

# Guidelines

**On the methodology to be used by the resolution authority for determining the valuation of contracts prior to their termination as referred to in Article 29(1) of CCPRRR.**

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## **I. Scope**

### **Who?**

1. These Guidelines apply to Resolution Authorities.

### **What?**

2. These Guidelines further specify the methodology to be used by the resolution authority for determining the valuation of contracts prior to their termination as referred to in Article 29(1) of CCPRR.

### **When?**

3. These Guidelines apply from two months after the date of publication on ESMA's website in the official languages of the European Union.

## II. Legislative references, abbreviations and definitions

### Legislative references

CCPRRR	REGULATION (EU) 2021/23 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 <sup>1</sup> .
EMIR	Regulation (EU) 648/2012 of 4 July 2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories <sup>2</sup> .
ESMA Regulation	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC <sup>3</sup> .
RTS 153/2013	Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 on requirements for central counterparties (OJ L 52, 23.2.2013).
RTS 152/2013	Commission Delegated Regulation (EU) No 152/2013 of 19 December 2012 on capital requirements for central counterparties (OJ L 52, 23.2.2013).

### Abbreviations

<i>EC</i>	European Commission
<i>EEA</i>	European Economic Area
<i>ESFS</i>	European System of Financial Supervision
<i>ESMA</i>	European Securities and Markets Authority

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<sup>1</sup> OJ L 22, 22.1.2021, p. 1–102

<sup>2</sup> OJ L 201, 27.7.2012, p.1

<sup>3</sup> OJ L 331, 15.12.2010, p. 84

*EU*

European Union

**Definitions**

4. Unless otherwise specified, the terms used in this Final Report have the same meaning as in CCPRRR, EMIR and the RTS 152/2013 and 153/2013.

### III. Purpose

5. These Guidelines are based on Article 29(7) of CCPRRR. The objective of these Guidelines is to promote the convergence of supervisory and resolution practices regarding the methodology to be used by the resolution authority for determining the valuation of contracts prior to their termination as referred to in Article 29(1) of CCPRRR.
6. In particular, they aim to promote the convergence of supervisory and resolution practices with respect to this valuation methodology. For this purpose, Guidelines 1, 2, 3 and 5 cover respectively the process of the valuation, its scope, the valuation according to the rules and arrangements of the CCP which should be considered first and then the valuation using alternative price discovery methods and sources if deemed necessary.
7. Furthermore, given the need to provide guidance on the decision not to use the CCP rules and arrangements, the requirement for the CCP to provide information to the resolution authority and the latter's preparedness to perform its assessment to ensure consistent, efficient and effective resolution practices for this methodology, the scope of the final Guidelines is expanded beyond the scope set forth by Article 29(7) of CCPRRR. Thus, ESMA has decided to issue Guidelines 4, 6 and 7 under Article 16(1) of the ESMA Regulation in line with which ESMA may issue guidelines with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and to ensuring the common, uniform and consistent application of Union law.

## **IV. Compliance and reporting obligations**

### **Status of the Guidelines**

8. In accordance with Article 16(3) of the ESMA Regulation, competent authorities (being the resolution authorities designated pursuant to Article 3 of CCPRRR) must make every effort to comply with these Guidelines.
9. Competent authorities to which these Guidelines apply should comply by incorporating them into their national legal and/or supervisory and resolution frameworks as appropriate.

### **Reporting requirements**

10. Within two months of the date of publication of the Guidelines on ESMA's website in all EU official languages, competent authorities to which these Guidelines apply must notify ESMA whether they (i) comply, (ii) do not comply, but intend to comply, or (iii) do not comply and do not intend to comply with the Guidelines.
11. In case of non-compliance, competent authorities must also notify ESMA within two months of the date of publication of the Guidelines on ESMA's website in all EU official languages of their reasons for not complying with the Guidelines.
12. A template for notifications is available on ESMA's website. Once the template has been filled in, it shall be transmitted to ESMA.

## **V. Guidelines on valuation methodology**

### **Guideline 1: Process**

1. The resolution authority should require the CCP under resolution to value each contract to be terminated. The value of each contract should be calculated as a termination amount covering the amount of losses or gains to be collected or paid by the CCP in order to reflect the current exposure implied by the terms of the contract on the basis of a termination price determined for this purpose.
2. In accordance with Article 29(7) of CCPRRR the resolution authority should determine the termination price for each contract that is to be terminated under Article 29 of CCPRRR in accordance with these Guidelines. A single termination price should be determined per contract and used as the termination price for all positions on the same contract being terminated.
3. The termination price of the contract should be determined as a fair market price reflecting the economic equivalent of all material terms of the terminated contract and the option rights of the parties in respect of this contract.

