

NEWSLETTER  
**BANKING & FINANCE**  
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MiFID and Crossborder Transactions with Non-EEA  
Member States: Views from a Swiss Legal Perspective on  
Major Issues and Impacts

# BANKING & FINANCE

## 1. Introductory Remarks

Since Switzerland is not a member of the EEA, MiFID will not be directly implemented. However, the financial supervisory authority, i.e. the Swiss Federal Banking Commission (the FBC), and several self-regulatory organisations are closely monitoring the relevant developments in Europe. Hence, it may be that certain regulations of MiFID will be introduced in Switzerland, either by way of statutory legislation or self-regulation.

## 2. Major Distinctions

Basically, the scope of applicability of MiFID is broader than the one of the relevant Swiss provisions, both with respect to regulated activities and captured instruments (e.g. asset managers and investment advisors are not supervised by the FBC; the same applies to OTC-derivatives which are not regulated by the Swiss financial services legislation).

Although Swiss law imposes on financial services providers obligations of best execution, client information and classification as well as transaction reporting, these obligations are phrased as principles and are not as detailed and far-reaching as the MiFID provisions. As a consequence thereof, Swiss financial services providers dispose of substantial discretion how to comply with these principles.

## 3. Cross-Border Transactions of Banks and Securities Dealers with Switzerland

Subject to certain limited exceptions, foreign banks and securities dealers engaged in cross-border banking or securities transactions with Switzerland require authorization by the FBC if they execute these transactions through a permanent and commercial physical presence in Switzerland (i.e. subsidiary, branch or representative office).

In this respect, banking activities means (i) the acceptance of deposits from the public on a professional basis or the public soliciting for such deposits or (ii) the refinancing in substantial amounts with other (materially) unrelated banks, both for the purpose of financing, on its own account, the activities of unrelated third parties.

Security activities means, if conducted on a professional basis, (i) the sale and purchase, on own account, of securities with the intention of resale within a short period (such also including market makers), (ii) the sale and purchase of securities for the account of third parties on the secondary market, (iii) the offer of securities to the public on the primary market or (iv) the creation and offer of derivatives to the public.

Finally, if the FBC becomes aware of other cross-border activities, it may – under certain circumstances – inform the relevant foreign supervisory authority thereof.

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