

# Guidelines and Recommendations

Guidelines and Recommendations regarding written agreements between members of CCP colleges





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## **I. Scope**

### **Who?**

1. These Guidelines and Recommendations apply to national competent authorities (NCAs).

### **What?**

2. The Guidelines and Recommendations define the written agreement that a CCP's NCA should propose as part of its establishment of a college under Article 18 of EMIR (CCP colleges) to facilitate the exercise of the tasks referred to in Articles 15, 17, 49, 51 and 54 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC Derivatives, CCPs and Trade Repositories (EMIR) and that the CCP college members should agree to ahead of their participation in such colleges.
3. The Guidelines and Recommendations do not introduce new requirements for CCPs in addition to the ones specified in EMIR or the relevant technical standards. Instead they specify requirements for NCAs in the establishment, management and chairing of CCP colleges under EMIR.

### **When?**

4. These Guidelines and Recommendations apply from [date to be included in the final version of this document following their publication by ESMA on its website in the official languages of the European Union].

## **II. Purpose**

5. As stated in the Opinion issued by ESMA on 14 March 2013 (ESMA/2013/312) and in line with Recital 5 of the draft RTS on CCP colleges, ESMA considers that a standard written agreement introduced through ESMA Guidelines and Recommendations under Article 16 of the ESMA Regulation will facilitate the establishment of colleges. In addition, ESMA considers that a comply-or-explain mechanism regarding the Guidelines and Recommendations could work as an early mechanism to ensure the establishment of the college, before proceedings with the European Court of Justice are activated.
6. Where an NCA elects not to agree with the provisions of the standard written agreement included in the Guidelines and Recommendations, which could affect the establishment of a college under Article 18(5) of EMIR and the authorisation of the CCP, that NCA should be required to justify such decision stating its reasons.

### **III. Compliance and reporting obligations**

#### **Status of the guidelines**

7. This document contains Guidelines and Recommendations issued under Article 16 of the ESMA Regulation<sup>1</sup>. In accordance with Article 16(3) of the ESMA Regulation NCAs must make every effort to comply with Guidelines and Recommendations.

#### **Reporting requirements**

8. NCAs to whom these Guidelines and Recommendations apply must notify ESMA whether they comply or intend to comply with the Guidelines and Recommendations, with reasons for non-compliance, within two months of the date of publication by ESMA to [post-trading@esma.europa.eu](mailto:post-trading@esma.europa.eu). In the absence of a response by this deadline, NCAs will be considered as non-compliant. A template for notifications is available from the ESMA website.

### **IV. Guidelines and Recommendations regarding written agreements between members of CCP colleges**

9. Considering the requirement in Article 18(5) of EMIR such that the establishment and functioning of a CCP college shall be based on a written agreement between all its members, and in line with Recital 5 of the draft RTS on CCP colleges, NCAs should propose a written agreement in accordance with the standard written agreement included in Guideline and Recommendation One of these Guidelines and Recommendations when establishing a CCP college under Article 18(5) of EMIR.
10. Similarly, members of a CCP college, when presented with a written agreement under Article 18(5) of EMIR should agree to such written agreement.

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<sup>1</sup> 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.

## **GUIDELINE AND RECOMMENDATION ONE: STANDARD WRITTEN AGREEMENT**

(Article 18(5) of Regulation (EU) No 648/2012)

When establishing a CCP college under Article 18 of EMIR, a NCA should propose a written agreement in accordance with the standard written agreement included in Annex I.

## **GUIDELINE AND RECOMMENDATION TWO: ADOPTION OF WRITTEN AGREEMENT BY COLLEGE MEMBERS**

(Article 18(5) of Regulation (EU) No 648/2012)

When presented with a written agreement for the establishment and functioning of a CCP college that does not depart from the standard written agreement included in Annex I, an NCA should agree to such written agreement within 12 calendar days from receipt and should avoid requesting changes to the written agreement that introduce a departure from the standard written agreement.

For the purposes of this guideline, a proposal to entrust additional tasks on one or more members of the college relating to the specific circumstances of an individual CCP should not be considered as a departure from the standard written agreement.