Commission Delegated Regulation (EU) 2015/1515 of 5 June 2015 amending Regulation (EU) No 648/2012 of the European Parliament and of the Council as regards the extension of the transitional periods related to pension scheme arrangements (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2015/1515

of 5 June 2015

amending Regulation (EU) No 648/2012 of the European Parliament and of the Council as regards the extension of the transitional periods related to pension scheme arrangements

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories[(1)] and in particular Article 85(2) thereof,

Whereas:

(1) CCPs interpose themselves between counterparties to the contracts traded on one or more financial markets. The credit risk of those counterparties is mitigated through the posting of collateral which is calculated to cover any potential losses upon a default. CCPs accept only highly liquid assets, generally cash, as collateral to meet variation margin (VM) calls in order to allow for a rapid liquidation in the event of a default.

(2) Pension Scheme Arrangements (PSAs) in many Member States are active participants in the OTC derivatives markets. However, PSAs generally minimise their cash positions, instead holding higher yielding investments such as securities in order to ensure strong returns for pensioners. Entities operating pension scheme arrangements, the primary purpose of which is to provide benefits upon retirement, usually in the form of payments for life, but also as payments made for a temporary period or as a lump sum, typically minimise their allocation to cash in order to maximise the efficiency and the return for their policy holders. Hence, requiring such entities to clear OTC derivative contracts centrally would lead to divesting a significant proportion of their assets for cash in order for them to meet the ongoing margin requirements of CCPs.

(3) Article 89(1) of Regulation (EU) No 648/2012 therefore provides that, for three years after the entry into force of that Regulation, the clearing obligation set out in Article 4 does not apply to OTC derivative contracts that are objectively measurable as reducing investment risks directly relating to the financial solvency of PSAs. The transitional period also applies to entities established for the purpose of providing compensation to members of PSAs in case of a default.

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2015/1515. (See end of Document for details)*

(4) In order to evaluate the current situation fully, the Commission prepared a report in accordance with Article 85(2) of Regulation (EU) No 648/2012 assessing whether necessary efforts have been made by CCPs to develop appropriate technical solutions for the transfer of non-cash collateral as VM by PSAs. In order to carry out this assessment, the Commission ordered a baseline study on solutions for the posting of non-cash collateral to central counterparties by pension scheme arrangements, as well as on the impact of removing the exemption in the absence of a solution in terms of the reduction in retirement income for the pensioner beneficiaries of the affected PSAs.

(5) In accordance with the findings of its report, the Commission considers that the necessary effort to develop appropriate technical solutions has not been made by CCPs at this point in time and that the adverse effect of centrally clearing OTC derivative contracts on the retirement benefits of future pensioners remains unchanged.

(6) The three-year transitional period referred to in Article 89(1) of Regulation (EU) No 648/2012 should therefore be extended by two years.

(7) This Regulation should enter into force as soon as possible to allow the extension of the existing transitional periods to occur prior to or as soon after expiry as possible. A later entry into force could lead to legal uncertainty for pension scheme arrangements as to whether they need to begin preparing for upcoming clearing obligations.

HAS ADOPTED THIS REGULATION:

Article 1

The first subparagraph of Article 89(1) of Regulation (EU) No 648/2012 is replaced by the following:

> Until 16 August 2017, the clearing obligation set out in Article 4 shall not apply to OTC derivative contracts that are objectively measurable as reducing investment risks directly relating to the financial solvency of pension scheme arrangements as defined in Article 2(10). The transitional period shall also apply to entities established for the purpose of providing compensation to members of pension scheme arrangements in case of a default.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 5 June 2015.

For the Commission

The President

Jean-Claude JUNCKER