

FINMA Guidance 01/2019

BREXIT: Recognition of UK derivatives regulations

21 February 2019

To fulfil the obligations applying to derivatives trading under foreign law, FINMA must both recognise the foreign financial market infrastructures and recognise the foreign law as equivalent (Art. 95 FMIA; Art. 81 FMIO). In this regard FINMA recognised the following regulations of the European Union (EU) as provisionally equivalent in its FINMA Guidance 01/2016: clearing of OTC derivatives transactions through a central counterparty (Art. 4 EMIR); reporting of derivative transactions to a trade repository (Art. 9 EMIR); risk mitigation techniques for OTC derivatives transactions (Art. 11 EMIR). The provisional recognition of equivalence enables counterparties subject to the Swiss obligations to meet these obligations by fulfilling the European regulations, provided the relevant conditions are met. It has not yet been possible to complete the regular assessment process to definitively confirm the equivalence.

The decision of the United Kingdom to leave the European Union (Brexit) means it will no longer fall within the territorial scope of EMIR. From this date the United Kingdom will, on the basis of the European Union (Withdrawal) Act 2018 in conjunction with the Over the Counter Derivatives, Central Counterparties and Trade Repositories Regulations 2018 ("the EMIR transposition act"), transpose EMIR into domestic UK law with a number of minor formal changes.

Against this backdrop FINMA provisionally recognises the derivatives regulations of the United Kingdom with regard to the clearing obligation (Art. 14 EMIR transposition act), reporting obligation (Art. 19 EMIR transposition act) and risk mitigation obligation (Art. 21 EMIR transposition act) as equivalent to the relevant Swiss legislation (cf. Art. 97 (1) FMIA; Art. 104 (1) FMIA; Art. 107 (1) FMIA). The provisional recognition of equivalence will enter into force when the EMIR transposition act is passed by the British parliament.