

FINMA Guidance 01/2017

Financial Market Infrastructure Act: Deadlines for the exchange of collateral

31 January 2017

Introduction

In FINMA Guidance 01/2016 “Financial Market Infrastructure Act: FINMA's next steps” of 6 July 2016 (“FINMA Guidance 01/2016”), FINMA informed financial market participants about the proposed steps to be taken in relation to the Financial Market Infrastructure Act (FMIA), the Financial Market Infrastructure Ordinance (FMIO) and FINMA's Financial Market Infrastructure Ordinance (FMIO-FINMA). FINMA also announced that it would inform financial market participants in due course about any relevant new developments.

Some risk mitigation obligations for OTC derivatives transactions (relating to timely confirmation, portfolio reconciliation, dispute resolution, portfolio compression and valuation; see Art. 131 paras. 1 and 2 FMIO) entered into force on 1 January 2017.

Moreover, following the publication of the EU regulations on the exchange of collateral in the Official Journal of the European Union on 15 December 2016, FINMA is now providing information about the schedule for the implementation of the Swiss regulations on the exchange of collateral.

Furthermore, as already indicated in FINMA Guidance 01/2016, FINMA will in due course provide information about the authorisation and recognition of trade repositories, the decision regarding definitive recognition of the equivalence of the European regulations, and the introduction of a clearing obligation. These topics are not, however, addressed in this guidance.

Deadlines for the exchange of collateral

In FINMA Guidance 01/2016, based on Article 131 para. 6 FMIO, FINMA extended the transitional deadlines for the relevant Swiss obligations with respect to Article 131 paras. 4 and 5 FMIO until such a time as the corresponding future obligations will have to be met in line with the relevant European regulations.¹ In this context, FINMA stated that it would provide further information about the parallel deadlines in Switzerland once the corresponding European regulations on the exchange of collateral had been finalised and adopted.

Delegated Regulation 2016/2251 of the European Commission in the Official Journal of the European Union (“Regulation 2016/2251”) was published on 15 December 2016.² Under the transitional provisions, the individual obligations

¹ See Section 3 of FINMA Guidance 01/2016.

² Delegated Regulation (EU) 2016/2251 of 4 October 2016 supplementing Regulation (EU) No. 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty.

will be phased in after the regulation enters into force (Art. 35 ff. and Art. 40 Regulation 2016/2251).

For counterparties who meet the conditions set out in Article 131 para. 4 let. a FMIO and Article 131 para. 5 let. a FMIO, in alignment with Article 40, Article 36 para. 1 let. a, Article 37 para. 1 let. a and Article 38 para. 2 of Regulation 2016/2251, the obligations to provide initial and variation margins will apply from 4 February 2017 and, in the case of intra-group transactions, from 4 July 2017 in line with the above-mentioned deadline extensions. Furthermore, in line with those deadline extensions and in conjunction with Article 38 para. 1 of Regulation 2016/2251, these obligations relating to OTC derivatives transactions involving equity or index options will apply to all counterparties from 4 January 2020.

Otherwise the deadlines defined in Article 131 paras. 4 and 5 FMIO will apply unchanged.