FINMA Guidance 01/2020

Financial Market Infrastructure Act and Ordinance: derivatives trading

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1 International clarifications on derivative obligations

On 5 March 2019 the Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO) issued a joint statement[1] on the final implementation phases of the international framework[2] for initial and variation margin for non-centrally cleared OTC derivatives. This statement is intended to support timely and smooth implementation of this framework. As a full member of BCBS and IOSCO, FINMA participated in the work that led to the abovementioned statement.

In their statement, BCBS/IOSCO note that:

- Market participants may need to amend derivatives contracts in response to interest rate benchmark reforms. Amendments to legacy derivative contracts pursued solely for the purpose of addressing interest rate benchmark reforms do not require the application of the margin requirements for the purposes of the BCBS/IOSCO framework.
- In the remaining phases of the framework's implementation, initial margin requirements will apply to a large number of entities for the first time, potentially involving documentation, custodial and operational arrangements. The Basel Committee and IOSCO note that the framework does not specify documentation, custodial or operational requirements if the bilateral initial margin amount does not exceed the framework's €50 million initial margin threshold. It is expected, however, that covered entities will act diligently when their exposures approach the threshold to ensure that the relevant arrangements needed are in place if the threshold is exceeded.

FINMA supports the abovementioned statement from BCBS/IOSCO and declares that the interpretation contained therein applies to Swiss supervisory law (cf. Art. 131 para. 3, 100b para. 1 FMIO [SR 958.11]).

Derivatives contracts that have not previously been subject to a clearing obligation should not be subject to such an obligation even if fallback clauses are introduced.

[1] BCBS/IOSCO statement on the final implementation phases of the Margin requirements for non-centrally cleared derivatives (https://www.iosco.org/news/pdf/IOSCONEWS526.pdf)

[2] IOSCO Margin requirements for non-centrally cleared derivatives (https://www.iosco.org/library/pubdocs/pdf/IOSCOPD480.pdf)

2 Requirement to trade certain derivatives on a trading venue

The platform trading duty set out in Art. 112 ff. FMIA (SR 958.1) is part of the global reforms of the derivatives regulations that were initiated following the financial crisis of 2007/2008. In Switzerland, the platform trading duty was introduced on 1 August 2017 in the context of an amendment to the FMIO. In reality, however, the duty will only become effective when FINMA specifies the derivatives that must be traded on platforms.

The Federal Council announced in September 2018 that the FMIA should be reviewed in the next few years and that the Federal Department of Finance (FDF) will take up this work from 2019[3]. This review may encompass the platform trading duty, among other things. In light of this, FINMA will postpone its decision on naming the derivatives subject to the platform trading duty until after this review is complete. The SIF supports this postponement.

[3] https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-72174.html