

## PUBLIC STATEMENT

### Implementation of the clearing obligation for pension scheme arrangements

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The European Securities and Markets Authority (ESMA) sent a letter<sup>1</sup> to the European Commission (EC) on 25 January 2022 providing its views on the clearing obligation (CO) for Pension Scheme Arrangements (PSA) and recommended the end of the current exemption from the CO with a one-year implementation period.

On 9 June 2022, the EC published a Delegated Act<sup>2</sup> in line with ESMA's letter exempting PSAs from the CO until 18 June 2023.

The one-year implementation takes into account the EU clearing strategy currently being developed by the EC which aims to further increase EU cleared markets attractiveness. As this is the last possible extension of the exemption for PSAs under EMIR, every effort should be undertaken to ensure compliance with the CO by the time the CO starts to apply to PSAs.

Neither ESMA nor competent authorities possess any formal power to dis-apply a directly applicable EU legal text. Therefore, any change to the application of the EU rules would need to be implemented through EU legislation.

The Delegated Act is currently under non-objection of the European Parliament and Council and would only enter into force after its approval and subsequent publication in the Official Journal of the European Union.

ESMA is mindful that the approval process for the aforementioned Delegated Act may take some time and that the extension provided for by the Delegated Act will, most probably, not have entered into force by the end of the current temporary exemption, i.e. by 18 June 2022. Therefore, from 19 June 2022 and until the approval process of the Delegated Act has been completed, ESMA expects competent authorities not to prioritise their supervisory actions in relation to the CO for PSAs and to generally apply their risk-based supervisory powers in their day-to-day supervision of applicable legislation in this area in a proportionate manner.

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<sup>1</sup> [ESMA recommends clearing obligation for pension funds to start in June 2023 \(europa.eu\)](#)

<sup>2</sup> [emir-delegated-act-2022-3684\\_en.pdf \(europa.eu\)](#)