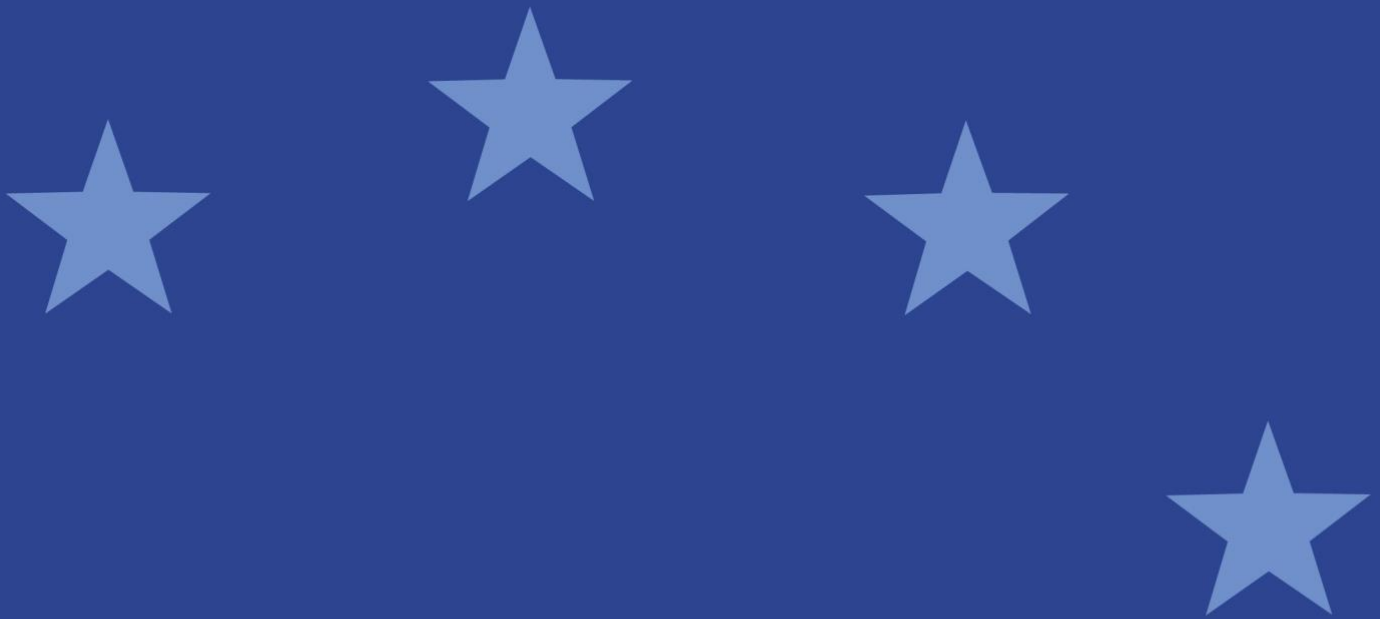


Response Form to the Consultation Paper

**Draft RTS on the content of CCP resolution plans (Article 12(9) 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_RSPL_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_RSPL_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_RSPL_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 content of CCP resolution plans”).

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_RSPL_00>

The Futures Industry Association (FIA) and the International Swaps and Derivatives Association (ISDA), together 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.

We applaud ESMA for its enormous efforts and impressive work it has delivered on the consultations on CCP resolution, providing a thorough and comprehensive analysis for each of them.

We agree with most of the provisions in this draft RTS. However, we believe that parts of the resolution should be more transparent: In order for the for the resolution objectives to be met by all stakeholders, it is important that all, including market participants, have information about the resolution goals and the tools utilized in the resolution plan to enable them to adapt their actions accordingly. If market participants do not have the required visibility, they may develop worst case scenarios and enact mitigation actions to cover all potential resolution actions, even if these were never part of the resolution plan. Some of these mitigating actions by clearing participants might run counter to resolution actions employed by the resolution authority (RA).

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 960 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_RSPL_00>

Questions

Q1 : Do you agree with how ESMA has enabled sufficient flexibility and ensured proportionality in the draft RTS? If not, please explain?

<ESMA_QUESTION_RSPL_01>

We agree with ESMA's proposals that enable sufficient flexibility and ensure proportionality.

<ESMA_QUESTION_RSPL_01>

Q2 : Is there any aspect from the BRRD RTS that is not included in the draft RTS, but should be? If yes, please specify and explain why?

<ESMA_QUESTION_RSPL_02>

We do not believe there is any aspect that is not included from the BRRD RTS in the draft RTS.

<ESMA_QUESTION_RSPL_02>

Q3 : Do you agree with how the draft RTS envisages to further specify the resolution plan? If not, please explain?

<ESMA_QUESTION_RSPL_03>

We agree in general with how the detailed draft RTS envisages to further specify the resolution plan, but we believe there are a few areas which could benefit from further enhancements:

Firstly, we believe it is important to communicate the content of the resolution plan to all entities that are essential to successful execution of a CCP's resolution plan, together with the opportunity to provide comments.

The summary of a resolution plan will be shared with CCPs. We recommend to share the summary also with clearing participants (clearing members and their clients). It is important for the resolution goals to be achieved that all stakeholders, including market participants are aware what the goals are, and which tools can be utilised in resolution to enable the adoption of appropriate actions. If market participants do not have the required visibility, they may develop possible scenarios and enact mitigation actions to cover all potential RA actions, even if these were never part of the resolution plan. Some of these mitigating actions by clearing participants might have the potential to run counter to resolution actions employed by the RA.

Secondly, with regards to impediments to resolvability, we believe it would be helpful for ESMA to specify an overall time limit by which the national resolution authority/competent authority must prepare a report to the CCP, and also for the CCP to implement changes to remove/remediate these impediments. This is particularly important in the context of the FSB's guidance that CCPs' capital be used in full in resolution (and which relates to national insolvency law related subjects and issues).

Finally, with regards to staff retention, we believe that it is important that any incentive, compensation, and retention structures are assessed in terms of their value/relevance during a resolution phase. Deferred compensation in the form of share schemes may form less of a barrier to exit for staff if the share price has fallen considerably due to the CCP entering resolution. It is also possible that key staff may look to exit the CCP prior to it entering the resolution phase should they be aware of significant issues, in which case the content of the resolution plan will not be relevant.

<ESMA_QUESTION_RSPL_03>

Q4 : In particular, do you agree with the content of the summary of the resolution plan (Article 12(7)(a))? Is there any aspect missing? If yes, please specify and explain why?

<ESMA_QUESTION_RSPL_04>

We agree with the suggestion that all elements of section 7 be included in the summary of the resolution plan.

<ESMA_QUESTION_RSPL_04>

Q5 : Do you agree with the Option 1, if not please explain? Have you identified other benefits and costs not mentioned above associated to the proposed approach (Option 1)?

<ESMA_QUESTION_RSPL_05>

We agree with option 1.

<ESMA_QUESTION_RSPL_05>

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

<ESMA_QUESTION_RSPL_06>

N/A

<ESMA_QUESTION_RSPL_06>