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**EACH response to the ESMA consultation  
on Draft RTS on the requirements for  
independent valuers, the methodology for  
assessing the value of the assets and  
liabilities of a CCP, the separation of the  
valuations, the buffer for additional losses  
to be included in provisional valuations  
and the methodology for carrying out the  
valuation for the purpose of the ‘no  
creditor worse off’ principle (Articles 25(6),  
26(4) and 61(5) of CCPRRR)**

January 2022

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EACH response to the ESMA consultation on Draft RTS on the requirements for independent valuers, the methodology for assessing the value of the assets and liabilities of a CCP, the separation of the valuations, the buffer for additional losses to be included in provisional valuations and the methodology for carrying out the valuation for the purpose of the 'no creditor worse off' principle (Articles 25(6), 26(4) and 61(5) of CCPRRR)

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## Introduction

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The European Association of CCP Clearing Houses (EACH) represents the interests of Central Counterparties (CCPs) in Europe since 1992. CCPs are financial market infrastructures that significantly contribute to safer, more efficient and transparent global financial markets. EACH currently has 19 members from 15 different European countries. EACH is registered in the European Union Transparency Register with number 36897011311-96.

EACH appreciates the opportunity to provide feedback to the ESMA Consultation Paper on Draft RTS on the requirements for independent valuers, the methodology for assessing the value of the assets and liabilities of a CCP, the separation of the valuations, the buffer for additional losses to be included in provisional valuations and the methodology for carrying out the valuation for the purpose of the 'no creditor worse off' principle (Articles 25(6), 26(4) and 61(5) of CCPRRR) (hereinafter called "The consultation").

## Section 5.4 – Elements of independence

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**Question 1: Do you agree with the proposed approach to define three elements of independence that should be met for a valuer to be deemed to be independent from the CCP and the resolution authority?**

We agree with the proposed approach to define the three elements of independence that should be met for a valuer to be deemed to be independent from the CCP and the resolution authority. In line with ESMA's observations, we believe the valuer should be highly capable, structurally separate, and non-conflicted. In our view such role could be performed by an auditor type of firm.

**Question 2: Do you agree with the proposed definitions for the relevant entity, relevant authority and independent valuer?**

We agree with the definitions of the relevant authority, independent valuer and the relevant entity. However, we would request further clarifications from ESMA on whether CSDs should also be captured under this definition and therefore excluded from the valuation process. CSDs are entities often acting as custodian of CCP's assets and which assets could be used for the purposes of securing intra-day credit lines. Therefore, we believe that such entities should also be excluded from scope, since their independence is questionable.

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## Section 5.5 – The conflicting interest element - Material common or conflicting interest

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**Question 3: Do you agree with the proposed conditions to assess whether a person considered for the position of independent valuer or appointed as independent valuer does not have an actual or potential material interest in common or in conflict with any relevant public authority or the CCP?**

We broadly agree with the proposed conditions to assess whether a person considered for the position of independent valuer or appointed as independent valuer does not have an actual or potential material interest in common or in conflict with any relevant public authority or the CCP. Regarding the material interests arising from persons working for audit firms as noted in paragraph 53 of the consultation, we would note that there might be instances where, although the audit firm might not be servicing the CCP directly, it may still service the CCP's clearing members or clients. Under such circumstances we would assume that this would represent a conflict of interest according to the proposed RTS.

Regarding a person's independence as described in Criterion 1 part 3 (c) i.e., material creditors or debtors, although we agree with the elements considered by ESMA that would determine a person's independence from the CCP, we note that the description would also capture audit firms and consultancies.

## Section 5.6 – The competence element - qualifications, experience, ability, knowledge and resources

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**Question 4: Do you agree with the proposed conditions to assess whether a person considered for the position of independent valuer or appointed as independent valuer has the necessary qualifications, experience, ability, knowledge and resources?**

We agree with the proposed conditions to assess whether a person considered for the position of independent valuer or appointed as independent valuer has the necessary qualifications, experience, ability, knowledge, and resources. In particular, we agree that a person fulfilling the necessary qualifications would most likely be a qualified auditor, however, we would note that other functions i.e., qualified actuary could also fit that role.

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## Section 5.7 – Structural separation element - Structural Separation and conflicting interests

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**Question 5: Do you agree with the proposed approach to determine and assess the three elements of independence to conclude if a valuer shall be deemed to be independent from the CCP and the resolution authority?**

We agree with the proposed approach to determine and assess the three elements of independence to conclude if a valuer shall be deemed to be independent from the CCP and the resolution authority.

## Section 6.4 – Sources of information for valuations

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**Question 6: Do you agree with the respective proposed approaches for the valuation under Article 24(2) and Article 24(3) of Regulation (EU) 2021/23?**

We broadly agree with the respective proposed approach for the valuation under Article 24(2) and Article 24(3) of CCP RRR. With regards to the sources of information proposed to be available to the independent valuers, it is not entirely clear as to what we are attempting to value. Would the valuation capture a CCP's assets and liabilities or just the CCP's equity? For example, the treatment of intangible assets is not entirely clear when looking at the valuation process. For the purposes of the valuation of intangible assets, we believe that the KCCP calculations may be proven helpful since they would include the value of the default fund, collateral held by the CCP etc.

## Section 7.3 – Valuation under resolution versus NCWO valuation

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**Question 7: Do you agree with the described process for performing the 'No Creditor Worse Off' Valuation in accordance with Article 61 of Regulation (EU) 2021/23?**

We agree with the described process for performing the NCWO valuation.

However, we would welcome additional clarity as to whether the valuation of replacement costs would relate to trades, positions or deltas, i.e. whether the clients' positions would be treated net or gross.

**Question 8: Do you agree with the proposed list of direct replacement costs to be included in the NCWO valuation?**

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We broadly agree with the proposed list and would merely propose two clarifications:

- We understand the losses defined under Article 25(2)(d) of the RTS as being the losses stemming from the opposite transaction to the terminated transactions, and that only net costs, and not net profit, will be accounted for in the valuation.
- ESMA notes in paragraph 107 that initial margins may be a misleading proxy for replacement costs as they are linked to an extreme scenario. However, the circumstances leading to a CCP resolution, or its formal insolvency, will very likely be significantly worse than the 1% worst case scenario. Therefore, initial margins will likely be a rather optimistic proxy. In most circumstances, we thus expect the estimated cost of a replacement transaction to be higher than the concentration/liquidity add-ons of such position (on a net basis). While such an assumption cannot be prescriptive, recognizing the discretion of the independent valuer, it could be included as a general recommendation/recital.

## Section 8.2 – Buffer definition

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**Question 9: Do you agree with the proposed approach for the calculation of the buffer for additional losses to be included in provisional valuations?**

Yes, EACH agrees with the proposed approach for the calculation of the buffer for additional losses to be included in provisional valuations.

**Question 10: With regards to the proposed policy options for the circumstances for the independent valuer to be deemed independent, do you agree with Option 2? If not please explain? Have you identified other benefits and costs not mentioned above associated to the proposed approach ?**

Yes, EACH agrees with Policy Option 2.

## Cost-benefit analysis – Valuation of assets and liabilities of a CCP

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**Question 12: With regards to the proposed policy options for the information to be used in valuation, do you agree with Option 2? If not please explain? Have you identified other benefits and costs not mentioned above associated to the proposed approach?**

Yes, EACH agrees with Policy Option 2.