

26 September 2017

## Consultation Document on Funds Relationships in the Global LEI System

### Executive summary

The present report proposes a **limited update to the way relationships affecting funds are recorded in the Global LEI System (GLEIS)**, with the objectives of making sure that the implementation of relationship data is consistent throughout the GLEIS and provide a means to facilitate a standardized collection of fund relationship information at the global level. These objectives are being pursued by: (i) providing definition of fund relationships and (ii) aligning the cases where the information is necessary to what will be done for direct and ultimate accounting parent entities as defined in the LEI Regulatory Oversight Committee (LEI ROC) report of March 2016<sup>1</sup>. This collection also is designed to help ensure that relationships affecting an important proportion of entities that have a Legal Entity Identifier (LEI) are appropriately covered.

The report proposes to replace the current optional reporting of a single “fund family” relationship as part of Level 1 (reference data of the entity) with the following relationships, as part of “Level 2” data (relationship data):

- “**Fund Management Entity**”, proposed to be defined as a *legal entity whose regular business is managing one or more investment funds* (possibly distinguishing a main Fund Management Entity from other Fund Management Entities involved in the management of the same fund). Funds would have to provide this information in order to receive or renew an LEI. An entity would report if it is a fund, and this information would be recorded as part of the public reference data of the entity, subject to challenge by third parties. Views are sought in this consultation on the scope of possible exceptions for reporting the relationship with a Fund Management Entity to the GLEIS, beyond the absence of such relationship, in particular whether there are examples where a Fund Management Entity’s identity would not be public for registered funds.
- “**Umbrella Funds**” relationship, proposed to be defined as a situation where *an investment fund has one or more than one sub-funds/compartments where all sub-funds/compartments have a common (Main) Fund Management Entity and each sub-fund/compartment has its own investment objectives, separate investment policies and strategies, segregation of*

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<sup>1</sup> See LEI ROC publication “Collecting data on direct and ultimate parents of legal entities in the Global LEI System – Phase 1”, March 2016, [https://www.leiroc.org/publications/gls/lou\\_20161003-1.pdf](https://www.leiroc.org/publications/gls/lou_20161003-1.pdf).

*assets, separate investors and where an investment fund has segregated liability between sub-funds/compartments.* There would be no opt out from reporting the existence of an umbrella fund where the sub-fund does not itself have legal personality and is a sub-set of another legal person, consistent with the decision made by the ROC for international branches. In other cases, reporting of the umbrella fund could either (i) be optional or (ii) be part of the information that must be provided in order for an LEI to be issued or renewed to a sub-fund/compartment, with the same opt-outs as for the reporting of Fund Management Entities.

- **“Master-Feeder”** relationship, proposed to be defined as a relationship, where *a Feeder Fund is exclusively, or almost exclusively, invested in a single other fund, or several funds that have identical investment strategies referred to as a Master Fund (or Master Funds).* Reporting this relationship could either (i) be optional or (ii) be part of the information that must be provided in order for an LEI to be issued or renewed to the Master Fund (or possibly Feeder Fund) with the same opt-outs as for the reporting of Fund Management Entities.
- **“Other Fund Family”**: reporting this relationship, which would capture other family relationships not captured above (such as those specific to a jurisdiction), would be optional.

The report also discusses and seeks views on whether an entity that has a relationship with a fund should always be reported to the GLEIS using the LEI of this entity (which would in practice, force such related entities to obtain an LEI, even where they are not required to do so by the law or regulation of the jurisdiction where they are organized and/or do business), or whether the current situation where a name is recorded could be continued, as well as other issues such as the validation and recording of these relationships.

This consultation document was developed by the LEI ROC under its Committee on Evaluation and Standards (CES).<sup>2</sup> The purpose is to seek input from the public on the design of a process for collecting data on the relationships of funds within the GLEIS. Your **responses to the questionnaire annexed to this document are invited by 26 November 2017** and will inform the final version of the policy framework that the ROC will approve for implementation by the Global LEI Foundation (GLEIF).<sup>3</sup> Implementation would not take place before January 2019.

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<sup>2</sup> The ROC was established in January 2013 to coordinate and oversee a worldwide framework of legal entity identification, the Global LEI System. The ROC was established on the recommendation of the Financial Stability Board and its Charter was endorsed by the Group of 20 (G-20) nations in November 2012. G20 Leaders at their Los Cabos summit in June 2012 encouraged “global adoption of the LEI to support authorities and market participants in identifying and managing financial risks”. (More on <http://www.leiroc.org/>).

<sup>3</sup> The GLEIF is in charge of defining, in consultation with the ROC and other relevant stakeholders, operational and technical standards for the GLEIS necessary for consistent implementation in a federated system, or respecting specific schemas or transmission protocols. These operational and technical standards are in particular defined in the Master Agreement between the GLEIF and LOUs (more information on the Master Agreement and Global LEI legal framework can be found here: <https://www.gleif.org/en/lei-system/global-lei-system-a-network-of-federated-services>). This Master Agreement defines the minimum provisions of the contracts between LOUs and the legal entities for the issuance and maintenance of LEIs.

## Introduction

The LEI is a 20-character reference code to uniquely identify legally distinct entities that engage in financial transactions. Each LEI is associated with reference data including the name and legal address of the entity. LEIs are issued and managed by a network of independent operators federated by the GLEIF applying the rules of the GLEIS under the oversight of the LEI ROC. The LEI ROC gathers over 90 official sector bodies from more than 50 countries. The LEI is used in more than 50 laws and regulations applicable in over 40 jurisdictions to support the reporting of financial transactions and other public sector uses. More generally, the LEI is used by market participants to support more reliable management of data on legal entities.

As initially intended, the GLEIS will start recording in 2017 relationships between an entity and its parent entities as defined in the LEI ROC report of March 2016.<sup>4</sup> At its Plenary meeting of 1-2 February 2016, the ROC decided to conduct work in view of a limited update to the way relationships funds have with other entities are recorded in the GLEIS, to both capture worldwide a fund's relationship with its management entity regardless of different legal and accounting framework under which they are organized, and improve the way funds relationships are recorded.

The ROC wishes to highlight that the present document does not seek to cover all relationships that funds have with other entities. Section I explains the objectives of the data collection. Section II describes the relationships that are intended to be covered (Fund Management Entity, Umbrella Funds, Master-Feeder, and Other Fund Family) and proposes definitions. Section III discusses whether the rules of the GLEIS should require a fund to report the LEI as opposed to only the name of the related entity. Section IV discusses whether recording these relationships should be a condition for the validation of a complete record in the GLEIS. Section V explains how these relationships would be verified and section VI lists issues to consider when representing fund relationships in the GLEIS. Section VII discusses potential future work on other funds relationships.

## Section I – Objectives of the data collection

Several reasons led the LEI ROC to contemplate improving the data collection on relationships funds have with other entities.

### 1. Improve the current collection of funds relationships

Currently, funds relationships are already collected in the GLEIS with the optional “associated entity” data element in Level 1 data, which includes only one value (“Fund Family”), and allows a fund to provide the LEI or the name of the associated entity. Some 17,000 entities with an LEI have used this option and provided information on an associated entity. However, “Fund Family”

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<sup>4</sup> [https://www.leiroc.org/publications/gls/lou\\_20161003-1.pdf](https://www.leiroc.org/publications/gls/lou_20161003-1.pdf)

covers different concepts and ROC guidance included “umbrella funds” and “fund manager”.<sup>5</sup> This is because this information was originally introduced in the GLEIS with the primary objective of avoiding possible confusions between funds that have the same name, especially where it is common to designate funds with numbers. While this objective is met, some public sector users have complained that in the absence of clear definitions distinguishing different types of funds relationships, the information currently collected does not meet other uses (such as those reflected in the next subsection).

Another reason for the proposal to improve the collection of fund relationships in the GLEIS is that the “associated entity” data element needs to be updated for consistency with the new way relationships between entities are now recorded in the GLEIS. Since May 2017, the GLEIS started collecting information on the direct and ultimate parents of legal entities, based on accounting definitions.<sup>6</sup> These relationships are not recorded as part of the “Level 1” reference data, but as a separate relationship record. This facilitates recording various attributes of the relationship, such as a start and end date and the level of verification of the information (which may be different from the business card information recorded in Level 1 data). This also allows the relationship record to be managed separately from the identity of entities, given that the two entities involved in the relationship may not be managed by the same LEI issuer. Therefore, it is necessary to improve the way funds relationships are currently recorded and ensure the consistent treatment of relationship data in the GLEIS.

