



**Response: ESMA Consultation Paper on draft RTS on Valuation of  
CCPs assets and liabilities in resolution**

**January 2022**

## Introduction

The World Federation of Exchanges (WFE) is the global trade association for regulated exchanges and clearing houses. We represent over 250 market-infrastructures, spread across the Asia-Pacific region (~37%), EMEA (~43%) and the Americas (~20%). with everything from local entities in emerging markets to groups based in major financial centres.

The WFE has previously sought to proactively contribute to the international debate on CCP risk management, recovery and resolution<sup>1</sup>. In doing so, its members have contributed significantly to the strengthening of the system via the implementation of many post-crisis initiatives, including efforts to encourage central clearing of derivatives as per the G-20 direction.

Whilst we consider recovery is almost always preferable to resolution, the WFE nevertheless welcomes well-designed efforts to enhance and strengthen how CCPs will be resolved if the worst was to occur – such as a simultaneous default of several of the largest globally systemic banks. We therefore generally support further initiatives which encourage better planning by resolution authorities. In that context, the WFE appreciates the opportunity to respond to this Consultation Paper relating to draft Regulatory Technical Standards (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.

We agree with the proposed criteria of assessment and the approaches ESMA has taken to outline the draft RTS as they are in line with existing accounting procedures and standard requirements for ensuring the independence of valuers. We welcome ESMA’s proposal to keep CCP-specific knowledge as part of the requirements for independent valuers.

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<sup>1</sup> - [WFE: CCP Risk Management Recovery and Resolution – Aligning CCP and Member Incentives – October 2015](#)  
- [WFE: Response to CPMI-IOSCO Consultative Report Resilience and Recovery of CCPs – October 2016](#)  
- [WFE: Response to FSB Discussion Note - Essential Aspects of CCP Resolution – October 2016](#)  
- [WFE: The Interplay between Central Counterparty Recovery and Resolution: A Global Perspective – February 2017](#)  
- [WFE: Response to FSB’s Consultative Document on CCP Resolution & Resolution Planning – March 2017](#)  
- [WFE: Response to FSB’s Consultation Paper on Treatment of CCP Equity in Resolution – July 2020](#)

**Response to questions:**

**Question 1: 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?**

We agree with the definition of the three elements of independence specified by ESMA. We also agree that the appointment of an independent valuer should be conducted by the resolution authority.

**Question 2: Do you agree with the proposed definitions for the relevant entity, relevant authority and independent valuer?**

We agree with the proposed definitions.

**Question 3: 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?**

We broadly support the proposed criteria to assess the independence of potential valuers by the relevant authorities and the CCP as they are in line with existing standards, except that the definition could capture audit firms or consultancies, potentially leaving very limited choice.

We would also welcome clarification as to whether it would constitute a conflict of interest if an audit firm that did not service the CCP directly did service that CCP's members.

**Question 4: 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?**

We agree with the proposed conditions to assess the independent valuer's qualifications. We consider the specific knowledge of clearing and post-trading essential for a person's qualification to become an independent valuer of a CCP's assets and liabilities, although it may limit the pool of professionals who would be considered for the position.

We support ESMA's proposal to keep CCP-specific requirements in the assessment of valuers' process but allow resolution authorities to compile and maintain a provisional list of potential valuers to ensure the availability of a sufficient number of professionals who could conduct valuations.

**Question 5: 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?**

We agree with the proposed criteria for assessment.

**Question 6: Do you agree with the respective proposed approaches for the valuation under Article 24(2) and Article 24(3) of Regulation (EU) 2021/23?**

We agree. We support ESMA's proposal to introduce different types of value as a measurement basis for cash flows, assets and liabilities in order to reflect the differences in value in specific situations. We also support the proposal to allow valuers' some flexibility in identifying alternative

measurement bases based on their assessment of the potential impact of resolution tools on the CCPs' cash flows and the value of their assets and liabilities.

**Question 7: 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?**

We agree with the valuation process proposed by ESMA. We note that the assessment of the losses that would have been incurred, and of the recoveries that would have been made if the CCP or relevant clearing service had been liquidated or terminated, should assume the full application of the CCP's rules and arrangements and any other contractual agreements. Any deviation as determined by the authorities should be made clear and transparent.

**Question 8: Do you agree with the proposed list of direct replacement costs to be included in the NCWO valuation?**

We agree with the proposed list of costs. We also support ESMA's suggestion that the valuer might have to adopt a simplistic approach to determine the potential direct replacement costs in the NCWO valuation given that proxy metrics such as initial margins would reflect costs in an extreme scenario.

In line with our remarks to Q7, we reiterate that the counterfactual to the CCP's bankruptcy should be the complete application of the CCP's default management procedures and recovery plans. This should include a holistic consideration of the ancillary costs related to such action. Replacement costs for the re-establishing of clearing member positions, the costs for closure of positions as well as the costs related to the liquidating of the CCP should be comprehensively considered.

**Question 9: Do you agree with the proposed approach for the calculation of the buffer for additional losses to be included in provisional valuations?**

We agree with ESMA's proposal to allow flexibility in the calculation of the additional-loss buffer in provisional valuations and to not introduce a specific formula or a floor. We agree with ESMA's conclusion that a more prescriptive approach "may have biased the work of the valuer and the decision to enter resolution or use a specific tool."

**Question 10: 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 ?**

We agree with policy Option 2. In our view it would be challenging to compile an exhaustive list of circumstances which would prevent a person or entity to become an independent valuer. Therefore, a better approach would be to outline general criteria that render a person independent from the relevant authorities and relevant entities .

**Question 11: If you advocate for a different approach, how would it impact the cost and benefit assessment? Please provide details.**

**Question 12: 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?**

We agree with Option 2.

**Question 13: If you advocate for a different approach, how would it impact the cost and benefit assessment? Please provide details.**

**Question 14: 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?**

We agree with a measurement based on the type of assets.

**Question 15: If you advocate for a different approach, how would it impact the cost and benefit assessment? Please provide details.**

**Question 16: 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?**

We agree with Option 2, i.e. allowing the valuer “to extrapolate losses from part of the entity’s assets for the purpose of calculating a buffer for additional losses”.

**Question 17: If you advocate for a different approach, how would it impact the cost and benefit assessment? Please provide details.**