

The BBA response to the “Review of the technical standards on reporting under Article 9 of EMIR”

The BBA is the leading trade association for the UK banking sector with more than 200 member banks headquartered in over 50 countries with operations in 180 jurisdictions worldwide. Eighty per cent of global systemically important banks are members of the BBA.

The BBA welcomes the opportunity to provide comments on the “Review of the technical standards under Article 9 of EMIR”, and we support ESMA’s collaboration with the industry in order to enhance and improve reporting under EMIR.

The BBA believes that enhanced technical standards will aid ESMA and the National Competent Authorities (NCAs) in achieving high quality data, and will allow the reporting parties to provide this data in the most efficient manner possible.

Although not addressed under the scope of this consultation, we recommend that ESMA give consideration, as part of the EMIR review, to relieving the reporting obligation from both parties. As it is critical we align the reporting requirements with other G20 countries, we recommend that ESMA consider a one-side reporting regime. The BBA welcomes the opportunity for discussions on this point with ESMA and NCAs in order to improve the functioning of trade reporting.

In summary, the BBA raises the three high-level points as part of this paper:

- The BBA as part of a Cross-Trade Association Identifiers Steering Committee (CTAISC) is engaged with IOSCO on discussions on the Legal Entity Identifier, Unique Trade Identifier and Unique Product Identifier. This work seeks to achieve global standardisation to allow for the pairing and matching of reports, which will allow ESMA and the National Competent Authorities to fulfil regulatory mandates.
- The BBA outlines how reporting differs between market participants, and provides recommendations in order to resolve issues.
- The BBA welcomes guidance from ESMA where we have outlined concerns, specifically around valuations and basket weightings.

Q1: Do you envisage any difficulties with removing the ‘other’ category from derivative class and type descriptions in Articles 4(3)(a) and 4(3)(b) of ITS 1247/2012? If so, what additional derivative class(es) and type(s) would need to be included? Please elaborate.

The ‘other’ category is currently used by BBA members where the type does not match the descriptions currently available. Exotic products will not always meet uniform definitions.

The BBA asks for ESMA to consider the real benefit of removing the category and the unintended consequences of increasing the potential for incorrect classification by the two parties. In certain circumstances, such as structured/exotic transactions, “other” is actually the correct classification. Moreover, the BBA supports the work carried out by the International Swaps and Derivatives Association’s (ISDA) response to this question, specifically the issues raised on the removal of contract type. Additionally, it is important to consider that members use the means facilitated by the registered Trade Repositories when providing the information required by the Regulatory and Implementing Technical Standards. Those means should be aligned to the requirements laid down in those rules to allow market participants to meet all their regulatory obligations. ESMA addressed the issue in the EMIR Q&A TR Question 21 paragraph 4; however firms encounter issues to map the

product classification required by the rules with the taxonomies used in the TR means. Consequently, we propose that the means provided by the Trade Repositories are harmonised.

Identifiers

The BBA via the CTAISC is working with IOSCO on a number of key issues to align identifiers on a global basis. Moreover, the collaborative work that the CTAISC has carried out to date with IOSCO, has also been forming part of IOSCO's joint work with the Financial Stability Board to improve data consistency. The BBA would welcome ESMA's consideration of the work that is being carried within this area to harmonise standards, and would additionally support further collaborative work with industry on the proposed changes to the technical standards for trade identifications fields.

Q2: Do you think the clarifications introduced in this section adequately reflect the derivatives market and will help improve the data quality of reports? Will the proposed changes cause significant new difficulties? Please elaborate.

The BBA welcomes the clarification on the term 'Reporting Counterparty' and the proposed renaming of fields 17-18 in Table 1 to correctly reflect the descriptions. We do not envisage these changes having any material impact on our members. However, the rewording under Annex V, Article 1(2) for rewording Article 3a in respect of Table 1 Field 14 Buyer/Seller does not consider all possible scenarios, e.g. interest rate swaps (float/float) where a buyer/seller model is not appropriate. The BBA would welcome clarification from ESMA as to what should be reported in these scenarios.

Q3: What difficulties do you anticipate with the approaches for the population of the mark to market valuation described in paragraphs 21 or 19 respectively? Please elaborate and specify for each type of contract what would be the most practical and industry consistent way to populate this field in line with either of the approaches set out in paragraphs 21 and 23.

The BBA believes that clarity should be provided on how the value of the contract (Field 17) should be calculated and reported. We further believe that this will not have a significant benefit in achieving the objective of a consistent and harmonised population of fields in paragraph 11 of the consultation because different values will apply if the counterparty is a buyer/payer or a seller/receiver. For example, following a mark-to-market approach, a buyer/payer would apply a bid price whilst a seller/receiver would base their calculation on offer price. The time of the price and any application of a foreign exchange rate will similarly affect the market price differential between parties.

