Eidgenössische Finanzmarktaufsicht FINMA
Autorité fédérale de surveillance des marchés financiers FINMA
Autorità federale di vigilanza sui mercati finanziari FINMA
Swiss Financial Market Supervisory Authority FINMA

FINMA Guidance 02/2021

Derivative trading obligations and reference rate replacement

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In its Guidance 01/2020 of 20 March 2020 FINMA made clear, with reference to the joint statement by the Basel Committee on Banking Supervision and the International Organization of Securities Commissions of 5 March 2019, that amendments to existing derivative contracts solely to address the reference rate reforms would not trigger margin obligations. Likewise, FINMA declared that the introduction of a fallback clause would not trigger a clearing obligation for existing derivative contracts.

In the process of switching to the new reference rates, there is now a need for further clarification about the conditions in which derivative contracts amended as described above qualify as legacy contracts and hence do not give rise to central clearing or bilateral margin obligations.

Adjustments to existing derivative contracts solely to address the reference rate reforms are not considered as newly concluded derivative contracts and therefore do not trigger either clearing or margin obligations (Arts. 85, 131 para. 3 FMIO [SR 958.11]).

The following will be considered as adjustments in the above sense:

a) The replacement, extension or other modification to an existing derivative contract that replaces the operative benchmark rate; replacements can also be made as part of portfolio compression;

b) The introduction of a fallback clause in relation to the operative benchmark rate for a derivative contract;

c) Technical adaptations required to implement the adjustments outlined under a) and b).

The adjustments may, in particular, modify the maturity or effect a change in the actual notional amount of the existing derivative contract, but they must be necessary for the replacement of the reference rate and abide by the market practices applicable in each case for the new reference rates.

This guidance relates solely to the regulatory derivative obligations under the FMIA. By providing these clarifications FINMA is also responding to international developments and contributing to the timely replacement of LIBOR.

FINMA considers inadequate preparations for the replacement of LIBOR as a major risk for the Swiss financial centre. FINMA set out its expectations including concrete milestones in Guidance 10/2020 LIBOR transition roadmap and is calling on all financial market players to comply with these milestones. FINMA's monitoring shows that the majority of banks are making satisfactory progress, although some market participants are still lagging behind the published milestones. Additional supervisory measures are being evaluated for supervised institutions that do not meet the expectations set out in FINMA Guidance 10/2020. FINMA is calling on all financial market participants to continue to press ahead with their preparations for the replacement of LIBOR as a matter of the highest priority.