

## OPINIONS

# Exemption from the clearing obligation for pension schemes

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## OPINION

# Exemption from the clearing obligation for pension schemes

Notification Reference: 1\_Pension\_Notification\_FCA\_1a

## 1 Legal Basis

1. According to Article 89(2) of Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories<sup>1</sup> (EMIR), before taking its decision related to the pension scheme exemption from the clearing obligation, the relevant competent authority needs to obtain the opinion of the European Securities and Markets Authority (ESMA) that needs to consult the European Insurance and Occupational Pensions Authority (EIOPA).
2. ESMA is adopting the following opinion on (1) the compliance of the type of entities or the type of arrangements with Article 2(10)(c) and (2) the reason why an exemption is justified due to difficulties in meeting the variation margin requirements in accordance with Article 89(2) of EMIR.
3. Pursuant to Article 44(1) of Regulation (EU) No 1095/2010<sup>2</sup> this opinion has been adopted by the Board of Supervisors.

## 2 Background and Procedure

4. EMIR provides for the obligation of counterparties to clear certain classes of OTC derivative contracts. Some pension scheme arrangements or entities benefit automatically from a temporary exemption from that obligation for their OTC derivative contracts that reduce investment risks directly related to their solvency whereas other pension scheme arrangements or entities need to obtain a prior authorisation before availing from the exemption (in accordance with Article 89(2) of EMIR).

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<sup>1</sup> OJ L 201, 27.7.2012, p. 1.

<sup>2</sup> OJ L 331, 24.11.2010, p. 84.



5. The pension scheme arrangements which have to apply for an exemption under Article 89(2) of EMIR are (1) occupational retirement provision businesses of life insurance undertakings covered by Directive 2002/83/EC, and (2) other authorised and supervised entities, or arrangements, operating on a national basis, recognised under national law and whose primary purpose is to provide retirement benefits. The opinion of ESMA is required before the relevant competent authority decides on an exemption for these two categories of pension scheme arrangements.
6. After receiving the request for exemption, the relevant competent authority has to notify ESMA and EIOPA thereof and ESMA has to provide its opinion within 30 calendar days of receipt of the notification.
7. Upon receipt of ESMA's opinion, the competent authority has 10 working days to adopt and communicate its decision to the pension scheme arrangement and to ESMA.
8. In the present case, the Financial Conduct Authority (FCA) has notified ESMA on 31 December 2015 that the following Arrangement Type has requested to benefit from the exemption from the clearing obligation in application of Article 2(10)(c):

*A pension scheme arrangement which is the occupational retirement provision business of a life insurance undertaking covered by Directive 2002/83/EC, where 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, within the meaning of Article 2(10)(c) of EMIR, hereinafter “the Arrangement Type”.*

9. The Arrangement Type is identified in the EIOPA database of pension plans and products in EEA<sup>3</sup> under the code: UK1 (subgroup identified in the database under code: UK1.1 Trust-based DB schemes, UK1.2 Trust-based DC schemes, UK1.3 Trust-based Hybrid schemes).
10. EIOPA has replied to the consultation on the notification and has provided its response to ESMA on 19 January 2016.

### **3 ESMA Opinion**

11. In order to prepare this opinion, ESMA has relied on information provided by the national competent authority in its notification and provided by EIOPA in its consultation.

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<sup>3</sup> <https://eiopa.europa.eu/regulation-supervision/pensions/database-of-pension-plans-and-products-in-the-eea>



***On the compliance of the Arrangement Type with Article 2(10)(c)***

12. The national competent authority has confirmed that the Arrangement Type is an occupational retirement provision businesses of life insurance undertaking covered by Directive 2002/83/EC or, from 1 January 2016, by Directive 2009/138/EC (Solvency II)
13. The national competent authority has confirmed that the Arrangement Type has an explicit retirement objective in accordance with national law.<sup>i</sup>
14. The national competent authority is of the opinion that the Arrangement Type complies with Article 2(10)(c) of EMIR. EIOPA shares this view.
15. In view of the above and on the basis of the information provided, ESMA is of the opinion that the Arrangement Type complies with Article 2(10)(c).

***On the reason why an exemption is justified due to difficulties in meeting the variation margin requirements***

16. The national competent authority is of the opinion that the Arrangement Type would encounter difficulties in meeting variation margin requirements for centrally cleared transactions due to limited holdings of cash within the Arrangement Type, high cost (e.g. lower investment returns or transaction costs) and risk of inefficiencies as a result of converting assets into cash. EIOPA shares this view.
17. In view of the above and on the basis of the information provided, ESMA is of the opinion that the reasons why an exemption is justified due to difficulties in meeting variation margin requirements for centrally cleared transactions for the Arrangement Type are established.

This Opinion is addressed to:

Financial Conduct Authority  
25 The North Colonnade, Canary Wharf  
London E14 5HS  
United Kingdom

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<sup>i</sup> In particular, the competent authority indicated in the notification that the business is established for the provision or retirement benefits and is registered under national law with HM Revenue and Customs.

## OPINION

# Exemption from the clearing obligation for pension schemes

Notification Reference: 2\_Pension\_Notification\_FCA\_1b

## 1 Legal Basis

1. According to Article 89(2) of Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories<sup>1</sup> (EMIR), before taking its decision related to the pension scheme exemption from the clearing obligation, the relevant competent authority needs to obtain the opinion of the European Securities and Markets Authority (ESMA) that needs to consult the European Insurance and Occupational Pensions Authority (EIOPA).
2. ESMA is adopting the following opinion on (1) the compliance of the type of entities or the type of arrangements with Article 2(10)(c) and (2) the reason why an exemption is justified due to difficulties in meeting the variation margin requirements in accordance with Article 89(2) of EMIR.
3. Pursuant to Article 44(1) of Regulation (EU) No 1095/2010<sup>2</sup> this opinion has been adopted by the Board of Supervisors.

## 2 Background and Procedure

4. EMIR provides for the obligation of counterparties to clear certain classes of OTC derivative contracts. Some pension scheme arrangements or entities benefit automatically from a temporary exemption from that obligation for their OTC derivative contracts that reduce investment risks directly related to their solvency whereas other

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<sup>1</sup> OJ L 201, 27.7.2012, p. 1.

<sup>2</sup> OJ L 331, 24.11.2010, p. 84.



pension scheme arrangements or entities need to obtain a prior authorisation before availing from the exemption (in accordance with Article 89(2) of EMIR).

5. The pension scheme arrangements which have to apply for an exemption under Article 89(2) of EMIR are (1) occupational retirement provision businesses of life insurance undertakings covered by Directive 2002/83/EC, and (2) other authorised and supervised entities, or arrangements, operating on a national basis, recognised under national law and whose primary purpose is to provide retirement benefits. The opinion of ESMA is required before the relevant competent authority decides on an exemption for these two categories of pension scheme arrangements.
6. After receiving the request for exemption, the relevant competent authority has to notify ESMA and EIOPA thereof and ESMA has to provide its opinion within 30 calendar days of receipt of the notification.
7. Upon receipt of ESMA's opinion, the competent authority has 10 working days to adopt and communicate its decision to the pension scheme arrangement and to ESMA.
8. In the present case, the Financial Conduct Authority (FCA) has notified ESMA on 31 December 2015 that the following Arrangement Type has requested to benefit from the exemption from the clearing obligation in application of Article 2(10)(c):

*A retirement income pension scheme arrangement which is the occupational retirement provision business of a life insurance undertaking covered by Directive 2002/83/EC, where 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, within the meaning of Article 2(10)(c) of EMIR, hereinafter "the Arrangement Type".*

9. The Arrangement Type is identified in the EIOPA database of pension plans and products in EEA<sup>3</sup> under the code: UK1 (subgroup identified in the database under code: UK1.1 Trust-based DB schemes, UK1.2 Trust-based DC schemes, UK1.3 Trust-based Hybrid schemes).
10. EIOPA has replied to the consultation on the notification and has provided its response to ESMA on 19 January 2016.

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<sup>3</sup> <https://eiopa.europa.eu/regulation-supervision/pensions/database-of-pension-plans-and-products-in-the-eea>



### 3 ESMA Opinion

11. In order to prepare this opinion, ESMA has relied on information provided by the national competent authority in its notification and provided by EIOPA in its consultation.

#### ***On the compliance of the Arrangement Type with Article 2(10)(c)***

12. The national competent authority has confirmed that the Arrangement Type is an occupational retirement provision businesses of life insurance undertaking covered by Directive 2002/83/EC or, from 1 January 2016, by Directive 2009/138/EC (Solvency II)

13. The national competent authority has confirmed that the Arrangement Type has an explicit retirement objective in accordance with national law.<sup>i</sup>

14. The national competent authority is of the opinion that the Arrangement Type complies with Article 2(10)(c) of EMIR. EIOPA shares this view.

15. In view of the above and on the basis of the information provided, ESMA is of the opinion that the Arrangement Type complies with Article 2(10)(c).

#### ***On the reason why an exemption is justified due to difficulties in meeting the variation margin requirements***

16. The national competent authority is of the opinion that the Arrangement Type would encounter difficulties in meeting variation margin requirements for centrally cleared transactions due to limited holdings of cash within the Arrangement Type, high cost (e.g. lower investment returns or transaction costs) and risk of inefficiencies as a result of converting assets into cash. EIOPA shares this view.

17. In view of the above and on the basis of the information provided, ESMA is of the opinion that the reasons why an exemption is justified due to difficulties in meeting variation margin requirements for centrally cleared transactions for the Arrangement Type are established.

This Opinion is addressed to:

Financial Conduct Authority  
25 The North Colonnade, Canary Wharf  
London E14 5HS  
United Kingdom



<sup>i</sup> In particular, the competent authority indicated in the notification that the business is established for the provision or retirement benefits and is registered under national law with HM Revenue and Customs.

## OPINION

# Exemption from the clearing obligation for pension schemes

Notification Reference: 3\_Pension\_Notification\_FCA\_1c

## 1 Legal Basis

1. According to Article 89(2) of Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories<sup>1</sup> (EMIR), before taking its decision related to the pension scheme exemption from the clearing obligation, the relevant competent authority needs to obtain the opinion of the European Securities and Markets Authority (ESMA) that needs to consult the European Insurance and Occupational Pensions Authority (EIOPA).
2. ESMA is adopting the following opinion on (1) the compliance of the type of entities or the type of arrangements with Article 2(10)(c) and (2) the reason why an exemption is justified due to difficulties in meeting the variation margin requirements in accordance with Article 89(2) of EMIR.
3. Pursuant to Article 44(1) of Regulation (EU) No 1095/2010<sup>2</sup> this opinion has been adopted by the Board of Supervisors.

## 2 Background and Procedure

4. EMIR provides for the obligation of counterparties to clear certain classes of OTC derivative contracts. Some pension scheme arrangements or entities benefit automatically from a temporary exemption from that obligation for their OTC derivative contracts that reduce investment risks directly related to their solvency whereas other

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<sup>1</sup> OJ L 201, 27.7.2012, p. 1.

