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BBA Response to the ESMA Discussion Paper on Draft RTS and ITS under SFTR

Executive Summary

The BBA[1] supports the principles behind the European Commission's intentions to reduce potential market and systemic risk in the use of securities financing transactions (SFTs) by increasing transparency and ensuring that clients are aware of any potential risks associated with the re-use of funds. We have highlighted a number of key recommendations that we feel should be adopted if SFTR is to be applied consistently and successfully.

Clarity on definitions

The BBA has identified a number of instances within the draft RTS and ITS where definitions are open to varying interpretations. Further clarity on these definitions would ensure firms are aware of their obligations, take a consistent approach to the application of the regulations, and avoid unintended consequences.

For example, it is unclear in many cases exactly who will be subject to the reporting obligation, which will lead to firms not being able to establish who is in scope and what needs to be reported. Clarity and consistency across these definitions is essential if firms are to successfully adopt the RTS and ITS under SFTR.

Reporting equivalence with EMIR

The BBA believes that, where possible, reporting under SFTR should be aligned with the reporting requirements under EMIR; requiring reporting of similar products under multiple regimes is unduly burdensome to both the reporting party and the regulator receiving the data. Such unnecessary complexity is also likely to result in a lower quality of data received by regulators, adversely affecting the European Commission's objectives for SFTR.

In particular, ESMA's current proposals for the reporting of position level data and for data to be made public by a Trade Repository are not aligned with EMIR. Additionally, the individuals who are obliged to report under SFTR do not appear to be in line with reporting requirements under EMIR. Aligning SFTR reporting requirements with EMIR and existing market practices will clarity for firms, an improvement in the quality of data received by regulators and will help to support the European Commission's objectives for SFTR. For these reasons, ESMA should ensure that alignment takes place.

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[1] The British Bankers' Association (BBA) welcomes the opportunity to engage with the European Securities and Markets Authority (ESMA) on their Discussion Paper (DP) on rules under the Securities Financing Transaction Regulation (SFTR). The BBA also supports the approach taken by ESMA in consulting with relevant stakeholders on these draft RTS and ITS, and looks forward to engaging with ESMA further on this matter in due course.

The BBA is the leading association for the United Kingdom banking and financial services sector, representing over 200 banks which are headquartered in 50 countries and have operations in 180 countries worldwide. Our members manage more than €10 trillion in banking assets, employ nearly half a million individuals, contribute some €100 billion to the economy each year and lend some €200 billion to businesses.

Usage of LEI

Further clarity with regards to LEI requirements is essential; the language used around LEIs within paragraph 102 of the DP leave room for interpretations. Whilst the BBA supports the principle of standardised product, trade and entity identifiers, for those actors that are individuals not engaging in an undertaking or otherwise not a legal entity, the BBA recommends that ESMA definitively states that the LEI is not required.

We strongly urge global regulators to mandate the use of LEIs on as broad a scale as possible, increasing the number of LEIs issued and ensuring that the cost for all registrants is therefore reduced. We also recommend making greater use of the LEI Regulatory Oversight Committee (ROC) to identify branches within the Global LEI System, eliminating the need for a specific branch identifier, and for LEI codes to be required for all except individuals who currently use a CLC code. The latter would ensure that requirements under SFTR are kept consistent with requirements under EMIR.

Settlement data and reporting under CSDR

The rationale for collection of information on the settlement set out in the DP could potentially cross-over with the CSD Regulation (CSDR). Information already received under reporting should be sufficient for regulators to monitor potential financial stability risks posed by internalised settlement.

The BBA advises against any requirement to report internalised settlement is under SFTR. Where requirements are overlapped or duplicated (as they would be if global custodians had to double report identical information under both CSDR and SFTR reporting obligations), this leads to inefficiency and unnecessary complexity for firms. As CSDR reporting provides the most effect system for monitoring internalised settlement activities for the purposes of risk, there is no need for the extension of SFTR reporting into this space.

Questions

Q2: Are these procedures sufficient to ensure the completeness and correctness of the data reported under Article 4(1) SFTR? If not, what additional provisions should be envisaged?

The BBA does not regard these procedures are sufficient to ensure the completeness and correctness of the data referred to. Paragraph 56 appears to suggest that Trade Repositories should ensure a firm or reporting party has permission to submit SFT data; firms will be required to "prove" they have a delegation agreement in place before they are able to report data to Trade Repositories.

The BBA has concerns regarding these proposals, particularly the proof of permission. The text under the SFTR Level 1 Article 4(3) requires financial counterparties to report on behalf of SMEs and non-financial counterparties below the relevant threshold. We commend that where the reporting obligation lies with the financial counterparty, further evidence or documentation of permission from the counterparty should not have to be provided to the Trade Repository either in advance of or during reporting.

Further, it should be clarified that the financial counterparty reporting under Article 4(3) is not required to obtain or validate an LEI for its counterparty below the threshold in order to be able to submit its report to a Trade Repository.

The BBA recommends that ESMA re-examine these procedures in order to ensure unduly onerous burdens are not placed on either SMEs below the Article 4 (3) threshold, or financial counterparties reporting "on their behalf" under Article 4(3), requiring them to "prove" that the financial counterparty has the right to report the data referred to.

Q11: Do you agree with the proposed technical format, ISO 20022, as the format for reporting? If not, what other reporting format would you propose and what would be the benefits of the alternative approach?

The BBA agrees that the proposed technical format ISO 20022 should be adopted by ESMA as the format for reporting under SFTR. The precedent has been set through the use of ISO 20022 in both the Bank of England's money market reporting regime and the ECB's MMSR. The BBA would note, however, that for smaller and medium sized firms, the requirement to report under ISO 20022 will be particularly onerous and disproportionate to the benefit achieved for both these firms and regulators.

If the requirement to report under ISO 20022 is to go ahead, the BBA recommends that this only take place from Trade Repositories to authorities. This would allow smaller and medium-sized firms flexibility to meet technical formats agreed by their particular Trade Repository, thus avoiding the onerous requirements of ISO 20022. If all firms must be required to report to Trade Repositories using ISO 20022, then the BBA asks that sufficient time be given for firms (especially smaller firms) to become fully compliant.

The BBA notes that an ISO Working Group is currently constituted to oversee the introduction of ISO 20022 as the technical format for reporting. We would recommend that a similar working group is established by ESMA to consider not just the European context, but the global context as well. We note that other jurisdictions are not making the transition to ISO 20022 and that their usage of the FpML format must be considered, and are concerned about preserving a level playing field.

The BBA also notes that the proposed format does not address the issue of how firms report collateral. We acknowledge and appreciate the work already undertaken by ESMA with SWIFT to agree standards for reporting of repos under ISO 20022, and believe that the question of how collateral is reported is not addressed.

ESMA should use the RTS as an opportunity to make clear that an ISO 20022 standard should only be mandated from a reasonable period of time after such standard becomes available for the relevant product or data component. This is to avoid the situation where, for instance, collateral reporting is not supported by ISO 20022 at implementation date, or is only finalised shortly before the implementation date leaving firms insufficient time to design, build, test and implement relevant systems.

Q12: How would the proposed format comply with the governance requirements in paragraph 75? Please elaborate.

The BBA believes that the proposed ISO 20022 format does comply with the governance requirements in paragraph 75. We note, however, that the governance requirements outlined in paragraph 75 would place a burden on Trade Repositories that report under EMIR.

Q13: Do you foresee any difficulties related to reporting using an ISO 20022 technical format that uses XML? If yes, please elaborate.

The BBA feels that reporting requirements using an ISO 20022 technical format based on XML would be onerous for many smaller and medium sized firms. We would ask ESMA to provide further details as to why XML is the set format for the reports.

Q14: Do you foresee issues in identifying the counterparties of an SFT trade following the above-mentioned definitions?

The BBA believes that the current definition of “broker” could potentially be confusing for firms in the context of margin lending. A prime broker is an investment bank or securities firm that provides global custody, securities lending, financing, technology and support, and value-added services to investors and hedge funds. The BBA therefore recommends that, to prevent the possibility of confusion, a separate definition of “prime broker” is included within this context.

Q15: Are there cases for which these definitions leave room for interpretation? Please elaborate.

The BBA regards the below elements leave room for interpretation, and would welcome clarity from ESMA.