### **Guideline 2: Scope**

1. For the purposes of these Guidelines a contract to be valued prior to the termination under the position allocation tool pursuant to Article 29 of CCPRRR should be an outstanding contract cleared by the CCP.

### **Guideline 3: Valuation according to the rules and arrangements of the CCP**

1. The methodology to be used by the resolution authority for determining the valuation referred to in Article 29(3)(a) of CCPRRR should take into account the valuation methodology defined in the CCP own rules and arrangements. The valuation should be based, as far as possible, on a fair market price determined on the basis CCP own rules and arrangements, unless the resolution authority determines it necessary to use another appropriate price discovery method.
2. When the resolution authority uses the CCP own rules and arrangements to value a contract under Article 29 of CCPRRR, the resolution authority may consider consulting the following:
  - a) The risk committee of the CCP under resolution;
  - b) Persons or committees tasked by the CCP under resolution to take part in the resolution management process.



## **Guideline 4: Decision not to use the rules and arrangements of the CCP**

1. The resolution authority may consider it necessary to use an alternative price discovery method to determine the price where it determines that, by using the methodology of the CCP, the identified price would not qualify as a fair market price, suitable for the termination of contracts under Article 29 of CCPRRR.
2. ESMA has identified the following principles that could be used by the resolution authority in assessing the valuation undertaken using the CCP own rules and arrangements:
  - a) The termination price should reflect the market conditions prevailing on a day and time that is as close as possible to the day and time of the termination of the contracts;
  - b) A fair market price should be understood as a price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the day and time of the termination of contracts;
  - c) When terminating multiple contracts based on common or closely related risk factors, the respective prices should respect, as far as possible, the economic relationship between the different contracts under the prevailing market conditions;
  - d) Where the valuation is based on a market price, the price should reflect all the information available at the time of termination, and should be a result of quotes or transactions reflecting the interests of a diverse group of buyers and sellers within a liquid market;
  - e) Where the valuation is performed on the basis of modelled prices, the model should, to the extent possible, be validated by a qualified party to ensure that it accurately produces appropriate prices, while any input parameters representing market prices used to calculate the modelled prices should also be assessed against the considerations under this guideline;
  - f) The determination of the termination price should not be used as a tool to allocate costs of the CCP to clearing members, such as allocating the costs from the default of a clearing member to non-defaulting clearing members.

## **Guideline 5: Valuation using alternative price discovery methods and sources**

1. When the resolution authority does not deem it appropriate to apply the CCP own rules and arrangements, it should determine the valuation by using the following alternative price discovery methods in the following order and inform the CCP accordingly:

- a) Where other CCPs clear the same contract, the end-of-day closing or settlement prices of such a contract as set by the relevant CCPs, with due regard to possible basis between CCPs to ensure a fair market price;
  - b) Where the same contract is traded at a trading venue that is not cleared by the CCP, the mid bid-ask price of such a contract;
  - c) Prices provided by third-parties, such as observable market prices or quotes from market-makers as long as these represent a fair market price;
  - d) A theoretical price calculated by an independent valuer to reflect a fair market price for the terminated contract; and
  - e) A combination of two or more of the methods under (a) to (d) which would ensure a fair market price.
2. The resolution authority should explain its choice when it decides to use a certain alternative pricing methodology.
  3. The resolution authority should consider the principles as set out in Guideline 4(2).

## **Guideline 6. Requirement to provide information**

1. The resolution authority should ask a CCP under resolution to provide the information needed, together with any relevant documents, data or justification needed to assess the value of the contract provided by the CCP. The resolution authority should set a deadline to the CCP to provide the information for this purpose.
2. The resolution authority should ask a CCP to provide the information under paragraph 1 before deciding to terminate contracts in order to consider the potential implications from partially or fully terminating cleared contracts, inform the decision on the appropriate resolution action to be taken and where the loss and position allocation tools are used, inform the decision on the extent of losses to be applied against affected creditors' claims, outstanding obligations or positions in relation to the CCP and on the extent and necessity of a resolution cash call. The resolution authority may set a deadline to the CCP to provide the information for this purpose.

## **Guideline 7. Assessment by the resolution authority**

1. The resolution authority should prepare and have the arrangements needed to be able to source and assess in a timely manner the information needed to determine the methodology for valuation prior to termination.
2. The resolution authority should have reliable access to information that may need to be collected from the CCP and from sources other than the CCP.

3. The resolution authority should also have the computational and analytical tools needed to quickly analyse the information received and decide on the appropriate valuation methodology.
4. As part of the resolution planning, the resolution authority should assess the CCP own rules and arrangements and seek to identify constraints related to the valuation prior to the termination of contracts.