The BBA believes that discrepancies might arise where market value is calculated using a mark-to-model method. Model inputs can vary due to differing, but equally valid, market participant views such as funding costs used for discounting; counterparty risk parameters; and market derived parameters such as implied volatility. However, we do agree that there should be reasonable consistency between the valuations of the buyer/payer and the seller/receiver. The BBA proposes that the definition of the valuation to be provided should be the "fair value for OTC derivatives in accordance with international accounting principles." We also support the use of an approximate replacement cost for Exchange Trade Derivatives, as detailed within the FIA response, which states the definition is inclusive of the size of the contract and current settlement price. The reporting parties do already compare valuations each day to fulfil obligations for EMIR portfolio reconciliation within a tolerance, and this tolerance should be applied to ensure comparable values are received for Field 17 from both parties. It is our view that a root cause of the current inconsistencies may be due to financial counterparties following the accounting standards of their jurisdiction and valuing mark to market, while Non-Financial Counterparties (NFC) value on an accrual basis. In addition, the BBA welcomes the opportunity to work with ESMA to develop guidelines for calculating market value by all counterparties.

Specific paragraph comments

Paragraph 18 - The BBA agrees with the outlined proposal.

Paragraph 24 - The consultation indicates that this field should remain static, presumably for the purpose of harmonisation and matching purposes. However, this field will vary as the contracts are valued mark to market or mark to model for the purpose of calculating variation margin. We do not believe market value should be used for reconciliation purposes.

Paragraph 21 – This is an important point. We firstly refer to bullet point one which we believe makes a reference to models in the second bullet point, specifically CFDs, forwards, FRAs and swaps. We ask for ESMA to provide further guidance in order for firms to be able to provide more precise data as to how valuations are calculated.

Q4: Do you think the adaptations illustrated in this section adequately reflect the derivatives market and will help improve the data quality of reports? Will the proposed changes cause significant new difficulties? Please elaborate.

The BBA welcomes the ability to include an action type 'Z' that will allow the reporting of compressed positions for ETDs in a single submission. In addition, the BBA feels that it would be appropriate to note that C = Cancel does not adequately describe the action type, and would be more accurately reflected if this was amended to "Termination", as Cancel suggests that something has been reported in error. Moreover, we recommend that a provision is added on how to address legacy trades for the purposes of obtaining a Legal Entity Identifier (LEI), i.e. the implications of trading with counterparties who haven't provided the firm with an LEI by the time these rules are final. Additionally, it is not clear how to populate fields 3 and 4 of Table 2 – Common Data, when neither a CFI code or an endorsed UPI code are used. We recommend the possibility of leaving these fields blank.

We would recommend for ESMA to move the Report Tracking Number to table one, and therefore a vertical ID be added to tie in multiple legs, and recommend that number (or the TRN) not to be included in the reports if it remains in table 2. Moreover, the BBA feels that the Report Tracking Number will add greater complexity to the reports, specifically operational challenges around the exchange of the UTI where a firm may not be able to generate this. BBA members believe the usage of has not been clearly articulated, and are concerned that it has been placed within table two.

We would like to raise our concern regarding paragraph 29 in respect of the updated rule requiring the mandatory use of ISO 17442 Legal Entity Identifier and the removal of the option of using other identifiers such as BICs or client internal identifiers where LEIs are not available. Where counterparties do not have a reporting obligation under EMIR there is no mandate to require the counterparty to obtain this, e.g. Asia corporates. For non-EEA counterparties, we would request continued use of an alternative identifier including BIC or a business registry number.

With regard to paragraph 34 the BBA wish to highlight that there are challenges when client transactions are novated from one counterparty to another, and obtaining the original notional would be difficult, specifically in equity based products. We also wish to note that the difficulty to identify "original notional" increases when lifecycle events are factored in as the original value is not stored. The transaction will be booked with the actual notional when novated and the original notional will not always be known to the transferee. The BBA would welcome ESMA working with industry on finding a solution, and would propose that a field named as "Current Active Notional" be utilised, with industry working with competent authorities to define this correctly.

Q5: Do you think the introduction of new values and fields adequately reflect the derivatives market and will help improve the data quality of reports? Will the proposed changes cause significant new difficulties? Please elaborate.

Paragraph 45 - The BBA requests that further clarification on the terminology used by ESMA, especially where the counterparty to the trade is not a Legal Entity and instead a Natural Person, namely:

- 'residency' (where client lives),
- 'domicile' (in the UK, this is actually a terms used in tax law, and means how a client defines themselves),
- 'nationality' (definitions of this vary by member state, but is not always aligned to citizenship)
- 'citizenship' (definitions vary by state, but generally refer to passport-holders) all mean different things

The BBA highlights to ESMA that it is not possible in all cases for firms to accurately validate or verify a clients' designation for any/all of these pieces of information. We would ask for clarity as to what is expected of firms and the accompanying validation here is important. A Natural Person may legitimately have multiple instances of any/all of the above and that these could also be subject to change during the course of a client's life, and so may change during the life of a trade.

Paragraph 55 - In respect of the addition of Article 6 we wish to raise a concern on a global UTI being generated on a European classification basis. This may cause different UTIs being generated for different jurisdictions and undermining the creation of a global identifier. Additionally, the BBA is concerned and believe ESMA should consider how this will work in practice in the absence of an agreement. The BBA currently understands that as fall-back option two UTIs would be generated on the occasion.

