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Mr. Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549–1090

Re: National Market System Plan Governing the Consolidated Audit Trail (File No. 4-698)

Dear Mr. Fields,

The Depository Trust & Clearing Corporation ("DTCC")[1] appreciates the opportunity to comment on questions raised in the proposed rulemaking to establish a National Market System Plan governing the Consolidated Audit Trail ("CAT"). This proposed rulemaking seeks comment on, *inter alia*, whether it is appropriate for the Securities and Exchange Commission ("Commission") to mandate use of a Legal Entity Identifier ("LEI") to assist the CAT Plan Processor in developing unique identifications of industry participants. In general terms, DTCC supports the required use of LEI in any future rulemaking by the Commission that speaks to the identification of an entity which is party to a financial transaction, or the reporting or monitoring of such transaction. As discussed below, the LEI is a critical tool for regulators, financial industry participants, and non-financial counterparties and end users to aggregate risk exposures, monitor systemic risk and promote transparency in the U.S. and global marketplaces.

DTCC is a member of one of the three bid teams designated as finalists to build and operate the CAT, however we are not submitting this comment letter in our capacity as a bidder; rather we are limiting our comments solely to the questions raised by the Commission with respect to the LEI, regardless of what bid is ultimately selected by the SROs.

In addition to the below discussion on DTCC's strong support and deep involvement in the LEI initiative and the progress of the Global Legal Entity Identifier System ("GLEIS"), we respectfully

[1] DTCC serves as the primary financial market infrastructure serving the U.S. capital markets across multiple asset classes, including equities, corporate and municipal bonds, government and mortgage-backed securities, money market instruments, mutual funds, insurance, alternative investment products, and over-the-counter derivatives. DTCC has operating facilities and data centers around the world and, through its subsidiaries, automates, centralized and standardizes the post-trade processing of financial transactions enabling thousands of institutions worldwide to issue securities and raise capital to build businesses. DTCC provides critical infrastructure to serve the financial marketplace and its constituents, including investors, commercial end-users, broker-dealers, banks, insurance carriers, and mutual funds.

submit responses to the Commission's specific questions numbered 134 and 146 contained in the request for public comment. Given that the information reported in the CAT will be an important new component to monitor financial activity and potential risks arising from those activities, DTCC supports a requirement that industry members and broker-dealers submit LEIs to the chosen CAT Plan Processor for use in the development by the Plan Processor of Reporter and Customer IDs, respectively. An LEI mandate will ensure that the information provided in CAT can be used in conjunction with information provided in other U.S. and global regulatory reporting systems, in order to provide maximum flexibility to regulators to understand risks and exposures, especially during periods of financial stress.

Global Markets Entity Identifier Utility

Through a competitive process, DTCC was chosen to build and operate an LEI utility for the industry and was designated by the Commodity Futures Trading Commission ("CFTC") to provide LEIs to swap market participants, as required by CFTC recordkeeping and reporting rules. This utility, which DTCC implemented in collaboration with SWIFT, is known as the Global Markets Entity Identifier ("GMEI") utility and has been globally endorsed by the Regulatory Oversight Committee ("ROC"), which oversees the GLEIS.[2] The GMEI utility is one of the local operating units ("LOU") of the GLEIS and is overseen by the Global Legal Entity Identifier Foundation ("GLEIF") and the ROC. LEIs are not issued by any single provider, they are issued by many utilities within a multi-dimensional federated system. Each of the twenty-nine endorsed LOUs operate under the ROC's global regulatory oversight, the FSB's cost-recovery model, and the GLEIF's governance standards. Market participants are protected by the competitive nature in which LOUs are operated, endorsed, and accredited.

To date, the GMEI utility has assigned LEIs to more than 215,000 legal entities across more than 140 jurisdictions, including over 108,000 for U.S. entities, representing approximately half of all global LEIs that have been assigned. Late in 2015, the CFTC extended the GMEI utility's designation as the provider of LEIs in support of the CFTC's swap data recordkeeping and reporting rules.

Industry and Regulatory Support for Legal Entity Identifier

DTCC strongly supports industry and regulatory efforts to mandate the use of the LEI in relevant rulemakings. As noted by regulators in the U.S. and global regulators, the Financial Stability Board ("FSB"), and several industry trade associations, global LEI adoption will enable improved systemic risk analysis.[3] In 2015, the International Monetary Fund issued a report on systemic risk

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[2] The GMEI utility is operated by Business Entity Date B.V., a wholly-owned subsidiary of DTCC.