<sup>2</sup> OJ L 331, 24.11.2010, p. 84.



pension scheme arrangements or entities need to obtain a prior authorisation before availing from the exemption (in accordance with Article 89(2) of EMIR).

5. The pension scheme arrangements which have to apply for an exemption under Article 89(2) of EMIR are (1) occupational retirement provision businesses of life insurance undertakings covered by Directive 2002/83/EC, and (2) other authorised and supervised entities, or arrangements, operating on a national basis, recognised under national law and whose primary purpose is to provide retirement benefits. The opinion of ESMA is required before the relevant competent authority decides on an exemption for these two categories of pension scheme arrangements.
6. After receiving the request for exemption, the relevant competent authority has to notify ESMA and EIOPA thereof and ESMA has to provide its opinion within 30 calendar days of receipt of the notification.
7. Upon receipt of ESMA's opinion, the competent authority has 10 working days to adopt and communicate its decision to the pension scheme arrangement and to ESMA.
8. In the present case, the Financial Conduct Authority (FCA) has notified ESMA on 31 December 2015 that the following Arrangement Type has requested to benefit from the exemption from the clearing obligation in application of Article 2(10)(c):  
  
*A buyout pension scheme which is the occupational retirement provision business of a life insurance undertaking covered by Directive 2002/83/EC, where 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, within the meaning of Article 2(10)(c) of EMIR, hereinafter "the Arrangement Type".*
9. The Arrangement Type is identified in the EIOPA database of pension plans and products in EEA<sup>3</sup> under the code: UK1 (subgroup identified in the database under code: UK1.1 Trust-based DB schemes).
10. EIOPA has replied to the consultation on the notification and has provided its response to ESMA on 19 January 2016.

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<sup>3</sup> <https://eiopa.europa.eu/regulation-supervision/pensions/database-of-pension-plans-and-products-in-the-eea>



### 3 ESMA Opinion

11. In order to prepare this opinion, ESMA has relied on information provided by the national competent authority in its notification and provided by EIOPA in its consultation.

#### ***On the compliance of the Arrangement Type with Article 2(10)(c)***

12. The national competent authority has confirmed that the Arrangement Type is an occupational retirement provision businesses of life insurance undertaking covered by Directive 2002/83/EC or, from 1 January 2016, by Directive 2009/138/EC (Solvency II)

13. The national competent authority has confirmed that the Arrangement Type has an explicit retirement objective in accordance with national law.<sup>i</sup>

14. The national competent authority is of the opinion that the Arrangement Type complies with Article 2(10)(c) of EMIR. EIOPA shares this view.

15. In view of the above and on the basis of the information provided, ESMA is of the opinion that the Arrangement Type complies with Article 2(10)(c).

#### ***On the reason why an exemption is justified due to difficulties in meeting the variation margin requirements***

16. The national competent authority is of the opinion that the Arrangement Type would encounter difficulties in meeting variation margin requirements for centrally cleared transactions due to limited holdings of cash within the Arrangement Type, high cost (e.g. lower investment returns or transaction costs) and risk of inefficiencies as a result of converting assets into cash. EIOPA shares this view.

17. In view of the above and on the basis of the information provided, ESMA is of the opinion that the reasons why an exemption is justified due to difficulties in meeting variation margin requirements for centrally cleared transactions for the Arrangement Type are established.

This Opinion is addressed to:

Financial Conduct Authority  
25 The North Colonnade, Canary Wharf  
London E14 5HS  
United Kingdom



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<sup>i</sup> In particular, the competent authority indicated in the notification that the business is established for the provision or retirement benefits and is registered under national law with HM Revenue and Customs.

## OPINION

# Exemption from the clearing obligation for pension schemes

Notification Reference: 4\_Pension\_Notification\_FCA\_2a-A

## 1 Legal Basis

1. According to Article 89(2) of Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories<sup>1</sup> (EMIR), before taking its decision related to the pension scheme exemption from the clearing obligation, the relevant competent authority needs to obtain the opinion of the European Securities and Markets Authority (ESMA) that needs to consult the European Insurance and Occupational Pensions Authority (EIOPA).
2. ESMA is adopting the following opinion on (1) the compliance of the type of entities or the type of arrangements with Article 2(10)(d) and (2) the reason why an exemption is justified due to difficulties in meeting the variation margin requirements in accordance with Article 89(2) of EMIR.
3. Pursuant to Article 44(1) of Regulation (EU) No 1095/2010<sup>2</sup> this opinion has been adopted by the Board of Supervisors.

## 2 Background and Procedure

4. EMIR provides for the obligation of counterparties to clear certain classes of OTC derivative contracts. Some pension scheme arrangements or entities benefit automatically from a temporary exemption from that obligation for their OTC derivative contracts that reduce investment risks directly related to their solvency whereas other

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<sup>1</sup> OJ L 201, 27.7.2012, p. 1.

<sup>2</sup> OJ L 331, 24.11.2010, p. 84.



pension scheme arrangements or entities need to obtain a prior authorisation before availing from the exemption (in accordance with Article 89(2) of EMIR).

5. The pension scheme arrangements which have to apply for an exemption under Article 89(2) of EMIR are (1) occupational retirement provision businesses of life insurance undertakings covered by Directive 2002/83/EC, and (2) other authorised and supervised entities, or arrangements, operating on a national basis, recognised under national law and whose primary purpose is to provide retirement benefits. The opinion of ESMA is required before the relevant competent authority decides on an exemption for these two categories of pension scheme arrangements.
6. After receiving the request for exemption, the relevant competent authority has to notify ESMA and EIOPA thereof and ESMA has to provide its opinion within 30 calendar days of receipt of the notification.
7. Upon receipt of ESMA's opinion, the competent authority has 10 working days to adopt and communicate its decision to the pension scheme arrangement and to ESMA.
8. In the present case, the Financial Conduct Authority (FCA) has notified ESMA on 31 December 2015 that the following Arrangement Type has requested to benefit from the exemption from the clearing obligation in application of Article 2(10)(d):

*A life insurance undertaking covered by Directive 2002/83/EC, the primary purpose of which is to provide retirement benefits by management of customers' long-term investments, which does not fall within Article 2(10)(c) of EMIR and which meets the requirements set out in Article 2(10)(d) of EMIR, hereinafter "the Arrangement Type".*

9. The Arrangement Type is identified in the EIOPA database of pension plans and products in EEA<sup>3</sup> under the code: UK1 (subgroup identified in the database under code: UK1.1 Trust-based DB schemes, UK1.2 Trust-based DC schemes, UK1.3 Trust-based Hybrid schemes).
10. EIOPA has replied to the consultation on the notification and has provided its response to ESMA on 18 January 2016.

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<sup>3</sup> <https://eiopa.europa.eu/regulation-supervision/pensions/database-of-pension-plans-and-products-in-the-eea>



### 3 ESMA Opinion

11. In order to prepare this opinion, ESMA has relied on information provided by the national competent authority in its notification and provided by EIOPA in its consultation.

#### ***On the compliance of the Arrangement Type with Article 2(10)(d)***

12. The national competent authority has confirmed that the Arrangement Type does not fall within the definition of Article 2(10)(a), (b) or (c) of EMIR and that it is authorised and supervised by the Financial Conduct Authority and the Prudential Regulation Authority.

13. The national competent authority has confirmed that the Arrangement Type operates on a national basis i.e. that arrangements are providing services mainly in the territory of one member state whereas investments may be performed on a cross border basis, is recognised under national law and has for primary purpose to provide retirement benefits.<sup>1</sup>

14. The national competent authority is of the opinion that the Arrangement Type complies with Article 2(10)(d) of EMIR. EIOPA shares this view.

15. In view of the above and on the basis of the information provided, ESMA is of the opinion that the Arrangement Type complies with Article 2(10)(d).

#### ***On the reason why an exemption is justified due to difficulties in meeting the variation margin requirements***

16. The national competent authority is of the opinion that the Arrangement Type would encounter difficulties in meeting variation margin requirements for centrally cleared transactions due to limited holdings of cash within the Arrangement Type, high cost (e.g. lower investment returns or transaction costs) and risk of inefficiencies as a result of converting assets into cash. EIOPA shares this view.

17. In view of the above and on the basis of the information provided, ESMA is of the opinion that the reasons why an exemption is justified due to difficulties in meeting variation margin requirements for centrally cleared transactions for the Arrangement Type are established.

This Opinion is addressed to:

Financial Conduct Authority  
25 The North Colonnade, Canary Wharf  
London E14 5HS  
United Kingdom



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<sup>i</sup> Legal basis of operation for authorised and supervised arrangements:  
Section 22 of Financial Services and Markets Act 2000 requires that any entity or arrangement carrying out specified activity needs to be authorised.  
<http://www.legislation.gov.uk/ukxi/2001/544/article/4/made>  
Specified activities, which need to be authorised, are listed in Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO). FCA and PRA jointly authorise pension schemes to undertake long-term insurance contracts. This could include Classes I (life and annuity), III (linked long-term) and VII (pension fund management) (Schedule 1, Part II of the RAO).  
<http://www.legislation.gov.uk/ukxi/2001/544/schedule/1/made>  
Assets are typically provided from UK Registered Pension Schemes under the Finance Act 2004 (or those deemed registered under Schedule 36 of the Finance Act 2004).  
<http://www.legislation.gov.uk/ukpga/2004/12/part/4>  
<http://www.legislation.gov.uk/ukpga/2004/12/schedule/36>

## OPINION

# Exemption from the clearing obligation for pension schemes

Notification Reference: 5\_Pension\_Notification\_FCA\_2a-E

## 1 Legal Basis

1. According to Article 89(2) of Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories<sup>1</sup> (EMIR), before taking its decision related to the pension scheme exemption from the clearing obligation, the relevant competent authority needs to obtain the opinion of the European Securities and Markets Authority (ESMA) that needs to consult the European Insurance and Occupational Pensions Authority (EIOPA).
2. ESMA is adopting the following opinion on (1) the compliance of the type of entities or the type of arrangements with Article 2(10)(d) and (2) the reason why an exemption is justified due to difficulties in meeting the variation margin requirements in accordance with Article 89(2) of EMIR.
3. Pursuant to Article 44(1) of Regulation (EU) No 1095/2010<sup>2</sup> this opinion has been adopted by the Board of Supervisors.

## 2 Background and Procedure

4. EMIR provides for the obligation of counterparties to clear certain classes of OTC derivative contracts. Some pension scheme arrangements or entities benefit automatically from a temporary exemption from that obligation for their OTC derivative contracts that reduce investment risks directly related to their solvency whereas other

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<sup>1</sup> OJ L 201, 27.7.2012, p. 1.

<sup>2</sup> OJ L 331, 24.11.2010, p. 84.



pension scheme arrangements or entities need to obtain a prior authorisation before availing from the exemption (in accordance with Article 89(2) of EMIR).

