



The Swiss Federal Department of Finance and FINMA open consultation on the Financial Market Infrastructure Ordinance and the FINMA Financial Market Infrastructure Ordinance

On 20 August 2015, the Swiss Federal Department of Finance and the Swiss Financial Market Supervisory Authority (FINMA) initiated hearings on the Financial Market Infrastructure Ordinance (FMIO) and the FINMA Financial Market Infrastructure Ordinance (FMIO-FINMA).

The Swiss Parliament adopted the Financial Market Infrastructure Act (FMIA) on 19 June 2015. The FMIA is intended to regulate financial market infrastructures - such as exchanges, multilateral trading systems, central counterparties, trade repositories, etc. - and derivative transactions in line with market developments and international standards, such as [EU Regulation No 648/2012](#) on OTC derivatives, central counterparties and trade repositories (EMIR). The FMIA not only combines provisions that are currently diffused in various federal acts in a single law but also includes numerous provisions which are entirely new for Switzerland. The FMIA charges the Federal Council and FINMA with the task of issuing implementing provisions - they have done this by setting up the FMIO and the FMIO-FINMA respectively.

FMIO

The FMIO covers (a) the authorisation requirements for financial market infrastructures, (b) the obligations of financial market participants in derivatives trading, (c) the disclosure of participations, (d) public tender offers, and (e) exemptions from insider dealing and market manipulation. It is inspired by existing legislation, international requirements and EU law (including EMIR).

Particularly worthy of mention are the following items:

1. In the area of financial market infrastructures, inter alia, the FMIO includes pre- and post-trade transparency requirements for trading venues and organized trading facilities. Such requirements shall in particular apply to so-called "dark-pools" (trading venues which have been lacking transparency until now). Moreover, the FMIO specifies the new rules on combating the negative effects of high-frequency trading.
2. In the area of derivatives trading, the FMIO specifies the clearing, notification and risk mitigation obligations laid down in the FMIA. Among other things, the FMIO sets forth clearing thresholds of (a) CHF 8 billion for financial counterparties and (b) CHF 1.1 billion (regarding credit and equity derivative contracts) and CHF 3.3 billion (regarding all other derivative contracts), respectively, for non-financial counterparties. The FMIO also provides for certain exemptions, such as (a) for derivative contracts regarding goods which must be delivered physically, (b) for minor (financial or non-financial) counterparties, and (c) for counterparties using foreign, FINMA-recognised financial market infrastructures and complying with the provisions of a foreign law which has been recognised by FINMA as equivalent.

FMIO-FINMA

The FMIO-FINMA deals with (a) securities journal and reporting requirements of securities dealers, (b) OTC derivatives that must be cleared with a central counterparty, (c) the disclosure of participations, and (d) public tender offers.

Perhaps most importantly, as regards the disclosure of participations, the FMIO-FINMA provides that if shareholders delegate their voting rights to a discretionary proxy, both parties must comply with the reporting requirements. This is a new obligation which goes beyond the current disclosure obligations as interpreted by the Swiss Federal Supreme Court.

Likewise, the current reporting requirements under the Swiss Stock Exchange Law for securities dealers are expanded. They shall now not only include financial instruments which are traded on an exchange but also those which are traded on multilateral trading facilities. Moreover, the reporting requirement is extended to also include financial instruments whose underlying securities are listed on a Swiss trading venue.

Outlook

The hearing regarding the two Ordinances will close on 2 October 2015. Subsequently, the Federal Council and FINMA may amend the drafts which were published on 20 August 2015. The final versions of the Ordinances are expected to enter into force, together with the FMIA, on 1 January 2016. This will be subject to some specific provisions which will enter into force at a later date. Moreover, there are a number of transitional periods by which the new obligations must be complied with.

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