

# Response Form to the Consultation Paper

**Draft RTS on the requirements for independent valuers, the methodology for assessing the value of the assets and liabilities of a CCP, the separation of the valuations, the buffer for additional losses to be included in provisional valuations and the methodology for carrying out the valuation for the purpose of the ‘no creditor worse off’ principle (Articles 25(6), 26(4) and 61(5) of CCPRRR)**



## Responding to this paper

ESMA invites comments on all matters in this consultation paper and in particular on the specific questions summarised in Annex III. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **24 January 2022**.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

### Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA\_QUESTION\_VLTN\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA\_VLTN\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_VLTN\_ABCD\_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Your input – Open consultations” → “Consultation on Valuation of CCPs assets and liabilities in resolution”).

## **Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

## **Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](#).

## **Who should read this paper?**

All interested stakeholders are invited to respond to this consultation. In particular, this paper may be specifically of interest for EU central counterparties, clearing members and clients of clearing members.

## General information about respondent

Name of the company / organisation	Eurex Clearing
Activity	Central Counterparty
Are you representing an association?	<input type="checkbox"/>
Country/Region	Germany

## Introduction

***Please make your introductory comments below, if any***

<ESMA\_COMMENT\_VLTN\_00>

Eurex Clearing is an EMIR-authorized central counterparty (CCP) and a subsidiary of the Deutsche Börse Group. Eurex Clearing provides clearing services for cash and derivatives markets in listed and over-the-counter (OTC) financial instruments.

As such, we welcome the opportunity to contribute to ESMA's consultation regarding the draft RTS on the requirements for independent valuers, the methodology for assessing the value of the assets and liabilities of a CCP, the separation of the valuations, the buffer for additional losses to be included in provisional valuations and the methodology for carrying out the valuation for the purpose of the 'No Creditor Worse Off' (NCWO) principle.

As set out below, we broadly agree with ESMA's analysis and proposals.

<ESMA\_COMMENT\_VLTN\_00>

## Questions

Q1: Do you agree with the proposed approach to define three elements of independence that should be met for a valuer to be deemed to be independent from the CCP and the resolution authority?

<ESMA\_QUESTION\_VLTN\_01>

We support the definition of the three elements of independence specified by ESMA. We also share ESMA's understanding that it is the resolution authority that is responsible for appointing an independent valuer in accordance with the requirements set out in the draft RTS.

<ESMA\_QUESTION\_VLTN\_01>

Q2 : Do you agree with the proposed definitions for the relevant entity, relevant authority and independent valuer?

<ESMA\_QUESTION\_VLTN\_02>

We agree with the definitions of the relevant entity, relevant authority and independent valuer.

<ESMA\_QUESTION\_VLTN\_02>

Q3 : Do you agree with the proposed conditions to assess whether a person considered for the position of independent valuer or appointed as independent valuer does not have an actual or potential material interest in common or in conflict with any relevant public authority or the CCP?

<ESMA\_QUESTION\_VLTN\_03>

We broadly agree with the proposed conditions. In this context, we would like to highlight the importance of stringent criteria for the assessment of potential conflicts of interest in order to ensure the integrity of the valuation process and to minimise costs for taxpayers and third parties.

There may be instances where an audit firm or consultancy has business ties (e.g. provision of consulting services) either with the CCP itself, with other CCPs with an interest in the CCP subject to resolution, or with clearing members and clients (material creditors of the CCP). Based on the description in the Consultation Paper, we assume that all of these links would constitute a material interest. As a consequence, persons working for the respective audit firm or consultancy would not be considered for the position as independent valuer by the resolution authority.

<ESMA\_QUESTION\_VLTN\_03>

Q4 : Do you agree with the proposed conditions to assess whether a person considered for the position of independent valuer or appointed as independent valuer has the necessary qualifications, experience, ability, knowledge and resources?

<ESMA\_QUESTION\_VLTN\_04>

We agree with the suggested conditions to assess whether a person being considered for the position of independent valuer or being appointed as an independent valuer has the necessary qualifications, experience, ability, knowledge, and resources.

<ESMA\_QUESTION\_VLTN\_04>

Q5 : Do you agree with the proposed approach to determine and assess the three elements of independence to conclude if a valuer shall be deemed to be independent from the CCP and the resolution authority?

<ESMA\_QUESTION\_VLTN\_05>

We broadly agree with the proposed approach.

<ESMA\_QUESTION\_VLTN\_05>

Q6: Do you agree with the respective proposed approaches for the valuation under Article 24(2) and Article 24(3) of Regulation (EU) 2021/23?

<ESMA\_QUESTION\_VLTN\_06>

We broadly agree with the respective proposed approaches for the valuation under Article 24(2) and Article 24(3). Regarding the overarching principles, we would appreciate more detail on the proposed 'economic value approach' for the second valuation.

<ESMA\_QUESTION\_VLTN\_06>

Q7: Do you agree with the described process for performing the 'No Creditor Worse Off' Valuation in accordance with Article 61 of Regulation (EU) 2021/23?

