

FINMA Guidance 05/2017

Financial Market Infrastructure Act: reporting to a trade repository / extending the transition period

18 October 2017

Background

On 3 April 2017, FINMA Guidance 02/2017 "Financial Market Infrastructure Act: reporting requirements / trade repositories", provided information about the authorisation of a Swiss trade repositories and the recognition of a foreign trade repository.

The actual authorisation/recognition of trade repositories brings into effect the requirement where Swiss market participants must report derivatives transactions to a trade repository. This has been the case for certain categories of Swiss market participant since 1 October 2017.

To give small non-financial counterparties not supervised by FINMA sufficient lead-in time for the technical implementation of this obligation to report derivative transactions to a trade repository, FINMA is extending the corresponding transitional provisions from 1 April 2018 to 1 January 2019.

The transition periods for large and small financial counterparties, large non-financial counterparties and central counterparties are unchanged.

1 Extending the transition period in accordance with Article 130 para. 1 let. c FMIO

The derivatives reporting obligation in accordance with Article 104 ff. FMIA is part of the G20 commitment to regulating derivatives markets. This concerns "all financial and non-financial counterparties and all derivative transactions concluded by them".¹

On 1 April 2017, FINMA granted authorisation to one Swiss trade repository and also recognised one foreign trade repository, thus instigating the obligation for Swiss market participants to report derivative transactions to a trade repository (see Art. 104 FMIA² in conjunction with Art. 130 FMIO³).

Article 130 para 1 and 2 FMIO provide for the staggered introduction of the obligation to report derivative transactions to a trade repository. In special cases, FINMA has the option of extending these transition periods as specified in Article 130 para. 3 FMIO.

¹ Federal Council Dispatch on FMIA, BBl. 2014 p. 7573.

² Federal Act on the Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (FMIA) of 19 June 2015.

³ Federal Ordinance on the Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (FMIO) of 25 November 2015.

From 1 January 2018, under the reporting hierarchy set forth in Article 104 paras. 2 and 3 of FMIA, most derivative transactions must be unilaterally reported to a trade repository by financial counterparties (FC), central counterparties (CCP), small financial counterparties (FC-)⁴ and non-financial counterparties (NFC). Reporting by these counterparties shall also include derivative transactions with small non-financial counterparties (NFC-).⁵ In certain cases, however, NFC- will also be required by law to submit a report, in particular in cases of derivative transactions with foreign counterparties that do not report in accordance with FMIA (see Art. 104 paras. 2 to 4 FMIA and Art. 92 para. 1 FMIO).⁶

According to the Explanatory Report of the Federal Department of Finance (FDF) on FMIO, "the reporting obligations of the various categories of counterparty will come into force in stages, depending on each one's organisational capabilities".⁷

Swissholdings and other representatives of the companies concerned have informed FINMA of the difficulties encountered by NFC- in implementing their reporting obligations and have applied for an extension. Some NFC- had mistakenly held out the hope that they could structure derivative transactions with foreign counterparties in such a way that they would avoid having to report such transactions. Consequently, they now need more time to prepare themselves for implementation of their reporting requirements.

The deadline extension is supported by the State Secretariat for International Financial Matters (SIF). FINMA has also been informed that no amendment to the ordinance is planned, concerning neither the principle of a reporting obligation for small non-financial counterparties nor an extension of the deadline.

To give NFC- sufficient lead-in time for the technical implementation of this obligation to report derivative transactions to a trade repository, FINMA is extending the transitional provisions specified in Article 130 para. 1 let. c FMIO, from 1 April 2018 to **1 January 2019**, in accordance with Article 130 para. 3 FMIO.

⁴ In accordance with the definition set out in Articles 99 and 100 FMIA in conjunction with Articles 88 and 89 FMIO.

⁵ In accordance with the definition set out in Articles 98 and 100 FMIA in conjunction with Articles 88 and 89 FMIO.

⁶ According to the Federal Council Dispatch on FMIA, Article 104 FMIA establishes that "reporting is required if, according to the reporting hierarchy, the foreign counterparty has a reporting obligation but for whatever reason fails to report or does not report to an authorised or recognised trade repository", BBl. 2014 p. 7573.

⁷ See p. 53 of the Explanatory Report on the Ordinance on the Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (Financial Market Infrastructures Ordinance, FMIO) of 25 November 2015.

2 Timeframes until reporting requirements enter into force

Open derivative 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-) or a non-financial counterparty (NFC) which is not small;
- from **1 January 2019** in all other cases. However, transactions between two small non-financial counterparties (NFC-) do not have to be reported.

For derivative transactions traded via a trading venue or an organised trading system (OTS), all deadlines are extended by six months, respectively (Art. 130 para. 2 FMIO).