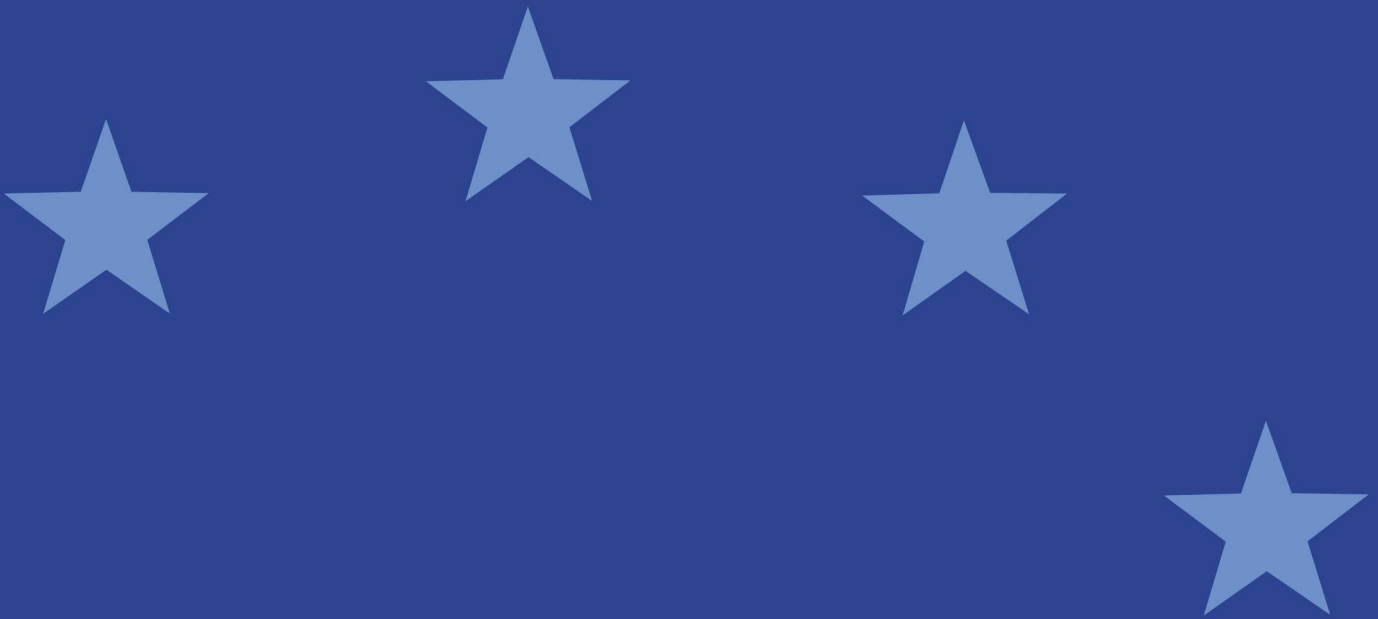




European Securities and
Markets Authority

Response Form to the Consultation Paper

**Draft Guidelines on the CCP assessment of resolvability (Article 15(5) of
CCPRRR**



Responding to this paper

ESMA invites comments on all matters in this consultation paper. 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 **1 August 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_RSLVTY_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_RSLVTY_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_RSLVTY_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 CCP assessment of resolvability”).

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	Futures Industry Association and International Swaps and Derivatives Association
Activity	Banking Sector
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	International

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_RSLVTY_00>

The Futures Industry Association (FIA) and the International Swaps and Derivatives Association (ISDA), together with the Associations, represent the largest number of global and national participants in clearing, banking and financial markets. The Associations appreciate this opportunity to comment on this consultation.

The associations welcome the guidelines proposed by ESMA to provide resolution authorities guidance on resolution practices in relation to those 26 matters as set out in Section C in accordance with Article 16(1) of the Regulation (EU) No 1095/2010. The associations welcome the note in paragraph 23 outlining 'the Guidelines come close to crisis management plans the CCPs have established under EMIR' and that 'the resolution authority may consider as part of the Guidelines'. However, we observed that such remark is not incorporated in the official guidelines. This note could perhaps be included in section 3 (Purpose), such that the resolution authorities could use output from the CCP crisis management plan when considering these guidelines.

This consultation response covers the positions of our members that are clearing members and their clients. The paper does not reflect the views of many CCPs, and many of the CCPs are in disagreement with the views expressed herein.

About FIA

FIA is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, D.C. Our membership includes clearing firms, exchanges, clearinghouses, trading firms and

commodities specialists from about 50 countries as well as technology vendors, law firms and other professional service providers.

Our mission: To support open, transparent and competitive markets, protect and enhance the integrity of the financial system, and promote high standards of professional conduct.

About ISDA

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 990 member institutions from 78 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org. Follow us on Twitter, LinkedIn, Facebook and YouTube.<ESMA_COMMENT_CA79_00>

<ESMA_COMMENT_RSLVTY_00>

Questions

Q1 : Do you agree with the general approach of the Guidelines and how ESMA has interpreted the mandate and the aim of the Guidelines? If not, please explain why.

<ESMA_QUESTION_RSLVTY_01>

The associations generally agree.

<ESMA_QUESTION_RSLVTY_01>

Q2 : Do you agree with structure of the Guidelines? If not, please explain why.

<ESMA_QUESTION_RSLVTY_02>

The associations generally agree with the structure of the guidelines to group common aspects of the 26 matters.

<ESMA_QUESTION_RSLVTY_02>

Q3 : 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_RSLVTY_03>

The associations generally agree with the choice of Option 2.

<ESMA_QUESTION_RSLVTY_03>

Q4 : If you advocated for a different approach, how would it impact the cost and benefit assessment? Please provide details

<ESMA_QUESTION_RSLVTY_04>

The associations did not advocate for a different approach.

<ESMA_QUESTION_RSLVTY_04>

Q5 : Do you agree with Guideline 1 providing principles on the overall assessment of a CCPs resolvability to ensure convergence to the extent possible. If not, please explain why.

<ESMA_QUESTION_RSLVTY_05>

The associations agree with the principles on the overall assessment. We welcome the proposed template and the note that size does not necessarily result in a significant risk and that this should be jointly assessed with relevance in the context of resolvability.

Furthermore, regarding the definition of Parameter 2 (Probability) one could find the use of the word “certainty” a little misleading, as it might be misinterpreted with a very high probability whereas the meaning seems to be “clarity” or “conspicuousness”. We propose to replace “the lower the certainty of” by “the higher the lack of clarity of”, “the less clearly defined” or something similar.

<ESMA_QUESTION_RSLVTY_05>

Q6 : Do you agree with Guidelines 2 to 12 providing the resolution authority with guidance on what to consider when assessing a CCPs resolvability. If not, please explain why. Please provide comments by referring to the Guideline you are providing comments on.

<ESMA_QUESTION_RSLVTY_06>

The associations agree with the guidelines but suggest numbering Guideline 6 - Matter 9: Contingency plans and continuity of access to payment and settlement systems, such that either point 1 is removed or and additional point 2 is added.

With regard to Guideline 9 we believe that point 3 does not fully cover the “possible impact on clearing members and, where applicable, their clients” as the impacts of the application resolution tools may go far beyond just raising clearing costs or reducing the availability of clearing services, and also may affect client of clearing members directly (e.g. position allocation tools). We thus believe that the resolution authority should analyse the impacts of the available resolution tools more thoroughly than currently described.

<ESMA_QUESTION_RSLVTY_06>