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EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY

EIOPA procedure on **Handling requests for temporary exemption from clearing obligation in accordance with Art. 89 (2) of Regulation 648/2012 (EMIR)**

EIOPA Occupational Pensions Stakeholder Group meeting
Frankfurt, 28 February 2017

What is the relevance for OPSG?

- EMIR temporarily exempts pension scheme arrangements from the clearing obligation
  - until 16 August 2017
  - COM proposes to extend to 16 August 2018

- Are there technical solutions to use non-cash collaterals?
- Is the exemption effective, i.e. is it beneficial to be exempted?
- If anything, what needs to be done from a regulatory perspective?

Background:
Scope of temporary exemption

- EMIR temporarily exempts
  - until 16 August 2017 (to be further extended to 16 August 2018).
- pension scheme arrangements
  - most types of pension scheme arrangements, such as IORPs, are directly exempted by EMIR
  - Article 89 (2) of EMIR sets out a <u>specific procedure</u> for pensions arrangements that fall under the criteria of Article 2 (10) (c) or (d) of EMIR before granting the temporary exemption from the clearing obligation according to Article 89 (1) of EMIR.
- from the clearing obligation of OTC derivatives
  - that are used to mitigate investment risks.

Background:
What are Art. 2 (10) (c) or (d) pension scheme arrangements?

- (c) occupational retirement provision businesses of life insurance undertakings covered by Directive 2002/83/EC, provided that all assets and liabilities corresponding to the business are ring-fenced, managed and organised separately from the other activities of the insurance undertaking, without any possibility of transfer
  - So far only 4 (out of 24) notifications based on (c)

- (d) any other authorised and supervised entities, or arrangements, operating on a national basis, provided that:
  - (i) they are recognised under national law; and
  - (ii) their primary purpose is to provide retirement benefits
  - Majority of the notifications received (20 out of 24)

Background:
What makes them eligible?

- An exemption is justified due to difficulties in meeting the variation margin requirements:
  - pension scheme arrangements typically minimise their holdings of cash in order to maximise the efficiency and the return for their customers.
  - unless the clearing obligation can be endorsed by a suitable technical solution for the transfer of non-cash collateral as variation margins, it is expected that there are likely negative effects on the retirement income of future pensioners.

Background:
What is EIOPA's role?

- National competent authorities must expressly grant the exemption for those specific types of pension arrangements, for which the eligibility must be assessed.

- Before granting the temporary exemption and in order to ensure consistency, to remove possible misalignments and to avoid any abuse, the national competent authority is required to ask for ESMA's opinion on the compliance of the criteria determining the eligibility of those types of entities or types of arrangements.

- Further, ESMA is requested to consult EIOPA before issuing an opinion assessing compliance of the type of entities or the type of arrangements.

Background:
How does that work?

NSA sends notification to ESMA and EIOPA

After 15 (22) calendar days:
EIOPA provides ESMA with its assessment

After 30 calendar days:
ESMA issues opinion to NSA

Within additional 10 working days:
NSA adopts decision

Background:
How does EIOPA assess compliance?

- Assess pension scheme arrangement data and specific information
    - Provided by national competent authority (via template)
    - Information in EIOPA's database on pension plans and products

- Assess information provided on liquidity and difficulties in meeting the variation margin requirements:
    - Provided by national competent authority (via template)