5. The pension scheme arrangements which have to apply for an exemption under Article 89(2) of EMIR are (1) occupational retirement provision businesses of life insurance undertakings covered by Directive 2002/83/EC, and (2) other authorised and supervised entities, or arrangements, operating on a national basis, recognised under national law and whose primary purpose is to provide retirement benefits. The opinion of ESMA is required before the relevant competent authority decides on an exemption for these two categories of pension scheme arrangements.
6. After receiving the request for exemption, the relevant competent authority has to notify ESMA and EIOPA thereof and ESMA has to provide its opinion within 30 calendar days of receipt of the notification.
7. Upon receipt of ESMA's opinion, the competent authority has 10 working days to adopt and communicate its decision to the pension scheme arrangement and to ESMA.
8. In the present case, the Financial Conduct Authority (FCA) has notified ESMA on 31 December 2015 that the following Entity Type has requested to benefit from the exemption from the clearing obligation in application of Article 2(10)(d):

*A life insurance undertaking covered by Directive 2002/83/EC, the primary purpose of which is to provide retirement benefits by management of customers' long-term investments, which does not fall within Article 2(10)(c) of EMIR and which meets the requirements set out in Article 2(10)(d) of EMIR, hereinafter "the Entity Type".*

9. The Entity Type is identified in the EIOPA database of pension plans and products in EEA<sup>3</sup> under the code: UK1 (subgroup identified in the database under code: UK1.1 Trust-based DB schemes, UK1.2 Trust-based DC schemes, UK1.3 Trust-based Hybrid schemes).
10. EIOPA has replied to the consultation on the notification and has provided its response to ESMA on 18 January 2016.

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<sup>3</sup> <https://eiopa.europa.eu/regulation-supervision/pensions/database-of-pension-plans-and-products-in-the-eea>



### 3 ESMA Opinion

11. In order to prepare this opinion, ESMA has relied on information provided by the national competent authority in its notification and provided by EIOPA in its consultation.

#### ***On the compliance of the Entity Type with Article 2(10)(d)***

12. The national competent authority has confirmed that the Entity Type does not fall within the definition of Article 2(10)(a), (b) or (c) of EMIR and that it is authorised and supervised by the Financial Conduct Authority and the Prudential Regulation Authority.

13. The national competent authority has confirmed that the Entity Type operates on a national basis i.e. that services are provided on a national basis whereas investments may be performed on a cross border basis, is recognised under national law and has for primary purpose to provide retirements benefits.<sup>i</sup>

14. The national competent authority is of the opinion that the Entity Type complies with Article 2(10)(d) of EMIR. EIOPA shares this view.

15. In view of the above and on the basis of the information provided, ESMA is of the opinion that the Entity Type complies with Article 2(10)(d).

#### ***On the reason why an exemption is justified due to difficulties in meeting the variation margin requirements***

16. The national competent authority is of the opinion that the Entity Type would encounter difficulties in meeting variation margin requirements for centrally cleared transactions due to limited holdings of cash within the Entity Type, high cost (e.g. lower investment returns or transaction costs) and risk of inefficiencies as a result of converting assets into cash. EIOPA shares this view.

17. In view of the above and on the basis of the information provided, ESMA is of the opinion that the reasons why an exemption is justified due to difficulties in meeting variation margin requirements for centrally cleared transactions for the Entity Type are established.

This Opinion is addressed to:

Financial Conduct Authority  
25 The North Colonnade, Canary Wharf  
London E14 5HS  
United Kingdom



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<sup>i</sup> Legal basis of operation for authorised and supervised entities:

Section 22 of Financial Services and Markets Act 2000 requires that any entity or arrangement carrying out specified activity needs to be authorised.

<http://www.legislation.gov.uk/ukxi/2001/544/article/4/made>

Specified activities, which need to be authorised, are listed in Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO). FCA and PRA jointly authorise pension schemes to undertake long-term insurance contracts. This could include Classes I (life and annuity), III (linked long-term) and VII (pension fund management) (Schedule 1, Part II of the RAO).

<http://www.legislation.gov.uk/ukxi/2001/544/schedule/1/made>

Assets are typically provided from UK Registered Pension Schemes under the Finance Act 2004 (or those deemed registered under Schedule 36 of the Finance Act 2004).

<http://www.legislation.gov.uk/ukpga/2004/12/part/4>

<http://www.legislation.gov.uk/ukpga/2004/12/schedule/36>

## OPINION

# Exemption from the clearing obligation for pension schemes

Notification Reference: 6\_Pension\_Notification\_FCA\_2b-A

## 1 Legal Basis

1. According to Article 89(2) of Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories<sup>1</sup> (EMIR), before taking its decision related to the pension scheme exemption from the clearing obligation, the relevant competent authority needs to obtain the opinion of the European Securities and Markets Authority (ESMA) that needs to consult the European Insurance and Occupational Pensions Authority (EIOPA).
2. ESMA is adopting the following opinion on (1) the compliance of the type of entities or the type of arrangements with Article 2(10)(d) and (2) the reason why an exemption is justified due to difficulties in meeting the variation margin requirements in accordance with Article 89(2) of EMIR.
3. Pursuant to Article 44(1) of Regulation (EU) No 1095/2010<sup>2</sup> this opinion has been adopted by the Board of Supervisors.

## 2 Background and Procedure

4. EMIR provides for the obligation of counterparties to clear certain classes of OTC derivative contracts. Some pension scheme arrangements or entities benefit automatically from a temporary exemption from that obligation for their OTC derivative contracts that reduce investment risks directly related to their solvency whereas other

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<sup>1</sup> OJ L 201, 27.7.2012, p. 1.

<sup>2</sup> OJ L 331, 24.11.2010, p. 84.



pension scheme arrangements or entities need to obtain a prior authorisation before availing from the exemption (in accordance with Article 89(2) of EMIR).

5. The pension scheme arrangements which have to apply for an exemption under Article 89(2) of EMIR are (1) occupational retirement provision businesses of life insurance undertakings covered by Directive 2002/83/EC, and (2) other authorised and supervised entities, or arrangements, operating on a national basis, recognised under national law and whose primary purpose is to provide retirement benefits. The opinion of ESMA is required before the relevant competent authority decides on an exemption for these two categories of pension scheme arrangements.
6. After receiving the request for exemption, the relevant competent authority has to notify ESMA and EIOPA thereof and ESMA has to provide its opinion within 30 calendar days of receipt of the notification.
7. Upon receipt of ESMA's opinion, the competent authority has 10 working days to adopt and communicate its decision to the pension scheme arrangement and to ESMA.
8. In the present case, the Financial Conduct Authority (FCA) has notified ESMA on 31 December 2015 that the following Arrangement Type has requested to benefit from the exemption from the clearing obligation in application of Article 2(10)(d):

*A retirement income life insurance arrangement covered by Directive 2002/83/EC, the primary purpose of which is to provide retirement benefits by payment of income to customers, which does not fall within Article 2(10)(c) of EMIR and which meets the requirements set out in Article 2(10)(d) of EMIR, hereinafter “the Arrangement Type”.*

9. The Arrangement Type is identified in the EIOPA database of pension plans and products in EEA<sup>3</sup> under the code: UK1 (subgroup identified in the database under code: UK1.1 Trust-based DB schemes, UK1.2 Trust-based DC schemes, UK1.3 Trust-based Hybrid schemes).
10. EIOPA has replied to the consultation on the notification and has provided its response to ESMA on 18 January 2016.

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<sup>3</sup> <https://eiopa.europa.eu/regulation-supervision/pensions/database-of-pension-plans-and-products-in-the-eea>



### 3 ESMA Opinion

11. In order to prepare this opinion, ESMA has relied on information provided by the national competent authority in its notification and provided by EIOPA in its consultation.

#### ***On the compliance of the Arrangement Type with Article 2(10)(d)***

12. The national competent authority has confirmed that the Arrangement Type does not fall within the definition of Article 2(10)(a), (b) or (c) of EMIR and that it is authorised and supervised by the Financial Conduct Authority and the Prudential Regulation Authority.

13. The national competent authority has confirmed that the Arrangement Type operates on a national basis i.e. that arrangements are providing services mainly in the territory of one member state whereas investments may be performed on a cross border basis, is recognised under national law and has for primary purpose to provide retirement benefits.<sup>1</sup>

14. The national competent authority is of the opinion that the Arrangement Type complies with Article 2(10)(d) of EMIR. EIOPA shares this view.

15. In view of the above and on the basis of the information provided, ESMA is of the opinion that the Arrangement Type complies with Article 2(10)(d).

#### ***On the reason why an exemption is justified due to difficulties in meeting the variation margin requirements***

16. The national competent authority is of the opinion that the Arrangement Type would encounter difficulties in meeting variation margin requirements for centrally cleared transactions due to limited holdings of cash within the Arrangement Type, high cost (e.g. lower investment returns or transaction costs) and risk of inefficiencies as a result of converting assets into cash. EIOPA shares this view.

17. In view of the above and on the basis of the information provided, ESMA is of the opinion that the reasons why an exemption is justified due to difficulties in meeting variation margin requirements for centrally cleared transactions for the Arrangement Type are established.

This Opinion is addressed to:

Financial Conduct Authority  
25 The North Colonnade, Canary Wharf  
London E14 5HS  
United Kingdom



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<sup>i</sup> Legal basis of operation for authorised and supervised arrangements:

Section 22 of Financial Services and Markets Act 2000 requires that any entity or arrangement carrying out specified activity needs to be authorised.

<http://www.legislation.gov.uk/ukxi/2001/544/article/4/made>

Specified activities, which need to be authorised, are listed in Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO). FCA and PRA jointly authorise pension schemes to undertake long-term insurance contracts. This could include Classes I (life and annuity), III (linked long-term) and VII (pension fund management) (Schedule 1, Part II of the RAO).

<http://www.legislation.gov.uk/ukxi/2001/544/schedule/1/made>

Assets are typically provided from UK Registered Pension Schemes under the Finance Act 2004 (or those deemed registered under Schedule 36 of the Finance Act 2004).

<http://www.legislation.gov.uk/ukpga/2004/12/part/4>

<http://www.legislation.gov.uk/ukpga/2004/12/schedule/36>

Payment of pension benefits as defined in s.165 and Schedule 28 of the Finance Act 2004 which covers the pay out of pension retirement income via a lifetime annuity, income withdrawal scheme or pension scheme

<http://www.legislation.gov.uk/ukpga/2004/12/section/165>

<http://www.legislation.gov.uk/ukpga/2004/12/schedule/28>

## OPINION

# Exemption from the clearing obligation for pension schemes

Notification Reference: 7\_Pension\_Notification\_FCA\_2b-E

## 1 Legal Basis

1. According to Article 89(2) of Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories<sup>1</sup> (EMIR), before taking its decision related to the pension scheme exemption from the clearing obligation, the relevant competent authority needs to obtain the opinion of the European Securities and Markets Authority (ESMA) that needs to consult the European Insurance and Occupational Pensions Authority (EIOPA).
2. ESMA is adopting the following opinion on (1) the compliance of the type of entities or the type of arrangements with Article 2(10)(d) and (2) the reason why an exemption is justified due to difficulties in meeting the variation margin requirements in accordance with Article 89(2) of EMIR.
3. Pursuant to Article 44(1) of Regulation (EU) No 1095/2010<sup>2</sup> this opinion has been adopted by the Board of Supervisors.

