

FINMA Guidance 02/2017

Financial Market Infrastructure Act: reporting requirements / trade repositories

3 April 2017

Introduction

In FINMA Guidance 01/2016 “Financial Market Infrastructure Act: FINMA's next steps” of 6 July 2016 and Guidance 01/2017 “Financial Market Infrastructure Act: deadlines relating to the exchange of collateral” of 31 January 2017, FINMA announced that it would inform financial market participants about relevant developments relating to the Financial Market Infrastructure Act (FMIA), the Financial Market Infrastructure Ordinance (FMIO) and FINMA's Financial Market Infrastructure Ordinance (FMIO-FINMA). In this context, FINMA had also mentioned that two trade repositories had submitted applications.

In this Guidance, FINMA provides information about the authorisation of a Swiss trade repository and the recognition of a foreign trade repository.

Under Article 104 FMIA in conjunction with Article 130 FMIO, the authorisation and recognition of these trade repositories triggers the requirement for Swiss market participants to report derivatives transactions to a trade repository.

Recognition of the foreign trade repository is restricted to the receipt of reports under *Swiss law*. Until further notice, therefore, only reports which are made to the foreign trade repository under FMIA have discharging effect. A substituting report from Swiss market participants or their European counterparties to the foreign trade repository under *European law* has no discharging effect.

1 Authorisation of SIX Trade Repository AG

On 1 April 2017, FINMA legally authorised SIX Trade Repository AG, Zurich, to operate a Swiss trade repository in accordance with Article 74 FMIA. SIX Trade Repository AG is therefore authorised to accept reports about derivatives transactions from persons subject to reporting requirements in accordance with Article 104 FMIA and Article 105 para. 2 FMIA in conjunction with Article 93 FMIO.

2 Recognition of Regis-TR S.A.

Regis-TR S.A., which is headquartered in Luxembourg, is a European trade repository which has been registered with the European Securities and Markets Authority (ESMA) since 14 November 2013.

Regis-TR S.A. applied in Switzerland for recognition as a foreign trade repository for the receipt of reports in accordance with FMIA. This application has now been approved.

On 1 April 2017, FINMA recognised Regis-TR S.A. as a foreign trade repository in accordance with Article 80 FMIA for the receipt of reports about derivatives transactions from persons subject to reporting requirements in accordance with Article 104 FMIA and Article 105 para. 2 FMIA in conjunction with Article 93 FMIO. Swiss market participants will therefore be able to make reports about derivatives transactions with discharging effect *under FMIA* to Regis-TR S.A.

However, due to the limited scope of the recognition of Regis-TR S.A. based on the application, it is not currently possible for Swiss market participants to make reports about derivatives transactions with discharging effect *under EMIR*.¹ Any reports of derivatives transactions which are made to Regis-TR S.A. under EMIR do not therefore release persons subject to reporting requirements under Swiss law from their obligation to make the reports to an authorised or recognised trade repository in accordance with Article 105 para. 2 FMIA in conjunction with Article 93 FMIO.

3 Deadlines for the introduction of the reporting requirement

Under Article 104 FMIA in conjunction with Article 130 FMIO open derivatives transactions must be reported from the following dates at the latest:

- from 1 October 2017 if the counterparty which is required to report is a central counterparty (CCP) or a financial counterparty (FC) which is not small;
- from 1 January 2018 if the counterparty which is required to report is a small financial counterparty (FC-)² or a non-financial counterparty (NFC) which is not small;
- from 1 April 2018 in all other cases. However, transactions between two small non-financial counterparties (NFC-)³ do not have to be reported.

¹ 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). For the provisional recognition of the equivalence of the European regulations by FINMA, see Section 2.2 of FINMA Guidance 01/2016 "Financial Market Infrastructure Act: FINMA's next steps" of 6 July 2016.

² As defined in Articles 99 and 100 FMIA in conjunction with Articles 88 and 89 FMIO.

³ As defined in Articles 98 and 100 FMIA in conjunction with Articles 88 and 89 FMIO.

The deadlines are extended by six months in the case of derivatives transactions executed through a trading venue or organised trading facility (Art. 130 para. 2 FMIO).