In addition, a structured way to record information on umbrella funds would avoid the current practice of using the legal name data element to mention the name of the umbrella fund and sub-fund. Similarly, the address field is frequently used to mention another entity (“care of”), which is probably in many cases the fund management entity. Using data elements such as the name or address to record relationships is sub-optimal, as it results for instance in complicating name matching or the geocoding of addresses.

## **2. Uses of fund relationship information**

One could argue that relationship information may not be necessary, because in the case where an investment fund has a separate management entity, the assets and the liabilities of the fund are segregated from those of the management entity and therefore also from the assets and liabilities of any other fund(s) the management entity manages. Therefore the only “risk entity” to a transactional counterparty or investor is the fund itself. A management entity duly authorized to instruct and execute transactions on behalf of a fund does so as an agent of the fund. However,

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<sup>5</sup> LEI ROC, Common Data File Format V1.0 [http://www.leiroc.org/publications/gls/lou\\_20140620.pdf](http://www.leiroc.org/publications/gls/lou_20140620.pdf) (definition of Associated Entity and Fund Family).

<sup>6</sup> See LEI ROC, Collecting data on direct and ultimate parents of legal entities in the Global LEI System – Phase 1, available here: [http://www.leiroc.org/publications/gls/lou\\_20161003-1.pdf](http://www.leiroc.org/publications/gls/lou_20161003-1.pdf)

identifying the counterparty is not necessarily the only objective of this information, because collecting this information responds to other objectives, such as:

- Market conduct, as described below;
- Understanding potential systemic risks, for instance to the extent that the management of different funds by the same manager could be a potential source of contagion;

There are other ways to achieve these objectives, and regulators are already collecting relationship information on funds, either as part of the regulation of funds, or for the reporting of transactions. While views may differ on the need for additional granularity, some ROC members have stated that collecting this information in the GLEIS could offer benefits, such as:

- Support the harmonisation of data collections and the ability to aggregate information from different data collections.
- Avoid having to record in every trade information that is largely static, although changes in funds management entities do occur. The GLEIS could offer a single repository that would avoid duplications (to the extent several regulators would use it instead of a separate collection) and also facilitate managing the history of changes.
- The identification of fund managers is for instance considered relevant for the meaningful global aggregation of OTC derivatives data to allow for effective monitoring of potential systemic risks and market conduct issues posed by the manager of different funds. Notably, it may be relevant to identify unusual or particularly large transactions stemming from funds managed by the same fund manager, to potentially identify market abuse situations or concentration of risks stemming from the behaviour of one or several fund managers.
- This is an important step in understanding the interconnectedness of funds, which is essential when doing data analytics, risk assessment, risk aggregation, and economic analyses in support of a regulator’s mission. Risk aggregation is one of the objectives of the GLEIS. The aspect of risk concentration is for instance relevant for identifying the various feeder funds invested into the same master fund.

### **3. Funds represent a significant proportion of entities with an LEI and are generally not captured by the accounting consolidation parent relationships already collected in the GLEIS**

Major global industry associations, together with national associations from North America and Europe, wrote to the LEI ROC, in their response to the consultation on parent entities conducted in 2015, that “regulated investment fund LEIs form a large part (one third) of the assigned LEI data base” and that parent relationships would generally not capture relationships that these funds have with their managers and investors.

The parent information collected in the GLEIS is based on accounting consolidation, and funds typically are not consolidated with their management entities.<sup>7</sup> As applied in the GLEIS, relationships between a fund and a Fund Management Entity generally are distinct, and recording such a relationship with a Fund Management Entity does not necessarily duplicate parent relationships.<sup>8</sup> A range of criteria in both US GAAP and IFRS, applies to determine whether a manager should consolidate a fund and the mere fact that the asset manager is a decision maker and receives fees does not necessarily mean that there is consolidation.<sup>9</sup> Another reason for the lower relevance for funds of the ongoing collection by the GLEIS of parent relationships based on accounting consolidation is that exemptions to consolidation apply for investment entities in IFRS and US-GAAP.

The accounting consolidation parent relationship is also distinct from the master-feeder relationship envisaged in this report. Master funds can have several feeder funds, and none of them may be the majority shareholders or have control over the master fund. Even if, in the future, the GLEIS collects information on shareholders, which would allow to identify that a feeder is invested into a master, this would not inform that there is a master-feeder relationship and that the feeder is exclusively or almost exclusively invested in the master.

## **Section II - Definitions**

Investment funds or collective investment schemes may not always be registered, or may be subject to varying degrees of regulation, and there is therefore no single legal or regulatory definition.

For the purposes of this report, we are generally using the words “fund” or “investment fund” to describe a collective investment scheme (or pooled investment) beneficially owned by multiple investors and managed on behalf of those investors by an asset manager or by the fund itself. There are many types of investment funds, depending for instance on whether they are incorporated or not, open-ended or closed-ended, exchange traded, etc. While this report focuses on registered investment funds, the question whether the collection of certain funds relationships should vary

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<sup>7</sup> Money market funds in the U.S., in particular, would not be consolidated under U.S. GAAP accounting standards from being consolidated. (ASC 810-10-15-12f)

<sup>8</sup> However, consolidation between a fund and a Fund Management Entity does occur, for example, in special instances, such as at the initial stage of a fund where the manager or sponsor seeds the investment funds, and is the unique or primary investor in the funds. Such consolidation generally lasts until the shares in the funds are distributed more widely.

<sup>9</sup> For instance, under US GAAP, a first step in assessing whether a reporting entity is required to consolidate another entity is to determine whether the reporting entity holds a variable interest in the other entity. The assessment whether fees paid to a decision maker or service provider are a variable interest would focus on whether (1) the fees “are commensurate with the level of effort” (ASC 810-10-55-37(a)), (2) the reporting entity has any other direct or indirect interests through its related parties that absorb more than an insignificant amount of the VIE’s variability (ASC 810-10-55-37(c)), and (3) the arrangement includes only customary terms (ASC 810-10-55-37(d)).

depending on whether the fund is registered, and the question whether the collection specifically should apply, for example, to pension funds and sovereign wealth funds, are discussed in section III.

### 1. Definition of “Fund Management Entity”

Currently the GLEIS offers the concept of “fund family” to identify entities associated with a fund, but does not specifically define “fund family”, other than referring to two types of associated entities: an umbrella fund, and an entity managing a fund.<sup>10</sup>

Concerning the latter concept, the ROC proposes to define the term “Fund Management Entity” rather than using “Fund Manager” because the objective is to identify the relationships between two entities: (i) the fund and (ii) the legal entity which manages the fund. The objective here is not to identify the relationships of a fund with the staff that performs in practice the fund management tasks and is sometimes described as “fund manager” or “portfolio manager”. In the Global LEI System, the term “legal entity” is not restricted to incorporated entities and may include trusts, partnerships or individuals acting in a business capacity.<sup>11</sup> Therefore, it would seem that Fund Management Entities considered under the definition below are generally eligible to obtain an LEI.<sup>12</sup>

The ROC proposes the following definition of “Fund Management Entity”: *A legal entity whose regular business is managing one or more investment funds.*

In the United States for instance, an investment adviser has responsibility for directing a fund’s investments and handling its business affairs. The investment adviser has its own employees, including portfolio manager(s) who are investment professionals who determine which securities to buy and sell in the fund’s portfolio, consistent with the fund’s investment objectives and policies.

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<sup>10</sup> The Common Data File Format published in June 2014 ([http://www.leiroc.org/publications/gls/lou\\_20140620.pdf](http://www.leiroc.org/publications/gls/lou_20140620.pdf)) or “CDF” specifies for “AssociatedEntity”: “There is only one legal value for this enumeration – FUND\_FAMILY and that use is reserved to dealing with “umbrella” fund identification only” but also describes FUND\_FAMILY as “The legal entity is a fund, and the associated entity is the manager of the fund.”

