

BANKING - SWITZERLAND

Impact of new financial market infrastructure regulation

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The Financial Market Infrastructure Act and the Financial Market Infrastructure Ordinance came into effect on January 1 2016. Specific transitional periods were granted to fulfil various new duties, as well extended record-keeping and reporting duties for banks as participants on trading venues regarding securities transactions.

The European Commission extended the application date of the revised Markets in Financial Instruments Directive by one year, and on June 29 2016 the Federal Council also decided to extend the corresponding transitional periods in the Financial Market Infrastructure Ordinance and the Stock Exchange Ordinance by one year to January 1 2018. On July 6 2016 the Swiss Financial Market Supervisory Authority (FINMA) published Guidance 01/2016 regarding the Financial Market Infrastructure Act and FINMA's next steps. On the one hand, the extension of the transitional period will allow FINMA to take into account the still developing technical specifications in the European Union when preparing its own implementing regulations. On the other hand, market participants will have more time to adjust their processes and systems to the new rules.

The extension of the transitional period affects:

- new duties of trading venues and organised facilities;
- pre and post-trade transparency; and
- algorithmic and high-frequency trading.

As organised facilities that are not subject to authorisation may be operated only by banks, securities dealers, stock exchanges or multilateral trading venues, these changes will affect banks significantly. In particular, banks as participants on trading venues need not fulfil the extended reporting and record-keeping duties until January 1 2018.

Other transitional periods remain unchanged, particularly those in connection with derivatives trading regulations or new authorisations of existing and new financial market infrastructures. There have never been transitional periods for banks operating an organised facility in connection with the following requirements:

- organisation and prevention of conflicts of interest; and
- guarantee of orderly trading.

There are close links between authorisations and new duties in connection with derivatives trading, particularly as the transitional periods for reporting duties to trade depositories regarding derivatives transactions do not start until the first authorisation or recognition of a trade repository by FINMA. Banks are considered financial counterparties in connection with derivatives trading. As reporting duties will apply according to the size of the counterparty, banks will be the first to start the new reporting duties. Banks will also be required to be the first movers in relation to risk mitigation duties, because they will apply depending on the average gross position at the month's end of non-centrally cleared over-the-counter derivatives.

According to FINMA Guidance 01/2016 and other publicly available information, a foreign transaction repository has already filed an application with FINMA, and SIX Swiss Exchange is set to

AUTHORS

[Alexander Vogel](#)



[Christophe Pétermann](#)



[Reto Luthiger](#)



soon file an application with FINMA regarding authorisation as a trade repository for derivatives trading. According to SIX, the platform will be based on the technological solution of UnaVista belonging to the London Stock Exchange Group, which is already used in the European Union under the European Market Infrastructure Regulation. There is no other publicly known filing with FINMA for authorisation or recognition as a trade repository or central counterparty. FINMA will report on its website when the first authorisations of trade repositories or central counterparties will be granted.

For further information on this topic please contact [Alexander Vogel](#), [Christophe Pétermann](#) or [Reto Luthiger](#) at Meyerlustenberger Lachenal by telephone (+41 44 396 91 91) or email (alexander.vogel@mll-legal.com, christophe.petermann@mll-legal.com or reto.luthiger@mll-legal.com). The Meyerlustenberger Lachenal website can be accessed at www.mll-legal.com.

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