Natural persons

The treatment under SFTR of natural persons as counterparties to SFTS is open to interpretation. Article 2 states that SFTR will apply to the “counterparties” of an SFT, while Article 3 refers to both financial and non-financial counterparties. Clarity needs to be provided on who will be subject to the reporting obligation. Furthermore, we note that under EMIR, certain categories of counterparties are exempt from the EMIR reporting obligation, such as individuals, central banks, etc. We urge ESMA to clarify that this is also the case under SFTR and where possible ensure a consistency.

Under the proposed EMIR, LEI codes will be required for all stakeholders with the exception of individuals, who will use a CLC code; this is in effect LEI for individuals. Unless regulators globally mandate the use of LEI, there will continue to be counterparties without LEIs. We

recommend that ESMA utilise the same mechanism as under EMIR, using the same hierarchy of code in the even that an LEI is not available.

The BBA also believes that the language around LEIs within paragraph 102 leaves room for interpretation. As we have previously stated in consultation submissions to CPMI and IOSCO, the BBA supports the principle of standardised product, trade and entity identifiers. However, for those actors that are individuals not acting in a business capacity or otherwise not a legal entity, the BBA recommends that ESMA be clear that the LEI is not required.

Definition of margin lending open to interpretation

The BBA notes that the definition of “margin lending” in SFTR article 3.10 appears to go beyond “classic” margin lending, capturing other business models which do not contain the risks SFTR is designed to mitigate. Clarification on this definition would be welcomed. The BBA believes there must be an exemption for non-classic margin lending, given the large burden this would place on firms to the detriment of their clients.

As classic margin lending involves lending to a client to purchase a basket of securities, with the loan secured against that basket, it makes sense for SFTR to apply here as the performance of the loan is directly related to the performance of the investments made. Non-classic margin lending, however, sees the client secure their loan against a different basket of securities rather than the one financed by their loan.

Non-classic margin lending is generally pursued by firms seeking a more “conservative” approach to risk as the performance of the loan is not directly linked to an investment, in this case the client’s basket of securities. It therefore does not serve the stated purpose of SFTR to capture non-classic margin lending, and doing so will make this model of lending less attractive. This in turn reduces the access of firms’ clients to credit. ESMA should clarify whether “margin lending” as defined in 3.10 includes non-classic lending.

Furthermore, the BBA encourages ESMA to ensure the interpretation of margin lending transactions is consistent with the description of margin lending as defined in the FSB paper:

> “…the provision of collateralised loans by a financial institution (usually a bank or a broker) to clients who are seeking leverage of their trading positions by borrowing money. The securities serving as collateral are held in margin accounts and are often re-hypothecated by financial institutions to fund the loans provided and eventually may reduce the cost of funding to the clients. In most jurisdictions, margin lending is included in the “prime brokerage” services provided to the client, based on a margin agreement between the financial institution and the client”. [2]

In addition to the above, there is a lack of clarity on whether a loan by a private bank and investment manager to a customer, secured on a security portfolio, would be caught by the definition of an SFT within Article 3(11). Clarification will preserve the benefits of SFTs whilst simultaneously achieving the desired policy outcomes of transparency and risk mitigation.

We note that loans granted to private banking clients are usually secured by a security interest over all clients’ assets held in the relevant private bank accounts. If a client unilaterally uses the financing to purchase securities, it is likely that such securities will be held by the client in a private bank account over which the financing bank has a security interest. Nevertheless, in this scenario the performance of the loan is not directly related to the performance of the investment in securities made, the financing bank has typically not

[2] http://www.fsb.org/wp-content/uploads/FSB-Standards-for-Global-Securities-Financing-Data-Collection.pdf

evaluated the securities purchased by the client in order to provide the financing and no margin is exchanged between the client and the financing bank based on the fluctuation in value of the securities. The BBA therefore recommends that ESMA clarify this type of transaction is not captured by the definition of "margin lending transaction", as there is no direct correlation between the performance of the loan and the securities being purchased, carried or traded.

Equally, loans or other financing transactions in which a borrower may use the financing at any time to purchase, carry or trade securities but where the loan is not secured by collateral in the form of securities *or* is not secured against the securities being purchased, carried or traded with such extension of credit should be excluded as these transactions do not contain the risks the SFTR is designed to mitigate.

Definition of sell-buy back and buy-sell-back transactions

The BBA recommends that ESMA confirm the definition of sell-buy back and buy-sell-back transactions does not capture transactions which combine the sale or purchase of securities with a physically settled derivative transaction on equivalent underlying securities. Although these transactions could strictly speaking fall under the SFTR definition of a 'sell-buy back and buy-sell-back transaction', they include derivatives contracts as defined under EMIR and should therefore as per Recital 7 of SFTR be excluded from the SFTR scope.

The BBA notes that requiring these transactions to be reportable would go against the European Commission's stated objective of avoiding duplication of the reporting requirements under EMIR and SFTR.

We further believe that any lack of clarity or potential for interpretation of definitions must be addressed by ESMA as a priority; any instance where a definition is in question will lead only to confusion and operational difficulty for firms, whilst at the same time preventing ESMA from drafting regulatory technical standards that are consistent and equally applied across the industry.

Definition of broker

As raised in our response to question 14, the BBA regards the current definition of "broker" could potentially be confusing for firms in the context of margin lending, and that a separate definition of "prime broker" should be included by ESMA.

Q16: Is it possible to report comprehensive information at transaction level for all types of SFTs and irrespective of whether they are cleared or not?

No. Margin loans do not undergo "transactions" in the same way that other SFTs do; it is not clear to our members how information could therefore be reported for margin lending SFTs at "transaction" level. The BBA recommends that provision for this be made as it is very difficult to see how comprehensive information about margin lending could be reported at transactions level.

Q17: Is there any need to establish complementary position level reporting for SFTs? If yes, should we consider it for particular types of SFTs, such as repo, or for all types?

The BBA does not support any additional complementary position level reporting being required in addition to existing transaction reporting, however it is important to note that certain post-execution lifecycle events occur post-trade and collateral changes might be better suited to being reported at position level, as these activities are generally managed at position level, and reporting should reflect this. Therefore, consistent with existing ETD reporting under EMIR, reporting parties should have the option, but not the obligation, to report at a position level should they desire.

Generally, the BBA believes that collection of data via position level reporting as opposed to transaction-level or trade-level reporting would have been more meaningful for the purpose of SFTR. However, given that SFTR Level 1 text mandates the reporting at transaction level, we do not feel complementary reporting at position level is needed as it would not add any additional information and would simply add costs for firms. A requirement for counterparties to send position level reports in addition to transaction level reports would effectively lead to requiring firms to double report very similar information, where positions could in time be calculated based on the transaction information sent to Trade Repositories.

In addition, the BBA notes that position level reporting is currently the standard used on a global level by the FSB. Some position level data reporting might therefore be required under the FSB going forward. However, the BBA recommends that such reporting be kept strictly under FSB requirements, and should not be defined now under SFTR.

Q18: Is there any need to differentiate between transaction-level data and position level data on loans from financial stability perspective? Please elaborate.

The BBA does not believe that the differentiation between transaction-level data and position level data is specific to loans; rather, as discussed in our response to question 17, this is a wider issue. From a financial stability perspective, and for the purposes of risk management, position level data is what is useful.

The BBA recommends that, in line with EMIR – which is focused on risk management – ESMA should focus on position level data where the purpose of the reporting is in line with management of financial stability risks. We would reiterate our call in our response to question 17 for ESMA to engage with the FSB, and share opinions over what forms of data are most useful for the purposes of identifying and preventing financial stability risks, without causing too onerous or preventative burdens to fall on firms.

Q19: Would the data elements included in section 6.1 be sufficient to support reporting of transactions and positions?

Please see the BBA response to questions 17 and 18; we believe that in principle these data elements would in time be sufficient to support reporting of transactions and positions, and that position level reporting that has met the FSB standards should be the primary source of data. In order to support our position in our response to question 17, that the option, but not the obligation, to report at position level a creation of a new attribute marked “Level” would be required as has been provided under the revised EMIR RTS under consideration by the European Commission.

Q20: Would the data elements differ between position level data and transaction-level data? If so, which ones?

Please see the BBA response to question 19; we believe that in principle these data elements would in time be sufficient to support reporting of transactions and positions, and that position level reporting that has met the FSB standards should be the primary source of data.

