

Update

Newsflash September 2018

FinfraG Update IX – Federal Council extends transitional period for reporting of derivative transactions by small non-financial counterparties

The purpose of this Newsflash is to inform Swiss market participants that the Federal Council has decided to postpone the entry into effect of the reporting obligation for small non-financial counterparties (NFC-) until 1 January 2024. The corresponding amendment to the Financial Market Infrastructure Ordinance (FMIO) will enter into force on 1 January 2019.

The Financial Market Infrastructure Act (FMIA) and its implementing Ordinances (FMIO and FMIO-FINMA) entered into force on 1 January 2016. One of the major innovations was the introduction of an obligation for all counterparties to report derivatives transactions to an authorized or recognized trade repository. NFC- may be subject to the reporting obligation where their foreign counterparty that would be the reporting entity pursuant to the FMIA does not fulfill the reporting obligation in accordance with the FMIA.

The FMIO initially provided that the reporting obligation was to be phased in over a period of 6 to 12 months depending on the categorization of the counterparties starting on the date of the first authorization or recognition of a trade repository by FINMA.

At present, the reporting obligation is already in effect for financial counterparties (FC) and large

non-financial counterparties (NFC+). However, the implementation of the reporting obligation raised important practical difficulties for NFC-. Therefore, FINMA extended in October 2017 the transitional period for NFC- to fulfill their reporting obligation from 1 April 2018 to 1 January 2019.

On 14 September 2018, the Federal Council decided to further postpone the entry into effect of the reporting obligation for NFC- until 1 January 2024. The corresponding amendment to the FMIO will enter into force on 1 January 2019.

This decision follows international developments as well as the desire to reduce the administrative burden resulting from this obligation on NFC-. In order to take into account international developments and technological developments, in particular those of Fintech, the Federal Department of Finance is planning to revise the

FMIA. The Federal Department of Finance will start working on the revision of the FMIA in 2019. It is in this context that the Federal Council decided to postpone the entry into effect of the reporting obligation for NFC- until 2024. However, this decision does not affect the

reporting duties already in force for other market participants.

Please do not hesitate to contact us in case of any questions.

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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