



European Securities and
Markets Authority

Final Report

Guidelines on written agreements between members of CCP colleges





European Securities and
Markets Authority

ESMA REGULAR USE

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I. Executive Summary

Reasons for publication

This paper contains guidelines regarding written agreements between members of CCP colleges which replace the guidelines adopted on 4 June 2013 (ESMA/2013/661). The guidelines published with this report take into account the changes with respect to CCP colleges introduced to Regulation (EU) No 648/2012 by Regulation (EU) No 2019/2099 of the European Parliament and of the Council of 23 October 2019 as regards the procedures and authorities involved in the authorisation of CCPs and requirements for the recognition of third-country CCPs (EMIR 2.2), and the changes made to the Commission Delegated Regulation (EU) No 876/2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on colleges for central counterparties by Commission Delegated Regulation (EU) No 2020/2145 of 1 September 2020 amending Delegated Regulation (EU) No 876/2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council as regards changes to the composition, functioning and management of colleges for central counterparties.

Guidelines set out ESMA's view which aims to ensure the common, uniform and consistent application of Union law in a particular area, or of appropriate supervisory practices within the European System of Financial Supervision. ESMA expects all relevant National Competent Authorities (NCAs) to comply with these Guidelines.

Contents

This report discusses the rationale for issuing these Guidelines regarding written agreements between members of CCP colleges. It includes Guidelines regarding a standard written agreement for the establishment and functioning of CCP colleges and Guidelines for the swift adoption of such written agreements.

Given the need to ensure proper functioning and management of CCP colleges in a timely manner and to facilitate smooth adjustment of CCP colleges to the new provisions of EMIR, and taking into account the fact that the Guidelines are solely addressed to NCAs having only limited impact on market participants and that no major changes were introduced in EMIR with respect to written agreement of CCP Colleges, ESMA has consulted only college members when drafting these Guidelines and has decided that it is not appropriate to conduct a public consultation.

Next Steps

These Guidelines will apply after their publication by ESMA on its website in the EU official languages.

NCAs should comply with the Guidelines. NCAs must notify ESMA whether they comply or intend to comply with these Guidelines, including with a justification of the reasons for any non-compliance, within two months of publication by ESMA on its website of the final Guidelines in all EU official languages.

II. Introduction

1. Article 18 of EMIR imposes two requirements regarding the establishment of CCP colleges. Firstly, Article 18(1) of EMIR requires that an NCA establishes a CCP college within 30 calendar days of receiving a complete application for authorisation as a CCP under EMIR. Secondly, Article 18(5) of the Regulation provides that the establishment and functioning of the CCP college has to be based on a written agreement between its members (i.e. the authorities eligible for participation in the CCP college). It also provides that the agreement has to determine the practical arrangements for the functioning of the college and specifies the most important ones. Given the limited time for the competent authority to establish a college and the requirement that the competent authority has to duly consider the opinion of the college before granting the authorisation to a CCP, a timely adoption of the written agreement between college members is necessary for a college to be established and to perform its functions conferred upon it by EMIR.
2. The practical arrangements for the operation of colleges are further specified in the Commission Delegated Regulation (EU) No 876/2013 on colleges for central counterparties.
3. On 4 June 2013 ESMA adopted the Guidelines regarding written agreements between members of CCP colleges (ESMA/2013/661) to facilitate the prompt establishment of colleges by proposing a template for a standard written agreement for establishment and functioning of the CCP colleges.
4. Regulation (EU) No 648/2012 (EMIR) has been amended by Regulation (EU) No 2019/2099 of the European Parliament and of the Council of 23 October 2019 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs which introduced several changes, inter alia, to the composition and the tasks of colleges. For instance, it introduced two new categories of non-voting members whose participation in the college is subject to the agreement of the competent authority of the CCP. More precisely, pursuant to point (ca) of Article 18(2) of EMIR competent authorities of clearing members other than the largest three may join the college, and pursuant to point (i) of Article 18(2) of EMIR central banks of issue of currencies that are not considered as the most relevant may also submit request to join the college.
5. These amendments entail also the amendment of Commission Delegated Regulation (EU) No 876/2013.
6. Therefore, ESMA considers that the standard written agreement suggested in the Guidelines of 4 June 2013 need to be revised to reflect the changes introduced to EMIR and Delegated Regulation (EU) No 876/2013.
7. With respect to the example above, the written agreement should provide guidance to the procedure under which such competent authorities and central banks of issue may request to become members of a college.
8. Section III provides an overview of the changes to the standard written agreement initially proposed.

9. Pursuant to Article 16(2) of the ESMA Regulation¹, ESMA should, where appropriate, conduct open public consultations and request advice from the Securities and Markets Stakeholder Group (SMSG) regarding guidelines it intends to issue and analyse the related potential costs and benefits.
10. Section IV of this report provides the reasons why it was considered justified to issue these Guidelines without public consultation or advice from SMSG.
11. The analysis of the costs and benefits that the proposed guidelines might entail (impact assessment) is provided in Annex I.
12. These Guidelines are issued under Article 16 of the ESMA Regulation. In accordance with Article 16(3) of the ESMA Regulation, NCAs must make every effort to comply with the Guidelines.