Q21: Would the proposed approach for collateral reporting in section 4.3.5 be sufficient to accurately report collateral data of SFT positions? Please elaborate.

The BBA believes that reporting of collateral data should be reported at position level rather than transaction-level; as discussed in our answers to questions 17 and 18, position level data is the most useful for ESMA's purposes.

Q22: From a reporting perspective, do you foresee any significant benefits or drawbacks in keeping consistency with EMIR, i.e. applying Approach A? What are the expected costs and benefits from adopting a different approach on reporting of lifecycle events under SFTR with respect to EMIR? Please provide a justification in terms of cost, implementation effort and operational efficiency. Please provide concrete examples.

Whilst the BBA supports SFTR alignment with EMIR event types, and therefore the application of Approach A, we believe that ESMA should additionally ensure that reporting under SFTR is also aligned with MiFIR transaction reporting, making new reports and adhering to no event types.

We note that SFTs exempted from the reporting obligation under SFTR will still need to be transaction reported under MiFIR; we also note that EMIR and MiFIR transaction reporting have different event types. The BBA's assumption is therefore that SFTs would not be reportable under MiFIR transaction reporting until the reporting obligation for SFTR comes into force. Clarification from ESMA that this assumption is intended to be the case would be welcomed.

Q23: Do you agree with the proposed list of "Action Types"? If not, which action types should be included or excluded from the above list to better describe the SFT? Please elaborate.

The BBA broadly agrees with the proposed list of action types, although we would draw ESMA's attention to the following issues:

- 'Principal increase' does not cover cases of decrease, and should therefore be altered to read 'principal change'.

- 'Re-pricing' covers only the early termination and replacement of buy-backs and sell-backs, and should therefore be altered to read 're-rating'.

- To maintain consistency with EMIR and provide for optional but not obligated position reporting, the action type "compression" should be added.

As we identified in our answer to question 15, where room is left open for interpretation within definitions, this will lead to inconsistent application by firms. The BBA would advise ESMA to consider the ICMA ERC Guide to Best Practice in the European Repo Market, which contains agreed definitions for terms used for repo transactions.

Q24: Do you foresee any benefits or drawbacks of implementing the proposed reporting logic of event types and technical actions (Approach B)? Please elaborate.

The BBA supports the implementation of Approach A, as stated in our answer to question 22. As ESMA itself agrees, Approach B is not consistent with EMIR requirements as Approach A is. A lack of consistency with EMIR would cause significant operational difficulties for firms that centrally manage transaction reporting across asset classes, and the BBA would therefore reaffirm our support for the implementation of Approach A as opposed to Approach B.

Q25: Do you agree with the proposed list of event types and technical actions? If not, which one should be included or excluded?

The BBA broadly agrees with the proposed list of event types and technical actions, although would draw ESMA's attention to the following issues:

- The point on the Unique Trade Identifier (UTI) does not take into account the potential for dissemination and pairing; an error point should be added to address this.

- 'Re-pricing' should be altered to read 're-rating' for the reasons outlined in our answer to question 23.

Q26: Do you foresee any need to introduce a unique reference identifier for the lifecycle events or for technical actions? Please elaborate.

The BBA does not foresee any need to introduce a unique reference identifier for the lifecycle events or for technical actions. We believe that this issue has already been suitably addressed in our earlier answers; firms can make use of the UTI, and pairing and matching followed by position level reporting, with accompanying reporting of life cycle events.

The introduction of a separate unique reference identifier for these events, or for technical actions, would be onerous on firms and would be unnecessary given that firms will already be capable of reporting this information.

Q27: From a reporting perspective, do you foresee any drawbacks in keeping consistency with EMIR? If so, please indicate which ones.

We refer ESMA back to our answer to question 22, where we do not note any general drawbacks in keeping consistency with EMIR. We would reiterate previous what we have stated in previous answers, that the number of reporting fields should be reduced as much as possible to ensure the quality of the data received by national competent authorities is as optimised as possible. The BBA also notes that a lower number of fields may help to increase matching rates, which remained low throughout 2015.

Q28: Are the proposed rules for determination of buyer and seller sufficient? If not, in which scenarios might it not be clear what the direction of the trade is? Which rules can be proposed to accommodate for such scenarios?

The BBA does not agree that the proposed rules for determination of buyer and seller are sufficient. The BBA therefore recommends that ESMA uses the market standard terms "borrower" and "lender" in the context of margin lending, which will remove any risk of confusion or a potential lack of clarity for firms.

Q29: Are the proposed rules consistent with the existing market conventions for determination of buyer and seller? If not, please provide alternative proposals.

The BBA refers ESMA to our response to question 28; we do not believe that the proposed rules for determination of buyer and seller are sufficient. The BBA recommends that ESMA use the market standard terms “borrower” and “lender” in the context of margin lending, which removes the risk of confusion or a potential lack of clarity for firms.

Q30: Are you aware of any bilateral repo trade scenario? With the exception of tri-party agents that are documented in section 4.2.5, are there any other actors missing which are not a broker or counterparty? Please elaborate.

The BBA believes that the descriptions of the two bilateral repo trade scenarios as documented in section 4.2.5 are broadly accurate; we would point out to ESMA that brokers taking principal risks are an uncommon scenario in repo trades, and therefore scenario 2 is not particularly relevant.

The BBA refers to and supports ICMA’s response to ESMA’s DP on draft RTS and ITS under SFTR.

Q31: Do you consider that the above scenarios also accurately capture the conclusion of buy/sell-back and sell/buy back trades? If not, what additional aspect should be included? Please elaborate.

The BBA believes the above scenarios generally captures the conclusion of buy/sell-back and sell/buy back trades; however, we the RTS and ITS should not make the distinction between repos and buy/sell-back trades. The differences between these instruments are insufficient to justify a duplicated reporting framework. If a sell/buy-back is properly documented, there are only operational distinctions with repo. As such, the BBA strongly recommends that an unnecessary duplicated reporting framework for buy/sell-back trades and repos is avoided.

The BBA refers to and supports ICMA’s response to ESMA’s DP on draft RTS and ITS under SFTR.

Q32: Do you agree with the description of the repo scenarios?

Although we broadly agree with the description of repo scenarios, we do not agree with the statement in paragraph 149 that “in the case of a bilateral trade…that the counterparties submit to clearing, Counterparty 1 and Counterparty 2 would need to also report the original bilateral trade”. Bilateral trades in repo are conditional on clearing successfully occurring; thus, if a trade cannot be submitted to a CCP then it will not be valid. Reporting of the initial trade would therefore make more sense.

The BBA refers to and supports ICMA’s response to ESMA’s DP on draft RTS and ITS under SFTR.

Q33: Are you aware of any other repo scenarios involving CCPs?

The BBA is not aware of any other repo scenarios involving CCPs.

Q34: Are there any other scenarios that should be discussed? Please elaborate.

The BBA believes that a scenario similar to scenario 2, "bilateral securities lending trade with agency intermediary", should be discussed, as this also currently exists in the repo space. In order to fully capture all repo scenarios, this form of agency repo should be discussed by ESMA.

The BBA refers to and supports ICMA's response to ESMA's DP on draft RTS and ITS under SFTR.

Q35: Do you consider that the documented scenarios capture accurately the conclusion of buy/sell-back trades? If not, what additional aspects should be considered?

The BBA refers ESMA to our response to question 31; we do believe that these scenarios are generally captured, but believe there is not a sufficient distinction between repos and buy/sell-back trades to justify a duplicated reporting mechanism.

Q36: According to market practices, can buy/sell-back and sell/buy back trades involve a CCP?

The BBA understands that, according to market practices, buy/sell-back and sell/buy back trades can and do involve a CCP.

Q37: Are there any other actors missing which are not mentioned above, considering that tri-party agents are covered in section 4.2.5? Please elaborate.

No, the BBA does not believe there are any other actors missing which are not mentioned above.

Q38: Are there any differences in the parties involved according to the different agency lending models?

We believe that in securities lending scenario 3 – a securities lending trade with a principal intermediary – differs from securities lending scenario 2, as the latter involves a bank acting in a simple agency capacity. The principal intermediary model therefore allows the intermediary to act on their own behalf, having separate relationships with counterparties 1, 2 and 4. Although some principal intermediaries could be classified as agents lending when acting in a principal capacity, categorising them broadly as agents is confusing.

