Partial Revision of the FinMIO-FINMA

06.01.2023

Key takeaways

- **The catalogue of interest-rate derivatives subject to clearing through a central counterparty will be updated in light of the benchmark reform and aligned with corresponding EU-law.**
- **Reporting on derivative transactions will require more content, particularly on the derivative's characteristics and its underlying.**
- **Trading venues must implement the changes in reporting into their reporting regulations and technical specifications within six months from the entry into force on 1 February 2023.**
- **Endeavours are currently underway to revise the FinMIA and FinMIO, with further changes to the reporting obligations on the horizon.**

Introduction

On 14 December 2022, FINMA published the partially revised FINMA Financial Market Infrastructure Ordinance (FinMIO-FINMA), which will enter into force on 1 February 2023. This revision of the FinMIO-FINMA pertains to two specific aspects of the ordinance; the other parts of the ordinance remain unchanged.

The revision was preceded by a public consultation held between May and July 2022. The respondents generally welcomed the planned amendments. Nevertheless, some respondents also called upon FINMA to make adjustments to the consultation draft.

While FINMA indeed incorporated some of the proposed adjustments, the final version of the FinMIO-FINMA still largely reflects the consultation draft.

Topics of the Revision

Specifications to the Content of Derivative Transaction Reporting

The revision's first pillar concerns the content to be reported for derivative transactions, which are subject to the reporting obligation under Art. 101 of the Financial Market Infrastructure Act (FinMIA). Specifically, for transactions involving derivatives having securities admitted to trading on a trading venue as underlying, the underlying must henceforth also be reported and will thus be included in trading surveillance.

Therefore, trading venues must ensure the technical prerequisites that the amended derivatives reports may be filed completely and correctly by the persons subject to a reporting obligation. Furthermore, trading venues must identify and reject any reports that are obviously incorrect or incomplete.

To underline the importance of trade reporting for effective trade surveillance, FINMA also announced that it will act consistently upon any indications of breaches of reporting obligations and will enforce compliance therewith.

Update of the Catalogue of Interest-rate Derivatives Subject to a Clearing Requirement

The second pillar of the revision consists, in essence, of a reaction to the benchmark reform and the resultant shift towards alternative reference rates in the market. To this end, FINMA updated the catalogue of interest-rate derivatives that must be mandatorily cleared through a central counterparty.

In particular, interest-rate derivatives referring to GBP LIBOR, USD LIBOR, JPY LIBOR, and EONIA are no longer featured in the catalogue. Overnight Index Swaps (OIS), based on €STR and SOFR (each for terms between 7 days and 3 years) and on TONA (for terms between 7 days and 30 years), are now subject to clearing through a central counterparty and thus featured in the catalogue. Last, the catalogue is updated insofar as the maximum term for SONIA-based OIS, falling under the clearing obligation, is raised from 3 years to 50 years.

Conclusions

The revision touches upon two distinct aspects of the FinMIO-FINMA. Unsurprisingly, each of the two pillars is driven by particular motivations.

The enhanced requirements regarding the content of derivative transaction reporting aim at bolstering the material quality of reporting, and thus, at closing blind spots and gaps in trading surveillance.

On the other hand, the update of the catalogue of interest-rate derivatives closes the regulatory gap stemming from the markets' shift towards alternative reference rates. Furthermore, the update will largely re-align the Swiss framework with its EU-counterpart (notably, the European Market Infrastructure Act (EMIR) and the Commission Delegated Regulation (EU) 2022/750).

Ostensibly, FINMA refrained from including CHF-denominated interest-rate derivatives based on SARON in the catalogue of interest-rate derivatives subject to clearing through a central counterparty. While this may appear peculiar at first, it reflects the relatively small trading volumes and is thus in line with the criteria for mandatory clearing via a central counterparty stipulated in Art. 101(1) FinMIA.

Despite calls from a number of respondents to the public consultation for more detailed and granular regulation, FINMA maintains its principle-based approach in regulating the content of transaction reporting, leaving the detailed content of the reporting obligation within the purview of the trading venues.

Next steps

The abovementioned enhanced reporting obligations will apply no later than 15 months from the revised ordinance's entry into force. Already within 6 months, however, trading venues (i.e. the report addressees) must make the necessary adjustments to their reporting regulations and technical specifications and notify the reporting parties.

Beyond the changes to the reporting obligations under the revised FinMIO-FINMA, preliminary work on a broader revision of the FinMIA and the Financial Market Infrastructure Ordinance (FinMIO) has recently begun (see our Legal Update of 11 October 2022) and will bring further changes to the reporting obligations.

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