¹ 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); OJ L 331, 15.12.2010, p. 84–119

III. Changes to the standard written agreement adopted with these Guidelines

14. In light of EMIR's amendments introduced by EMIR 2.2, the standard written agreement proposed in the Guidelines has been revised as follows:

- a. A new point has been added to propose the procedure under which competent authorities referred to in point (ca) and central banks of issue referred to in point (i) of Article 18(2) of EMIR may become members of a college.
- b. The provisions regarding the review of the composition of colleges is amended to state that the review of composition of a college should take place annually within 30 calendar days of the anniversary of the date of the last review of the composition of the college.
- c. A new point is added clarifying that the chairing authority should publish on its website and notify to ESMA a list of the members of the college within 30 calendar days after the college's establishment and should update the list after any change to the composition of the college.
- d. A new point is added to reflect the changes introduced in Article 18(2) of EMIR regarding responsibilities of colleges in relation to Article 31 of EMIR regarding changes to shareholding.
- e. A new point is added to reflect the changes introduced in Article 18(2) of EMIR regarding responsibilities of colleges in relation to Article 35 of EMIR regarding outsourcing.
- f. The provision regarding applications by CCPs and other notifications is amended:
 - i. to reflect the changes introduced in Article 17(3) of EMIR that applications and notifications are to be submitted by the chairing authority to college members within 7 calendar days of the receipt of the application.
 - ii. to reflect the changes introduced in Article 19(1a) of EMIR regarding proposals for recommendations accompanying college opinions.
 - iii. to add reference to Article 49(1c) of EMIR regarding validations.
- g. The provision regarding meetings of colleges is amended to reflect the changes introduced in the last sub-paragraph of Article 18(4) of EMIR regarding college members being able to contribute to the setting of agendas of college meetings.
- h. The provision regarding written procedure is amended to change the period for casting votes from 10 to 14 calendar days.
- i. The provision regarding emergency situations is amended to state that the protocol regarding the operation of colleges in an emergency situation is to be provided in the Annex to the agreement.

IV. Reasons for issuing these guidelines without public consultation

15. These Guidelines only concern NCAs, who have inputted into their preparation and have been duly consulted. The Guidelines are not addressed to CCPs themselves or to other stakeholders. Furthermore, ESMA has undertaken an analysis of the costs and benefits that these proposed Guidelines might entail and has concluded that they will not have a direct impact upon CCPs. ESMA's impact assessment is set out at Annex I.
16. In addition, the changes introduced to EMIR have only very limited impact on the proposed standard written agreement.
17. Against this background, ESMA considers that it is appropriate not to hold an open public consultation on these revised Guidelines. For the same reasons, ESMA considers it is not appropriate to seek advice from the Securities and Markets Stakeholder Group.

Annexes

Annex I: Cost-benefit analysis

1. The objective of performing a cost-benefit analysis is to assess the costs and benefits of the various technical options which were analysed during the process of drafting the Guidelines. The Guidelines regarding written agreements between members of CCP colleges propose practical arrangements between members of a CCP college which should not add material compliance costs for market participants associated with them. The only costs should be for the members of a CCP college. Those costs are also limited given the minor changes to existing practices. The changes are due to changes in EMIR, so ESMA did not have alternative policy choices than amending the guidelines.
2. The requirement to establish CCP colleges, and their membership, is set out in EMIR and the policy choices involved in establishing these requirements were assessed by the legislature.

Annex II: Guidelines on written agreements between members of CCP colleges

I. Scope

Who?

1. These Guidelines apply to competent authorities.

What?

2. These guidelines apply in relation to Articles 18 and 19 of EMIR (CCP colleges) with regards to the tasks referred to in Articles 15, 17, 30, 31, 32, 35, 49, 51 and 54 of Regulation (EU) No 648/2012, and in relation to the Commission Delegated Regulation (EU) No 876/2013 on colleges for central counterparties.

When?

3. These Guidelines 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. Legislative references, abbreviations and definitions

Legislative references

<i>ESMA Regulation</i>	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 ²
<i>EMIR</i>	European Market Infrastructures Regulation – Regulation (EU) 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories ³ as amended by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs ⁴ .
<i>Delegated Regulation on colleges</i>	Commission Delegated Regulation (EU) No 876/2013 of 28 May 2013 on colleges for central counterparties ⁵ as amended by Commission Delegated Regulation (EU) No 2020/2145 of 1 September 2020 ⁶

Abbreviations

<i>CCP</i>	Central Counterparty
<i>Commission</i>	European Commission
<i>ESMA</i>	European Securities and Markets Authority
<i>EU</i>	European Union

² OJ L 331, 15.12.2010

³ OJ L 201, 27.7.2012

⁴ OJ L 322, 12.12.2019

⁵ OJ L 244, 13.9.2013

⁶ OJ L 428, 18.12.2020

III. Purpose

4. These guidelines are based on Article 16(1) of the ESMA Regulation. They replace the guidelines adopted by ESMA on 4 June 2013 (ESMA/2013/661). The objectives of these guidelines are to establish consistent, efficient and effective supervisory practices within the European System of Financial Supervision and to ensure the common, uniform and consistent application of Articles 18 and 19 of EMIR and of the Delegated Regulation on colleges. In particular, they aim to propose a standard written agreement to ensure the timely establishment and smooth functioning of a CCP college. The standard written agreement takes account of the amendments to EMIR, in particular Article 18 and Article 19 thereof, and the amendments to the Delegated Regulation on colleges.