The BBA refers to and supports ISLA's response to ESMA's DP on draft RTS and ITS under SFTR.

Q39: When would the both counterparties know the other's identity in an undisclosed lending agreement?

Under the agent lender disclosure process (where lending agents use global systems treating close of business as the end of the trading day in North America) when a loan is settled and becomes outstanding on the settlement date, the borrower is not advised of the identity of the beneficial owners of that loan until the business day after settlement, or S+1. As loans are regularly re-assigned ahead of S+1, a borrower will never have certainty on the identity of their underlying beneficial owner counterparties.

The BBA refers to and supports ISLA's response to ESMA's DP on draft RTS and ITS under SFTR.

Q44: In the case of securities lending transactions, are there any other actors missing, considering that tri-party agents will be covered in section 4.2.5?

The BBA believes the list of actors provided is sufficient, and that no other actors are missing.

Q45: What potential issues do reporting counterparties face regarding the reporting of the market value of the securities on loan or borrowed?

A potential issue affecting market participants, in particular reporting counterparties, is the challenge of updating market value for regulatory reporting. Counterparties will have to decide which market data to use out of current day or previous day, which FX rates will be applicable for reporting out of bids or offers, as well as "clean" or "dirty" prices for fixed income securities, and the currency that the market value will be reported in.

The BBA advises ESMA standardise the market values to be reported in the currency that the instrument is initially denominated in, and to add an additional reporting field marked "currency" to the reporting template to facilitate this. In addition, we suggest that market participants be directed to report the market value of their SFTs as they are at the close of a business day.

The BBA refers to and supports ISLA's response to ESMA's DP on draft RTS and ITS under SFTR.

Q46: Do such securities lending transactions exist in practice?

It is the BBA's understanding that the majority of commodities financing transactions (commodities lending, repo and buy/sell-back) are made up of inventory financing transactions, with financiers providing cash to their counterparty and taking a title over existing commodities owned by the counterparty through credit risk mitigation. Generally speaking, however, non-collateralised commodities financing transactions are not prevalent.

The BBA refers to and supports ISLA and FIA-Europe's responses to ESMA's DP on draft RTS and ITS under SFTR.

Q47: Do you agree with the proposal to explicitly identify non-collateralised securities or commodities lending transactions in the reporting fields? Please elaborate.

We refer ESMA to our response to question 46; the BBA does not believe that non-collateralised commodities financing transactions are prevalent, and therefore we do not see the need for this proposal.

Q48: Would it be possible that an initially unsecured securities or commodities lending or borrowing transaction becomes collateralised at a later stage? Please provide concrete examples.

We refer ESMA to our response to question 46; the BBA does not believe that non-collateralised commodities financing transactions are prevalent, and therefore we do not see the need for this proposal.

Q49: Which of the scenarios described for securities lending (Section 4.2.4.2), repo and buy-sell back (Section 4.2.4.1) are currently applicable to commodities financing transactions? Please provide a short description of the commodity financing transactions that occur under each scenario and the involved actors.

We note that bilateral commodities financing transactions, or scenario 1, are currently applicable to commodities financing transactions; in these transactions, a financier engages with their counterparty on a bilateral basis without using any market intermediary; there are no additional actors under this scenario.

The BBA refers to and supports FIA-Europe's response to ESMA's DP on draft RTS and ITS under SFTR.

Q50: Are you aware of commodity financing transactions that would fall in the scope of the Regulation but are not covered in the scenarios described for securities lending (Section 4.2.4.2), repo and buy-sell back (Section 4.2.4.1)? If yes, please describe the general characteristics of such a transaction.

As the BBA referred to in our answer to question 49, commodities financing transactions typically operate within a bilateral market, not using market intermediaries in a manner comparable to securities repo and lending markets. It is difficult to confirm with certainty whether or not there is a commodity financing transaction that would fall in the scope of the Regulation but is not covered by the described scenarios, as ESMA has not clarified significant difference between repo and buy/sell back.

The BBA refers to and supports FIA-Europe's response to ESMA's DP on draft RTS and ITS under SFTR.

Q51: Are the types of transactions recognised sufficiently clear for unambiguous classification by both reporting counterparties of commodity financing transactions into one of the types?

The BBA believes the types of transactions recognised are sufficiently clear for unambiguous classification by both reporting counterparties of commodity financing transactions, although refers ESMA to the caveat in our answer to question 50 about the lack of clarity on the differences between repo and buy/sell back.

Q52: What additional details may help to identify the type of transactions used?

The BBA refers ESMA to our response to question 50; we suggest the lack of clarity about the definition of a buy/sell back trade and a repo trade be addressed by ESMA to help identify the type of transactions used.

Q53: What are the main types of commodities used in SFTs?

It is the BBA's understanding that commodities financing transactions cover:

- Energy
- Base metals
- Agricultural products (e.g. coffee, sugar).

In particular, base metal and agricultural commodities are most used for commodities financing transactions due to their ability to be stored, as opposed to energy being consumed.

The BBA refers to and supports FIA-Europe's response to ESMA's DP on draft RTS and ITS under SFTR.

Q54: How often, in your experience, are other commodities used?

We refer ESMA to our response to question 53; energy and in particular base metal and agricultural commodities are most often used for commodities financing transactions, although by no means exclusively.

Q55: In your experience, what share of the transactions involves standardised commodity contracts, such as most traded gold and crude oil futures? Please provide concrete examples.

Answering the question on the assumption that ESMA is referring to the share of transactions involving commodities falling within a basket of deliverable products that meet contract specifications, the BBA understands that many commodities financing transactions do not reach settlement via an exchange traded contract. Therefore the underlying (in this case the standardised commodity) is not assessed for compliance with the usual contract specifications.

The BBA refers to and supports FIA-Europe's response to ESMA's DP on draft RTS and ITS under SFTR.

Q56: In your experience, what share of the transactions involve commodities that meet the contract specification for the underlying to derivative contracts traded on at least one [EU] exchange? If yes, please elaborate and provide concrete examples.

The BBA refers ESMA to our response to question 55; in addition to this, we note that a small amount of agricultural commodities are assessed for delivery, as many are not settled through clearing but through bilateral repo trading.

Q57: Do the proposed fields and attributes in Section 6.1 sufficiently recognise the characteristics of commodity financing transactions? Please describe any issues you may see and describe any reporting attributes that should be added in order to enable meaningful reporting of commodity financing transactions?

The BBA does not agree that the proposed fields and attributes in Section 6.1 sufficiently recognise the characteristics of commodity financing transactions. There are a number of fields within this section that do not take into account the characteristics of the commodities financing transactions market, instead mainly relating to the securities repo and lending market.

Fields 4, 7, 10, 16, and 19 within Table 1, Fields 1 and 10 within Table 2, and Fields 2 and 12 within Table 3 will all be difficult to complete as they are currently worded. We refer to and support FIA-Europe's response to ESMA's DP on draft RTS and ITS under SFTR for further detail on these fields.

Q58: Could all scenarios described for securities lending, repo and buy-sell back theoretically apply to future forms of commodities financing transactions?

The BBA does not agree that all scenarios described for securities lending, repo and buy-sell back could apply to future forms of commodities financing transaction; the BBA requests that ESMA please explain how these scenarios could apply to future commodities financing transactions.

Q59: Should other scenarios be considered? If yes, please describe.

The BBA does not believe any other scenarios should be considered.

Q60: Would you agree that the ISIN could be used to uniquely identify some commodities used in SFTs? If yes, which one and what prerequisites would need to be fulfilled? If no, what alternative solution would you proposed for a harmonised identification of commodities involved in SFTs?

The BBA does not agree that the ISIN could be used to uniquely identify commodities financing transactions used in SFTs. Commodities that are taken as security are normally stored, and therefore are not given ISINs.

The BBA refers to and supports FIA-Europe's response to ESMA's DP on draft RTS and ITS under SFTR.

Q61: Would the classification as described in RTS 23 of MiFIR be the most effective way to classify commodities for the purposes of transparency under SFTR?

The BBA believes that the classification as described in RTS 23 of MiFIR is the most effective way to classify commodities for the purposes of transparency under SFTR, and advises that ESMA proceed with this classification.

Q62: Is there another classification that ESMA should consider?

The BBA refers ESMA to our response to question 61; the classification as described in RTS 23 of MiFIR would be the most effective way to classify commodities for the purposes of transparency under SFTR.