<ESMA\_QUESTION\_VLTN\_07>

Yes, we agree with the proposed three-tiered process and report for conducting the NCWO valuation in accordance with the Level 1 text, ensuring that market participants are not economically worse off when the resolution authority has taken

resolution action compared to a situation where the CCP would have been wound up under normal insolvency proceedings, taking into account direct replacement costs to reopen terminated net positions. We welcome that ESMA has taken into consideration existing standards under the BRRD to differentiate the treatment of valuation in resolution and under the NCWO counterfactual.

<ESMA\_QUESTION\_VLTN\_07>

Q8: Do you agree with the proposed list of direct replacement costs to be included in the NCWO valuation?

<ESMA\_QUESTION\_VLTN\_08>

Yes, we agree with the assessment that market movement during the period of time to enter net replacement transaction, as well as the cost caused by entering such transaction ('liquidity charge'), and the collateralisation of this replacement transaction are the main driver of the replacement costs. For the sake of clarity, we understand 'losses stemming from market moves between the time net positions were closed by the CCP', as being the losses stemming from the opposite transaction to the terminated transactions, and that only net costs and not net profit will be accounted for in the valuation. The inclusion of net profit will likely result in a non-respect of the NCWO principle, despite the best effort of the resolution authority, as it cannot anticipate the market direction.

We also acknowledge that ESMA notes the use of the Initial Margin Requirement (IMR) as a proxy for the cost cannot be used in a systematic manner, as IMR represents a 99% confidence level, which may not be representative of the current market conditions. We recognise that it remains at the discretion of the independent valuer to assess the best methodology under the given market conditions. However, the circumstances that lead to a CCP resolution, or as a counterfactual, its formal insolvency, will very likely be significantly worse than the 1% worst case scenario, rendering the IMR a rather optimistic proxy. It therefore is our expectation that in most circumstances, the estimated cost of a replacement transaction will be higher than the concentration/liquidity add-ons of such a position (on a net level). While such an assumption cannot be prescriptive, so to adapt to every scenario, it could be included in the form of a general recommendation or guidance.

It is also important, though obvious, that the methodology applied is identical between the resolution and the counterfactual.

<ESMA\_QUESTION\_VLTN\_08>

Q9: Do you agree with the proposed approach for the calculation of the buffer for additional losses to be included in provisional valuations?

<ESMA\_QUESTION\_VLTN\_09>

We agree with the proposed flexible approach to the calculation of the buffer for additional losses and share ESMA's view that a more prescriptive approach (e.g. setting a floor) could influence the work of the valuer and thereby the decision to initiate resolution or to use a specific resolution tool.

<ESMA\_QUESTION\_VLTN\_09>

Q10: With regards to the proposed policy options for the circumstances for the independent valuer to be deemed independent, do you agree with Option 2? If not please explain? Have you identified other benefits and costs not mentioned above associated to the proposed approach?

<ESMA\_QUESTION\_VLTN\_10>

Based on our comments above, we agree with Option 2.

<ESMA\_QUESTION\_VLTN\_10>

Q11: If you advocate for a different approach, how would it impact the cost and benefit assessment? Please provide details.

<ESMA\_QUESTION\_VLTN\_11>

As per our response to the previous question, no comment.

<ESMA\_QUESTION\_VLTN\_11>

Q12: With regards to the proposed policy options for the information to be used in valuation, do you agree with Option 2? If not please explain? Have you identified other benefits and costs not mentioned above associated to the proposed approach?

<ESMA\_QUESTION\_VLTN\_12>

As per our comments above, we agree with Option 2.

<ESMA\_QUESTION\_VLTN\_12>

Q13: If you advocate for a different approach, how would it impact the cost and benefit assessment? Please provide details.

<ESMA\_QUESTION\_VLTN\_13>

As per our response to the previous question, no comment.

<ESMA\_QUESTION\_VLTN\_13>

Q14: With regards to the policy options for the measurement basis, do you agree with proposed mixed approach? If not please explain? Have you identified other benefits and costs not mentioned above associated to the proposed approach?

<ESMA\_QUESTION\_VLTN\_14>

We agree with the proposed mixed approach.

<ESMA\_QUESTION\_VLTN\_14>

Q15: If you advocate for a different approach, how would it impact the cost and benefit assessment? Please provide details.

<ESMA\_QUESTION\_VLTN\_15>

As per our response to the previous question, no comment.

<ESMA\_QUESTION\_VLTN\_15>

Q16: With regards to the proposed policy options for the buffer for additional losses in provisional valuations, do you agree with Option 2? If not please explain? Have you identified other benefits and costs not mentioned above associated to the proposed approach?

<ESMA\_QUESTION\_VLTN\_16>

As indicated in our response to Q9, we agree with Option 2.

<ESMA\_QUESTION\_VLTN\_16>

Q17: If you advocate for a different approach, how would it impact the cost and benefit assessment? Please provide details.

<ESMA\_QUESTION\_VLTN\_17>

As per our response to the previous question, no comment.

<ESMA\_QUESTION\_VLTN\_17>