<sup>11</sup> See the definition in ISO 17442 :2012 (The term "legal entities" includes, but is not limited to, unique parties that are legally or financially responsible for the performance of financial transactions or have the legal right in their jurisdiction to enter independently into legal contracts, regardless of whether they are incorporated or constituted in some other way (e.g. trust, partnership, contractual). It excludes natural persons, but includes governmental organizations and supranationals." (source: International Organisation for Standardisation, [http://www.iso.org/iso/catalogue\\_detail?csnumber=59771](http://www.iso.org/iso/catalogue_detail?csnumber=59771)). Individuals acting in a business capacity are eligible to an LEI under certain conditions described by the ROC on [30 September 2015](#).

<sup>12</sup> In the EU, the AIFMD sets out that the AIFM shall be a legal person. Similarly, the UCITS Directive lays down that a UCITS management company is a company, the regular business of which is the management of UCITS in the form of common funds (including unit trusts) or of investment companies. Therefore, individuals can never be authorised as AIFM or UCITS management company. In the US, although investment advisers typically are organized in corporate form (e.g., LLC or LP), largely for liability limitation and tax purposes, approximately a hundred investment advisers are organized as sole proprietorships, which appear eligible to obtain an LEI given the definition above.

In the EU, EU legislation distinguishes between two types of external fund managers: (i) UCITS<sup>13</sup> management companies and (ii) alternative investment fund managers ('AIFM').<sup>14</sup> AIFMD was originally designed to capture collective investment undertakings (UCIs) that were not already regulated under the UCITS Directive, referred to as alternative investment funds (AIF), in particular hedge funds, private equity and real estate funds. A key element of both the AIFMD and UCITS framework is the responsibility of the UCITS management company or AIFM for providing 'investment management' functions (i.e. portfolio and risk management) to UCITS or AIF. In the EU, each UCITS can have only one UCITS Management Company and each AIF can have only one AIFM.

However, in some cases, there may be several entities that would meet the definition above for the same fund. In the US for instance, one variation of the traditional portfolio management structure is the manager-of-managers (or multi-manager) structure where an investment adviser supervises one or more sub-advisers. In such an arrangement: (i) the investment adviser is responsible for supervising each sub-adviser; and (ii) each sub-adviser is responsible for a designated portion (all or a slice) of the day-to-day management of the fund's portfolio. In such structures, each sub-adviser to the fund must be registered under the Investment Advisers Act of 1940 ("Advisers Act") and identified in fund filings under the Investment Company Act of 1940 ("Company Act").

In the EU, UCITS management companies and AIFMs can delegate portfolio management activities to third parties, subject to compliance with the delegation provisions which include requirements for ongoing delegation monitoring.

It could be envisaged to distinguish two types of relationships instead of one:

- "(Main) Fund Management Entity" would be defined as: "*A legal entity whose regular business is managing one or more than one investment fund. In case of multiple legal entities managing an investment fund, the (Main) Fund Management Entity is the entity with the widest ranging management responsibilities and/or the one in charge of the selection and/or supervision of the other(s)*"; it is expected to be responsible for providing and/or supervising at least the portfolio management and risk management functions to the fund.
- "Other Fund Management Entity" would be defined as: "*In case of multiple legal entities managing an investment fund, an Other Fund Management Entity is a managing entity other than the (Main) Fund Management Entity*". It may for instance be one or several

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<sup>13</sup> Undertakings for Collective Investment in Transferable Securities

<sup>14</sup> Article 2 (1) (b) of Directive 2009/65/EU: 'Management company' means a company, the regular business of which is the management of UCITS in the form of common funds or of investment companies (collective portfolio management of UCITS); Article 4 (1) (b) of Directive 2011/61/EU: 'AIFMs' means legal persons whose regular business is managing one or more AIFs.

entities performing portfolio management functions for the fund (often under a delegation arrangement).

## 2. Proposed definition of “Umbrella Fund”

The ROC proposes the following definition: *An umbrella fund is an investment fund with one or more than one sub-funds/compartments where all sub-funds/compartments have a common (Main) Fund Management Entity and each sub-fund/compartment has its own investment objectives, separate investment policies and strategies, segregation of assets, separate investors and which has segregated liability between sub-funds/compartments.*

The sub-funds or compartments are legal entities in the LEI sense (i.e. eligible to obtain an LEI), although they may not be legal person or have legal personality in the traditional legal sense.

In EU legislation, there is no formal definition of ‘umbrella fund’ or ‘compartment’. Whether or not UCITS are allowed to have several investment compartments is left to the decision of each EU Member State.<sup>15</sup> AIFMD framework acknowledges the concept of ‘compartments’ without defining it.<sup>16</sup> Each UCITS compartment has to be treated as separate UCITS for the purpose of assessing compliance with investment limits laid down in the UCITS Directive.

In the US, the term “series” fund, rather than “umbrella” fund, is used.<sup>17</sup> The ROC’s intent is that “series funds” generally would be identified as “umbrella” funds in the GLEIS. The objectives of collecting information on this relationship are discussed in section III-2 and are distinct from the identification of funds that have the same Fund Management Entity (which are covered in the previous section). In some cases, “turnkey” fund operators may use a series fund structure<sup>18</sup>, where each individual fund is managed by its own investment adviser. A question is whether this type of series fund, which is not managed by a common investment adviser, should be excluded from the definition of “umbrella” fund in the GLEIS:

- Excluding them would prevent the identification of a legal entity in the traditional legal sense that “hosts” the compartments or series fund (see section III),.

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<sup>15</sup> Article 1 (2) of Directive 2009/65/EU: Member States may allow UCITS to consist of several investment compartments.

<sup>16</sup> Article 1 (1) (a) of Directive 2011/61/EU: ‘AIFs’ means collective investment undertakings, including investment compartments thereof [...]

<sup>17</sup> A “series fund” is a single legal entity with multiple portfolios (each also referred to as a “series” of shares). A series fund, or trust, allows the sponsoring investment adviser to spread out operating costs across the funds in the trust by combining or outsourcing certain services (e.g., audit, trustee, some legal). The series trust structure accordingly allows the sponsor to focus more on gathering assets and managing portfolios.

<sup>18</sup> For instance with the objective of allowing the use of a common board, administrator, and certain other service providers.

- As the GLEIS would be collecting information on the Fund Management Entities, users would be able to identify those that do not have the same Fund Management Entity.

Unsegregated sub-funds are excluded in the definition proposed above because they are not considered to be eligible to obtain an LEI, under the current definition of legal entities in the GLEIS; if however, such unsegregated sub-funds were to be considered eligible in the future, the absence of segregation would need to be recorded in the GLEIS, and the relationships with other unsegregated parts would also need to be recorded. Some jurisdictions require disclosures on segregation.<sup>19</sup> Views are sought on whether, in some jurisdictions, there is uncertainty concerning the existence of segregation, which would affect the definition of umbrella funds proposed in this document.

The inclusion of cases where an umbrella fund has only one sub-fund is intended to cover the transient situation where several sub-funds are planned, but only one is in existence, or the case where other sub-funds have ceased to exist.

In the U.S., there are certain insurance products (“variable annuities”) that are designed for retirement or other long-term goals and that offer investors aspects of insurance and investments. Premium payments under a variable annuity are invested in an insurance company separate account. An insurance company separate account is not a separate legal entity from its sponsoring insurance company under state law. Nevertheless, they may be eligible to obtain an LEI, to the extent the separate account is insulated by law for the benefit of certain contract owners. Such a separate account typically is registered under the Company Act as a UIT. A single separate account may have multiple subaccounts, each of which may invest in a different underlying mutual fund.<sup>20</sup>

GFMA and 8 regional or national funds associations, in their “LEI Fund Guidance”, v 4.0 of 12 May 2013, recommended that insurance company separate accounts receive a distinct LEI from the sponsoring insurance company if they are the counterparty to the reportable transaction.<sup>21</sup> Although this may not be true in all jurisdictions, where this is the case:

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<sup>19</sup> In the EU, UCITS prospectus and key investor information document (KIID) need to include an indication of the investment compartment(s). Separate KIID need to be produced for each individual compartment and, inter alia, describe whether or not the assets and liabilities of each compartment are segregated by law and how this might affect the investor. Separate accounting is required for compartments in the EU (under both UCITS and AIFMD, see Article 8 (1) of Commission Directive 2010/43/EU)

<sup>20</sup> For more information about variable annuities, see: <https://www.sec.gov/investor/pubs/varannty.htm>.