Q63: Are there transactions in which a pool of commodities is financed that the reporting needs to take into account? Please provide concrete examples.

The BBA understands that there are transactions in which a pool of commodities is financed and that reporting must take into account; in cases where financiers finance client inventory through a "borrowing base" transaction (where a group of lenders takes security over a pool of commodities and then lends against it), this could be considered by ESMA as a commodities financing transaction for the purposes of SFTR.

Although we believe that this would qualify more as a secured financed arrangement instead of a commodities financing transaction, and would recommend that ESMA support that position, if ESMA views this as a commodities financing transaction for the purposes of SFTR then there would need to be amendments to the reporting fields to include the appropriate financiers.

The BBA refers to and supports FIA-Europe's response to ESMA's DP on draft RTS and ITS under SFTR.

Q64: Do you agree with this basic scenario? If no, please explain what changes would need to be made to the scenario.

The BBA agrees with the scenario described in Section 4.2.4.5. We would note, however, that prime brokerage margin lending is not transaction based and that therefore the use of the terminology "transactions" in the definition would not be accurate. Prime brokerage lending is a form of post-trade financing; SFTs traded in a prime brokerage context, either as securities loans or margin loans, are traded against a pool of collateral without the SFTs themselves being linked to collateral.

The BBA refers to and supports AFME's response to ESMA's DP on draft RTS and ITS under SFTR.

Q65: Are there other entities that do not act as counterparties but can be involved in the transaction chain (e.g. brokers or intermediaries)?

The BBA understands that there are generally no other entities that act as counterparties. We cannot rule out the possibility that there are other entities that may act as counterparties in the transaction chain, but for the purposes of margin loans, these are entered into between prime brokers and counterparties We therefore do not believe that any additional counterparty in this context would be relevant to ESMA.

The BBA refers to and supports AFME's response to ESMA's DP on draft RTS and ITS under SFTR.

Q66: Are there standard margin agreements used in the market? If yes, which ones? If no, are there standard elements in margin agreements in the EU that are noteworthy from a financial stability perspective and not included in the list of questions or current data tables included in Section 6.1?

The BBA does not believe there are standard margin agreements used in this market. Prime brokerage agreements are not typically market standard documents, instead usually being produced by a trade association through a Global Master Repurchase Agreement. These agreements are drafted bespoke due to the nature of prime brokerage arrangements, which are dependent on the practices and operational capacity of the prime brokerage entity itself, as well as the counterparty.

The BBA refers to and supports AFME's response to ESMA's DP on draft RTS and ITS under SFTR.

Q67: Are there margin loans that do not have a fixed maturity or repayment date, or other conditions in the agreement on which full or partial repayment of the loan can be conditioned?

Prime brokerage loans typically contain open terms; there may be margin loans without a fixed maturity or repayment date (or with other conditions on which full or partial repayment can be conditioned), but these are determined on a case-by-case basis, typically based on the particular firm's margin technology.

The BBA refers to and supports AFME's response to ESMA's DP on draft RTS and ITS under SFTR.

Q68: Are floating rates used in margin lending transactions? Are there specificities that ESMA should be aware of regarding interest rates in the context of margin lending transactions?

Yes, floating rates are commonly used in margin lending transactions. The BBA is not aware of any specificity regarding interest rates in the context of margin lending transactions that would be of use to ESMA.

Q69: What potential issues do reporting counterparties face regarding the reporting of margin account/credit balances?

The BBA believes that margin accounts and credit balances should not be reported. We refer ESMA to our answer to question 64; "transaction" is not suitable for use in margin lending, as the reporting of execution, clearing and settlement of individual transactions does not exist as ESMA has described within the prime brokerage margin lending market. We recommend that ESMA exempt margin accounts and credit balances from the reporting scope.

The BBA refers to and supports AFME's response to ESMA's DP on draft RTS and ITS under SFTR.

Q70: How is information regarding the market value of short positions in the context of margin lending used by the lender (if at all)?

The BBA does not believe it is clear how information regarding the market value of short positions in the context of margin lending is used by the lender, or whether this information is used at all.

The BBA refers to and supports AFME's response to ESMA's DP on draft RTS and ITS under SFTR.

Q71: What kind of provisions do lenders have in place to limit or mitigate client losses from short positions?

Lenders have multiple provisions in place to limit or mitigate client losses from short positions; these include individual margin calculation methodologies, which assess and mitigate risks to a client's collateral. Other mitigations include client's netting arrangements and set off rights.

The BBA refers to and supports AFME's response to ESMA's DP on draft RTS and ITS under SFTR.

Q72: Do you foresee any issues with reporting information on SFTs involving tri-party by the T+1 reporting deadline? If so, which ones – availability of collateral data, timeliness of the information, etc.? Please elaborate.

The BBA believes that, as identified in the question by ESMA, both availability of collateral data and timeliness of the information is an issue with reporting information on SFTs involving tri-party by the T+1 reporting deadline.

General collateral data is available after T+2, and agreements are completed with a T+3 deadline. A T+1 reporting deadline for information on SFTs involving tri-party data is therefore not possible. We recommend ESMA clarify how this information could be obtained by a T+1 deadline when collateral data and agreements data are only available from T+2 and T+3 respectively.

The BBA also recommends that tri-party agents are given the responsibility of providing information on collateral allocation directly to Trade Repositories, which would be far more efficient and timely for ESMA's purposes.

Q73: Would you agree with the proposed split between the counterparty and transaction data?

The BBA agrees with the proposed split between the counterparty and transaction data, and believes that this would be broadly consistent with the existing practice.

The BBA notes that when a firm reports an ISIN code they do not generally have to include all reporting fields. As such, ESMA should be able to derive information from the already supplied ISIN code in the majority of cases. The BBA recommends that all fields should only be required to be reported where no derived data is already available, such as in an ISIN code or LEI. This could be achieved through counterparty agreement.

In addition, the BBA believes that counterparty data should not include information related to collateral. We feel it would be more appropriate for all such data to be reported under the existing collateral tables.

Q74: Is the reporting of the country code sufficient to identify branches? If no, what additional elements would SFT reporting need to include?

The BBA does not believe reporting of the country code is sufficient to identify branches.

We note that the LEI ROC will be able to identify branches within the Global LEI System in the future; using this approach would be the ideal system going forward. The BBA understands that guidance from the ROC will be forthcoming within the coming months on the assignment of LEIs to international branches. Given that ESMA is on the ROC, this timeframe is very visible and easily confirmed. Given the time frame for the Level 2 rules to be submitted to the European Commission, the BBA recommends that ESMA simply point to ROC guidance, which may then already be issued, rather than ask firms to implement a different process for what might be a very short amount of time.

Some firms may not strategically source the ISO 3166 country code for reporting purposes, and even if they do, the codes would need to be programmed into the SFTR reporting only to be discontinued a short time later. It would seem very inefficient and burdensome to ask firms to provide reporting on this basis for, again, a very short period of time. We suggest ESMA simply cite the ROC guidance as the standard to be followed.

Q75: Do you foresee any costs in implementing such type of identification?

Costs would accompany the use of LEI. Although the majority of BBA members support the use of LEI regardless of this, we acknowledge that any costs are viewed negatively by smaller sized members, and that these are exacerbated by the inconsistency of where LEI is applied. The BBA calls on the global regulatory community to mandate the use of LEIs broadly, thereby increasing the number of LEIs issued and reducing the cost for all registrants.

Q76: Would it be possible to establish a more granular identification of the branches? If yes, what additional elements would SFT reporting need to include and what would be the associated costs?

As the BBA has stated in our answers to questions 74 and 75, the LEI ROC guidance for branches should be used as this is the most efficient and accurate way of identifying branches.

Q77: What are the potential benefits of more granular identification of branches? Please elaborate.

The BBA refers ESMA to our answer to questions 74, 75 and 76; the LEI ROC guidance for branches should be used as this is the most efficient and accurate way of identifying branches.

Q78: Are there any situations different from the described above where the actual transfers between headquarters and branches or between branches can be considered transactions and therefore be reportable under SFTR? Please provide specific examples.

The BBA generally agrees with the reasoning of ESMA under paragraph 194; however, we note that a branch within an entity is not reportable, but that if a branch is located within a third country then this can be considered a transaction and therefore is reportable under SFTR.