## 2 Background and Procedure

4. EMIR provides for the obligation of counterparties to clear certain classes of OTC derivative contracts. Some pension scheme arrangements or entities benefit automatically from a temporary exemption from that obligation for their OTC derivative contracts that reduce investment risks directly related to their solvency whereas other

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<sup>1</sup> OJ L 201, 27.7.2012, p. 1.

<sup>2</sup> OJ L 331, 24.11.2010, p. 84.



pension scheme arrangements or entities need to obtain a prior authorisation before availing from the exemption (in accordance with Article 89(2) of EMIR).

5. The pension scheme arrangements which have to apply for an exemption under Article 89(2) of EMIR are (1) occupational retirement provision businesses of life insurance undertakings covered by Directive 2002/83/EC, and (2) other authorised and supervised entities, or arrangements, operating on a national basis, recognised under national law and whose primary purpose is to provide retirement benefits. The opinion of ESMA is required before the relevant competent authority decides on an exemption for these two categories of pension scheme arrangements.
6. After receiving the request for exemption, the relevant competent authority has to notify ESMA and EIOPA thereof and ESMA has to provide its opinion within 30 calendar days of receipt of the notification.
7. Upon receipt of ESMA's opinion, the competent authority has 10 working days to adopt and communicate its decision to the pension scheme arrangement and to ESMA.
8. In the present case, the Financial Conduct Authority (FCA) has notified ESMA on 31 December 2015 that the following Entity Type has requested to benefit from the exemption from the clearing obligation in application of Article 2(10)(d):

*A retirement income life insurance entity covered by Directive 2002/83/EC, the primary purpose of which is to provide retirement benefits by payment of income to customers, which does not fall within Article 2(10)(c) of EMIR and which meets the requirements set out in Article 2(10)(d) of EMIR, hereinafter “the Entity Type”.*

9. The Entity Type is identified in the EIOPA database of pension plans and products in EEA<sup>3</sup> under the code: UK1 (subgroup identified in the database under code: UK1.1 Trust-based DB schemes, UK1.2 Trust-based DC schemes, UK1.3 Trust-based Hybrid schemes).
10. EIOPA has replied to the consultation on the notification and has provided its response to ESMA on 18 January 2016.

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<sup>3</sup> <https://eiopa.europa.eu/regulation-supervision/pensions/database-of-pension-plans-and-products-in-the-eea>



### 3 ESMA Opinion

11. In order to prepare this opinion, ESMA has relied on information provided by the national competent authority in its notification and provided by EIOPA in its consultation.

#### ***On the compliance of the Entity Type with Article 2(10)(d)***

12. The national competent authority has confirmed that the Entity Type does not fall within the definition of Article 2(10)(a), (b) or (c) of EMIR and that it is authorised and supervised by the Financial Conduct Authority and the Prudential Regulation Authority.

13. The national competent authority has confirmed that the Entity Type operates on a national basis i.e. that services are provided on a national basis whereas investments may be performed on a cross border basis, is recognised under national law and has for primary purpose to provide retirements benefits.<sup>i</sup>

14. The national competent authority is of the opinion that the Entity Type complies with Article 2(10)(d) of EMIR. EIOPA shares this view.

15. In view of the above and on the basis of the information provided, ESMA is of the opinion that the Entity Type complies with Article 2(10)(d).

#### ***On the reason why an exemption is justified due to difficulties in meeting the variation margin requirements***

16. The national competent authority is of the opinion that the Entity Type would encounter difficulties in meeting variation margin requirements for centrally cleared transactions due to limited holdings of cash within the Entity Type, high cost (e.g. lower investment returns or transaction costs) and risk of inefficiencies as a result of converting assets into cash. EIOPA shares this view.

17. In view of the above and on the basis of the information provided, ESMA is of the opinion that the reasons why an exemption is justified due to difficulties in meeting variation margin requirements for centrally cleared transactions for the Entity Type are established.

This Opinion is addressed to:

Financial Conduct Authority  
25 The North Colonnade, Canary Wharf  
London E14 5HS  
United Kingdom



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<sup>i</sup> Legal basis of operation for authorised and supervised entities:

Section 22 of Financial Services and Markets Act 2000 requires that any entity or arrangement carrying out specified activity needs to be authorised.

<http://www.legislation.gov.uk/ukksi/2001/544/article/4/made>

Specified activities, which need to be authorised, are listed in Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO). FCA and PRA jointly authorise pension schemes to undertake long-term insurance contracts. This could include Classes I (life and annuity), III (linked long-term) and VII (pension fund management) (Schedule 1, Part II of the RAO).

<http://www.legislation.gov.uk/ukksi/2001/544/schedule/1/made>

Assets are typically provided from UK Registered Pension Schemes under the Finance Act 2004 (or those deemed registered under Schedule 36 of the Finance Act 2004).

<http://www.legislation.gov.uk/ukpga/2004/12/part/4>

<http://www.legislation.gov.uk/ukpga/2004/12/schedule/36>

Payment of pension benefits as defined in s.165 and Schedule 28 of the Finance Act 2004 which covers the pay out of pension retirement income via a lifetime annuity, income withdrawal scheme or pension scheme

<http://www.legislation.gov.uk/ukpga/2004/12/section/165>

<http://www.legislation.gov.uk/ukpga/2004/12/schedule/28>

## OPINION

# Exemption from the clearing obligation for pension schemes

Notification Reference: 8\_Pension\_Notification\_FCA\_2c-A

## 1 Legal Basis

1. According to Article 89(2) of Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories<sup>1</sup> (EMIR), before taking its decision related to the pension scheme exemption from the clearing obligation, the relevant competent authority needs to obtain the opinion of the European Securities and Markets Authority (ESMA) that needs to consult the European Insurance and Occupational Pensions Authority (EIOPA).
2. ESMA is adopting the following opinion on (1) the compliance of the type of entities or the type of arrangements with Article 2(10)(d) and (2) the reason why an exemption is justified due to difficulties in meeting the variation margin requirements in accordance with Article 89(2) of EMIR.
3. Pursuant to Article 44(1) of Regulation (EU) No 1095/2010<sup>2</sup> this opinion has been adopted by the Board of Supervisors.

## 2 Background and Procedure

4. EMIR provides for the obligation of counterparties to clear certain classes of OTC derivative contracts. Some pension scheme arrangements or entities benefit automatically from a temporary exemption from that obligation for their OTC derivative contracts that reduce investment risks directly related to their solvency whereas other

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<sup>1</sup> OJ L 201, 27.7.2012, p. 1.

<sup>2</sup> OJ L 331, 24.11.2010, p. 84.



pension scheme arrangements or entities need to obtain a prior authorisation before availing from the exemption (in accordance with Article 89(2) of EMIR).

5. The pension scheme arrangements which have to apply for an exemption under Article 89(2) of EMIR are (1) occupational retirement provision businesses of life insurance undertakings covered by Directive 2002/83/EC, and (2) other authorised and supervised entities, or arrangements, operating on a national basis, recognised under national law and whose primary purpose is to provide retirement benefits. The opinion of ESMA is required before the relevant competent authority decides on an exemption for these two categories of pension scheme arrangements.
6. After receiving the request for exemption, the relevant competent authority has to notify ESMA and EIOPA thereof and ESMA has to provide its opinion within 30 calendar days of receipt of the notification.
7. Upon receipt of ESMA's opinion, the competent authority has 10 working days to adopt and communicate its decision to the pension scheme arrangement and to ESMA.
8. In the present case, the Financial Conduct Authority (FCA) has notified ESMA on 31 December 2015 that the following Arrangement Type has requested to benefit from the exemption from the clearing obligation in application of Article 2(10)(d):

*A buyout life insurance arrangement covered by Directive 2002/83/EC, the primary purpose of which is to provide retirement benefits by payment of income to customers, which does not fall within Article 2(10)(c) of EMIR and which meets the requirements set out in Article 2(10)(d) of EMIR, hereinafter “the Arrangement Type”.*

9. The Arrangement Type is identified in the EIOPA database of pension plans and products in EEA<sup>3</sup> under the code: UK1 (subgroup identified in the database under code: UK1.1 Trust-based DB schemes).
10. EIOPA has replied to the consultation on the notification and has provided its response to ESMA on 18 January 2016.

### **3 ESMA Opinion**

11. In order to prepare this opinion, ESMA has relied on information provided by the national competent authority in its notification and provided by EIOPA in its consultation.

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<sup>3</sup> <https://eiopa.europa.eu/regulation-supervision/pensions/database-of-pension-plans-and-products-in-the-eea>



***On the compliance of the Arrangement Type with Article 2(10)(d)***

12. The national competent authority has confirmed that the Arrangement Type does not fall within the definition of Article 2(10)(a), (b) or (c) of EMIR and that it is authorised and supervised by the Financial Conduct Authority and the Prudential Regulation Authority.
13. The national competent authority has confirmed that the Arrangement Type operates on a national basis i.e. that arrangements are providing services mainly in the territory of one member state whereas investments may be performed on a cross border basis, is recognised under national law and has for primary purpose to provide retirement benefits.<sup>i</sup>
14. The national competent authority is of the opinion that the Arrangement Type complies with Article 2(10)(d) of EMIR. EIOPA shares this view.
15. In view of the above and on the basis of the information provided, ESMA is of the opinion that the Arrangement Type complies with Article 2(10)(d).

***On the reason why an exemption is justified due to difficulties in meeting the variation margin requirements***

16. The national competent authority is of the opinion that the Arrangement Type would encounter difficulties in meeting variation margin requirements for centrally cleared transactions due to limited holdings of cash within the Arrangement Type, high cost (e.g. lower investment returns or transaction costs) and risk of inefficiencies as a result of converting assets into cash. EIOPA shares this view.
17. In view of the above and on the basis of the information provided, ESMA is of the opinion that the reasons why an exemption is justified due to difficulties in meeting variation margin requirements for centrally cleared transactions for the Arrangement Type are established.

This Opinion is addressed to:

Financial Conduct Authority  
25 The North Colonnade, Canary Wharf  
London E14 5HS  
United Kingdom

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<sup>i</sup> Legal basis of operation for authorised and supervised arrangements:



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Section 22 of Financial Services and Markets Act 2000 requires that any entity or arrangement carrying out specified activity needs to be authorised.

<http://www.legislation.gov.uk/ukxi/2001/544/article/4/made>

Specified activities, which need to be authorised, are listed in Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO). FCA and PRA jointly authorise pension schemes to undertake long-term insurance contracts. This could include Classes I (life and annuity), III (linked long-term) and VII (pension fund management) (Schedule 1, Part II of the RAO).

