Financial Market Infrastructures

13.08.2019

Key takeaways

- **FINMA's supervision of financial market infrastructures is largely based on the FMIA**
- **Self-regulation for trading venue operators**
- **Pre- and post-trade transparency obligations with respect to trading venues**
- **Securities clearing system operated by the CCP and securities delivery and settlement system operated by the CSD constitute important infrastructures in ensuring the proper functioning of Switzerland's securities markets**
- **Recognition of UK central counterparties**

Financial market infrastructure regulation is based on a number of laws: the Financial Market Infrastructure Act ("FMIA"), the Banking Act, the Stock Exchange Act and the National Bank Act. The relevant implementing provisions are set out in the Financial Market Infrastructure Ordinance, FINMA's Financial Market Infrastructure Ordinance and the National Bank Ordinance. FINMA's supervision of financial market infrastructures is largely based on the FMIA in conjunction with the Financial Market Infrastructure Ordinance. The following service providers are regarded as financial market infrastructures:

- trading venues, i.e. exchanges or multilateral trading facilities (Art. 26 FMIA)
- central counterparties (Art. 48 FMIA)
- central securities depositories (Art. 61 FMIA)
- trade repositories (Art. 74 FMIA)
- payment systems (Art. 81 FMIA)

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Trading Venues

The regulatory framework for trading venues distinguishes between the supervision of institutions (licensing requirements etc.) and the monitoring of markets (pre- and post-trade transparency). The overriding goal is to ensure the security and stability of the Swiss financial market. The legislator has tasked trading venue operators, i.e. stock exchanges and multilateral trading facilities, with establishing and enforcing their own organizational and trading regulations, as set out in Article 27 FMIA. Operators are therefore largely responsible for regulating whether participants and/or securities are allowed access to the trading venue and for preparing regulations to monitor trading. They are also charged with establishing a listing body and a surveillance unit.

Similar to the EU approach (with its significant number of delegations to the European Securities and Market Authority), an important part of the regulation has been delegated to the Federal Council (and further to the regulator) regarding classified rules (administrative rulebook). The FMIA has mandated the Federal Council to determine which financial products are going to be required to be traded via a central counterparty, a trading venue, or a trading facility by considering the degree of standardization, their liquidity, their trading volumes and the availability of pricing information in the given category as well as the counterparty's risks associated with the respective transaction. Noteworthy is that the requirement to trade via a trading venue also applies if the Swiss market participant's foreign counterparty was subject to this requirement if it had its registered office in Switzerland. Intra-group transactions, currency swaps and forward transactions as well as derivatives not admitted for trading by any applicable trading venue or facility are excluded from the aforesaid duty.

The FMIA has also strengthened pre-trade transparency for transactions via trading venues that obliges firms to publish the bid and offer prices and the size of their trading positions. Pre-trade transparency requirements are exempted for high-volume transactions taking into account recognized international standards, foreign legal developments and trades that are executed by the Swiss National Bank (SNB). Trading via an organized trading facility is also subject to transparency requirements, which can be exempted. Pre-trade transparency shall, however, only apply where specifically regulated by the Federal Council, again in line with recognized international standards for extending the publication duty to pre-trading transparency.

Central counterparties, central securities depositories and securities settlement systems

Central counterparties (CCPs) and central securities depositories (CSDs) clear and settle securities transactions. The securities clearing system operated by the CCP and the securities delivery and settlement system operated by the CSD constitute important infrastructures in ensuring the proper functioning of Switzerland's securities markets. The CCP acts as an intermediary in on-exchange and in some over-the-counter (OTC) markets. It acts as the seller and buyer in a transaction, thus assuming the function of a performance guarantor. In order to be able to ensure proper settlement and performance of transactions for the buyer and seller in case one of the two parties fails to meet its duty of delivery or payment, the CCP demands collateral from all trading parties in the form of cash and securities.

Exchange-traded securities are either deposited physically or registered as book-entry securities with an authorized CSD. The first task of the CSD is to settle securities transactions. The CSD also ensures that all securities are held correctly in safe keeping and acts as a registry for book-entry securities. Moreover, the CSD must ensure that corporate actions, such as interest or dividend payments, and capital increases can be performed centrally for the securities deposited with it.

Trade Repositories

Derivatives – Impact of the New Financial Market Regulation / Financial Market Infrastructure Act (FMIA)

Payment Systems

Financial Market Infrastructure Act (FMIA)

Recognition and supervision of foreign financial market infrastructures

Foreign financial market infrastructures active in Switzerland must be recognized by FINMA and supervised by the competent foreign supervisory authority. FINMA exchanges information with these authorities if needed. FINMA has recently provisionally recognized the derivatives regulations of the UK with respect to the clearing, the reporting and the risk mitigation obligations as being equivalent to the respective provisions in the FMIA. Such recognition has become necessary, because initially FINMA recognized the regulations of the European Union (EU) as equivalent in its FINMA Guidance 01/2016, which included the clearing of OTC derivatives transactions through a UK central counterparty (Art. 4 EMIR). Now, with the decision of the UK to leave the EU (Brexit), the UK will be out of the territorial scope of EMIR. In order to avoid market disruptions, FINMA provisionally recognizes the derivatives regulations of the UK with regard to the clearing obligation, the reporting obligation and the risk mitigation obligation (FINMA Guidance 01/2019). This means for UK central counterparties that they are recognized by FINMA to continue clearing derivative trades that are subject to clearing. This provisional recognition of equivalence will enter into force simultaneously with the EMIR Transposition Act (to be passed by the British Parliament).

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