IV. Compliance and reporting obligations

Status of the guidelines

5. In accordance with Article 16(3) of the ESMA Regulation competent authorities must make every effort to comply with these guidelines.
6. Competent authorities to which these guidelines apply should comply by incorporating them into the written agreements for establishment and functioning of a CCP college.

Reporting requirements

7. 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. In the absence of a response by this deadline, competent authorities will be considered as non-compliant.
8. 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.
9. A template for notifications is available from the ESMA website. Notifications should be sent to EU-CCP@esma.europa.eu.

V. Guidelines on written agreements between members of CCP colleges

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

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, a competent authority 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 these guidelines, 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.

Annex I

Standard Written Agreement

Written agreement for the establishment and functioning of the college of *CCP*

1. Introduction

- 1.1. In accordance with Article 18(5) of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (“the Regulation” or “EMIR”), as amended by Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs , Commission Delegated Regulation (EC) No 876/2013 of 28 May 2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on colleges for central counterparties as amended by Commission Delegated Regulation (EU) No 2020/2145 of 1 September 2020 amending Delegated Regulation (EU) No 876/2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council as regards changes to the composition, functioning and management of colleges for central counterparties (“the RTS”), this agreement (“the Written Agreement”) between the members of the college for *CCP* is intended to establish the practical arrangements for the establishment and functioning of the college for *CCP* (the “College”) and to facilitate the effective operation of the College in accordance with EMIR and the RTS.
- 1.2. This Written Agreement does not create any additional legally binding obligations on the College Members which are not specified in EMIR or the RTS. The function of colleges is to facilitate the exercise of the tasks specified in EMIR and the tasks assigned to College Members as well as the composition, establishment and management of colleges have been articulated by the legislator in EMIR as legal obligations and, therefore, are binding and directly applicable to all College Members. Practical arrangements laid down in the RTS form part of this Written Agreement.
- 1.3. This Written Agreement is intended to be consistent with EMIR and the RTS. If, however, there is any conflict between a provision of EMIR (or the RTS) and this Written Agreement, the provisions of EMIR (or the RTS) will take precedence.
- 1.4. This Written Agreement does not supersede or prevent a College Member from organising or participating in any other bilateral or multilateral arrangements for regulatory, supervisory or oversight purposes with regard to a *CCP*.

2. Defined Terms

- 2.1. *Chairing Authority*, for the purpose of this Written Agreement, is the Competent Authority designated by the Member State of establishment of a *CCP* to establish, manage and chair the college for such *CCP*, pursuant to Article 18(1) of EMIR.

2.2. College Member for the purpose of this Written Agreement is an authority that qualifies for membership of the College, including, where applicable, as a result of the decision of *Chairing Authority*, in accordance with Article 18(2) of EMIR.

3. Formation of the College

3.1. In accordance with Article 18(1) of EMIR, *Chairing Authority* must establish a college within 30 calendar days of the submission of a complete application by a *CCP* for authorisation as a *CCP* under EMIR.

3.2. In accordance with Article 18(5) of EMIR, the establishment and functioning of the College will be based on a Written Agreement between all of the College Members.

3.3. In order to ensure that the deadline for the establishment of the College is met, the steps that will be taken by the *Chairing Authority* in establishing the College, and the relevant timeframes, are as follows:

3.3.1. Within 5 calendar days of receipt of a complete application for authorisation under EMIR, *Chairing Authority* will determine which authorities are College Members in accordance with Article 18(2) of EMIR, in particular points (b) to (c) and (d) to (h) thereof. *Chairing Authority* will provide ESMA with a copy of the analysis on which it has based its determination.

3.3.2. Within 7 calendar days of receipt of a complete application for authorisation under EMIR, *Chairing Authority* will provide the College Members with:

3.3.2.1. a copy of this Written Agreement for their review and approval;

3.3.2.2. a full list of College Members, including the categories in points (b) to (c) and (d) to (h) of Article 18(2) in which they qualify;

3.3.2.3. a fully reasoned explanation of any circumstances where the provisions of this Written Agreement depart from ESMA's Guidelines regarding written agreements between members of *CCP* colleges (the Guidelines), highlighting the differences between this written agreement and the standard written agreement included in the Guidelines on written agreements between college members.

