# Financial Market Infrastructure Act (FMIA)

21.12.2018

- **Entered into force in 2016**
- **Organization and operation of financial market infrastructures**
- **Derivatives trading**
- **More transparency**

## 1. Introduction

In parallel to the global regulatory efforts as in the US, the EU and Asia, Switzerland tailored a new law to ensure a more stable financial market as a reaction to the credit crisis in 2008. The consultation period of the Financial Market Infrastructure Act (FMIA) ran until 31 March 2015 and the FMIA entered into force on 1 January 2016.

FMIA governs the organization and operation of financial market infrastructures as well as the rules of conduct for these infrastructures active in securities and derivatives trading.

## 2. Overview of FMIA

FINANCIAL MARKET INFRASTRUCTURES

FMIA introduces the term "Financial Market Infrastructures" to Swiss law and combines different terms and legislation into one act rather than spreading it over a number of historically grown laws.

According to FMIA, the following entities shall be classified as a "Financial Market Infrastructure":

- an exchange;

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- a multilateral trading system;
- central counterparties;
- central securities repositories;
- transaction registers;
- paying systems.

Financial Market Infrastructures require a license provided by the Swiss Financial Market Supervisory Authority (FINMA). FINMA is also the competent supervisory body. Systemically relevant Financial Market Infrastructures (central counterparties, central securities repositories and paying systems in case the requirements pursuant to FMIA are fulfilled) are, in addition, subject to Swiss National Bank (SNB) supervision. FMIA provides rules for trading venues and organized trading systems. Exchanges and multilateral trading systems are specified trading venues. FMIA requires trading venues to be adequatly organized (self-regulation applies), provide trading transparency (pre-trading and post-trading) and have relevant systems in place to adequatly monitor the trading activities. The same applies to organized trading systems.

For foreign trading participants, FMIA requires licensing and operating based on the principle of reciprocity. The rules for foreign trading participants mainly apply to securities dealers that aim to participate in a Swiss trading venue without being domiciled in Switzerland, but these rules will be extended to any participant of a trading venue. FINMA may refuse granting a license in certain circumstances (jurisdiction of domicile of applicant restricts access to home market for Swiss market participants).

## DERIVATIVES TRADING

FMIA also introduced detailed rules for derivatives trading and measures to reduce market risks. Different rules apply to financial and small financial counterparties as well as non-financial and small non-financial counterparties. FMIA recognizes that small financial counterparties as well as non-financial and small non-financial counterparties use OTC derivatives to protect themselves against market risks that are directly related to their market activities or treasury financing activities. Thus, derivative transactions hedge risks directly connected with such commercial activities; treasury financing activities and  those that do not protect against such risk but do not exceed the respective thresholds shall not be subject to the obligations in FMIA. For all other market participants trading in derivatives, FMIA introduces clearing obligations (across asset classes), risk mitigation duties and transparency and/or reporting rules (FINMA Guidance 02/2017 "Financial Market Infrastructures Act: reporting requirements / trade repositories" of 3 April 2017 provides information about the authorisation of a Swiss trade repository and the recognition of a foreign trade repository; their recognition and authorisation means that Swiss market participants will now be subject to a phased-in entry into force of derivatives transactions reporting requirements by notifying a trade repository). The details of the targeted OTC derivative trades are defined (by delegation) in two different regulations: the Financial Market Infrastructure Ordinance (FMIO) and the FINMA Ordinance to the FMIA (FMIO-FINMA).

According to the FMIO, the clearing threshold amounts are as follows:

- CHF 1.1 billion (in gross notional value) Credit derivative contracts
- CHF 1.1 billion (in gross notional value) Equity derivative contracts
- CHF 3.3 billion (in gross notional value) Interest rate derivative contracts
- CHF 3.3 billion (in gross notional value) Foreign exchange derivative contracts
- CHF 3.3 billion (in gross notional value) Commodity derivative contracts and others.

The FMIO-FINMA specifies the products that trigger the clearing obligation.

On 14 September 2018, the Federal Council extended the transition period for the reporting of derivative transactions by small non-financial counterparties (NFC-) until 1 January 2024 under the Financial Market Infrastructure Act (FMIA). The amendment to the Financial Market Infrastructure Ordinance (FMIO) will enter into force on 1 January 2019. The reporting duties of other market participants are not affected by this decision.

KEY DIFFERENCES TO THE EQUIVALENT EU REGULATION

In contrast to the requirements in the EU, FMIA follows the US approach and allows one-way reporting when trading derivatives and a less restrictive approach compared to MiFID II/ MiFIR when it comes to the applicability of self-regulation. The transfer of data between a repository in Switzerland and non-Swiss authorities, however, is more restricted in comparison to US and EU laws. The majority of the rules, however, are similar to an equivalent to the European Market Infrastructure Regulation (EMIR).

## 3. Key Points for Market Participants

The categorization of each market participant and the products traded will trigger different regulatory obligations. At an early stage, Swiss and foreign market participants must understand to what extent FMIA applies to them (licensing obligations, clearing obligations, reporting and transparency rules, etc.) and must assess the depth of their need for action.

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