[3] *See* 80 FR. 33593, 33597 n.43 (June 12, 2015).

oversight and management in the United States, noting that continued data gaps hamper U.S. efforts to perform systemic risk analysis.[4] The report discussed how improving the standardization of financial data remains an important priority and stated that "[a] clear announcement from all member agencies that the LEI will provide the basis for future mandatory data collection that requires entity identification would provide a welcome boost to data standardization initiatives."[5]

While the industry is adopting the LEI in its own risk management processes, in order for these benefits to be fully realized, regulatory mandates are needed to require all counterparties on financial transactions to register for LEIs, maintain the reference data within the GLEIS, and include LEIs for themselves and their counterparties in mandated regulatory reporting.

The GLEIS has garnered widespread regulatory support. The FSB, the ROC—the organization tasked with assuming regulatory oversight of the LEI initiative—and individual regulators have recommended that an LEI be assigned to every legal entity that engages in financial transactions. Further, several regulatory authorities, such as the CFTC, the European Securities and Markets Authority ("ESMA"), the Monetary Authority of Singapore ("MAS"), the Hong Kong Monetary Authority ("HKMA"), the Australian Securities and Investment Commission ("ASIC"), and the Ontario Securities Commission ("OSC") have promulgated recordkeeping and reporting rules that require counterparties to be identified by LEIs. Domestically, key U.S. officials have discussed the progress of the LEI system and highlighted the importance of requiring the use of LEIs in reporting. In public remarks in March 2015, the Office of Financial Research ("OFR") Director Richard Berner stated that the LEI is the "cornerstone for financial data standards" and "the case for ubiquitous adoption of this data standard is strong."[6] In addition, Director Berner noted that the OFR has been calling for regulators to require broader use of the LEI in regulatory reporting.[7] SEC Commissioner Kara Stein has also repeatedly discussed the importance and value of the LEI, noting in 2015 that the LEI would be useful to the Commission in areas beyond its existing mandate and expressing hope that the Commission would "undertake additional areas for

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[4] *See* International Monetary Fund, United States Financial Sector Assessment Program: Systemic Risk Oversight and Management, IMF Country Report No. 15/172, 18 (July 2015), *available at* https://www.imf.org/external/pubs/ft/scr/2015/cr15172.pdf.

[5] *See id.*

[6] *See* Director Richard Berner, Office of Financial Research, Remarks at the Financial Regulation Summit: Data Transparency Transformation (Mar. 24, 2015), *available at* http://financialresearch.gov/public-appearances/2015/03/24/financial-regulation-summit/.

[7] *See id.*

deploying the LEI."[8] And just last month, the Financial Stability Oversight Council ("FSOC") noted in its 2016 annual report that wider adoption of the LEI system would facilitate the data sharing and analysis among regulators necessary for proper market oversight.[9]

DTCC supports these arguments and recommendations, not only for the stated efficiency reasons, but on the public policy grounds that increased use of the LEI in regulatory reporting regimes increases transparency and enables enhanced risk monitoring and mitigation, by industry participants as well as regulators.

Support for Use of the LEI in the CAT NMS Plan

Questions 134 and 146 in the proposed rulemaking ask whether the CAT NMS Plan should mandate industry participants to provide LEIs to the Plan Processor for purposes of developing the CAT Reporter ID[10] and Customer ID, respectively.[11]

DTCC encourages the Commission to mandate LEI in both areas, not just for the fairly limited number of financial services firm that will be CAT Reporters, many of which already have LEIs in order to comply with other rulemaking, but also for their legal entity clients that they transact with. DTCC believes LEI to be an appropriate—and, perhaps, the only—tool to capture accurate information about organizations/legal entities that are industry participants transacting in the broad domestic and global marketplace, across asset classes. While other proprietary methods can work for individual reporting initiatives in a particular jurisdiction, for a particular asset class, only the single global LEI standard, supported by regulators in the world's leading financial markets, can provide the necessary tool to truly aggregate systemic risk exposures across markets. Given that the information reported in the CAT will be an important new component to monitor financial activity and potential risks arising from those activities, DTCC believes the LEI should be mandated in CAT.