<sup>21</sup> See: [http://www.gfma.org/uploadedFiles/Initiatives/Legal\\_Entity\\_Identifier\\_\(LEI\)/LEI-Fund-Guidance-2013.pdf](http://www.gfma.org/uploadedFiles/Initiatives/Legal_Entity_Identifier_(LEI)/LEI-Fund-Guidance-2013.pdf) “Insurance company ‘Separate Accounts’ & ‘General Accounts’ Insurance company ‘separate accounts’ are subject to state insurance law and in some cases ERISA which forbids commingling of assets with the main insurance investment account and will have distinct assets and liabilities in the event of liquidation. Insurance company separate accounts for co-mingled investments should therefore receive a distinct LEI from the main legal entity if they are the counterparty to the reportable transaction. Insurance company ‘general accounts’ are not bankruptcy protected and therefore should use the LEI of the insurance company itself rather than being ring-fenced into a separate LEI.”

- A first option could be to describe the relationship between the separate accounts and the insurance company as an umbrella fund relationship in the GLEIS. This may require defining the relationship as “umbrella entity” and adapting the definition.
- A second option would be to create a “sponsor” relationship, where the insurance company would be the sponsor and the separate account the sponsored entity. To the extent an insurance company can have several separate accounts that could themselves have several subaccounts, the “umbrella fund” relationship would apply between the separate account and the sub-accounts.

### **3. Definition of a “Master-Feeder” relationship**

The ROC proposes the following definition:

- *A Feeder Fund is exclusively, or almost exclusively, invested in a single other fund, or several funds that have identical investment strategies referred to as a Master Fund (or Master Funds).*

In the US, some mutual funds have a two-tiered or **master-feeder structure** in which the master fund is an investment company registered under the Company Act. The feeder funds hold a single investment: shares in the master fund. The master and feeder funds have the same investment objectives and policies. The feeder funds typically are distinguished from one another by their targeted marketing and distribution arrangements.

Like a traditional single-tiered mutual fund, the master fund retains an investment adviser to manage its portfolio as well as a custodian to hold its assets and perform the fund accounting functions. Interests in the master fund are sold privately to one or more feeder funds.

In the US, with respect to funds in a master-feeder structure, it may be that only the master fund has an investment adviser. It may therefore be particularly relevant to record separately this master-feeder relationship, which would be one of the opt-outs for not reporting a “Fund Management Entity”, should the reporting of such relationship become required in the GLEIS as envisaged in section IV.

In the EU a feeder UCITS/AIF has to invest at least 85% of its assets in the master-fund and is permitted to hold up to 15% of its assets in other assets (e.g. ancillary liquid assets or financial derivative instruments used for hedging purposes).<sup>22</sup> In any case, every feeder UCITS/AIF must

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<sup>22</sup> In the EU, an alternative investment funds can have several master funds, under Art. 5 of Directive 2011/61, (“feeder AIF” means an AIF which: (i) invests at least 85 % of its assets in units or shares of another AIF (the ‘master AIF’); (ii)

have an authorised/registered entity that acts as Management Company or AIFM (or be self-/internally managed). The Management Company or AIFM of the feeder fund might be identical to the Management Company or AIFM of the master-fund, but could also be a separate entity.

This relationship could also possibly apply to situations in which a fund is exclusively, or almost exclusively, invested in another fund. For instance, in the US, insurance company separate accounts invest in underlying mutual funds and the separate account is considered to be an investment company known as a unit investment trust, which is passive in nature. This is similar to master-feeder in that there is a 1-1 relationship between the separate account and the underlying fund.

It should be noted that relationships are not mutually exclusive: a feeder fund could for instance report both a Master fund relationship and a Fund Management Entity.

#### **4. Whether an “other fund family relationship” should be created**

There may be other relationships qualified as, or akin to, a fund family relationship under domestic law, which would not be encompassed in the three definitions above. To ensure continuity with the current option to report a broad “Fund family” relationship, it could be envisaged to create a catch-all category “other fund family relationship” which could be sub-divided at a later stage, if necessary.

For instance, in the US, the term “**Family of investment companies**” is used in certain regulatory context to mean any two or more registered investment companies that: (i) share the same investment adviser or principal underwriter; and (ii) hold themselves out to investors as related companies for purposes of investment and investor services.<sup>23</sup> A number of these family relationships would be covered by the relationships defined above. However, some other relationships, such as funds that share the same principal underwriter, would not and could therefore be captured in the GLEIS under the “other fund family relationship”.

Similarly, two funds with different Fund Management Entities could be related because these Fund Management Entities are themselves related. In some cases, the relationship would be captured in the GLEIS, for instance if these Fund Management Entities report in the GLEIS that they have the same ultimate accounting consolidation parent. In other cases where such indirect relationships are not reported, the concept of “other fund family relationship” could be used. For instance, in the US, the term “**fund complex**” is used in certain regulatory contexts to encompass, for example,

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invests at least 85 % of its assets in more than one master AIFs where those master AIFs have identical investment strategies; or (iii) has otherwise an exposure of at least 85 % of its assets to such a master AIF).

<sup>23</sup> Starting in 2018, the SEC will require registered funds to identify the name of the “family of investment companies” in responding to Item B.5 of newly adopted Form N-CEN (as such term is defined in the form). (*See* Investment Company Reporting Modernization Release Nos. 33-10231 (2016)).

the situation where a registered investment company (fund) has an investment adviser that is an affiliated person of the investment adviser of any of the other registered investment companies that are part of the fund complex.<sup>24</sup>

***Questions for consultation:***

1. ***Do you have comments on the definition of a “Fund Management Entity” relationship?***
2. ***In the case of multiple “Fund Management Entities” for a single investment fund, should the reporting be limited to the “main” or “principal” managing entity or should there be a distinction between ““(Main) fund management entity” and “Other fund management entity” e.g. sub-adviser?***
3. ***Do you have comments on the definition of an “Umbrella Fund” relationship between the Umbrella funds and its sub-funds and compartments? Should the definition of umbrella funds cover series funds (such as US series funds)? Should it include turnkey funds? Should it include the relationship between an insurance company and its separate accounts or should a specific relationship (such as sponsor) be created?***
4. ***Do you have comments on the definition of a “Master-Feeder” relationship? Do you have views or additional examples of concrete cases that would be covered by the proposed definition?***
5. ***Do you have comments on the creation of a category “other fund family relationship”, to ensure a better transition with the current concept of “fund family”, in case the two definitions above would not cover all “family” situations in domestic regulations? Could you provide examples of situations that would be reported under this category (please quote the relevant laws and regulations, as applicable).***
6. ***Do you have comments on the proposal to discontinue the “Fund family” associated entity as currently defined and recorded in Level 1 reference data (although historical files would keep the information). What would be the appropriate way to migrate the information for lapsed records and records of inactive entities, (for instance into the “other fund family relationship”?).***
7. ***Should the four types of relationships described in this section apply to***
  - (a) pension funds?***
  - (b) sovereign wealth funds?***
8. ***Are you aware of domestic regimes of funds regulation that would not be compatible with the definitions and proposals in this report?***

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<sup>24</sup> See Investment Company Act Form N-1A (registration form for mutual funds) instructions for Item 17.1(b) (Management of the Fund).

### **Section III - Whether entity related to a fund should always be represented with an LEI, or whether the current situation where a name is recorded without an LEI could be continued.**

Out of 17,000 LEIs with an associated entity recorded in the GLEIS, the associated entity is designated by a name, and not an LEI, in some 4,000 cases. It may be envisaged to change the GLEIS standards to always require an LEI for the related entity, which means that the related entity would have to obtain an LEI due to GLEIS requirements (even if the entity is not otherwise required to have an LEI, for instance based on applicable regulations). Applying such a requirement for the related entity to obtain an LEI should be facilitated when the related entity is actually the entity representing the fund for the acquisition of the LEI (which may generally be the case of the “Fund Management Entity”) or when the sub-fund is part of the same legal person as the umbrella fund.