3.3.3. Where a competent authority of a clearing member referred to in point (ca) of Article 18(2) of EMIR or a central bank of issue referred to in point (i) of Article 18(2) of EMIR wishes to participate in the College of a *CCP*, it will submit its request to *Chairing Authority* of the *CCP* justifying its request. In the case of a competent authority referred to in point (ca) of Article 18(2) of EMIR, when reviewing the justification provided in accordance with point (ca) of Article 18(2) of EMIR, *Chairing Authority* may consider, among other things, the level of contributions to the default fund of the *CCP* of the clearing members for which the requesting competent authority is the competent authority and the systemic importance of the *CCP* to the Member State of the requesting competent authority. In the case of a central bank of issue referred to in point (i) of Article 18(2) of EMIR, when reviewing the justification provided in accordance with

point (i) of Article 18(2) of EMIR, *Chairing Authority* may consider, among other things, the relative share of the currency in the *CCP's* average end-of-day open positions across all financial instruments cleared by the *CCP*, the systemic importance of the *CCP* to the currency area and the currency denomination of OTC derivatives subject to the OTC clearing obligation under EMIR cleared by the *CCP*. *Chairing Authority* will respond to the requesting competent authority or central bank within 20 calendar days of the receipt of the request either consenting to or rejecting the request. Where *Chairing Authority* does not grant the request, it shall also provide full and detailed reasons in writing within the same timeframe. Where *Chairing Authority* grants the request, it shall provide the requesting competent authority or central bank with a copy of this Written Agreement for their review and approval. Where new members join a college pursuant to points (ca) or (i) of Article 18(2) of EMIR, *Chairing Authority* will immediately notify other members of the college.

- 3.3.4. *Chairing Authority* may commence the steps required to establish the College ahead of its determination of the completeness of a *CCP's* application.
 - 3.3.5. Within 12 calendar days of receipt of a copy of this Written Agreement for their review and approval, College Members, including those who are members of the college pursuant to points (ca) and (i) of Article 18(2), will return a signed copy of this Written Agreement to *Chairing Authority* and will also provide *Chairing Authority* with the name, telephone number, email address and any other relevant contact details for the members of staff at the College Member that will act as the primary and secondary representatives for that College Member at the College (the “contact details”).
 - 3.3.6. Where a College Member does not return a signed copy of this Written Agreement to *Chairing Authority* within 12 calendar days, that College Member must provide *Chairing Authority* with a fully reasoned explanation of why it has not signed the Written Agreement within the envisaged timeframe. Where the written agreement does not depart from the standard written agreement included in the Guidelines on written agreements between college members, that College Member must justify to ESMA such non-compliance with the Guidelines (pursuant to Article 16(3) of the ESMA Regulation in the case of College Members to which the ESMA Regulation applies). The failure of a College Member to sign the Written Agreement may result in infringement proceedings in accordance with Article 258 of the TFEU, as well as the actions provided for in Articles 265 and 271(d) of the TFEU.
 - 3.3.7. The College will be considered to be established once a signed copy of this Written Agreement has been received from all College Members. Within 5 calendar days of the College being established, *Chairing Authority* will confirm to College Members the fact that the College has been established and the contact details of all College Members.
- 3.4. Every year, within 30 calendar days of the anniversary of the date of the last review of the composition of the College, *Chairing Authority* will determine/confirm which authorities are College Members in accordance with Article 18(2) of EMIR. *Chairing Authority* will provide ESMA with a copy of the analysis on which it has based its determination/confirmation. *Chairing Authority* will inform College Members of their eligibility to continue to participate (including the categories in points (b) to (i) of Article 18(2) in which they qualify in the College within 25 calendar days of the

anniversary of the date of the last review of the composition of the College.

- 3.5. Each College Member will notify *Chairing Authority* promptly of any changes in its statutory tasks that impact on its eligibility to participate in a college. Following this notification, the *Chairing Authority* shall update the college composition within 30 calendar days from the date of receipt of the notification.
- 3.6. Chairing Authority will publish on its website and notify to ESMA a list of the members of the college within 30 calendar days after the college's establishment. Chairing Authority will update the list without undue delay after any change to the composition of the college, including in respect of any non-voting members referred to in points (ca) and (i) of Article 18(2) of EMIR.
- 3.7. Each College Member will notify *Chairing Authority* promptly of any changes to the contact details of its representative(s). *Chairing Authority* will circulate a copy of such changes to all College Members.
- 3.8. Subject to the agreement of all College Members, additional authorities may be invited by *Chairing Authority* to attend specific meetings of the College (or specific sessions thereof) as observers. For the avoidance of doubt, such an invited authority may be a Non-EEA Authority. Observers are not expected to attend meetings of the College on a permanent basis and have no voting rights.

4. Working language of the College

- 4.1. The working language of the College, including the language in which *Chairing Authority* will communicate with College Members, when, for example, it produces its risk assessment report (under Article 19(1) of EMIR), or its model validation reports (under Articles 41(2) and 49(1) of EMIR), and the language in which the College will operate and reach any joint opinion (under Article 19(1) of EMIR) will be English.
- 4.2. Where a notification is made or an application is submitted in any of the following cases, including any additional information related thereto, in an official language of the European Union that is not English, *Chairing Authority* will provide College Members with an English translation of all relevant documentation necessary for the College to form an opinion on:
 - 4.2.1. *an application of a CCP* for authorisation pursuant to Article 17 of EMIR (application for authorisation);
 - 4.2.2. *an application of a CCP* for an extension of its business to additional services or activities not covered by its initial authorisation pursuant to Article 15 of EMIR (application for extension);
 - 4.2.3. a notification of a 'proposed acquirer' or 'proposed vendor' pursuant to Article 31(2) of EMIR and any additional information provided pursuant to Article 31(3) of EMIR (notification of changes in shareholding);
 - 4.2.4. an application of a *CCP* pursuant to Article 35(1) of EMIR (application for outsourcing);

- 4.2.5. an application of a *CCP* pursuant to Article 41(2) of EMIR (application to adopt models and parameters);
- 4.2.6. an application of a *CCP* pursuant to Article 49(1) of EMIR (application to amend its models and parameters); or
- 4.2.7. an application of a *CCP* pursuant to Article 54(1) of EMIR (application for an interoperability arrangement).