<http://www.legislation.gov.uk/ukxi/2001/544/schedule/1/made>

Assets are typically provided from UK Registered Pension Schemes under the Finance Act 2004 (or those deemed registered under Schedule 36 of the Finance Act 2004).

<http://www.legislation.gov.uk/ukpga/2004/12/part/4>

<http://www.legislation.gov.uk/ukpga/2004/12/schedule/36>

Payment of pension benefits as defined in s.165 and Schedule 28 of the Finance Act 2004 which covers the pay out of pension retirement income via a lifetime annuity, income withdrawal scheme or pension scheme

<http://www.legislation.gov.uk/ukpga/2004/12/section/165>

<http://www.legislation.gov.uk/ukpga/2004/12/schedule/28>

## OPINION

# Exemption from the clearing obligation for pension schemes

Notification Reference: 9\_Pension\_Notification\_FCA\_2c-E

## 1 Legal Basis

1. According to Article 89(2) of Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories<sup>1</sup> (EMIR), before taking its decision related to the pension scheme exemption from the clearing obligation, the relevant competent authority needs to obtain the opinion of the European Securities and Markets Authority (ESMA) that needs to consult the European Insurance and Occupational Pensions Authority (EIOPA).
2. ESMA is adopting the following opinion on (1) the compliance of the type of entities or the type of arrangements with Article 2(10)(d) and (2) the reason why an exemption is justified due to difficulties in meeting the variation margin requirements in accordance with Article 89(2) of EMIR.
3. Pursuant to Article 44(1) of Regulation (EU) No 1095/2010<sup>2</sup> this opinion has been adopted by the Board of Supervisors.

## 2 Background and Procedure

4. EMIR provides for the obligation of counterparties to clear certain classes of OTC derivative contracts. Some pension scheme arrangements or entities benefit automatically from a temporary exemption from that obligation for their OTC derivative contracts that reduce investment risks directly related to their solvency whereas other

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<sup>1</sup> OJ L 201, 27.7.2012, p. 1.

<sup>2</sup> OJ L 331, 24.11.2010, p. 84.



pension scheme arrangements or entities need to obtain a prior authorisation before availing from the exemption (in accordance with Article 89(2) of EMIR).

5. The pension scheme arrangements which have to apply for an exemption under Article 89(2) of EMIR are (1) occupational retirement provision businesses of life insurance undertakings covered by Directive 2002/83/EC, and (2) other authorised and supervised entities, or arrangements, operating on a national basis, recognised under national law and whose primary purpose is to provide retirement benefits. The opinion of ESMA is required before the relevant competent authority decides on an exemption for these two categories of pension scheme arrangements.
6. After receiving the request for exemption, the relevant competent authority has to notify ESMA and EIOPA thereof and ESMA has to provide its opinion within 30 calendar days of receipt of the notification.
7. Upon receipt of ESMA's opinion, the competent authority has 10 working days to adopt and communicate its decision to the pension scheme arrangement and to ESMA.
8. In the present case, the Financial Conduct Authority (FCA) has notified ESMA on 31 December 2015 that the following Entity Type has requested to benefit from the exemption from the clearing obligation in application of Article 2(10)(d):

*A buyout life insurance entity covered by Directive 2002/83/EC, the primary purpose of which is to provide retirement benefits by payment of income to customers, which does not fall within Article 2(10)(c) of EMIR and which meets the requirements set out in Article 2(10)(d) of EMIR, hereinafter “the Entity Type”.*

9. The Entity Type is identified in the EIOPA database of pension plans and products in EEA<sup>3</sup> under the code: UK1 (subgroup identified in the database under code: UK1.1 Trust-based DB schemes).
10. EIOPA has replied to the consultation on the notification and has provided its response to ESMA on 18 January 2016.

### **3 ESMA Opinion**

11. In order to prepare this opinion, ESMA has relied on information provided by the national competent authority in its notification and provided by EIOPA in its consultation.

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<sup>3</sup> <https://eiopa.europa.eu/regulation-supervision/pensions/database-of-pension-plans-and-products-in-the-eea>



***On the compliance of the Entity Type with Article 2(10)(d)***

12. The national competent authority has confirmed that the Entity Type does not fall within the definition of Article 2(10)(a), (b) or (c) of EMIR and that it is authorised and supervised by the Financial Conduct Authority and the Prudential Regulation Authority.
13. The national competent authority has confirmed that the Entity Type operates on a national basis i.e. that services are provided on a national basis whereas investments may be performed on a cross border basis, is recognised under national law and has for primary purpose to provide retirements benefits.<sup>i</sup>
14. The national competent authority is of the opinion that the Entity Type complies with Article 2(10)(d) of EMIR. EIOPA shares this view.
15. In view of the above and on the basis of the information provided, ESMA is of the opinion that the Entity Type complies with Article 2(10)(d).

***On the reason why an exemption is justified due to difficulties in meeting the variation margin requirements***

16. The national competent authority is of the opinion that the Entity Type would encounter difficulties in meeting variation margin requirements for centrally cleared transactions due to limited holdings of cash within the Entity Type, high cost (e.g. lower investment returns or transaction costs) and risk of inefficiencies as a result of converting assets into cash. EIOPA shares this view.
17. In view of the above and on the basis of the information provided, ESMA is of the opinion that the reasons why an exemption is justified due to difficulties in meeting variation margin requirements for centrally cleared transactions for the Entity Type are established.

This Opinion is addressed to:

Financial Conduct Authority  
25 The North Colonnade, Canary Wharf  
London E14 5HS  
United Kingdom

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<sup>i</sup> Legal basis of operation for authorised and supervised entities:  
Section 22 of Financial Services and Markets Act 2000 requires that any entity or arrangement carrying out specified activity needs to be authorised.  
<http://www.legislation.gov.uk/ukksi/2001/544/article/4/made>



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Specified activities, which need to be authorised, are listed in Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO). FCA and PRA jointly authorise pension schemes to undertake long-term insurance contracts. This could include Classes I (life and annuity), III (linked long-term) and VII (pension fund management) (Schedule 1, Part II of the RAO).

<http://www.legislation.gov.uk/uksi/2001/544/schedule/1/made>

Assets are typically provided from UK Registered Pension Schemes under the Finance Act 2004 (or those deemed registered under Schedule 36 of the Finance Act 2004).

<http://www.legislation.gov.uk/ukpga/2004/12/part/4>

<http://www.legislation.gov.uk/ukpga/2004/12/schedule/36>

Payment of pension benefits as defined in s.165 and Schedule 28 of the Finance Act 2004 which covers the pay out of pension retirement income via a lifetime annuity, income withdrawal scheme or pension scheme

<http://www.legislation.gov.uk/ukpga/2004/12/section/165>

<http://www.legislation.gov.uk/ukpga/2004/12/schedule/28>

## OPINION

# Exemption from the clearing obligation for pension schemes

Notification Reference: 10\_Pension\_Notification\_FCA\_3-A

## 1 Legal Basis

1. According to Article 89(2) of Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories<sup>1</sup> (EMIR), before taking its decision related to the pension scheme exemption from the clearing obligation, the relevant competent authority needs to obtain the opinion of the European Securities and Markets Authority (ESMA) that needs to consult the European Insurance and Occupational Pensions Authority (EIOPA).
2. ESMA is adopting the following opinion on (1) the compliance of the type of entities or the type of arrangements with Article 2(10)(d) and (2) the reason why an exemption is justified due to difficulties in meeting the variation margin requirements in accordance with Article 89(2) of EMIR.
3. Pursuant to Article 44(1) of Regulation (EU) No 1095/2010<sup>2</sup> this opinion has been adopted by the Board of Supervisors.

## 2 Background and Procedure

4. EMIR provides for the obligation of counterparties to clear certain classes of OTC derivative contracts. Some pension scheme arrangements or entities benefit automatically from a temporary exemption from that obligation for their OTC derivative contracts that reduce investment risks directly related to their solvency whereas other

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<sup>1</sup> OJ L 201, 27.7.2012, p. 1.

<sup>2</sup> OJ L 331, 24.11.2010, p. 84.



pension scheme arrangements or entities need to obtain a prior authorisation before availing from the exemption (in accordance with Article 89(2) of EMIR).

5. The pension scheme arrangements which have to apply for an exemption under Article 89(2) of EMIR are (1) occupational retirement provision businesses of life insurance undertakings covered by Directive 2002/83/EC, and (2) other authorised and supervised entities, or arrangements, operating on a national basis, recognised under national law and whose primary purpose is to provide retirement benefits. The opinion of ESMA is required before the relevant competent authority decides on an exemption for these two categories of pension scheme arrangements.
6. After receiving the request for exemption, the relevant competent authority has to notify ESMA and EIOPA thereof and ESMA has to provide its opinion within 30 calendar days of receipt of the notification.
7. Upon receipt of ESMA's opinion, the competent authority has 10 working days to adopt and communicate its decision to the pension scheme arrangement and to ESMA.
8. In the present case, the Financial Conduct Authority (FCA) has notified ESMA on 31 December 2015 that the following Arrangement Type has requested to benefit from the exemption from the clearing obligation in application of Article 2(10)(d):  
  
*An authorised pooled fund, established in the UK as a sub-fund without distinct legal personality, designed for pooling assets related to the provision of retirement benefits (i.e. the assets of pension scheme arrangements within Article 2(10) EMIR), where all investors are pension schemes; which is not within Article 2(10)(a) of EMIR and which meets the requirements set out in Article 2(10)(d) of EMIR, hereinafter "the Arrangement Type".*
9. The Arrangement Type is identified in the EIOPA database of pension plans and products in EEA<sup>3</sup> under the code: UK1 (subgroup identified in the database under code: UK1.1 Trust-based DB schemes).
10. EIOPA has replied to the consultation on the notification and has provided its response to ESMA on 18 January 2016.

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<sup>3</sup> <https://eiopa.europa.eu/regulation-supervision/pensions/database-of-pension-plans-and-products-in-the-eea>



### 3 ESMA Opinion

11. In order to prepare this opinion, ESMA has relied on information provided by the national competent authority in its notification and provided by EIOPA in its consultation.

#### ***On the compliance of the Arrangement Type with Article 2(10)(d)***

12. The national competent authority has confirmed that the Arrangement Type does not fall within the definition of Article 2(10)(a), (b) or (c) of EMIR and that it is authorised and supervised by the Financial Conduct Authority and the Prudential Regulation Authority.

13. The national competent authority has confirmed that the Arrangement Type operates on a national basis i.e. that arrangements are providing services mainly in the territory of one member state whereas investments may be performed on a cross border basis, is recognised under national law and has for primary purpose to provide retirement benefits.<sup>1</sup>

14. The national competent authority is of the opinion that the Arrangement Type complies with Article 2(10)(d) of EMIR. EIOPA shares this view.

15. In view of the above and on the basis of the information provided, ESMA is of the opinion that the Arrangement Type complies with Article 2(10)(d).