At a minimum, the LEI of the related entity would continue to be required when the related entity has one. The question of whether the related entity should be described with an LEI in all cases may differ depending on the relationship.

#### **“Fund Management Entity”**

A given Fund Management Entity frequently manages portfolios of investments of a large number of different regulated investment funds (compartments included). To avoid any confusion in registering the names of the Fund Management Entities, it would appear preferable to register them with an LEI. The use of different types of identifiers or description of the entity through open text fields might lead to a situation where the same entity is identified/described differently by the reporting entity, thus limiting the usefulness of that information.

In addition, always using an LEI for the Fund Management Entity could more precisely identify such entity and mitigate confusion, which could, in turn, improve the monitoring of securities transactions by funds that are managed by the same entity.

#### **“Umbrella Funds”**

Although the individual compartment or sub-fund is the counterparty or an investor, and as described in the next section, the umbrella structure would need to be identified at least where the sub-fund does not itself have legal personality and is a sub-set of another legal person.

#### **Master Feeder and other fund relationships:**

If reporting these relationships is optional (see next section), the LEI of the related entity could be required by the standards governing the GLEIS in all cases where such a relationship is reported

(i.e. optionality applies for reporting the relationship, but the use of an LEI would be mandatory, if the relationship is reported).

### **Preliminary conclusions**

Representatives of the global fund industry supported the approach to attribute an LEI to the “**Umbrella Fund**”, because it “will help to drive better data consistency for the fund name and registered address information that can then be applied to each sub-fund name”.<sup>25</sup>

However, a difficulty is that, there may be in the case of funds the legacy issues of sub-funds that have an LEI whereas the umbrella fund does not yet have one. In addition, while funds are or will be required to obtain an LEI in some jurisdictions pursuant to applicable law and/or regulation, the related entities may not be under the same obligation. For instance, in the US, the SEC has adopted a rule that requires all U.S. registered funds to report an LEI starting in 2018.<sup>26</sup> The rule requires U.S. registered funds to obtain LEIs at the registrant and registered fund (series) level for SEC reporting purposes. In contrast, such rule does not require that the fund’s investment adviser obtain an LEI based solely on its relationship with a registered fund, but does allow the fund to report its investment adviser’s LEI, if available.

Therefore, a wide ranging GLEIS standard requiring related entities to obtain and provide an LEI, in lieu of a name, would, in practice, force such related entities to obtain an LEI, where they are not required to do so by the law or regulation of the jurisdiction where they are organized and/or do business. Views are sought as to whether this constraint is sufficiently counterbalanced by the benefits described above.

At a minimum, the GLEIS standards could require that an LEI, and not a name, be reported, where the sub-fund itself does not have its own legal personality and is a compartment or series of another legal person. This would parallel the decision<sup>27</sup> made by the ROC for international branches. Some users have criticized the attribution of LEIs for entities that are not fully distinct and this would address this concern by making it possible for users to automatically link the LEI of the sub-fund with the entity that has legal personality. This may also facilitate the implementation of the new International Organisation for Standardisation (ISO) standard on entity legal form, which is collected as part of the reference data of each entity.

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<sup>25</sup> See: [http://www.gfma.org/uploadedFiles/Initiatives/Legal\\_Entity\\_Identifier\\_\(LEI\)/LEI-Fund-Guidance-2013.pdf](http://www.gfma.org/uploadedFiles/Initiatives/Legal_Entity_Identifier_(LEI)/LEI-Fund-Guidance-2013.pdf)

<sup>26</sup> See Investment Company Reporting Modernization Release No. 33-10231 (2016).

<sup>27</sup> LEI ROC, Including data on international/foreign branches in the Global LEI System, 11 July 2016, [http://www.leiroc.org/publications/gls/roc\\_20160711-1.pdf](http://www.leiroc.org/publications/gls/roc_20160711-1.pdf).

***Questions for Consultation:***

9. *What are your views on the costs and benefits of identifying the “Fund Management Entity”, the “Umbrella Fund”, the “Master Fund” and the “Other fund family” strictly with an LEI (as opposed for instance to using the name). Should using a name (rather than an LEI) be permissible in some cases? If you suggest using a name, or some other means or combination of means (other than the strict use of the LEI), please assess the costs and benefits of this alternative.*

## **Section IV - Extent to which fund relationships should be required by the GLEIS in order to obtain or maintain an LEI**

Currently, a minimum set of Level 1 reference data (name, address, ...) for an entity must be provided in order for an LEI to be issued and considered by the ROC and regulators as valid. The ROC also decided that information on direct and ultimate parent entities should be added to this set of information required by the GLEIS for validating an LEI record, but with the option to decline providing this information for reasons that will be made public. This section discusses the extent to which each of the fund relationships described in section 1 should be a mandatory part of the validation of an LEI record, and the nature of any exception or opt-out that would be permissible (for instance in case the information would not already be in the public domain).

As a preliminary remark, any GLEIS standards that would require the reporting of a fund relationship (subject to opt-outs) would –obviously - apply only to funds. As noted earlier, there is no universal definition of an investment fund. To specify the universe of funds that would be subject to this requirement, an initial approach would be to ask entities requiring or renewing their LEIs to specify whether they are a fund or not. This information would be recorded under the “Entity Category” data element introduced recently for branches, be publicly available and subject to challenges by users like other data elements in the GLEIS. This would not prevent regulators from voluntarily publishing lists of LEIs of entities they consider to be funds for the purposes of the GLEIS, which would help LOUs to implement any requirement to report relationships specific to funds.

### **1. Fund Management Entity**

Currently, the relationship between a fund and the Fund Management Entity can be reported on an optional basis. There would be several reasons for GLEIS standards to require such reporting:

- Funds are required to report their LEIs when they report certain transactions in certain jurisdictions, such as derivative trades, and a number of regulators already include, or

consider including, information on the Fund Management Entity in the trade reporting. Including this relationship information in the LEI record of fund would give regulators the possibility to omit this information from trade reporting, and retrieve it instead from the LEI. This may be more efficient as this information does not change for every trade but would require regulators to rely on the data in the GLEIS rather than data reported to trade repositories.

- As noted in the “LEI Fund Guidance”, v 4.0 of 12 May 2013 prepared by GFMA and 8 regional or national funds associations, a number of funds obtain their LEIs through a request from their Fund Management Entity and the LOU is already required to check that this entity is entitled to represent the fund.<sup>28</sup> Therefore, at least in those cases,<sup>29</sup> requiring the “Fund Management Entity” relationship to be recorded and verified would presumably not substantially add to the workload of LOUs.
- The information on the identity of the Fund Management Entity is not expected to be confidential, and is required to be disclosed for regulated/registered funds in some jurisdictions but in other instances this information may not always be public.

One could argue that this information may not be necessary, because in the case an investment fund has a separate management entity, the assets and the liabilities of the fund are segregated from those of the management entity and therefore also from the assets and liabilities of any other fund(s) the management entity manages. Therefore the only “risk entity” to a transactional counterparty or investor is the fund itself. A management entity duly authorized to instruct and execute transactions on behalf of a fund does so as its agent and not as a principal. However, risk tracking/assessment is not necessarily the only objective of this information, because collecting this information responds to other regulatory objectives, such as market conduct.

Another potential obstacle is that the “universe” of Fund Management Entities is very broad and it may be in some cases difficult to report in an appropriate manner the legal structure that manages a given fund. Therefore, the ROC is considering as well some exceptions and opt-outs mirroring those applying for the collection of information on ultimate and direct parents of legal entities in the GLEIS:

a) there is no Fund Management Entity according to the definition used. This would be the case for instance if the Fund itself is responsible for providing any portfolio management and risk

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<sup>28</sup> The GFMA stated that “Not all funds are self-managed entities, in which case the LEI request should be received from the separate entity that is responsible for providing the “mind and management” of the fund, for example the fund management company in the case of a mutual fund. In such cases, the submitter should be able to demonstrate its responsibility for the fund or, if it is acting on behalf of a third party with that responsibility, demonstrate both the role of the third party and its own authority to act on their behalf. Acting in this capacity the submitter would select the role of primary party and also carry the responsibility to certify the fund LEI”. [http://gfma.org/uploadedFiles/Initiatives/Legal\\_Entity\\_Identifier\\_\(LEI\)/LEI-Fund-Guidance-2013.pdf](http://gfma.org/uploadedFiles/Initiatives/Legal_Entity_Identifier_(LEI)/LEI-Fund-Guidance-2013.pdf)

<sup>29</sup> Other cases include funds not represented by a Fund Management Entity, which are likely to have no such relationships to report (for instance self-managed funds), and where verification costs would be limited as well. The availability of verification sources is discussed in section V.

management function. For example, a U.S. unit investment trust and a U.S. feeder fund each do not have an investment adviser. In the EU, UCITS and AIF of the corporate form may be internally/ self-managed (subject to authorization/registration). Therefore, not all registered funds would be in a position to report a “Fund Management Entity”. The GLEIS would record and publish the cause (at a minimum by stating that “the fund does not have a Fund Management Entity that meets the definition”, and possibly by adding, where applicable, that the fund is an internally managed fund, perhaps by reporting the entity itself as the Fund Management Entity<sup>30</sup> or through other means).