The BBA would additionally support the inclusion of last modified timestamp in section 2i for lifecycle update time stamping, as there is still a split in decision about whether the execution timestamp should be provided. The BBA would welcome further clarity on the Execution timestamp usage, and we would recommend that having the additional field in place would provide ESMA with greater transparency.

Q6: In your view, which of the reportable fields should permit for negative values as per paragraph 40? Please explain.

The BBA supports the introduction of negative values as detailed within the proposed table.

Q7: Do you anticipate any difficulties with populating the corporate sector of the reporting counterparty field for non-financials as described in paragraph 42? Please elaborate.

The BBA anticipates difficulty arising from delegated reporting that the proposal to populate a multi-sector counterparty field for non-financials would be reliant upon the data provided by the client. The information members provide will be reliant on the accuracy of information provided by clients.

Q8: Do you envisage any difficulties with the approach described in paragraph 49 for the identification of indices and baskets? Please elaborate and specify what would be the most practical and industry consistent way to identify indices and baskets.

The BBA notes that the reference to Paragraph 45 within question 8 is incorrect. We have amended this to paragraph 49 within our response.

The BBA welcomes the first proposal within paragraph 49 to introduce ISO 3166 country code. However, we believe that it is unreasonable for this field to be matched if both counterparties follow a convention which comes to the same outcome, i.e one counterparty uses the country code, and the second were to use the ISIN.

Additionally, the BBA welcomes the introduction within paragraph 49 which deals with the reporting of baskets and indices in order to align with MiFIR. However, BBA members support ISDA's view that increasing the granularity will require clearer guidance and the proposal should be extended to include weightings. The BBA further notes that any proposal to breakdown constituencies of baskets and lifecycle events would mean that a welcomed level of reporting granularity would be difficult to achieve where referencing these instruments using ISIN's, Alternative Instrument Identifiers or other identifiers.

Q9: Do you think the introduction of the dedicated section on Credit Derivatives will allow to adequately reflect details of the relevant contracts? Please elaborate.

The BBA welcomes the introduction of the proposed fields and will allow for more accurate reporting of credit derivatives. However, we ask ESMA to clearly define the proposed field 70 "Date of last life cycle event". Moreover we believe that the reporting of interest rates, calculation basis and frequency of payment, as opposed to the reporting of the coupon will reflect the details of the contract more appropriately. We also ask ESMA to take into account complexities around the potential implementation, specifically on the format and data management within firms.

Q10: The current approach to reporting means that strategies such as straddles cannot usually be reported on a single report but instead have to be decomposed and reported as multiple derivative contracts. This is believed to cause difficulties reconciling the reports with firms' internal systems and also difficulties in reporting valuations where the market price may reflect the strategy rather than the individual components. Would it be valuable to allow for strategies to be reported directly as single reports? If so, how should this be achieved? For example, would additional values in the Option Type field (Current Table 2 Field 55) achieve this or would other changes also be needed? What sorts of strategies could and should be identified in this sort of way?

BBA members note that current reporting practices differ amongst market participants and ESMA should take this into consideration with the proposed approach. The option type fields should permit firms to include exotic options as part of the option classification. Additionally, the firms booking methodologies are often depicted in a way that more than one option component is linked to the same transaction, In this instance, it would be optimal to allow the reporting of more than one Option within the same report (separate strike prices, etc.). Moreover, the BBA would like to point out that the reporting of strategy trades (such as straddles) require greater flexibility in approach. Members view that the reporting of these strategies should be the same as when they're confirmed, e.g. a strategy is confirmed by one confirmation referencing (strategy), then only one UTI should be issued for this strategy. In instances where multiple confirmations are used, then multiple UTIs should be issued; this would then provide a solution in allowing linkages to be reported with a UTI. We refer ESMA to our response to question 4, and note that the use of Report Tracking Number has not been clearly articulated, and recommend that ESMA move this to table one with a vertical ID to be added to tie in multiple legs.

The BBA believes it to be relevant to be able to report more than one value for option type and style if the derivative contains more than one option. We are concerned at how the relevant the information would be, and also what it would be used for. This then provides BBA members with operational challenges in reconciling the information against their counterparty's report due to distinct differences in system implementation (in certain instances).

The issue identified is not only related to straddles or option strategies. There is a greater issue on how to report a swap contract with one or more embedded options, for example a swap that contains one Interest rate swap in combination with several options. That is one legal contract and one confirmation and one UTI. There are different ways to book these kinds of deals in different systems, therefore it is complicated to reconcile each field.

The possibility of reporting the type of strategies mentioned above in one single report, as opposed to decomposing it in several reports of several contracts should be viewed as an improvement, and therefore allowing a better representation of these strategies. However, accommodating these practices in the reporting process may imply substantial increase in the time and activities devoted to fulfilling compliance requirements. It would also be very good to report a packaged deal under one common UTI for all underlying transactions since counterparties are re-reporting the underlying in different ways (report on package level instead of component level).

Q11: Do you think that clarifying notional in the following way would add clarity and would be sufficient to report the main types of derivatives:

The BBA is supportive of ISDAs views on clarifying the notionals for each type. We have highlighted the difficulties in ascertaining the original notional in our response to question 4.