Where such English translation is provided by the relevant *CCP*, the *Chairing Authority* has no responsibility for the translation.

5. Applications subject to an opinion of the college

- 5.1. Where an application or a notification of a type listed in paragraph 4.2 of this Written Agreement is submitted to *Chairing Authority*, *Chairing Authority* will provide each College Member with an electronic ('soft') copy of the application or notification, and any documentation provided in support of such application or notification, in the official language of the European Union in which they are submitted within 7 calendar days of the receipt of the application or notification (except in the case of an application for authorization under Article 14 of EMIR which will be provided to College Members within 7 calendar days of the College having been established, pursuant to paragraph 3.3.7 of this Written Agreement). Where the application or notification is not complete and is further complemented with any additional information, within 7 calendar days of the receipt of such additional information, *Chairing Authority* will transmit it to each College Member. Within 7 calendar days of the application having been determined by *Chairing Authority* to be complete, *Chairing Authority* will notify all College Members.
- 5.2. Where an application or notification was submitted to *Chairing Authority* in an official language of the European Union that is not English then *Chairing Authority* will provide College Members with the English translation of the documentation referred to in paragraph 4.2 of this Written Agreement sufficiently in advance of any vote of the College on a joint opinion in accordance with the second subparagraph of Article 19(1) of EMIR.
- 5.3. *Chairing Authority* will indicate to College Members the timeframe within which they should raise any points of interest or concern they have with regards to the application or notification. *Chairing Authority* will, to the extent possible, endeavour to take these views into account during the preparation of its risk assessment and in any event will provide feedback to the relevant College Member on how these views have been taken on board. *Chairing Authority* will endeavour to provide such feedback sufficiently in advance of any vote of the College on a joint opinion in accordance with the second subparagraph of Article 19(1) of EMIR.
- 5.4. *Chairing Authority* will schedule a meeting of the College to consider the risk assessment produced by *Chairing Authority* under the second subparagraph of Article 19(1) of EMIR, any validation by *Chairing Authority* of the models and parameters used by the *CCP* pursuant to Articles 41(2) or 49(1) of EMIR, any validation by ESMA of significant changes to the models and parameters used by the *CCP* pursuant to Article 49(1) of EMIR, *Chairing Authority's* recommendation on whether to approve the application and to reach a joint opinion under the second

subparagraph of Article 19(1) of EMIR. The opinion will include any recommendations adopted by the College in accordance with the first subparagraph of Article 19(1a) of EMIR and paragraph 5.5 of this Written Agreement or submitted by a central bank of issue in accordance with the second subparagraph of Article 19(1a) of EMIR. College Members will be provided with at least 14 calendar days to review and consider the risk assessment of CCP and recommendation, prior to the meeting of the College. College Members should strive to submit any comments, or issues, for discussion by the College at least 7 calendar days in advance of the College meeting, including any proposals for recommendations.

- 5.5. Prior to the vote on the college opinion, the College will discuss the risk assessment, and, where relevant, any proposal for recommendations and ESMA opinion, and vote on any proposal for recommendations submitted by college members other than central banks of issue.
- 5.6. Without prejudice to the fourth subparagraph of Article 17(4) of EMIR, and if no joint opinion of the College is reached, at the meeting held under paragraph 5.4 of this Written Agreement, then *Chairing Authority* will schedule another meeting to be held within a sufficient timeframe as to enable the College to adopt a majority opinion within 30 calendar days of the College's receipt of the risk assessment as is required pursuant to the second subparagraph of Article 19(1) of EMIR or, in the case of a validation, to 49(1c) of EMIR.
- 5.7. *Chairing Authority* will communicate for review and comment, its draft written response to the application, to all College Members no fewer than 3 calendar days before such response is provided to the applicant.
- 5.8. Where recommendations have been included in the joint opinion, *Chairing Authority* should regularly update the College on the implementation of any action to comply with those recommendations.

6. Meetings of the College

- 6.1. The College will meet in person at least annually and, if deemed necessary by *Chairing Authority*, each time that the College is required to reach a joint opinion under the second subparagraph of Article 19(1) of EMIR. Where *Chairing Authority* calls for other meetings of the College these may be held as in person meetings or as teleconference or videoconference calls. College Members should endeavour to participate in person at any such meeting of the College. Where it is not feasible for a College Member to physically attend an in-person meeting, they might participate by teleconference or videoconference call with such participation counting towards the quorum of the meeting.
- 6.2. The representative attending a College meeting on behalf of a College Member should have sufficient delegated authority to vote at the College meeting on behalf of the College Member they represent.
- 6.3. College Members may request that a meeting of the College be held by informing *Chairing Authority* of such request. The requesting College Member should outline in its request those matters that it proposes that the College needs to discuss. *Chairing Authority* will respond to such requests within 14 calendar days and where

the request is accepted will schedule a meeting to be held within 30 calendar days. Where *Chairing Authority* does not consider that a meeting of the College is necessary, *Chairing Authority* will respond to the requesting College Member with an explanation of *Chairing Authority's* reason for not considering that a meeting of the College is necessary, including an explanation of how *Chairing Authority* proposes to address the concerns raised by the College Member that requested the additional meeting.