In the case of direct accounting consolidation parent and ultimate accounting consolidation parent, the ROC admitted two other exceptions to reporting parent relationships:

b) legal obstacles prevent providing or publishing this information: which included (i) obstacles in the laws or regulations of a jurisdiction<sup>31</sup>; (ii) other binding legal commitments such as articles governing the legal entity or a contract.

c) the disclosure of this information would be detrimental to the parties to the relationship. This included reasons generally accepted by public authorities in similar circumstances, based on a declaration by the entity.<sup>32</sup>

However, at least for regulated/registered funds, and as discussed above, it would not seem that such exceptions could be applicable. Respondents to the public consultation are invited to provide any example where a Fund Management Entity’s identity would not be public for registered funds.

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<sup>30</sup> In the EU, in the case of a self-managed fund, the fund is considered as the Fund Management Entity. Under AIFM Directive 2011/61/EU, *Article 5*, 1. Member States shall ensure that each AIF managed within the scope of this Directive shall have a single AIFM, which shall be responsible for ensuring compliance with this Directive. The AIFM shall be either: (a) an external manager, which is the legal person appointed by the AIF or on behalf of the AIF and which through this appointment is responsible for managing the AIF (external AIFM); or (b) where the legal form of the AIF permits an internal management and where the AIF’s governing body chooses not to appoint an external AIFM, the AIF itself, which shall then be authorised as AIFM....”

<sup>31</sup> This would include for instance cases where, under the applicable legal framework disclosing the Fund Management Entity relationship would require the consent of one of the entities in the relationship, or both, and such consent could not be obtained, knowing that it would be a responsibility of the fund to seek the Fund Management Entity consent when necessary for disclosing the Fund Management Entity relationship, for instance by inviting in writing the Fund Management Entity to provide consent. In this case, the reference data of the fund would specify, in addition to the disclosure of the reason foreseen for b(i), that “the consent of the Fund Management Entity was necessary under the applicable legal framework and the Fund Management Entity did not consent or could not be contacted”.

<sup>32</sup> This would also include the following cumulative circumstances: i) the Fund Management Entity could not be informed via the GLEIS and have the possibility to correct the relationship information before publication (including raising a cause for opt out), as envisaged in section 3.2, either because the Fund Management Entity does not have an LEI, or it has an LEI but the GLEIS has not yet implemented such system; ii) the relationship is not already in the public domain (information being in the public domain assumes here that the way the information came into the public domain did not infringe the applicable legal framework); iii) the fund has reasons to believe that the Fund Management Entity may consider disclosure to be detrimental; (iv) the fund has sought to consult the Fund Management Entity of the reporting of the Fund Management Entity information to the GLEIS but could not confirm the absence of detriment in a way that can appropriately prevent liability risks for the fund (or those acting on its behalf) under the applicable legal framework. This case is expected to correspondent mostly to a transient situation and is meant to ensure that the fund is not prevented to obtain an LEI during the time needed to ascertain the absence of detriment to the Fund Management Entity. It will be flagged in the reference data and the ROC and GLEIF would monitor its use to adapt it as necessary.

Respondents to the public consultation are also invited to give their views as to whether reasons b) and c) should be kept, at least for non-registered funds, or for both registered and non-registered funds. If the opt-outs were allowed only for non-registered funds and because it would be difficult to define universally what is a registered fund, it would be for the entity wanting to use reasons b) and c) to state that it is an unregistered fund. This statement would be publicly disclosed in the GLEIS and therefore subject to challenge by any user that could demonstrate that the fund otherwise would be required to disclose its Fund Management Entity.

In any case, no set of opt-out provisions would prevent an authority from being more restrictive in the range of reasons it accepts, when requiring entities under its jurisdiction to report the information to the GLEIS. Making public the reasons for declining to provide the relationship with a Fund Management Entity will allow regulators to monitor alignment of entities with local reporting rules and to observe patterns of noncompliance. Such disclosure may also incentivize the provision of relationship information by market participants desiring to demonstrate a high level of transparency.

Entities opting out from reporting to the GLEIS the relationship with their Fund Management Entity would have to select a reason among a, b (i) and (ii), and c above and this reason would be made public. As for parent relationships, LOU would not be expected to verify the statement by the fund, beyond the collection, for b (i) of the references of the law or regulation or other element of the legal framework which will also be made public,<sup>33</sup> and for c), of a sufficiently descriptive explanation of the nature of the detriment, which would not be made public but shared with the GLEIF and ROC. In the latter case, further guidance would be developed as necessary.

## **2. Umbrella Funds**

When an LEI is obtained for the first compartment or sub-fund of an umbrella fund, it is proposed that the relevant umbrella fund would also have to obtain an LEI.

It is proposed that there would be no opt out available where the compartment/sub-fund does not itself have legal personality and is a sub-set of another legal person, consistent with the decision made by the ROC for international branches. Some users have criticized the attribution of LEIs for entities that may be considered separate funds because of their segregated balance sheet, but which, for other purposes, are only a part of another entity. This concern would be addressed by:

- Recording in the GLEIS that the entity is a compartment of sub-fund in the “Entity Category” data element. Where such compartments or sub-funds are a recognized legal form in the relevant jurisdiction, the new ISO standard on entity legal form may also assist;

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<sup>33</sup> The LOU is not expected to verify or analyze whether the legal framework constitutes a legal obstacle. It will be for instance for any competent regulator requiring this information to determine whether the opting out was justified.

- Recording the relationship with the umbrella fund in the relationship data. Users that need the umbrella level would then always be able to retrieve the information.

In other cases (i.e. where the compartment or sub-fund does have legal personality), views are sought on the benefits for users of having this information and on whether reporting the umbrella fund should either (i) be optional or (ii) be part of the information that must be provided in order for an LEI to be issued or renewed, with the same opt-outs b and c as in the previous section.

### **3. Master-Feeder relationship**

Views are sought on whether reporting this relationship in the GLEIS should either be (i) optional or (ii) part of the information that must be provided in order for an LEI to be issued or renewed with the same opt-outs as for the reporting of the relationship with Fund Management Entities.

In either case, the relationship would apply to any fund, whether registered or not. In the US, feeder funds can be registered investment companies, as well as: (i) unregistered offshore funds; or (ii) bank collective vehicles for pension fund assets or other institutional accounts that are exempt from registration under the Company Act. Therefore, restricting the collection of this relationship information to registered funds only may omit part of the relevant population.

A question is also whether the reporting of this relationship should be done by the feeder fund or the master fund. Some industry participants consider that the master fund may not necessarily be informed about all the feeder funds feeding into it.

### **4. Other fund family**

It is proposed that reporting this relationship to the GLEIS would be optional.

#### ***Questions for consultation:***

- 10. Do you have comments on the proposed standard requiring funds to report to the GLEIS a fund managing entity when they have one? Should a self-managed fund report itself as the Fund Management Entity or should the absence of a relationship with a Fund Management Entity be recorded in another way?***
- 11. Should the opt-outs b) and c) from reporting the Fund Management Entity to the GLEIS be restricted to funds that are not registered or be available for registered and non-registered funds? If the former, is the scope of registered funds sufficiently well-defined? Are there any example where a Fund Management Entity's identity would not be public for registered funds?***
- 12. Do you have comments on the proposed standard requiring sub-funds or compartments to report to the GLEIS their umbrella fund?***
- 13. Is the list of opt-outs appropriate?***

## Section V - Verifications to be conducted by LOUs concerning fund relationships and the source for verification.

Fund Management Entities are regulated entities and registered as such with the securities regulators or the central banks so far as regulated investment funds are concerned.