#### ***On the reason why an exemption is justified due to difficulties in meeting the variation margin requirements***

16. The national competent authority is of the opinion that the Arrangement Type would encounter difficulties in meeting variation margin requirements for centrally cleared transactions due to limited holdings of cash within the Arrangement Type, high cost (e.g. lower investment returns or transaction costs) and risk of inefficiencies as a result of converting assets into cash. EIOPA shares this view.

17. In view of the above and on the basis of the information provided, ESMA is of the opinion that the reasons why an exemption is justified due to difficulties in meeting variation margin requirements for centrally cleared transactions for the Arrangement Type are established.

This Opinion is addressed to:

Financial Conduct Authority  
25 The North Colonnade, Canary Wharf  
London E14 5HS  
United Kingdom



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<sup>i</sup> Legal basis of operation for arrangements:

The arrangements are subfunds of entities which may be umbrella funds, which may include UCITS, AIF (including UK Authorised Unit Trust, authorised under section 242 and 243 of Financial Services and Markets Act 2000, and Open Ended Investment Companies (OEICs) authorised under Open Ended Investment Companies Regulations 2001) or other form of investment fund authorised within EU/EEA.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1985L0611:20080320:EN:PDF>

Links are provided below to the legislation creating the regulatory framework for UK Authorised Unit Trusts and Open-Ended Investment Companies.

<http://www.legislation.gov.uk/ukpga/2000/8/section/242> (unit trust)

<http://www.legislation.gov.uk/ukpga/2000/8/section/243> (unit trust)

<http://www.legislation.gov.uk/uksi/2001/1228/schedule/7/made> (OEIC)

## OPINION

# Exemption from the clearing obligation for pension schemes

Notification Reference: 11\_Pension\_Notification\_FCA\_3-E

## 1 Legal Basis

1. According to Article 89(2) of Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories<sup>1</sup> (EMIR), before taking its decision related to the pension scheme exemption from the clearing obligation, the relevant competent authority needs to obtain the opinion of the European Securities and Markets Authority (ESMA) that needs to consult the European Insurance and Occupational Pensions Authority (EIOPA).
2. ESMA is adopting the following opinion on (1) the compliance of the type of entities or the type of arrangements with Article 2(10)(d) and (2) the reason why an exemption is justified due to difficulties in meeting the variation margin requirements in accordance with Article 89(2) of EMIR.
3. Pursuant to Article 44(1) of Regulation (EU) No 1095/2010<sup>2</sup> this opinion has been adopted by the Board of Supervisors.

## 2 Background and Procedure

4. EMIR provides for the obligation of counterparties to clear certain classes of OTC derivative contracts. Some pension scheme arrangements or entities benefit automatically from a temporary exemption from that obligation for their OTC derivative contracts that reduce investment risks directly related to their solvency whereas other

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<sup>1</sup> OJ L 201, 27.7.2012, p. 1.

<sup>2</sup> OJ L 331, 24.11.2010, p. 84.



pension scheme arrangements or entities need to obtain a prior authorisation before availing from the exemption (in accordance with Article 89(2) of EMIR).

5. The pension scheme arrangements which have to apply for an exemption under Article 89(2) of EMIR are (1) occupational retirement provision businesses of life insurance undertakings covered by Directive 2002/83/EC, and (2) other authorised and supervised entities, or arrangements, operating on a national basis, recognised under national law and whose primary purpose is to provide retirement benefits. The opinion of ESMA is required before the relevant competent authority decides on an exemption for these two categories of pension scheme arrangements.
6. After receiving the request for exemption, the relevant competent authority has to notify ESMA and EIOPA thereof and ESMA has to provide its opinion within 30 calendar days of receipt of the notification.
7. Upon receipt of ESMA's opinion, the competent authority has 10 working days to adopt and communicate its decision to the pension scheme arrangement and to ESMA.
8. In the present case, the Financial Conduct Authority (FCA) has notified ESMA on 31 December 2015 that the following Entity Type has requested to benefit from the exemption from the clearing obligation in application of Article 2(10)(d):

*An authorised pooled fund, established in the UK as a separate legal entity, designed for pooling assets related to the provision of retirement benefits (i.e. the assets of pension scheme arrangements within Article 2(10) EMIR), where all investors are pension schemes; which is not within Article 2(10)(a) of EMIR and which meets the requirements set out in Article 2(10)(d) of EMIR, hereinafter “the Entity Type”.*

9. The Entity Type is identified in the EIOPA database of pension plans and products in EEA<sup>3</sup> under the code: UK1 (subgroup identified in the database under code: UK1.1 Trust-based DB schemes).
10. EIOPA has replied to the consultation on the notification and has provided its response to ESMA on 18 January 2016.

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<sup>3</sup> <https://eiopa.europa.eu/regulation-supervision/pensions/database-of-pension-plans-and-products-in-the-eea>



### 3 ESMA Opinion

11. In order to prepare this opinion, ESMA has relied on information provided by the national competent authority in its notification and provided by EIOPA in its consultation.

#### ***On the compliance of the Entity Type with Article 2(10)(d)***

12. The national competent authority has confirmed that the Entity Type does not fall within the definition of Article 2(10)(a), (b) or (c) of EMIR and that it is authorised and supervised by the Financial Conduct Authority.

13. The national competent authority has confirmed that the Entity Type operates on a national basis i.e. that services are provided on a national basis whereas investments may be performed on a cross border basis, is recognised under national law and has for primary purpose to provide retirements benefits.<sup>i</sup>

14. The national competent authority is of the opinion that the Entity Type complies with Article 2(10)(d) of EMIR. EIOPA shares this view.

15. In view of the above and on the basis of the information provided, ESMA is of the opinion that the Entity Type complies with Article 2(10)(d).

#### ***On the reason why an exemption is justified due to difficulties in meeting the variation margin requirements***

16. The national competent authority is of the opinion that the Entity Type would encounter difficulties in meeting variation margin requirements for centrally cleared transactions due to limited holdings of cash within the Entity Type, high cost (e.g. lower investment returns or transaction costs) and risk of inefficiencies as a result of converting assets into cash. EIOPA shares this view.

17. In view of the above and on the basis of the information provided, ESMA is of the opinion that the reasons why an exemption is justified due to difficulties in meeting variation margin requirements for centrally cleared transactions for the Entity Type are established.

This Opinion is addressed to:

Financial Conduct Authority  
25 The North Colonnade, Canary Wharf  
London E14 5HS  
United Kingdom



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<sup>i</sup> Legal basis of operation for authorised and supervised entities: Fund is a UCITS, AIF (including UK Authorised Unit Trust, authorised under section 242 and 243 of Financial Services and Markets Act 2000, and Open Ended Investment Companies (OEICs) authorised under Open Ended Investment Companies Regulations 2001) or other form of investment fund authorised within EU/EEA.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1985L0611:20080320:EN:PDF>

Links are provided below to the legislation creating the regulatory framework for UK Authorised Unit Trusts and Open-Ended Investment Companies.

<http://www.legislation.gov.uk/ukpga/2000/8/section/242> (unit trust)

<http://www.legislation.gov.uk/ukpga/2000/8/section/243> (unit trust)

<http://www.legislation.gov.uk/uksi/2001/1228/schedule/7/made> (OEIC)

## OPINION

# Exemption from the clearing obligation for pension schemes

Notification Reference: 12\_Pension\_Notification\_FCA\_4-A

## 1 Legal Basis

1. According to Article 89(2) of Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories<sup>1</sup> (EMIR), before taking its decision related to the pension scheme exemption from the clearing obligation, the relevant competent authority needs to obtain the opinion of the European Securities and Markets Authority (ESMA) that needs to consult the European Insurance and Occupational Pensions Authority (EIOPA).
2. ESMA is adopting the following opinion on (1) the compliance of the type of entities or the type of arrangements with Article 2(10)(d) and (2) the reason why an exemption is justified due to difficulties in meeting the variation margin requirements in accordance with Article 89(2) of EMIR.
3. Pursuant to Article 44(1) of Regulation (EU) No 1095/2010<sup>2</sup> this opinion has been adopted by the Board of Supervisors.

## 2 Background and Procedure

4. EMIR provides for the obligation of counterparties to clear certain classes of OTC derivative contracts. Some pension scheme arrangements or entities benefit automatically from a temporary exemption from that obligation for their OTC derivative contracts that reduce investment risks directly related to their solvency whereas other

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<sup>1</sup> OJ L 201, 27.7.2012, p. 1.

<sup>2</sup> OJ L 331, 24.11.2010, p. 84.



pension scheme arrangements or entities need to obtain a prior authorisation before availing from the exemption (in accordance with Article 89(2) of EMIR).

5. The pension scheme arrangements which have to apply for an exemption under Article 89(2) of EMIR are (1) occupational retirement provision businesses of life insurance undertakings covered by Directive 2002/83/EC, and (2) other authorised and supervised entities, or arrangements, operating on a national basis, recognised under national law and whose primary purpose is to provide retirement benefits. The opinion of ESMA is required before the relevant competent authority decides on an exemption for these two categories of pension scheme arrangements.
6. After receiving the request for exemption, the relevant competent authority has to notify ESMA and EIOPA thereof and ESMA has to provide its opinion within 30 calendar days of receipt of the notification.
7. Upon receipt of ESMA's opinion, the competent authority has 10 working days to adopt and communicate its decision to the pension scheme arrangement and to ESMA.
8. In the present case, the Financial Conduct Authority (FCA) has notified ESMA on 31 December 2015 that the following Arrangement Type has requested to benefit from the exemption from the clearing obligation in application of Article 2(10)(d):  
  
*A contractually based pooled fund established in the UK, designed for pooling assets related to the provision of retirement benefits (i.e. the assets of pension scheme arrangements within Article 2(10) EMIR) or sub-fund of such a fund, where all investors are pension schemes; which in either case is not within Article 2(10)(a) of EMIR and which meets the requirements set out in Article 2(10)(d) of EMIR, hereinafter "the Arrangement Type".*
9. The Arrangement Type is identified in the EIOPA database of pension plans and products in EEA<sup>3</sup> under the code: UK1 (subgroup identified in the database under code: UK1.1 Trust-based DB schemes).
10. EIOPA has replied to the consultation on the notification and has provided its response to ESMA on 18 January 2016.

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<sup>3</sup> <https://eiopa.europa.eu/regulation-supervision/pensions/database-of-pension-plans-and-products-in-the-eea>



### 3 ESMA Opinion

11. In order to prepare this opinion, ESMA has relied on information provided by the national competent authority in its notification and provided by EIOPA in its consultation.

#### ***On the compliance of the Arrangement Type with Article 2(10)(d)***

12. The national competent authority has confirmed that the Arrangement Type does not fall within the definition of Article 2(10)(a), (b) or (c) of EMIR and that it is authorised and supervised by the Financial Conduct Authority and the Prudential Regulation Authority.

13. The national competent authority has confirmed that the Arrangement Type operates on a national basis i.e. that arrangements are providing services mainly in the territory of one member state whereas investments may be performed on a cross border basis, is recognised under national law and has for primary purpose to provide retirement benefits.<sup>1</sup>

14. The national competent authority is of the opinion that the Arrangement Type complies with Article 2(10)(d) of EMIR. EIOPA shares this view.

