



European Securities and
Markets Authority

Response Form to the Consultation Paper

**Draft Guidelines for the methodology to value each contract prior to termination
(Article 29(7) of the 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 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_VALPT_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_VALPT_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_VALPT_ABCD_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA’s website (www.esma.europa.eu under the heading “Your input – Open consultations” → “Consultation on the Methodology to value each contract prior to termination”).

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 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	CCP12 - The Global Association of Central Counterparties
Activity	Central Counterparty
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	International

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_VALPT_00>

The Global Association of Central Counterparties (“CCP12”) appreciates the opportunity to comment on the European Securities Markets Authority’s (“ESMA”) Consultation Paper on draft Guidelines on methodology to value each contract prior to termination.

About CCP12

CCP12 is the global association for CCPs, representing 41 members who operate around 60 individual central counterparties (CCPs) globally across the Americas, EMEA and the Asia-Pacific region.

CCP12 promotes effective, practical, and appropriate risk management and operational standards for CCPs to ensure the safety and efficiency of the financial markets it represents. CCP12 leads and assesses global regulatory and industry initiatives that concern CCPs to form consensus views, while also actively engaging with regulatory agencies and industry constituents through consultation responses, forum discussions and position papers.

For more information, please contact the office by e-mail at office@ccp12.org or through our website by visiting ccp12.org.

CCP12 Members



<ESMA_COMMENT_VALPT_00>

Questions

Q1 : Do you agree with the proposed analysis and the corresponding limitations on the use of market standard approaches? If not, please explain why? Have you identified other points not mentioned above.

<ESMA_QUESTION_VALPT_01>

As described further in CCP12's response to Question 4, CCP12 would like to emphasize that it is the CCP methodology that should be used as the preferred method. The ability of the resolution authority to determine that another methodology (i.e., not the CCP's) could be used, could create a lot of uncertainty for the CCP and market participants. In this context, the use of market standard documentation from ISDA, GMRA or FIA should not be mandated, but it should be left at the CCP's discretion to include their existing rules on valuation as part of the position allocation tool. The pricing of contracts – at least once per day – is vital and already core to all CCP processes and risk management.

We would also like to note an important fact that such standard documentation or certain envisaged tools (e.g., partial tear-ups) are not applicable in the context of securities cash clearing CCPs which are required to have their own specific methodologies. As such, it would not be practical to have a mandate as described in the guidelines across the board for all CCPs.

<ESMA_QUESTION_VALPT_01>

Q2 : Do you agree with the proposed analysis on the scope of the methodology and the concept of “contracts”? If not, please explain why and provide your analysis.

<ESMA_QUESTION_VALPT_02>

CCP12 agrees with the proposed analysis in the context of derivatives clearing CCPs and as long as it favours the CCP's methodology to the highest possible degree. However, as also noted above, the concept of “contracts” appears to be applicable primarily to derivatives clearing CCPs – and does not acknowledge differences that would apply in the context of securities cash clearing CCPs.

<ESMA_QUESTION_VALPT_02>

Q3 : Do you agree with the interpretation of what could be the resolution authority methodology i.e. the re-use of the valuation methodology of the CCP unless the resolution authority deems it necessary to use another appropriate price discovery method? If not, please explain why and provide your interpretation of methodology and sequencing.

<ESMA_QUESTION_VALPT_03>

CCP12 would like to reiterate that in our opinion the resolution authority should use the CCP methodology as the preferred method and any deviation from it should be evidence-based and limited to very exceptional situations.

<ESMA_QUESTION_VALPT_03>

Q4 : Do you agree with the proposed analysis with regards to the valuation methodology? If not, please explain why and provide your analysis.

<ESMA_QUESTION_VALPT_04>

In the CCP12's opinion, the usage of CCPs rules and arrangements should be the preferred method and other alternatives should only be seen as the last resort and only in instances where the resolution authority is able to substantiate that the CCP methodology would not produce a fair market price. This is especially important based upon the differences among CCPs in terms of the nature of their businesses and products cleared (e.g., securities vs. derivatives) and the fact that respective CCP rules and arrangements for contract valuation are specific to those businesses and products cleared. Also, in terms of alternative price discovery methods, the resolution authority should base them on as objective as possible criteria (e.g., the most recent available settlement price), with the overall aim to avoid distortion of the incentives structure embedded in a CCP's risk management and default waterfall. Clearing members' engagement in the CCP's actions (through participation in auctions, where applicable, and provision of competitive bids) is key to successful default management. If there is a possibility arising from legal provisions or guidelines (such as those relating to methodology to value contracts prior to termination) that clearing members might be better off in resolution due to a price discovery method which would be more beneficial to them than the standard market price, they might be disincentivized to participate in auctions effectively.

In our view, the last available settlement prices as calculated daily by the CCPs to settle variation margins are a reliable and transparent basis to determine the termination prices. These prices could be modified on an ad-hoc basis for the purpose of the resolution, if warranted by the specific circumstances. We consider this approach to comply with the principles ESMA proposes.

We stress that polling members on inexecutable prices is likely to skew prices, and both that approach and references to a third party is inevitably not a neutral process.

<ESMA_QUESTION_VALPT_04>

Q5 : Do you agree with the Option 2, if not please explain. Have you identified other benefits and costs not mentioned above associated to the proposed approach (Option 2)?

<ESMA_QUESTION_VALPT_05>

In the CCP12's view, Option 2 seems reasonable as long as the valuation methodologies that the CCPs have in place are strongly preferred and that cases in which alternative price discovery methods can be used are very limited in scope and evidence-based.

<ESMA_QUESTION_VALPT_05>

Q6 : If you advocated for a different approach, how would it impact the cost and benefit assessment? Please provide details.

<ESMA_QUESTION_VALPT_06>

No comment. / Not applicable.

<ESMA_QUESTION_VALPT_06>