Q79: Are there any other cases which are not identified above, where the beneficiaries and the counterparties will be different? Please elaborate.

The BBA agrees with the principles of ESMA's approach. However, the comment made on LEIs in paragraph 200 of the DP is not accurate. Specifically, paragraph 200 states: 'In this respect, ESMA EMIR General Question 118 indicates that sub-funds, which are not identifiable by LEI, can be typically considered as beneficiaries to the SFT'.

The BBA regards this as a typographical error, as ESMA's guidance in the answer to General Question 1.c in its Questions and Answers on the "Implementation of the Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and Trade Repositories (EMIR), October 1, 2015" clearly states that "(c) If the derivative contract is concluded at the level of the sub-fund, the counterparty should be the sub-fund and not the umbrella fund. In that case, the sub-fund needs to have an LEI for reporting purposes and be identified as the counterparty. Otherwise, the umbrella fund should have an LEI for reporting purposes and be identified as the counterparty. The sub-fund should be identified as the beneficiary".

The BBA suggests that ESMA correct the language in paragraph 200 to reflect that sub-funds can and do receive LEIs.

Q80: Do you agree with the proposal to link the legs of a cleared transaction by using a common identifier?

The BBA does not agree with the current proposal to link the legs of a cleared transaction using a common identifier. We note the complexity of the infrastructure required to report under EMIR, and that this complexity would be exacerbated by requiring users to also link the legs of a cleared transaction via a common identifier.

The BBA does not believe that the benefits of linking the legs of a cleared transaction are suitable to warrant the considerable infrastructure investment that users would need to

invest in to make this possible; in particular this burden will be onerous for smaller and medium-sized market participants. The BBA feels that, in terms of the objectives outlined by ESMA in paragraph 203, it is not clear how linking the legs of cleared transactions would add any value to these.

The BBA refers to and supports ICMA's response to ESMA's DP on draft RTS and ITS under SFTR.

Q81: Could you suggest robust alternative ways of linking SFT reports?

If SFT reports are to be linked, we believe that regulators should advocate for the use of LEI on a global scale; this will allow regulators to use the existing structure access to the relevant data, and would give regulators the most wide-ranging view of SFT reporting data to meet their stated objective of managing and maintaining market stability.

Q82: Are the different cases of collateral allocation accurately described in paragraphs 221-226? If not, please indicate the relevant differences with market practices and please describe the availability of information for each and every case?

The BBA does not believe that margin lending practices, repos or securities lending are completely accurately described in paragraphs 221-226.

The BBA refers to and supports AFME, ICMA and ISLA's response to ESMA's DP on draft RTS and ITS under SFTR.

Q83: Is the assumption correct that mainly securities lending would require the reporting of cash collateral? If no, for which other types of SFTs is the cash collateral element required? Please elaborate.

The BBA believes the assumption is correct that mainly securities lending would require the reporting of cash collateral.

Q84: Does the practice to collateralise a transaction in several amounts in different currencies exist? Pleas elaborate.

The BBA notes that it is common for cash pool collaterals to be held in different currencies, for example a securities lending trading relationship that may use Euro and US Dollar cash pools as collateral at the same time. Similarly, this practice does exist in the margin lending context; transactions can be collateralised in different currencies as per client requirements, as well as for hedging purposes.

The BBA refers to and supports AFME and ISLA's response to ESMA's DP on draft RTS and ITS under SFTR.

Q85: Do you foresee any issues on reporting the specified information for individual securities or commodities provided as collateral? If yes, please elaborate.

Yes, the BBA does foresee issues on reporting the specified information for individual securities or commodities provided as collateral. We are concerned there are too many data fields included; collateral reporting in particular should focus on identifying the exact collateral that has been provided and the value attributed by each market participant to that collateral. Reference data for this could be found through the use of ISIN.

We also believe that several fields relating to securities lending, repo and margin lending be re-examined by ESMA. On these, we refer to and support AFME, ICMA and ISLA's responses to ESMA's DP on draft RTS and ITS under SFTR.

Q86: Are there any situations in which there can be multiple haircuts (one per each collateral element) for a given SFT? Please elaborate.

The BBA understands that there are situations in which there can be multiple haircuts for a given SFT. In particular, with collateral baskets containing multiple securities, multiple haircuts are able to be applied.

Q87: Would you agree that the reporting counterparties can provide a unique identification of the collateral pool in their initial reporting of an SFT? If no, please provide the reasons as to why this would not be the case.

Yes, the BBA does agree that the reporting counterparties can provide a unique identification of the collateral pool in their initial reporting of an SFT. We believe that firms should be able to provide this identification for collateral pools; for instance, reporting counterparties are able to provide a unique identification of the collateral pool when initially reporting an SFT.

Q88: Are there cases where a counterparties to a repo, including those executed against a collateral pool, would not be able to provide the collateral with the initial reporting of the repo trade? If yes, please explain.

The BBA believes that applicable collateral allocation will not be available at T+1 when the report was due.

The BBA refers to and supports ICMA's response to ESMA's DP on draft RTS and ITS under SFTR.

Q89: Are there any issues to report the collateral allocation based on the aforementioned approach? Please elaborate.

The BBA refers ESMA to our response to question 88, and supports ICMA's response to ESMA's DP on draft RTS and ITS under SFTR.

Q90: In the case of collateral pool, which of the data elements included in Table 1 would be reported by the T+1 reporting deadline? Please elaborate.

With regards to a collateral pool, the BBA does not believe that any of the data elements included in Table 1 would be available by T+1. These elements are not available until the collateral has moved from the account of the borrower to the account of the lender; this generally takes place on the settlement date, which would therefore make it difficult to report the data elements included in Table 1 for a securities lending transaction by the T+1 deadline.

The BBA refers to and supports ISLA's response to ESMA's DP on draft RTS and ITS under SFTR.

Q91: Which option for reporting of collateral would be in your opinion easier to implement, i.e. always reporting of collateral in a separate message (option 2) or reporting of collateral together with other transaction data when the collateral is known by the reporting deadline (option 1)?

We refer ESMA back to our answers to question 22 and 27; the BBA recommends that when considering options for reporting of collateral, it is crucial that consistency with EMIR is maintained.

Q92: What are the benefits and potential challenges related to either approach? Please elaborate.

We refer ESMA back to our answers to question 22 and 27, where we outline the challenges when consistency with EMIR is not maintained and the benefits when it is.

Q93: Do you foresee any challenges with the proposed approach for reporting updates to collateral? What alternatives would you propose? Please elaborate.

Of potential approaches (the reporting of collateral data continuously or beginning with a collateral report and then reporting the delta on a day-by-day basis), the BBA does not support reporting of the delta, as we feel this is both onerous and unnecessary. Reporting continuously is a simpler and more effective way of ensuring that firms can submit the relevant data to national competent authorities on a timely basis.

Q94: Is it possible to link the reports on changes in collateral resulting from the net exposure to the original SFT transactions via a unique portfolio identifier, which could be added to the original transactions when they are reported?

The BBA does not believe it is possible to link the reports on changes in collateral resulting from the net exposure to the original SFT transactions via a unique portfolio identifier in the margin lending and securities lending context.

The BBA refers to and supports AFME and ISLA's response to ESMA's DP on draft RTS and ITS under SFTR.

Q95: Do you foresee any difficulties related to the linking of the collateral report to the underlying SFTs by specifying UTIs of those SFTs in the collateral report?

The BBA does not foresee any difficulties related to the linking of the collateral report to the underlying SFTs by specifying UTIs of those SFTs in the collateral report.

Q96: Are there additional options to uniquely link a list of collateral to the exposure of several SFTs to those specified? If yes, please detail them.

The BBA does not believe there are any additional options to uniquely link a list of collateral to the exposure of several SFTs to those specified.

Q97: What would you deem to be the appropriate option to uniquely link collateral to the exposure of several SFTs? Are you using any pro-rata allocation for internal purposes? What is the current market practice for linking a set of collateralised trades with a collateral portfolio? Please elaborate.

The BBA believes that there are separate options with regards to securities lending and margin lending. On securities lending, where a lending principal can be said to have similar collateral requirements in terms of acceptability, this may be held by their lending agent in an omnibus account where each lending principal owns a pro-rata share of the collateral pool, based on their share of the on-loan balances.

