

MiFID II

Legal Entity Identifier

What is a Legal Entity Identifier and why is one needed?

It is becoming increasingly important for global regulators to be able to identify the parties involved in a transaction. The chosen method to achieve this is through the adoption of Legal Entity Identifiers (LEI) which allows every legal entity to be uniquely identified in every jurisdiction. This is not a new concept and some regulations e.g. European Market Infrastructure Regulation (EMIR), already reference LEIs as an identifier for trade reporting purposes alongside other methods.

For some pieces of regulation, identification of a legal entity is required at a principal level, whereas for other pieces of regulation such as MiFID II, LEIs are required at an order placer level.

| Regulation | Level of LEI | Description | Exchange of LEI information between firms | Timeframe |
|--|----------------|---|---|--|
| European Market Infrastructure Regulation (EMIR) | - Principal | <ul style="list-style-type: none"> - EMIR reporting originally went live in February 2014, with an LEI as one of the available methods to identify principals in a transaction. - In November 2017, LEIs will become mandatory to identify counterparties (excluding natural persons) to a derivative transaction. This will apply to all global counterparties. - Trading can only take place with firms with a valid LEI in place. | <ul style="list-style-type: none"> - Received from clients at account opening and stored as a static data item - Ongoing reconciliation to GLEIF to ensure validity of LEIs | <ul style="list-style-type: none"> - Mandated LEIs from October 2017 - Please note that Morgan Stanley will be cross checking LEIs for its clients from the GLEIF system (please see below) - LEIs need to be uploaded to this database well ahead of go-live to ensure no issues on day one |
| MiFID II/MiFIR | - Order placer | <ul style="list-style-type: none"> - Under MiFID II/MiFIR in-scope investment firms (e.g. Morgan Stanley & Co. International plc) can only take orders from firms that have provided a valid LEI (regardless of whether such firms are in or out of scope of MiFID II). | <ul style="list-style-type: none"> - Should a firm have a single LEI, it may be possible for Morgan Stanley to apply this LEI to an order systematically - | <ul style="list-style-type: none"> - Mandated LEIs from 3rd January 2018 - Please note that Morgan Stanley will be cross checking LEIs for its clients from the GLEIF system (please see below) - LEIs need to be uploaded to this database well ahead of go-live to ensure no issues on day one |

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| SFTR | Principal | <ul style="list-style-type: none"> - The reporting requirement under Article 4 of the Securities Financing Transaction Regulation (SFTR) is anticipated to go-live for phase 1 entities (credit institutions and investment firms) in Q4 2018. Phase 2, 3 and 4 counterparties will be required to report 3, 6 and 9 months after this date respectively. - The reporting requirement applies to EU legal entities and EU branches of non-EU entities. - SFTR mandates the use of LEIs to identify all entities involved in an SFT including agents and brokers. | <ul style="list-style-type: none"> - Received from clients at account opening and stored as a static data item - Ongoing reconciliation to GLEIF to ensure validity of LEIs | <ul style="list-style-type: none"> - October 2018 - Please note that Morgan Stanley will be cross checking LEIs for its clients from the GLEIF system (please see below) - LEIs need to be uploaded to this database well ahead of go-live to ensure no issues on day one) |
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How do you get an LEI?

An LEI can be bought from an LEI issuing organization; these can be found on the Global Legal Entity Identifier Foundations (GLEIF) website <https://www.gleif.org/en/about-lei/how-to-get-an-lei-find-lei-issuing-organizations>. A firm's LEI must be renewed on an annual basis for a small fee. Morgan Stanley will capture your LEI from the GLEIF database so we ask that you ensure your LEI is updated and present on this system well ahead of go-live.

When registering for an LEI the issuing organization may take time to verify the information you have provided, to ensure you can still trade as of 3 Jan 2018 please allow for adequate time to process the request.

Things to look out for?

As described above, other regulations are mandating the requirement for Morgan Stanley's clients to have an LEI. The timeline for EMIR 2.0 has been confirmed as 1 November 2017, before MiFID II go-live, while the date for SFTR remains unconfirmed.

Investment Firm Requirements

What is an Investment Firm?

An investment firm under MiFID II is defined as ‘any legal person whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis’. ‘Investment activities’ are defined as:

- (1) Reception and transmission of orders in relation to one or more financial instruments;
- (2) Execution of orders on behalf of clients;
- (3) Dealing on own account;
- (4) Portfolio management;
- (5) Investment advice;
- (6) Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis;
- (7) Placing of financial instruments without a firm commitment basis;
- (8) Operation of an MTF;
- (9) Operation of an OTF.’

As a result of undertaking these activities and being designated as an investment firm the expansive requirements of MiFID II (e.g. Transaction Reporting, Post Trade Reporting, Record Keeping) apply.

What will it mean in practice?

MiFID II investment firms will need to build the extensive architecture to ensure MiFID II adherence and work closely with their clients and dealers to ensure all parties understand and adhere to their obligations. For example:

1. The Post Trade Reporting requirements under MiFID II require reporting to an APA for an extended set of asset classes and on a trade by trade basis an investment firm needs to:
 - Know who's obligation it is to report e.g. SI, seller reports
 - Have the capability of reporting information to an APA
 - Be able to share information with the counterparty to the trade where it is the counterparty's responsibility to report e.g. Trade date and time
2. Transaction Reporting requirements necessitate that investment firms submit transaction reports for all instruments that are available for trading on a trading venue or are a derivative whose underlying can be traded on a trading venue. These reports are to be submitted on a T+1 basis to the investment firm's NCA (via an ARM) and have up to 65 fields of information to be accurately recorded.

For further details of the MiFID II requirements please refer to the Morgan Stanley reference guides.

Things to look out for?

- Continued clarification of the MiFID II requirements as they are transposed into local rules by the NCAs and the differences in application.
- The solutions offered by the dealer community to support their clients which are designated as investment firms e.g. Delegated post trade reporting solution, unbundling of research from execution fees.
- MiFID II introduces a more restrictive inducements regime for investment firms providing portfolio management services or providing investment advice on an independent basis (and some regulators e.g. the UK FCA may apply this regime more broadly to other types of regulated entities e.g. UCITS & AIF managers). It is important to establish if you are subject to this more restrictive regime as it will impact on how Morgan Stanley interacts with you going forward e.g. in terms of research pricing/unbundling.
- Firms are required to submit a registration to their National Competent Authority (NCA) and it may take up to 6 months to be granted MiFID investment firm status, hence registration will need to be submitted in the first half of 2016 ahead of the Jan 17 MiFID II go-live date