ESMA issues clarifications on the clearing obligation and trading obligation for pension scheme arrangements

The European Securities and Markets Authority (ESMA) has issued today an updated statement on the clearing obligation and trading obligation for pension scheme arrangements (PSAs), with the objective to avoid, to the extent possible, disruption to certain PSAs who may face potential challenges clearing their OTC derivative contracts and trading them on trading venues on 17 August 2018, when the current, and final, exemption from the clearing obligation under EMIR expires.

EMIR introduced a temporary exemption for PSAs from the clearing obligation to allow time for a suitable technical solution for the transfer of non-cash collateral as variation margins to be developed by CCPs. With the two possible extensions already granted, there is no possibility to further extend this temporary exemption under EMIR. However, a further extension of the temporary exemption is part of the Refit negotiations. Furthermore, MiFIR exempts financial counterparties exempted from the clearing obligation under EMIR from the trading obligation for derivatives.

The updated statement clarifies that also for the purpose of the trading obligation, ESMA expects competent authorities to not prioritise their supervisory actions towards entities that are expected to be exempted again in a relatively short period of time, and to generally apply their risk-based supervisory powers in their day-to-day enforcement of applicable legislation in a proportionate manner. Nevertheless, ESMA would encourage PSAs to trade on trading venues.