The ROC proposes<sup>34</sup> that for verification purposes the following sources should be used when available:

- 1) National company registries;
- 2) Regulatory filings to regulators or central banks as well as registers and databases kept by competent authorities (other registration authorities, which is consistent with the approach of the list of business registries and registration authorities currently maintained by the GLEIF);
- 3) Fund prospectuses vetted by authorities.

This could be the appropriate order of sources to be used for validation or verification. It was also observed that for Level 1 reference data and for parent entities relationship data, the ROC already recognized several levels of validations, from “fully corroborated” to “entity supplied only”, to reflect the extent to which independent sources could be used for validation. A fund prospectus not vetted by authorities would probably be considered under the category “entity supplied only”.

Regulatory filings would exist in the US for instance, as the federal securities laws focus on a fund’s investment adviser because of such adviser’s prominent role in managing a fund, *e.g.* investing portfolio assets and, sometimes, sponsoring the fund. Such U.S. laws require an investment adviser to a:

- fund that is registered under the Company Act of 1940 also to be registered under the Advisers Act; and
- private fund (*i.e.*, generally a hedge fund or private equity fund), generally to register and, for certain advisers, report under the Advisers Act.<sup>35</sup>

Form ADV, the public registration and reporting form required under the Advisers Act, asks a filer to provide its LEI, if it has one. Similarly, Form PF, a non-public form filed by certain private fund advisers, asks a filer to provide its LEI, if available. The investment adviser(s) to a registered fund

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<sup>34</sup> This is similar to the guidance on validation documents in the LEI Fund Guidance v 4.0 published by GFMA ([http://www.gfma.org/uploadedFiles/Initiatives/Legal\\_Entity\\_Identifier\\_\(LEI\)/LEI-Fund-Guidance-2013.pdf](http://www.gfma.org/uploadedFiles/Initiatives/Legal_Entity_Identifier_(LEI)/LEI-Fund-Guidance-2013.pdf)).

<sup>35</sup> Certain private fund advisers are not required to register or report (*i.e.* those that exclusively manage a venture capital fund(s), or less than \$150 million (U.S. dollars) in assets that are held in only private funds).

can be identified through both: (i) the adviser's Form ADV; and (ii) the registered fund's registration statement.

Investment advisers in the U.S. generally are regulated entities. As such, an LOU could compare funds against IARD, EDGAR, and the SEC website for verification:

- IARD is a FINRA maintained system used to make required filings by: (i) registered investment advisers; and (ii) exempt reporting advisers (i.e., certain private funds).
- EDGAR is an SEC maintained and owned system that is used by multiple types of registrants (e.g., investment companies, corporations, exchanges) to make required filings.
- The SEC's website, [www.sec.gov](http://www.sec.gov) provides certain information about funds and advisers at <https://www.sec.gov/data>.

Given that the funds identifier would likely be included as the Business Registry or Registration Authority (BRRA) number requested by the LOU from the registrant, this should facilitate verification.

In the EU, both UCITS and AIFMD frameworks include detailed provisions in relation to the conditions and procedures for obtaining authorisation/registration as UCITS management company or AIFM. National competent authorities (NCAs) keep registers of all authorised/registered UCITS management companies and AIFMs and report regularly to ESMA. ESMA compiles data on authorised UCITS management companies and AIFMs on the basis of data provided by NCAs in a publicly accessible register: <https://www.esma.europa.eu/databases-library/registers-and-data>. ESMA register does not include 'registered AIFMs'.<sup>36</sup>

***Questions for consultation:***

- 14. Do you have comments on the proposed level of verification of funds relationships? Are there appropriate sources for verifications in your jurisdiction? Should the LOU verify the statement by an entity that the entity is a fund? If so, how?***

## **Section VI – Representation of fund relationships in the GLEIS.**

There is an expectation by the ROC that the relationship data model developed for parent entities would be used also for relationships with funds, instead of recording the information as part of the

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<sup>36</sup> AIFMs managing portfolios of AIFs whose assets under management, including assets acquired through use of leverage, in total do not exceed threshold of (i) 100 million EUR or (ii) 500 million EUR if portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during 5 years following the initial investment.

Level 1 data. The views of respondents to the public consultation are sought as to the concrete uses they see to fund relationships that would be recorded in the GLEIS, and how these uses may impact the way this information is recorded in the GLEIS. For instance, are there any specific consideration that could impact data elements such as:

- Level of verification;
- Sources of information;
- Dates of the relationships.

***Questions for consultation:***

***15. Are there any specific consideration that could impact data elements such as, the level of verification; the sources of information; the dates of the relationships?***

## **Section VII - Other fund relationships**

The present document focuses only on some relationships that funds have with other entities. The ROC is aware that many other relationships exist, some of which might be added in future expansions of relationship data, on which there would be separate public consultations. To that end, respondents to the public consultation are invited to specify which relationships they would recommend adding to the GLEIS, any definition they would recommend using (preferably relying on internationally recognized definitions) as well as the benefits and costs related to such additions. Where several additional relationships are suggested, respondents are invited to specify whether they consider that some of them would have a higher priority.

For instance, additional relationships that could be considered to be implemented in the GLEIS include relationships that apply to a broad range of entities that provide services to funds (and possibly to entities other than funds) such as the independent public accountant or external auditor of the entity a custodian<sup>37</sup>, a principal underwriter<sup>38</sup>, a sponsor<sup>39</sup> or a transfer agent<sup>40</sup>. Another

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<sup>37</sup> A custodian holds the fund's assets, maintaining them separately to protect shareholder interests and reconciling the fund's holdings against the custodian's records.

<sup>38</sup> Principal underwriters sell fund shares, either directly to the public or through other firms (e.g., broker dealers).

<sup>39</sup> The fund's sponsor, who is typically the fund's investment adviser, has a variety of responsibilities such as, assembling the group of third parties needed to launch, manage, and operate the fund, providing officers and affiliated directors to oversee the fund, and recruiting unaffiliated persons to serve as independent directors. The sponsor also usually contributes the seed capital, serving as the fund's initial shareholder.

<sup>40</sup> Transfer agents execute shareholder transactions, maintain records of transactions and other shareholder account activity, and send account statements and other documents to shareholders.

consideration is that some jurisdictions are already implementing the optional reporting of certain fund relationships, some of which may be specific to local regulatory definitions. To illustrate, starting in 2018, all investment companies that are registered in the United States under the Investment Company Act will be required to report certain census information on new Form N-CEN. The SEC rule that implements the requirement provides that a registered investment company that does not yet have a LEI will be required to obtain one, and report its LEI on Form N-CEN.<sup>41</sup> With respect to related third parties that provide services to such a fund, however, the same SEC rule provides that the fund report the third party's LEI only if the third party has an LEI (and has shared it with the fund).<sup>42</sup> In addition, an investment adviser that is registered in the U.S. under the Advisers Act is not required to obtain an LEI simply because of its relationship to a U.S. registered fund.<sup>43</sup>

Another type of relationship that may merit consideration in the future is the concept of “funds of funds”, by which a fund invests in other funds. However, this relationship is generally less permanent than the other ones considered here, and may more usefully be considered as part of the broader issue of whether and how to record investments by an entity in another (see ROC report Collecting data on direct and ultimate parents of legal entities in the Global LEI System – Phase 1, section 2.3 on “other relationships”).

***Questions for consultation:***

- 16. Do you support excluding at this time the relationships where a fund is simply invested in another one (as this would be covered by other types of relationships, such as Master-Feeder above, and would require further work on investment relationships, beyond funds)?***
- 17. Respondents to the public consultation are invited to give their views as to the criteria that should be taken into account when determining whether a relationship should be included in the Global LEI System.***

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<sup>41</sup> See Investment Company Reporting Modernization Release Nos. 33-10231 (2016). At the registrant level, the rule requires reporting of LEIs for the investment company registrant. The rule also requires reporting of LEIs of registered fund series. The SEC also noted that it would expect to revisit the requirement to report LEIs if the operation of the GLEIS were to change significantly.