6.4. *Chairing Authority* will chair all meetings of the College.

6.5. *Chairing Authority* will distribute a draft agenda for each meeting of the College, other than for meetings to distribute the information in emergency situations as described in paragraph 11.1 of this Written Agreement, at least 14 calendar days before each meeting. Where a College Member wishes to contribute to the agenda of a meeting, in particular by adding points to the agenda of a meeting, it should submit its request to *Chairing Authority* at least 10 calendar days prior to the meeting of the College. Wherever practical, the Agenda for a College meeting will be finalised at least 7 calendar days before the date of a meeting of the College.

6.6. The following agenda points will be tabled for discussion by the College at least annually:

6.6.1. Adoption of the minutes of the previous College meeting.

6.6.2. A report of *Chairing Authority's* supervisory activities with regard to the CCP since the previous meeting of the College.

6.6.3. A report of *Chairing Authority's* planned supervisory strategy and engagement plan with regard to the CCP for the period until the next scheduled meeting of the College.

6.6.4. An update on *Chairing Authority's* evaluation of the significant risks that the CCP is exposed to and which the CCP poses, including specific consideration of any risks posed by any interoperability arrangement to which the CCP is a party.

6.6.5. An update on the operational performance, functional and organizational set-up and strategic plans of the CCP.

6.7. College Members, including *Chairing Authority*, will endeavour to distribute any written material to be considered at a meeting of the College not less than 7 calendar days before the meeting.

6.8. Pursuant to Article 4 of the RTS on CCP College, the quorum for meetings of the College is two-thirds of the College Members.

6.9. Where a decision is tabled for a vote by the College, including any vote of the College on a joint opinion in accordance with the second subparagraph of Article 19(1) of EMIR, and the quorum requirements are not met (either where *Chairing Authority* ascertains that this will be the case in advance of the meeting or at the time of the meeting) then *Chairing Authority* shall organise a subsequent in person meeting as soon as is practically possible and, in any case on such a timeframe as is necessary to meet the various deadlines provided for in EMIR. *Chairing Authority*

will give as much notice of such subsequent meeting as is practically possible and will, to the extent practical, endeavour to distribute the information specified in paragraphs 6.5 and 6.7.

6.10. Any votes taken at a meeting of the College will be held by an open show of hands or explicit expression of vote in case of a meeting held by teleconference or videoconference call. Once cast, a vote cannot be withdrawn or amended by a College Member. Prior to the vote being taken, College Members from each Member State will inform *Chairing Authority* which authorities from their Member State will be eligible to cast a vote, in particular where the voting caps set out in Article 19(3) of EMIR apply. The outcome of any vote (including records of individual votes) will be clearly recorded in the minutes of the meeting.

6.11. Where considered appropriate by *Chairing Authority*, or where requested by a College Member, a vote may be taken by written procedure, on a proposal from *Chairing Authority* circulated to the College:

- (a) stating the time and date by which votes must be cast;
- (b) where, exceptionally, the period for casting votes is less than 14 calendar days from the submission of the risk assessment, giving the reason for the short period;
- (c) justifying the use of written procedure as opposed to a vote taken at a meeting of the College; and
- (d) providing any other material considered necessary for making the decision that has not previously been provided to the College.

6.11.1. Votes on decisions being taken by written procedure shall be in written form and a failure to vote shall be considered a vote for the proposal.

6.11.2. The result of a written procedure shall be notified without delay to the College.

6.11.3. College Members may request to *Chairing Authority* that any aspect of an issue that has been the subject of written procedure be discussed at the next meeting of the College. Such a request shall not affect the use or the result of a written procedure.

6.12. Minutes of meetings of the College will be distributed to College Members by *Chairing Authority* no more than 21 calendar days following a meeting of the College. Such minutes will be subject to comment by College Members for a period of at least 7 calendar days but no more than 21 calendar days and will be tabled for adoption at a subsequent meeting of the College. Alternatively, such minutes can be adopted by written procedure.

6.13. *Chairing Authority* will provide College Members with the following information as and when such information is available:

- The information specified in Article 5 of the RTS on CCP colleges;
- Details of any change to the models or parameters applied by the CCP;
- [Specific information to be defined by the College];

6.14. The transmission of information between College Members will be done by e-mail

or another secure means of communication, as agreed from time to time by the College. College Members will always be informed on an equal basis.

7. Qualifying Holdings

7.1. Where *Chairing Authority*, upon completion of its assessment in accordance with Article 31(5) of EMIR, and after considering the opinion of the college according to Article 32(1) of EMIR, decides to oppose a proposed direct or indirect acquisition of a qualifying holding in a *CCP*, *Chairing Authority* will notify the College within 3 calendar days of this decision.

