

Update

Newsflash February 2017

FinfraG Update II – FINMA publishes new Guidance on the deadlines for the exchange of collateral under the FMIA – Implication for Swiss counterparties

The purpose of this Newsflash is to provide Swiss market participants with an update on the new Guidance 01/2017 published by the Swiss Financial Market Supervisory Authority (FINMA) on January 31, 2017 on the deadlines for the exchange of collateral under the Swiss Financial Market Infrastructure Act (FMIA) and its implementing Ordinance (FMIO).

Background

The FMIA and its implementing Ordinance (FMIO) which entered into effect on January 1, 2016 impose on Swiss counterparties a number of obligations, namely clearing, reporting and for OTC derivatives transactions not subject to clearing several risk mitigation obligations which include portfolio reconciliation, dispute resolution and the obligation to exchange collateral (variation margin and initial margin).

In order to implement these new requirements, the FMIA and the FMIO provide for various transitional periods. Some of the risk mitigation obligations, such as portfolio reconciliation and dispute resolution, entered into effect on January 1, 2017.

For variation margin, the deadlines had previously been scheduled to apply as from September 1, 2016 for counterparties having in

excess of CHF 3'000 bn. gross derivatives positions and as from September 1, 2017 for all other counterparties (Art. 131 para. 4 FMIO).

For initial margin, the deadlines had previously been scheduled to apply from September 1, 2016 through September 1, 2019 depending on their threshold of gross derivatives positions (Art. 131 para. 5 FMIO).

In its Guidance 01/2016, FINMA provisionally extended the deadlines for the margin requirements until such time as the corresponding future obligations would have to be met in line with the relevant EU regulations.

Following the publication of the EU regulations on the exchange of collateral on December 15, 2016, FINMA has now published the Guidance 01/2017 to provide information about the schedule for the implementation of the Swiss regulations on the exchange of collateral.

Deadlines for the exchange of collateral

For variation margin the Guidance 01/2017 provides the following deadlines:

- › For counterparties whose aggregated month-end average gross position of non-centrally-cleared OTC derivatives at group or financial or insurance group level for the months of March, April and May 2016 is greater than CHF 3,000 billion (Art. 131 para. 4 let. a FMIO): From February 4, 2017 and, in the case of intra-group transactions, from July 4, 2017.
- › For all other counterparties the deadline defined in Art. 131 para. 4 let. b FMIO remains unchanged, i.e. from September 1, 2017.

For initial margin the Guidance 01/2017 provides the following deadlines:

- › For counterparties whose aggregated month-end average gross position of non-centrally-

cleared OTC derivatives at group or financial or insurance group level is greater than CHF 3,000 billion for each of the months of March, April and May 2016 (Art. 131 para. 5 let. a FMIO): From February 4, 2017 and, in the case of intra-group transactions, from July 4, 2017.

- › For all other counterparties the deadlines defined in Art. 131 para. 5 let. b-d FMIO remain unchanged, i.e. from September 1, 2017 until September 1, 2019 depending on their aggregated month-end average gross positions of OTC derivatives transactions.

Furthermore, in line with those deadline extensions, these obligations relating to OTC derivatives transactions involving equity or index options will apply to all counterparties from January 4, 2020.

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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