Natural persons and individual investors, along with accounts which are not easily defined as legal entity or natural person (i.e. trust accounts, certain small business accounts, etc.) are clearly not currently in scope for the LEI and DTCC does not advocate for extension of any LEI mandate to

[8] *See* Commissioner Kara Stein, The Dominance of Data and the Need for New Tools: Remarks at the SIFMA Operations Conference (Apr. 14, 2015), *available at* http://www.sec.gov/news/speech/2015-spch041415kms.html.

[9] FSOC 2016 Annual Report, Financial Stability Oversight Council, 15 (June 2016), a*vailable at* https://www.treasury.gov/initiatives/fsoc/studies-reports/Documents/FSOC%202016%20Annual%20Report.pdf,

[10] Securities Exchange Act Release No. 77724, (April 27, 2016), 81 FR 30614, 30640 (May 17, 2016).

[11] *Id.* at 30643.

such person or account. With that in mind, DTCC believes it is necessary that further work be done by the industry or by regulators to more precisely define the types of trust accounts and small business accounts that could be excluded, in order to eliminate concerns about the prohibitive reach and cost of the LEI system.

To DTCC's knowledge, there is no alternative common identifier for use by broker-dealers in identifying the legal entity of their counterparties if the counterparty does not possess an LEI. Mandating the LEI in CAT and all other future reporting rules will allow for aggregation of data across asset classes and markets, efficient integration with other data sets within the Commission's purview, and effective collaboration between the Commission and other regulators. To date, only one solution for such unambiguous identification exists that has been globally recognized and endorsed by regulators —the global LEI system. In addition, mandating LEI for CAT from the start is likely to be a much less expensive, more efficient alternative than permitting alternative identifiers initially and then later mapping or reconciling with the LEI.

DTCC notes that a similar LEI mandate for a similar purpose was debated in Europe and ultimately adopted by the European Commission under the revised Markets in Financial Instruments Directive and Regulation ("MiFID II and MIFIR").[12] The mandate under MiFID II and MIFIR, which goes into effect in January 2018, is the broadest mandate yet and will apply to any legal entity in any country that trades directly with a European investment firm covered by MiFID II. This will have the effect of requiring a great many additional industry participants, including many in the United States, that have not yet registered for an LEI to do so. Similarly, the Commission's mandated use of LEI in reporting security-based swaps transactions, and potentially in the proposed rule on Investment Company Reporting Modernization, will reduce the number of firms that have not registered for an LEI as well.[13] DTCC estimates that about 1.5 million legal entities are counterparties in financial transactions and should ultimately register for LEIs. The LEI mandates in OTC Derivatives reporting rules have caused nearly 500,000 of legal entities to obtain LEIs. MiFID II, other rules like the Commission's security based swaps reporting rule, and the CAT rule will serve to drive many of the remaining million or so to obtain LEIs as well, thus

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[12]*See* Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (June 12, 2014) , *available at* http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.173.01.0349.01.ENG ; Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (June 12, 2014), *available at* http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.173.01.0084.01.ENG.

[13] For additional information on DTCC's support for LEI in Investment Company Reporting Modernization rule, *See* Public Comment Letter from DTCC to Commission on Investment Company Reporting Modernization, *available at* https://www.sec.gov/comments/s7-08-15/s70815-294.pdf.

enabling regulators and others responsible for systemic risk analysis to accurately aggregate risk exposures.

Regarding costs versus benefits, DTCC believes that the public policy benefits of mandating the LEI outweigh the costs to the legal entities of registering for and maintaining their LEIs, and the costs to financial services firms obtaining their customers' LEI and mapping them to their internal identifiers in order to use the LEI in regulatory reporting. While some may argue that the cost to support the LEI mandate on any one particular rule that is related to aggregating risk exposures and monitoring systemic risk may be high in relation to the benefit from the LEI mandate in that particular rule, the one-time cost for the industry actually allows for it to support LEI mandates in all reporting rules. It is the collective benefit of LEI mandates in many reporting rules that maximizes both the counterparty risk benefits for the industry and the systemic risk analysis benefits for the regulatory community and thus the public interest.

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DTCC welcomes the opportunity to discuss these comments with the Commission at its convenience. Please contact me at [redacted] or [redacted].

Sincerely,

Larry E. Thompson
Vice Chairman and General Counsel