

Update

Newsflash February 2019

FinfraG Update X – FINMA provisionally recognizes UK derivatives regulations

On February 21, 2019, FINMA has communicated, by means of FINMA Guidance 01/2019, that it provisionally recognizes the derivatives regulations of the United Kingdom with respect to the clearing, the reporting and the risk mitigation obligations as being equivalent to the relevant provisions of the Swiss Financial Market Infrastructure Act.

The Financial Market Infrastructure Act (FMIA) and its implementing Ordinances (FMIO and FMIO-FINMA) provide that a Swiss counterparty can satisfy its obligations under the FMIA by complying with foreign regulations, if (i) the relevant foreign law is recognized as being equivalent by FINMA and (ii) with respect to the clearing and reporting obligations, the relevant foreign central counterparty and/or foreign trade repository has been recognized by FINMA (Substituted Compliance) (Art. 95 FMIA and Art. 81 FMIO).

Pursuant to FINMA Guidance 01/2016, the Regulation No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EMIR) is provisionally recognized as being equivalent to the relevant provisions of the FMIA.

Now, with the decision of the United Kingdom to leave the European Union, it will be out of the scope of EMIR. The United Kingdom will base on the European Union (Withdrawal) Act 2018 transpose the EMIR regulations into domestic

law under the Over the Counter Derivatives, Central Counterparties and Trade Repositories Regulations 2018 (EMIR Transposition Act).

Based thereon, to avoid market disruptions and to ensure that Swiss counterparties will still have the benefit of Substituted Compliance when entering into derivatives transactions with UK counterparties, FINMA has, as communicated in FINMA Guidance 01/2019, provisionally recognized the proposed derivatives regulations under the EMIR Transposition Act with regard to the clearing, the reporting and the risk mitigation obligations as being equivalent to the relevant FMIA requirements (Art. 97 para. 1, Art. 104 para. 1 and Art. 107 para. 1 FMIA).

While not specifically addressed in the FINMA Guidance 01/2019, we expect that in light of this provisional recognition of equivalence and the fact that the United Kingdom in substance takes over the EMIR regime, the recognition of financial market infrastructures based in the United Kingdom and recognized by FINMA under the EMIR regime will continue in full force and effect.

The provisional recognition of equivalence will enter into force when the EMIR Transposition Act is passed by the British parliament.

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

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