

Update

Newsflash November 2017

Developments on the duty to report securities transactions

- › **Starting from January 2018, foreign participants to a Swiss trading venue and foreign branches of Swiss securities dealers may report their transactions in securities admitted to trading in Switzerland and derivatives on such securities executed outside Switzerland through the regulatory reporting platform of the London Stock Exchange Group.**
 - › **The partnership concluded between the SIX Swiss Exchange and the London Stock Exchange Group is primary relevant for foreign participants to a Swiss trading venue and for foreign branches of Swiss securities dealers that are concluding transactions outside Switzerland in securities admitted to trading in Switzerland.**
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Starting from January 2018, foreign participants (i.e. formerly defined as remote member) of a Swiss trading venue and foreign branches of Swiss securities dealers may perform their reporting of transactions in securities admitted to trading on a Swiss trading venue through the regulatory reporting platform of the London Stock Exchange Group. This new possibility is based on an arrangement made between the SIX Swiss Exchange and the London Stock Exchange Group.

Background

Switzerland has implemented a securities transaction reporting that is similar in substance to the MiFiD II reporting. The Swiss transaction reporting regime is based on Article 39 of the Financial Market Infrastructure Act ("FMIA") to be read in conjunction with Article 37 of the

Financial Market Infrastructure Ordinance ("FMIO") for participants admitted to a trading venue (including foreign participants) and from Article 15 para. 2 of the Stock Exchange Act ("SESTA") and Article 31 of the Stock Exchange Ordinance ("SESTO") for securities dealers. In essence, transaction reporting is the mechanism by which market participants provide detailed reports to regulators to ensure the transparency of the markets. One of the main purposes of the transaction reporting is to enable regulators to identify and analyze risk positions.

General Principles of the transaction reporting

In principle, all participants to a Swiss trading venue and all securities dealers authorized under Article 10 SESTA must report all their transactions in Swiss and foreign securities admitted to trading in Switzerland. The reporting

obligation covers transactions in all securities admitted to trading in Switzerland and in derivatives on such admitted to trading securities (please refer to our Newsflash of October 2017 for further information on the reporting of derivatives) whether they are executed in Switzerland or abroad. This duty not only applies to transactions on own account, but also to transactions executed on behalf of clients.

Exemption from the duty to report

- › Article 37 para. 4 FMIO provides that transactions in securities admitted to trading in Switzerland and derivatives on such securities **executed abroad** are exempted from the reporting obligation in Switzerland in the following situations:
- › Transactions in **foreign securities** admitted to trading in Switzerland and derivatives on such securities executed on a **recognized foreign trading venue**.

Foreign participants and foreign branches of Swiss securities dealers are not required to report their transactions executed outside Switzerland in **Swiss securities** and in derivatives on such Swiss securities provided that they have under applicable law the duty to report in the jurisdiction in question and the Swiss trading venue has access to the reportable items based on a cooperation agreement within the framework

of an exchange of information concluded between Swiss Financial Market Supervisory Authority (“FINMA”) and the competent foreign supervisory authority. To date, no such agreement has been concluded by FINMA, though.

However, in its Circular 2018/2, FINMA provides for a relief for foreign participants in that where there is no cooperation agreement within the framework of an exchange of information between FINMA and the competent foreign supervisory authority, foreign participants may report their transactions executed outside Switzerland in Swiss securities and in derivatives with Swiss securities as their underlyings to a foreign disclosure office recognized by the trading venue.

It is in this context that the cooperation between the SIX Swiss Exchange and the London Stock Exchange Group is to be understood. As a result, foreign participants and foreign branches of Swiss securities dealers may fulfill their transaction reporting obligations as from January 3, 2018 through the regulatory reporting platform of the London Stock Exchange Group instead of having to report said transactions through the SIX Stock Exchange.

For any further questions regarding this matter please do not hesitate to contact us.

Legal Note: The information contained in this UPDATE Newsflash is of general nature and does not constitute legal advice. In case of particular queries, please contact us for specific advice.

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