With regard to margin lending, collateral is generally considered for the entire client portfolio; as prime brokerage is a post-trade custody service, the relevant SFTs from a prime brokerage point of view are made against a client portfolio made up of a pool of collateral; this collateral is not linked to any other collateral.

The BBA refers to and supports AFME and ISLA's responses to ESMA's DP on draft RTS and ITS under SFTR.

Q98: Do you foresee any issues between the logic for linking collateral data and the reporting of SFT loan data? Please elaborate.

The BBA does not foresee any issues between the logic for linking collateral data and the reporting of SFT loan data.

Q99: Do you agree with the description of funding sources mentioned above?

The BBA broadly agrees with the description of funding sources mentioned above; we note, however, that prime brokers fund multiple products, and that these funds cannot be linked to particular SFTs. Data on funding sources would not be useful for regulators, as each individual prime broker uses different methodologies for collecting and reporting this data. This resultant inconsistency and confusion over the data means that there would be little to no benefit derived from this data. As such, we recommend that these funding sources are not required to be reported.

The BBA refers to and supports AFME's response to ESMA's DP on draft RTS and ITS under SFTR.

Q100: Are there other funding sources used in the context of margin lending?

The BBA has not identified any other funding sources used in the context of margin lending, and refers ESMA to our response to question 99; data on funding sources would not be useful due to the different methodologies for collecting and reporting this data used by individual prime brokers.

Q101: What are the obstacles to lenders reporting the market value of funding sources?

The BBA refers ESMA to our responses to questions 99 and 100; we do not believe information on funding sources to be useful and due to the different methodologies used by individual prime brokers, it is difficult to provide a certain answer to this question.

The BBA refers to and supports AFME's response to ESMA's DP on draft RTS and ITS under SFTR.

Q102: Would reporting pro-rata amounts address some of the challenges or facilitate reporting?

The BBA does not believe that reporting pro-rata amounts would address the challenges associated with reporting information on funding sources, nor that reporting pro-rata amounts would help to facilitate reporting. We refer ESMA to our responses to questions 99, 100 and 101.

Q103: Should the cash in the margin accounts be considered also as part of the collateral for a given margin lending transaction? Please elaborate.

The BBA does not feel that cash in the margin accounts should be considered as also part of the collateral for a given margin lending transaction. Cash credits in the margin lending context are included within a client's overall net cash balance. If a client has cash credit, they therefore will not require any margin loan. As such, it would not be appropriate for cash in the margin accounts to be considered as also part of the collateral for a given margin lending transaction.

The BBA refers to and supports AFME's response to ESMA's DP on draft RTS and ITS under SFTR.

Q104: What are the metrics used (other than LTV ratios) to monitor leverage from margin lending, and more broadly to address risks related to the value of collateral? How are these calculated?

Individual firms use their own methodology to calculate margin, and analyse a client's portfolio – including both SFTs and non-SFTs – to establish the amount of finance they are willing to make available. Prime brokers do not call for margin based simply on a margin loan, as the client's portfolio they are using to establish the amount of finance they are willing to make available will contain more than just that margin loan.

This process is followed by more detailed analysis by an individual prime broker, considering a client's credit rating, the quality of their collateral and how concentrated the risk is within their portfolio.

The BBA refers to and supports AFME's response to ESMA's DP on draft RTS and ITS under SFTR.

Q105: Using these metrics, what are the current limits or thresholds used by margin lenders that will trigger a collateral action? How are these limits determined? Are there different thresholds triggering different actions? Can they vary over time, and for what reasons?

Assuming that "collateral action" refers to a margin call, individual firms use their own methodologies to determine limits and calculate margin. As described in our response to question 104, firms use a number of factors in calculating the level of finance they are prepared to offer a client, including the credit quality and risk concentration of their securities portfolio.

Prime brokers make margin calls when a client no longer has sufficient margin capital with the prime broker; after a prime broker has made a client aware that they must add cash to their account, if the client does not comply with this request or reduce their position, the prime broker is within their rights to liquidate the position. These factors often vary over time, as the factors themselves are regularly changing.

The BBA refers to and supports AFME's response to ESMA's DP on draft RTS and ITS under SFTR.

Q106: What kind of collateral actions can be triggered by crossing these limits or thresholds? Please describe the actions, their impact on the metrics described in Question 13, and the potential associated changes in limits or thresholds.

The collateral actions that can be triggered by crossing these limits or thresholds are margin calls from individual prime brokers. We refer ESMA to our responses to questions 104 and 105.

Q107: Are there any other important features, market practices or risks that you would like to bring to our attention in the context of margin lending?

The BBA recommends that margin lending be limited to cover only prime brokerage margin lending.

The BBA refers to and supports AFME's response to ESMA's DP on draft RTS and ITS under SFTR.

Q108: Do you have any alternative proposals for reporting information related to funding sources that might reduce the burden on reporting entities?

As we have previously mentioned, the BBA recommends that data on funding sources not be collected, as this data is neither helpful nor requested with other SFTs. We regard the reporting funding sources as outlined in the DP as going beyond what was agreed at the Level 1 stage of SFTR, and that it falls outside the scope of EMIR. As we feel that equivalence with EMIR is broadly desirable, we do not support the inclusion of reporting data on funding sources.

The BBA refers to and supports AFME's response to ESMA's DP on draft RTS and ITS under SFTR.

Q109: Do you agree with the collateralisation and margin lending practices described above? Are there instances where margin loans are not provided (or haircuts applied) on a portfolio basis?

The BBA does not agree with the collateralisation and margin lending practices as described above, as we do not feel they accurately describe all current margin lending practices. Paragraph 253, for example, is accurate but omits any mention of prime brokerage activity. We consider that the definition of margin lending should only refer to prime brokerage margin lending. This is because prime brokerage margin lending is the most relevant form of margin lending in the context of monitoring systemic risk. A broader definition risks not being clear, and resulting in inconsistent application.

The BBA refers to and supports AFME's response to ESMA's DP on draft RTS and ITS under SFTR.

Q110: What are the potential obstacles to reporting information regarding the individual securities set aside in margin accounts by the lender?

The BBA does not see any significant obstacles to reporting information regarding the individual securities set aside in margin accounts by the lender, although we note that prime brokers do not put securities in margin accounts.

In addition, we note that requiring reporting information on individual securities in the manner set out by ESMA would result in many thousands of day-by-day transactions being reported to little benefit for regulators. The resources required to monitor this data and maintain the framework that supports its reporting would not be justified by the value a regulator would derive from it. It would instead be preferable to report information on securities held in a client's account by asset type; this would ensure consistency with the existing FSB rules, and would also save regulators from monitoring potentially thousands of data elements that are not practically useful to the stated objectives of SFTR.

The BBA refers to and supports AFME's response to ESMA's DP on draft RTS and ITS under SFTR.

Q111: Would you agree that in the context of margin lending the entire collateral portfolio, i.e. both cash and securities, would require reporting? If no, please explain.

The BBA agrees that in the context of margin lending the entire collateral portfolio, including cash and securities, would require reporting; however, we note that this information should be included within the collateral template.

The BBA refers to and supports AFME's response to ESMA's DP on draft RTS and ITS under SFTR.

Q112: What are the obstacles to the reporting of reuse of collateral for transactions where there is no transfer of title? What are the current market practices aimed at mitigating risks from collateral re-use specifically in the context of margin lending?

The BBA believes that the primary obstacle to the reporting of re-use of collateral for transactions where there is no transfer of title is that no existing method is able to accurately indicate the exact amount of collateral that has been re-used for a particular margin loan, or another form of SFT. Reporting of re-use would therefore generate only an estimate of the amount that has been re-used, not giving accurate information to regulators.

The BBA refers to and supports AFME's response to ESMA's DP on draft RTS and ITS under SFTR.

Q113: What options exist to link collateral that is re-used to a given SFT or counterparty? Please document the potential issues.

The BBA understands that multiple options exist to link collateral that is re-used to a given SFT or counterparty in the context of margin lending and securities lending. For securities lending, linking in this way is a challenge due to the fungible nature of the collateral assets involved in securities lending transactions, as well as the changing nature of banks' balance sheets. In terms of margin lending, there are particular issues with re-use reporting.

The BBA refers to and supports AFME and ISLA's responses to ESMA's DP on draft RTS and ITS under SFTR.

Q114: In which cases can the re-use be defined at transaction level?

