ESMA Publishes Opinions on Pension Schemes To Be Exempt From EMIR Clearing Obligations

Article By:

Carolyn H. Jackson

On February 2, the European Securities and Markets Authority (ESMA) published a set of opinions to exempt 16 UK-based pension schemes from clearing obligations contained in the European Market Infrastructure Regulation (EMIR).

Under Article 89(2) of EMIR, relevant competent authorities (such as the Financial Conduct Authority (FCA)) are able to exempt certain pension schemes from the obligation to clear OTC derivatives contracts. In order to grant the exemption, the FCA must first notify ESMA of the exemption request and obtain an opinion from ESMA, which then consults with the European Insurance and Occupational Pensions Authority (EIOPA). Once ESMA issues an opinion to confirm the exemption, which it must within 30 calendar days, the FCA has 10 working days to adopt and communicate its decision.

Only pension scheme arrangements that are: (1) occupational requirement provision businesses of life insurance undertakings covered by Directive 2002/83/EC; and (2) other authorized and supervised entities or arrangements operating on a national basis, recognized under national law and with a primary purpose of providing retirement benefits (both under Article 2(10)(c) and (d), respectively), come within the exemption requirements of Article 89(2).

In assessing the exemption request, the FCA, ESMA and EIOPA consider the pension scheme's compliance with Article 2(10)(c) or (d) of EMIR (as applicable) and also the reasons as to why the pension scheme will encounter difficulties in meeting variation margin requirements.

A copy of ESMA's press release and opinions can be found here.

National Law Review, Volume VI, Number 36