8. On-going Risk Review

8.1. Without prejudice to Article 21 of EMIR, where *Chairing Authority* intends to review the arrangements, strategies, processes and mechanisms implemented by the *CCP* to comply with EMIR or to evaluate the risks to which *the CCP* is, or might be, exposed, it shall consult and be informed by the views of College Members.

8.2. Where *Chairing Authority* performs a review or evaluation of the *CCP* under Article 21 of EMIR, it will provide detailed results of the findings of the review or evaluation to College Members within 30 calendar days of the finalisation of such review or evaluation or by 14 calendar days prior to the next meeting of the College, whichever is earlier. *Chairing Authority's* report will include details of any actions arising for the *CCP*, *Chairing Authority* or any third party as a result of the review or evaluation and any penalties to be imposed on the *CCP*.

8.3. College Member will be entitled to raise any points of interest or concern it has with regard to *Chairing Authority's* review or evaluation. *Chairing Authority* will endeavour to take into account these views during the finalisation of its review and evaluation to the extent possible and provide feedback to the relevant College Member on how its views have been taken on board.

9. Organisation and Coordination of Activities between College Members

9.1. For operational efficiency the College may wish, in accordance with Article 18(4)(c) of EMIR, to entrust one or more College Members with tasks relevant for the College's role with regard to *CCP*.

9.2. Any entrustment of tasks, for instance via the establishment of dedicated task forces, will be voluntarily entered into by the College Members in question and should be structured in such a way as to not impact on the operation of this Written Agreement or on the ability of other College Members to participate fully and effectively in the College. An entrustment of tasks shall not result in a change in the allocation of voting rights between College Members.

9.3. *Chairing Authority* will be responsible for meeting any requests for information made to the College from authorities other than College Members. *Chairing Authority* may request the assistance of a College Member with regard to such requests.

10. Information Requests to the CCP

- 10.1. Should a College Member (the 'requesting College Member') require specific information or data with regards to the CCP, it should inform *Chairing Authority*. The requesting College Member should copy the request to all College Members to ensure that *Chairing Authority* does not receive more than one request for such information or data. Such request should include an explanation of why such information is required for the purposes of enabling that College Member to carry out its duties in accordance with Article 84(1) of EMIR.
- 10.2. If *Chairing Authority* considers that the request is not for the purposes of enabling the requesting College Member to carry out its duties in accordance with Article 84(1) of EMIR, then *Chairing Authority* will provide the requesting College Member with feedback on why it considers this to be the case. *Chairing Authority* will copy such response to all College Members.

11. Emergency Situation

- 11.1. Pursuant to Article 24 of EMIR, *Chairing Authority* and all College Members, are responsible for assessing whether the CCP is facing an emergency situation. For guidance, any situation on which there is (or is a serious threat of) a major disruption to the functioning of the CCP, or there is significant evidence to indicate that there is a high risk of a default of a major participant of the CCP, or such a default has occurred will typically be considered an emergency situation.
- 11.2. In the event of an emergency situation, as described in paragraph 11.1, *Chairing Authority* (or where relevant another College Member) will share with College Members the following information, where possible and without undue delay:
 - 11.2.1. details of the emergency situation;
 - 11.2.2. actions likely to be taken by *Chairing Authority* or, where relevant, by another authority;
 - 11.2.3. actions being taken by the CCP, including under its default rules, recovery or emergency procedures;
 - 11.2.4. if applicable, details of any default protections exercised and/or recovery powers deployed by the CCP; and,
 - 11.2.5. if applicable, details of failure-to-settle procedures used (by currency if relevant);
 - 11.2.6. details on the prospective implications of disruptions to the CCP's performance and for the full and timely provision of its services to its clearing members and interoperable infrastructures; and
 - 11.2.7. any other available information that would be of particular relevance to other College Members.

- 11.3. For the avoidance of doubt, nothing in this Written Agreement should constrain the ability of *Chairing Authority* or any other College Member to take timely action during an emergency situation.
- 11.4. *Chairing Authority*, or the relevant College Member, may choose to distribute the information specified in Paragraph 11.2 by email or by means of a conference call or in- person meeting, as is considered appropriate at the time.
- 11.5. College Members shall cooperate closely, wherever necessary and according to national law, with other relevant authorities (including central banks, finance ministries and resolution authorities) with regard to an emergency situation in respect of the *CCP*.
- 11.6. In order to facilitate effective cooperation in an emergency situation, a protocol regarding the operation of the College in an emergency situation is provided in the Annex. This protocol will indicate the type of information that *Chairing Authority* and College Members are expected to share in an emergency situation, how such information will be communicated and the timeframes in which communication would likely occur, in various different crisis scenarios. Such protocol will be regularly tested in coordination with the emergency situation testing of the *CCP* itself.
- 11.7. Chairing Authority will coordinate the emergency management activities of the College. Chairing Authority will take account of the views of other College Members with regard to the management of such emergency situations, except where a decision is required urgently in line with Article 20(3) of EMIR.