<sup>42</sup> The rule instructs a registrant to report LEIs (if any, as discussed above) for its principal underwriter and independent public accountant. The rule also seeks the reporting of LEIs (if any) for numerous relationships on the registered fund (series) level, including for feeder funds, securities lending agents, controlled foreign corporations, investment advisers, investment sub-advisers, transfer agents, pricing services, custodians, shareholder servicing agents, third-party administrators, affiliated broker-dealers, top ten brokers that received the largest brokerage commissions, and top ten principals with which the fund did the largest dollar amount of principle transactions. Furthermore, the rule seeks the reporting of LEIs (if any) for authorized participants (to be reported by exchange-traded funds) and depositor (to be reported by unit investment trusts).

<sup>43</sup> SEC rules do not require a registered or reporting investment adviser to obtain an LEI; only to report its LEI if it has one. See, e.g., Form ADV, Item 1.P. As of May 31, 2016, approximately 6.80% of all registered investment advisers reported an LEI when filing Form ADV. See *Form ADV and Investment Advisers Act Rules*, Release No. IA-4509 (Aug. 25, 2016).

## LEI ROC Working Group on Funds Relationships

### Members List

**Chair:**

Michel Maquil, Central Bank of Luxembourg

**Members:**

Gerlinde Abraham, Bafin, Germany

Eoin Cashin, Bank of Ireland

Yannick Ellenbroek, Netherlands Authority for the Financial Markets

Dan Hiltgen, US Securities and Exchange Commission

Susan Nash, FSB Secretariat

Kian Navid, ESMA

Tim Pinkowski, IOSCO Secretariat

Andreas Strömmer, Bafin, Germany

Bram Zwagemakers, Netherlands Authority for the Financial Markets.

Stéphane Mahieu, ROC Secretariat

## Consultation Document on Funds Relationships in the Global LEI System

### Annex 1: Questionnaire for the public

**THIS ANNEX IS ALSO AVAILABLE IN WORD FORMAT HERE:**

[www.leiroc.org/publications/Annex\\_1\\_Consultation\\_Document\\_on\\_Funds\\_Relationships-Questionnaire.docx](http://www.leiroc.org/publications/Annex_1_Consultation_Document_on_Funds_Relationships-Questionnaire.docx)

Please type your answers into the attached questionnaire and send it to [leiroc@bis.org](mailto:leiroc@bis.org) by COB **26 November 2017**. Where possible, please specify the reasons for the preferences expressed or the details of any trade-offs you see. A Microsoft Word version of the questionnaire is available here:

The responses to the questionnaire will be shared within the ROC membership and with the GLEIF. **Unless participants check the box below, responses will also be made public on the LEI ROC website.** If participants check the box, neither participants' identity nor any specifically identified reference to their opinion will be made public without their express consent. However, the responses themselves may be quoted or aggregated on an anonymised basis. A standard confidentiality statement in an email message or requests for confidential treatment other than the box below will not be treated as a request for non-disclosure.

Identification of the respondent and confidentiality
<p><b>Respondent:</b></p> <p><b>Name and email of a contact person:</b></p> <p><input type="checkbox"/> <b>Please check this box if you object to the publication of your responses to this questionnaire.</b></p>
<p><i>Please specify here as needed if there are specific response(s) that should not be quoted:</i></p>
<p><b>Question 1: Do you have comments on the definition of a “Fund Management Entity” relationship?</b></p> <p><i>Please insert your response here:</i></p>
<p><b>Question 2: In the case of multiple “Fund Management Entities” for a single investment fund, should the reporting be limited to the “main” or “principal” managing entity or should there be a distinction between ““(Main) fund management entity” and “Other fund management entity” e.g. sub-adviser?</b></p>

<p><i>Please insert your response here:</i></p>
<p><b>Question 3:</b> <i>Do you have comments on the definition of an “Umbrella Fund” relationship between the Umbrella funds and its sub-funds and compartments? Should the definition of umbrella funds cover series funds (such as US series funds)? Should it include turnkey funds? Should it include the relationship between an insurance company and its separate accounts or should a specific relationship (such as sponsor) be created?</i></p>
<p><i>Please insert your response here:</i></p>
<p><b>Question 4:</b> <i>Do you have comments on the definition of a “Master-Feeder” relationship? Do you have views or additional examples of concrete cases that would be covered by the proposed definition?</i></p>
<p><i>Please insert your response here:</i></p>
<p><b>Question 5:</b> <i>Do you have comments on the creation of a category “other fund family relationship”, to ensure a better transition with the current concept of “fund family”, in case the two definitions above would not cover all “family” situations in domestic regulations? Could you provide examples of situations that would be reported under this category (please quote the relevant laws and regulations, as applicable).</i></p>
<p><i>Please insert your response here:</i></p>
<p><b>Question 6:</b> <i>Do you have comments on the proposal to discontinue the “Fund family” associated entity as currently defined and recorded in Level 1 reference data (although historical files would keep the information). What would be the appropriate way to migrate the information for lapsed records and records of inactive entities? (for instance into the “other fund family relationship”?)</i></p>
<p><i>Please insert your response here:</i></p>
<p><b>Question 7:</b> <i>Should the four types of relationships described in this section apply to</i></p> <p style="padding-left: 40px;"> <i>(a) pension funds?</i>  <i>(b) sovereign wealth funds?</i> </p>
<p><i>Please insert your response here:</i></p>

<p><b>Question 8:</b> <i>Are you aware of domestic regimes of funds regulation that would not be compatible with the definitions and proposals in this report?</i></p>
<p><i>Please insert your response here:</i></p>
<p><b>Question 9:</b> <i>What are your views on the costs and benefits of identifying the “Fund Management Entity”, the “Umbrella Fund”, the “Master Fund” and the “Other fund family” strictly with an LEI (as opposed for instance to using the name). Should using a name (rather than an LEI) be permissible in some cases? If you suggest using a name, or some other means or combination of means (other than the strict use of the LEI), please assess the costs and benefits of this alternative.</i></p>
<p><i>Please insert your response here:</i></p>
<p><b>Question 10:</b> <i>Do you have comments on the proposed standard requiring funds to report to the GLEIS a fund managing entity when they have one? Should a self-managed fund report itself as the Fund Management Entity or should the absence of a relationship with a Fund Management Entity be recorded in another way?</i></p>
<p><i>Please insert your response here:</i></p>
<p><b>Question 11:</b> <i>Should the opt-outs b) and c) from reporting the Fund Management Entity to the GLEIS be restricted to funds that are not registered or be available for registered and non-registered funds? If the former, is the scope of registered funds sufficiently well-defined? Are there any example where a Fund Management Entity’s identity would not be public for registered funds?</i></p>
<p><i>Please insert your response here:</i></p>
<p><b>Question 12:</b> <i>Do you have comments on the proposed standard requiring sub-funds or compartments to report to the GLEIS their umbrella fund?</i></p>
<p><i>Please insert your response here:</i></p>
<p><b>Question 13:</b> <i>Is the list of opt-outs appropriate?</i></p>
<p><i>Please insert your response here:</i></p>

<p><b>Question 14:</b> <i>Do you have comments on the proposed level of verification of funds relationships? Are there appropriate sources for verifications in your jurisdiction? Should the LOU verify the statement by an entity that the entity is a fund? If so, how?</i></p>
<p><i>Please insert your response here:</i></p>
<p><b>Question 15:</b> <i>Are there any specific consideration that could impact data elements such as, the level of verification; the sources of information; the dates of the relationships?</i></p>
<p><i>Please insert your response here:</i></p>
<p><b>Question 16:</b> <i>Do you support excluding at this time the relationships where a fund is simply invested in another one (as this would be covered by other types of relationships, such as Master-Feeder above, and would require further work on investment relationships, beyond funds)?</i></p>
<p><i>Please insert your response here:</i></p>
<p><b>Question 17:</b> <i>Respondents to the public consultation are invited to give their views as to the criteria that should be taken into account when determining whether a relationship should be included in the Global LEI System.</i></p>
<p><i>Please insert your response here:</i></p>