15. In view of the above and on the basis of the information provided, ESMA is of the opinion that the Arrangement Type complies with Article 2(10)(d).

#### ***On the reason why an exemption is justified due to difficulties in meeting the variation margin requirements***

16. The national competent authority is of the opinion that the Arrangement Type would encounter difficulties in meeting variation margin requirements for centrally cleared transactions due to limited holdings of cash within the Arrangement Type, high cost (e.g. lower investment returns or transaction costs) and risk of inefficiencies as a result of converting assets into cash. EIOPA shares this view.

17. In view of the above and on the basis of the information provided, ESMA is of the opinion that the reasons why an exemption is justified due to difficulties in meeting variation margin requirements for centrally cleared transactions for the Arrangement Type are established.

This Opinion is addressed to:

Financial Conduct Authority  
25 The North Colonnade, Canary Wharf  
London E14 5HS  
United Kingdom



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<sup>i</sup> Legal basis of operation for arrangements: contractual arrangement.

An example is a Common Investment Fund. A Common Investment Fund (CIF) is a collective investment scheme, where a number of registered pension schemes have pooled some or all of their investments into a common fund for investment purposes. The common investment fund must be no more than an investment agency for the assets of the participating schemes. A common investment fund cannot be a registered pension scheme in its own right.

The trustee of the Common Investment Funds operate on the basis of the Trustee Act 2000.

<http://www.legislation.gov.uk/ukpga/2000/29/contents>

## OPINION

# Exemption from the clearing obligation for pension schemes

Notification Reference: 13\_Pension\_Notification\_FCA\_5-A

## 1 Legal Basis

1. According to Article 89(2) of Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories<sup>1</sup> (EMIR), before taking its decision related to the pension scheme exemption from the clearing obligation, the relevant competent authority needs to obtain the opinion of the European Securities and Markets Authority (ESMA) that needs to consult the European Insurance and Occupational Pensions Authority (EIOPA).
2. ESMA is adopting the following opinion on (1) the compliance of the type of entities or the type of arrangements with Article 2(10)(d) and (2) the reason why an exemption is justified due to difficulties in meeting the variation margin requirements in accordance with Article 89(2) of EMIR.
3. Pursuant to Article 44(1) of Regulation (EU) No 1095/2010<sup>2</sup> this opinion has been adopted by the Board of Supervisors.

## 2 Background and Procedure

4. EMIR provides for the obligation of counterparties to clear certain classes of OTC derivative contracts. Some pension scheme arrangements or entities benefit automatically from a temporary exemption from that obligation for their OTC derivative contracts that reduce investment risks directly related to their solvency whereas other

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<sup>1</sup> OJ L 201, 27.7.2012, p. 1.

<sup>2</sup> OJ L 331, 24.11.2010, p. 84.



pension scheme arrangements or entities need to obtain a prior authorisation before availing from the exemption (in accordance with Article 89(2) of EMIR).

5. The pension scheme arrangements which have to apply for an exemption under Article 89(2) of EMIR are (1) occupational retirement provision businesses of life insurance undertakings covered by Directive 2002/83/EC, and (2) other authorised and supervised entities, or arrangements, operating on a national basis, recognised under national law and whose primary purpose is to provide retirement benefits. The opinion of ESMA is required before the relevant competent authority decides on an exemption for these two categories of pension scheme arrangements.
6. After receiving the request for exemption, the relevant competent authority has to notify ESMA and EIOPA thereof and ESMA has to provide its opinion within 30 calendar days of receipt of the notification.
7. Upon receipt of ESMA's opinion, the competent authority has 10 working days to adopt and communicate its decision to the pension scheme arrangement and to ESMA.
8. In the present case, the Financial Conduct Authority (FCA) has notified ESMA on 31 December 2015 that the following Arrangement Type has requested to benefit from the exemption from the clearing obligation in application of Article 2(10)(d):

*An employer, or industry-wide, provided or sponsored or arranged pension scheme arrangement, which is not within Article 2(10)(a) of EMIR and which meets the requirements set out in Article 2(10)(d) of EMIR, hereinafter "the Arrangement Type".*

9. The Arrangement Type is identified in the EIOPA database of pension plans and products in EEA<sup>3</sup> under the code: UK1 (subgroup identified in the database under code: UK1.1 Trust-based DB schemes, UK1.2 Trust-based DC schemes, UK1.3 Trust-based Hybrid schemes).
10. EIOPA has replied to the consultation on the notification and has provided its response to ESMA on 18 January 2016.

### **3 ESMA Opinion**

11. In order to prepare this opinion, ESMA has relied on information provided by the national competent authority in its notification and provided by EIOPA in its consultation.

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<sup>3</sup> <https://eiopa.europa.eu/regulation-supervision/pensions/database-of-pension-plans-and-products-in-the-eea>



***On the compliance of the Arrangement Type with Article 2(10)(d)***

12. The national competent authority has confirmed that the Arrangement Type does not fall within the definition of Article 2(10)(a), (b) or (c) of EMIR and that it is authorised and supervised by the Financial Conduct Authority and the Prudential Regulation Authority.
13. The national competent authority has confirmed that the Arrangement Type operates on a national basis i.e. that arrangements are providing services mainly in the territory of one member state whereas investments may be performed on a cross border basis, is recognised under national law and has for primary purpose to provide retirement benefits.<sup>i</sup>
14. The national competent authority is of the opinion that the Arrangement Type complies with Article 2(10)(d) of EMIR. EIOPA shares this view.
15. In view of the above and on the basis of the information provided, ESMA is of the opinion that the Arrangement Type complies with Article 2(10)(d).

***On the reason why an exemption is justified due to difficulties in meeting the variation margin requirements***

16. The national competent authority is of the opinion that the Arrangement Type would encounter difficulties in meeting variation margin requirements for centrally cleared transactions due to limited holdings of cash within the Arrangement Type, high cost (e.g. lower investment returns or transaction costs) and risk of inefficiencies as a result of converting assets into cash. EIOPA shares this view.
17. In view of the above and on the basis of the information provided, ESMA is of the opinion that the reasons why an exemption is justified due to difficulties in meeting variation margin requirements for centrally cleared transactions for the Arrangement Type are established.

This Opinion is addressed to:

Financial Conduct Authority  
25 The North Colonnade, Canary Wharf  
London E14 5HS  
United Kingdom

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<sup>i</sup> Legal basis of operation for arrangements:



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UK Registered Pension Scheme under the Finance Act 2004, or deemed registered under Schedule 36 of the Finance Act 2004.

<http://www.legislation.gov.uk/ukpga/2004/12/part/4>

<http://www.legislation.gov.uk/ukpga/2004/12/schedule/36>

## OPINION

# Exemption from the clearing obligation for pension schemes

Notification Reference: 14\_Pension\_Notification\_FCA\_5-E

## 1 Legal Basis

1. According to Article 89(2) of Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories<sup>1</sup> (EMIR), before taking its decision related to the pension scheme exemption from the clearing obligation, the relevant competent authority needs to obtain the opinion of the European Securities and Markets Authority (ESMA) that needs to consult the European Insurance and Occupational Pensions Authority (EIOPA).
2. ESMA is adopting the following opinion on (1) the compliance of the type of entities or the type of arrangements with Article 2(10)(d) and (2) the reason why an exemption is justified due to difficulties in meeting the variation margin requirements in accordance with Article 89(2) of EMIR.
3. Pursuant to Article 44(1) of Regulation (EU) No 1095/2010<sup>2</sup> this opinion has been adopted by the Board of Supervisors.

## 2 Background and Procedure

4. EMIR provides for the obligation of counterparties to clear certain classes of OTC derivative contracts. Some pension scheme arrangements or entities benefit automatically from a temporary exemption from that obligation for their OTC derivative contracts that reduce investment risks directly related to their solvency whereas other

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<sup>1</sup> OJ L 201, 27.7.2012, p. 1.

<sup>2</sup> OJ L 331, 24.11.2010, p. 84.



pension scheme arrangements or entities need to obtain a prior authorisation before availing from the exemption (in accordance with Article 89(2) of EMIR).

5. The pension scheme arrangements which have to apply for an exemption under Article 89(2) of EMIR are (1) occupational retirement provision businesses of life insurance undertakings covered by Directive 2002/83/EC, and (2) other authorised and supervised entities, or arrangements, operating on a national basis, recognised under national law and whose primary purpose is to provide retirement benefits. The opinion of ESMA is required before the relevant competent authority decides on an exemption for these two categories of pension scheme arrangements.
6. After receiving the request for exemption, the relevant competent authority has to notify ESMA and EIOPA thereof and ESMA has to provide its opinion within 30 calendar days of receipt of the notification.
7. Upon receipt of ESMA's opinion, the competent authority has 10 working days to adopt and communicate its decision to the pension scheme arrangement and to ESMA.
8. In the present case, the Financial Conduct Authority (FCA) has notified ESMA on 31 December 2015 that the following Entity Type has requested to benefit from the exemption from the clearing obligation in application of Article 2(10)(d):

*An employer, or industry-wide, provided or sponsored or arranged pension scheme entity, which is not within Article 2(10)(a) of EMIR and which meets the requirements set out in Article 2(10)(d) of EMIR, hereinafter “the Entity Type”.*

9. The Entity Type is identified in the EIOPA database of pension plans and products in EEA<sup>3</sup> under the code: UK1 (subgroup identified in the database under code: UK1.1 Trust-based DB schemes, UK1.2 Trust-based DC schemes, UK1.3 Trust-based Hybrid schemes).
10. EIOPA has replied to the consultation on the notification and has provided its response to ESMA on 18 January 2016.

### **3 ESMA Opinion**

11. In order to prepare this opinion, ESMA has relied on information provided by the national competent authority in its notification and provided by EIOPA in its consultation.

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<sup>3</sup> <https://eiopa.europa.eu/regulation-supervision/pensions/database-of-pension-plans-and-products-in-the-eea>



***On the compliance of the Entity Type with Article 2(10)(d)***

12. The national competent authority has confirmed that the Entity Type does not fall within the definition of Article 2(10)(a), (b) or (c) of EMIR and that it is authorised and supervised by the Financial Conduct Authority.
13. The national competent authority has confirmed that the Entity Type operates on a national basis i.e. that services are provided on a national basis whereas investments may be performed on a cross border basis, is recognised under national law and has for primary purpose to provide retirements benefits.<sup>i</sup>
14. The national competent authority is of the opinion that the Entity Type complies with Article 2(10)(d) of EMIR. EIOPA shares this view.
15. In view of the above and on the basis of the information provided, ESMA is of the opinion that the Entity Type complies with Article 2(10)(d).