A combination of the transaction counterparties and the legal nature of the agreement defines re-use, both generally and at transaction level.

Q115: Do you see other ways to calculate the collateral re-use for a given SFT?

We refer ESMA to our response to question 113. In addition to this, we would also note that an alternative way to calculate re-use for a given SFT would be option 3 of the recommendations put forward by the FSB.

Q116: Are there any circumstances in which the re-use percentage applied at entity level could not be calculated for a given security (e.g. per ISIN)?

The BBA is not aware of circumstances in which the re-use percentage applied at entry level could not be calculated for a given security; we would however suggest to ESMA that any such calculation be made at ISIN level as opposed to entity level.

Q117: Which alternatives do you see to estimate the collateral re-use?

The BBA believes calculating the collateral re-use is problematic, as discussed in previous answers. There is currently no reporting method that is capable of providing a precise amount of collateral that has been re-used. The BBA advises that ESMA apply the exception provided for under SFTR article 4, in which information collection is limited to the amount of re-use of "distinguishable" collateral, and that where possible ESMA should aim to align with the forthcoming work of the FSB.

Q118: When the information on collateral availability for re-use becomes available? On trade date (T) or at the latest by T+1?

Generally speaking, it is possible to obtain the information on collateral availability on T; in certain instances of securities lending, for example, information is only available from T+1, but the BBA is not aware of any instances where information on collateral availability for re-use is only made available from T+2 and beyond.

The BBA refers to and supports AFME, ICMA and ISLA's responses to ESMA's DP on draft RTS and ITS under SFTR.

Q119: Is it possible to automatically derive the collateral re-use in some cases given the nature of the SFT (meaning based on the GMRA, GMSLA or other forms of legal agreements)? If yes, please describe these cases and how the information could be derived. Please explain if deviations could be drafted within legal agreements to deviate from the re-usability.

While the BBA believes that it is technically possible to automatically derive the collateral re-use in some cases, depending on the nature of the SFT, we believe that users would need to develop complex IT developments in order to link legal data bases to trading platforms. We doubt that a system would be capable of handling the legal distinctions between master agreements which are common, particularly in securities lending.

The BBA refers to and supports ISLA's response to ESMA's DP on draft RTS and ITS under SFTR.

Q120: Do you agree with the rationale for collection of information on the settlement set out in this section?

The BBA is concerned that the rationale for collection of information on the settlement set out under this section could lead to a cross-over with the CSD Regulation (CSDR). Information already received under reporting should be sufficient for regulators to monitor potential financial stability risks posed by internalised settlement.

The BBA advises against any requirement to report internalised settlement is under SFTR. Where requirements are overlapped or duplicated (as they would be if global custodians had to double report identical information under both CSDR and SFTR reporting obligations), this leads to inefficiency and unnecessary complexity for firms. As CSDR reporting provides the most effect system for monitoring internalised settlement activities for the purposes of risk, there is no need for the extension of SFTR reporting into this space.

Q121: Do you consider that information on settlement supports the identification and monitoring of financial stability risks entailed by SFTs?

The BBA does not consider that information on internalised settlement supports the identification and monitoring of financial stability risks entailed by SFTs, and refers ESMA to our response to question 120. We do not support the principle of SFTR duplicating information made available within the context of CSDR; internalised settlement information through CSDR provides the most appropriate form for monitoring internalised settlement activities, and the BBA therefore advises against the extension of SFTR reporting into this space.

Q122: Do you agree with the approach to identify the settlement information in the SFT reports?

We refer ESMA to our responses to questions 120 and 121; we do not agree with the approach to identify the settlement information in the SFT reports, for reasons previously outlined.

Q123: Do you envisage any difficulties with identifying the place of settlement?

The BBA does envisage difficulties with identifying the place of internalised settlement; we do not believe that “place of settlement” has been adequately defined to allow us to answer this question more fully, and are concerned that the lack of clarity around this definition could lead to unintended consequences. As we have outlined in our responses to questions 120 and 121, the BBA advises against the extension of SFTR reporting into this space, and favours the existing arrangements for internalised settlement for this information.

Q124: Are there any practical difficulties with identifying CSDs and indirect or direct participants as well as, if applicable, settlement internalisers in the SFT reports? Would this information be available by the reporting deadline? Please elaborate.

The BBA refers ESMA to our responses to questions 120 and 121; we advise against the extension of SFTR reporting into this space partly because of the practical difficulties we have already outlined, and that this information continued to be reported under CSDR as at present.

Q125: Will this information be available by the reporting deadline? What are the costs of providing this information?

The BBA is satisfied this information will be available by the reporting deadline. However, we do not support this information being included as it is unnecessary to meet the stated supervisory objectives.

In addition to this, we anticipate the costs of providing this information to be heavy, as well as onerous for smaller and medium-sized firms. The reason for this is that trade data does not include master agreements under which trades are executed, and obtaining this information will be costly; such costs are likely to either restrict market activity or be passed

onto the consumer. The BBA therefore suggest that this field not be included in the reporting template under SFTR.

Q126: What other data elements are needed to achieve the required supervisory objectives? Please elaborate.

The BBA does not feel there are any other data elements that are needed to achieve the required supervisory objectives.

Q127: Do you agree with the proposed categories of trading methods to be reported by SFT counterparties?

The BBA does not completely agree with the proposed categories of trading methods to be reported by SFT counterparties. Trading methods, for example, are more applicable to repos than they are to margin lending, with the latter being considered as more of a facility.

We also feel that market participants will not be able to classify their trading venues on a consistent basis; what constitutes an automatic trading system is currently contested. The BBA recommends that reporting parties be required to provide the MIC of their trading venue and for Trade Repositories to certify this at the appropriate time. This would help to avoid a lower quality of reporting.

The BBA refers to and supports AFME and ICMA's responses to ESMA's DP on draft RTS and ITS under SFTR.

Q128: Are there any other methods of trading that are not covered?

We would draw ESMA's attention to the fact that, typically, the majority of SFT transactions that are not transacted via electronic trading platforms are negotiated verbally on Bloomberg and then confirmed via VCON. This is not presently recognised within the DP. Other than this, the BBA does not believe there are any other methods of trading that have not already been covered by ESMA.

Q136: Would you be favourable of a more granular approach for public data than the one under EMIR? Would you be favourable of having public data as granular as suggested in the FSB November 2015 report? What are the potential costs and benefits of such granular information? Please elaborate.

The BBA believes that the content of the information to be made public by Trade Repositories should be very carefully considered in order to ensure no commercially sensitive information is being made public. We welcome the Level 1 requirement which states that the "information published under Article 12(1) should not enable the identification of a party to any SFT".

However, we are conscious that other types of data, such as the underlying securities for example, could also lead to sensitive information being made public. The BBA therefore recommends that the data that the Trade Repository will be required to make public should provide as little granularity as possible, as is currently the case under EMIR.

The BBA regards the total cost of publishing more granular data as potentially significant, as this would risk being to the detriment of trading activity and liquidity in the market.

With regard to the FSB report, as mentioned elsewhere in the DP, we note that the FSB has still not yet decided the level of granularity of the data to be made public. The FSB report very clearly recognises the need to safeguard the confidentiality of the data reported by

national authorities to the FSB. In their report, on pages 25-26 the FSB clearly state that the treatment of data and the sharing of aggregates with other reporting authorities, “and potentially the general public”, will be handled according to three levels of confidentiality (public, restricted, confidential), which will have to be specified by national authorities.

Q137: In terms of criteria for aggregation, which of the following aspects ones are most important to be taken into account – venue of execution of the SFT, cleared or not, way to transfer of collateral? What other aspects have to be taken into account for the purposes of the public aggregations? Please elaborate.

The BBA would invite ESMA to consult the ICMA ERC Operations Group survey, containing a potential aggregation of data and format; we refer to and support ICMA’s response to ESMA’s DP on draft RTS and ITS under SFTR.

Q138: Do you foresee any issues with publishing aggregate data on a weekly basis? Please elaborate.

The BBA notes that data publications this frequently may add volume to market observations, and such regular publication may adversely affect the breadth of the aggregate data being published.

Conclusion

We would welcome the opportunity to engage with ESMA throughout 2016 as draft RTS and ITS continue to be developed for SFTR, and are happy to answer any questions on our key recommendations below or any of our responses to ESMA's questions.