12. Withdrawal of Authorisation

- 12.1. Where *Chairing Authority* considers that one of the circumstances set out in Article 20(1) of EMIR for the withdrawal of the *CCP*'s authorization applies, then *Chairing Authority* will inform the College before it commences its review of whether to withdraw the authorisation of the *CCP* as provided for in Article 20(2) of EMIR. However pursuant to Article 20(3) of EMIR, in situations in which a decision on the withdrawal of authorisation is urgently required, then the provisions of paragraph 12.6 and 12.7 will apply.
- 12.2. Should a College Member request that *Chairing Authority* perform a review of whether the *CCP* remains in compliance with the conditions under which authorisation was granted (under Article 20(4) of EMIR), *Chairing Authority* will notify all College Members of this request and will formally respond to the request within 14 calendar days. All College Members will be notified of *Chairing Authority*'s response. If *Chairing Authority* decides not to undertake a requested review then it will provide the requesting authority and College Members with feedback on the reasons for not doing so.
- 12.3. *Chairing Authority* may, at its discretion, request the assistance or the views of any College Member with regards to the reviews specified in paragraphs 12.1 and 12.2. College Members will endeavour to fulfil such requests.
- 12.4. *Chairing Authority* will inform College Members in writing of the results of its

review. College Members wishing to express a view on the results of the review should do so in writing to *Chairing Authority*. *Chairing Authority* will consider any such responses received and will respond in writing to the College Members concerned.

12.5. *Chairing Authority* may organise a meeting (by conference call or in-person as is considered appropriate at the time) of the College to consult College Members on the results of the review.

12.6. In situations in which *Chairing Authority* determines that an urgent decision on whether to withdraw the authorisation of the CCP is required, *Chairing Authority* will inform the College as soon as possible of:

12.6.1. The grounds for *Chairing Authority's* assessment that an urgent decision is required (an 'emergency review').

12.6.2. The timescale for *Chairing Authority's* emergency review.

12.7. *Chairing Authority* will, to the extent practical in the circumstances, take into account any views, comments or concerns expressed by College Members with regard to an emergency review. *Chairing Authority* will notify the College Members of the results of the emergency review and any action taken no later than the CCP is informed of *Chairing Authority's* decision. *Chairing Authority* will organise a meeting (either by conference call or in-person, as is considered appropriate at the time) of the College to discuss any issues and actions arising from *Chairing Authority's* emergency review as soon as is practical following the taking of any action resulting from the emergency review.

13. Dispute Resolution

13.1. The College Members will endeavour to resolve any disputes in the operation of the College or during the adoption of opinions of the College through informal discussion between the College Members. Such discussion may be bilateral or multilateral. *Chairing Authority* shall always be informed of any dispute.

13.2. Should informal discussions not resolve a dispute; the College Members involved in the dispute will appropriately escalate the issue internally within their organisations.

13.3. Should discussions between the College Members not resolve the dispute within 30 calendar days of the issue being escalated pursuant to paragraph 13.2, then the dispute will be referred to ESMA in accordance with Article 17(4) of EMIR.

14. Confidentiality

14.1. Pursuant to the professional secrecy requirements provided for in Article 83 of EMIR, and any other similar legal obligations such as those resulting from other European or national laws, College Members confirm that any confidential information received by virtue of their participation in the College shall only be used, and further transmitted relevant to the performance of their respective duties and in

circumstances permitted under law.

- 14.2. Where further transmission of information received by virtue of participation in the College is permitted or required under law, then the relevant College Member shall not, to the extent possible under law, disclose such information without first obtaining the prior consent of the *Chairing Authority* or College Member that provided the information concerned.
- 14.3. Where the law to which a College Member is subject may prevent that College Member from obtaining prior consent for further disclosure in particular circumstances, then it shall inform *Chairing Authority* at the time of agreeing with this written agreement, specifying those circumstances.
- 14.4. Before a Non-EEA Authority can attend particular college meetings (or part of college meetings) pursuant to the provisions of paragraph 3.7, that Non-EEA Authority will be required to demonstrate to *Chairing Authority* that it is subject to equivalent professional secrecy obligations as those contained in Article 83 of EMIR and provide confirmation of such in writing.

15. Entry into force of this Written Agreement

- 15.1. This Written Agreement will enter into force upon formation of the College in accordance with paragraph 3.3.6 of this Written Agreement.

16. Amendment of this Written Agreement

- 16.1. Any College Member is eligible to propose an amendment of this Written Agreement.
- 16.2. Any amendment shall be proposed in writing and shall be distributed by email or by other secure means of communication to all College Members. The proposing College Member shall include a description of the rationale for the proposed change and the proposed new text of the Written Agreement in its notification to the other College Members.
- 16.3. Acceptance of the proposed amendment will be subject to the agreement of all College Members pursuant to Article 18(5) of EMIR.

17. Termination of this Written Agreement

- 17.1. This Written Agreement will remain in effect without an end date unless and until either:
 - 17.1.1. a CCP ceases to be authorised under EMIR; or,
 - 17.1.2. there is no longer a statutory basis for the operation of the College.

at which time the College will be terminated with immediate effect, following prior notice to college members.