***On the reason why an exemption is justified due to difficulties in meeting the variation margin requirements***

16. The national competent authority is of the opinion that the Entity Type would encounter difficulties in meeting variation margin requirements for centrally cleared transactions due to limited holdings of cash within the Entity Type, high cost (e.g. lower investment returns or transaction costs) and risk of inefficiencies as a result of converting assets into cash. EIOPA shares this view.
17. In view of the above and on the basis of the information provided, ESMA is of the opinion that the reasons why an exemption is justified due to difficulties in meeting variation margin requirements for centrally cleared transactions for the Entity Type are established.

This Opinion is addressed to:

Financial Conduct Authority  
25 The North Colonnade, Canary Wharf  
London E14 5HS  
United Kingdom

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<sup>i</sup> Legal basis of operation for authorised and supervised entities: UK Registered Pension Scheme under the Finance Act 2004, or deemed registered under Schedule 36 of the Finance Act 2004.  
<http://www.legislation.gov.uk/ukpga/2004/12/part/4>  
<http://www.legislation.gov.uk/ukpga/2004/12/schedule/36>



## OPINION

# Exemption from the clearing obligation for pension schemes

Notification Reference: 15\_Pension\_Notification\_FCA\_6-A

## 1 Legal Basis

1. According to Article 89(2) of Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories<sup>1</sup> (EMIR), before taking its decision related to the pension scheme exemption from the clearing obligation, the relevant competent authority needs to obtain the opinion of the European Securities and Markets Authority (ESMA) that needs to consult the European Insurance and Occupational Pensions Authority (EIOPA).
2. ESMA is adopting the following opinion on (1) the compliance of the type of entities or the type of arrangements with Article 2(10)(d) and (2) the reason why an exemption is justified due to difficulties in meeting the variation margin requirements in accordance with Article 89(2) of EMIR.
3. Pursuant to Article 44(1) of Regulation (EU) No 1095/2010<sup>2</sup> this opinion has been adopted by the Board of Supervisors.

## 2 Background and Procedure

4. EMIR provides for the obligation of counterparties to clear certain classes of OTC derivative contracts. Some pension scheme arrangements or entities benefit automatically from a temporary exemption from that obligation for their OTC derivative contracts that reduce investment risks directly related to their solvency whereas other

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<sup>1</sup> OJ L 201, 27.7.2012, p. 1.

<sup>2</sup> OJ L 331, 24.11.2010, p. 84.



pension scheme arrangements or entities need to obtain a prior authorisation before availing from the exemption (in accordance with Article 89(2) of EMIR).

5. The pension scheme arrangements which have to apply for an exemption under Article 89(2) of EMIR are (1) occupational retirement provision businesses of life insurance undertakings covered by Directive 2002/83/EC, and (2) other authorised and supervised entities, or arrangements, operating on a national basis, recognised under national law and whose primary purpose is to provide retirement benefits. The opinion of ESMA is required before the relevant competent authority decides on an exemption for these two categories of pension scheme arrangements.
6. After receiving the request for exemption, the relevant competent authority has to notify ESMA and EIOPA thereof and ESMA has to provide its opinion within 30 calendar days of receipt of the notification.
7. Upon receipt of ESMA's opinion, the competent authority has 10 working days to adopt and communicate its decision to the pension scheme arrangement and to ESMA.
8. In the present case, the Financial Conduct Authority (FCA) has notified ESMA on 31 December 2015 that the following Arrangement Type has requested to benefit from the exemption from the clearing obligation in application of Article 2(10)(d):

*An arrangement providing individual pension scheme arrangements, which is established and authorised in the UK, and which meets the requirements set out in Article 2(10)(d) of EMIR, hereinafter “the Arrangement Type”.*

9. The Arrangement Type is identified in the EIOPA database of pension plans and products in EEA<sup>3</sup> under the code: UK3.
10. EIOPA has replied to the consultation on the notification and has provided its response to ESMA on 18 January 2016.

### **3 ESMA Opinion**

11. In order to prepare this opinion, ESMA has relied on information provided by the national competent authority in its notification and provided by EIOPA in its consultation.

#### ***On the compliance of the Arrangement Type with Article 2(10)(d)***

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<sup>3</sup> <https://eiopa.europa.eu/regulation-supervision/pensions/database-of-pension-plans-and-products-in-the-eea>



12. The national competent authority has confirmed that the Arrangement Type does not fall within the definition of Article 2(10)(a), (b) or (c) of EMIR and that it is authorised and supervised by Financial Conduct Authority .
13. The national competent authority has confirmed that the Arrangement Type operates on a national basis i.e. that arrangements are providing services mainly in the territory of one member state whereas investments may be performed on a cross border basis, is recognised under national law and has for primary purpose to provide retirement benefits.<sup>i</sup>
14. The national competent authority is of the opinion that the Arrangement Type complies with Article 2(10)(d) of EMIR. EIOPA shares this view.
15. In view of the above and on the basis of the information provided, ESMA is of the opinion that the Arrangement Type complies with Article 2(10)(d).

***On the reason why an exemption is justified due to difficulties in meeting the variation margin requirements***

16. The national competent authority is of the opinion that the Arrangement Type would encounter difficulties in meeting variation margin requirements for centrally cleared transactions due to limited holdings of cash within the Arrangement Type, high cost (e.g. lower investment returns or transaction costs) and risk of inefficiencies as a result of converting assets into cash. EIOPA shares this view.
17. In view of the above and on the basis of the information provided, ESMA is of the opinion that the reasons why an exemption is justified due to difficulties in meeting variation margin requirements for centrally cleared transactions for the Arrangement Type are established.

This Opinion is addressed to:

Financial Conduct Authority  
25 The North Colonnade, Canary Wharf  
London E14 5HS  
United Kingdom

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<sup>i</sup> Legal basis of operation and recognition for authorised and supervised entities:  
UK Registered Pension Scheme under the Finance Act 2004, or deemed registered under Schedule 36 of the Finance Act 2004.



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These pension schemes are registered with Her Majesty's Revenue and Customs (previously Inland Revenue, under Article 153).

<http://www.legislation.gov.uk/ukpga/2004/12/part/4>

<http://www.legislation.gov.uk/ukpga/2004/12/schedule/36>

## OPINION

# Exemption from the clearing obligation for pension schemes

Notification Reference: 16\_Pension\_Notification\_FCA\_6-E

## 1 Legal Basis

1. According to Article 89(2) of Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories<sup>1</sup> (EMIR), before taking its decision related to the pension scheme exemption from the clearing obligation, the relevant competent authority needs to obtain the opinion of the European Securities and Markets Authority (ESMA) that needs to consult the European Insurance and Occupational Pensions Authority (EIOPA).
2. ESMA is adopting the following opinion on (1) the compliance of the type of entities or the type of arrangements with Article 2(10)(d) and (2) the reason why an exemption is justified due to difficulties in meeting the variation margin requirements in accordance with Article 89(2) of EMIR.
3. Pursuant to Article 44(1) of Regulation (EU) No 1095/2010<sup>2</sup> this opinion has been adopted by the Board of Supervisors.

## 2 Background and Procedure

4. EMIR provides for the obligation of counterparties to clear certain classes of OTC derivative contracts. Some pension scheme arrangements or entities benefit automatically from a temporary exemption from that obligation for their OTC derivative contracts that reduce investment risks directly related to their solvency whereas other

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<sup>1</sup> OJ L 201, 27.7.2012, p. 1.

<sup>2</sup> OJ L 331, 24.11.2010, p. 84.



pension scheme arrangements or entities need to obtain a prior authorisation before availing from the exemption (in accordance with Article 89(2) of EMIR).

5. The pension scheme arrangements which have to apply for an exemption under Article 89(2) of EMIR are (1) occupational retirement provision businesses of life insurance undertakings covered by Directive 2002/83/EC, and (2) other authorised and supervised entities, or arrangements, operating on a national basis, recognised under national law and whose primary purpose is to provide retirement benefits. The opinion of ESMA is required before the relevant competent authority decides on an exemption for these two categories of pension scheme arrangements.
6. After receiving the request for exemption, the relevant competent authority has to notify ESMA and EIOPA thereof and ESMA has to provide its opinion within 30 calendar days of receipt of the notification.
7. Upon receipt of ESMA's opinion, the competent authority has 10 working days to adopt and communicate its decision to the pension scheme arrangement and to ESMA.
8. In the present case, the Financial Conduct Authority (FCA) has notified ESMA on 31 December 2015 that the following Entity Type has requested to benefit from the exemption from the clearing obligation in application of Article 2(10)(d):

*An entity providing individual pension scheme arrangements, which is established and authorised in the UK, and which meets the requirements set out in Article 2(10)(d) of EMIR, hereinafter “the Entity Type”.*

9. The Entity Type is identified in the EIOPA database of pension plans and products in EEA<sup>3</sup> under the code: UK3.
10. EIOPA has replied to the consultation on the notification and has provided its response to ESMA on 18 January 2016.

### **3 ESMA Opinion**

11. In order to prepare this opinion, ESMA has relied on information provided by the national competent authority in its notification and provided by EIOPA in its consultation.

#### ***On the compliance of the Entity Type with Article 2(10)(d)***

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<sup>3</sup> <https://eiopa.europa.eu/regulation-supervision/pensions/database-of-pension-plans-and-products-in-the-eea>



12. The national competent authority has confirmed that the Entity Type does not fall within the definition of Article 2(10)(a), (b) or (c) of EMIR and that it is authorised and supervised by the Financial Conduct Authority.
13. The national competent authority has confirmed that the Entity Type operates on a national basis i.e. that services are provided on a national basis whereas investments may be performed on a cross border basis, is recognised under national law and has for primary purpose to provide retirements benefits.<sup>i</sup>
14. The national competent authority is of the opinion that the Entity Type complies with Article 2(10)(d) of EMIR. EIOPA shares this view.
15. In view of the above and on the basis of the information provided, ESMA is of the opinion that the Entity Type complies with Article 2(10)(d).

***On the reason why an exemption is justified due to difficulties in meeting the variation margin requirements***

16. The national competent authority is of the opinion that the Entity Type would encounter difficulties in meeting variation margin requirements for centrally cleared transactions due to limited holdings of cash within the Entity Type, high cost (e.g. lower investment returns or transaction costs) and risk of inefficiencies as a result of converting assets into cash. EIOPA shares this view.
17. In view of the above and on the basis of the information provided, ESMA is of the opinion that the reasons why an exemption is justified due to difficulties in meeting variation margin requirements for centrally cleared transactions for the Entity Type are established.

This Opinion is addressed to:

Financial Conduct Authority  
25 The North Colonnade, Canary Wharf  
London E14 5HS  
United Kingdom

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<sup>i</sup> Legal basis of operation for authorised and supervised entities: UK Registered Pension Scheme under the Finance Act 2004, or deemed registered under Schedule 36 of the Finance Act 2004. These pension schemes are registered with Her Majesty's Revenue and Customs (previously Inland Revenue, under Article 153).  
<http://www.legislation.gov.uk/ukpga/2004/12/part/4>  
<http://www.legislation.gov.uk/ukpga/2004/12/schedule/36>

