



Does FMIA (FinfraG) only apply to banks and brokers?

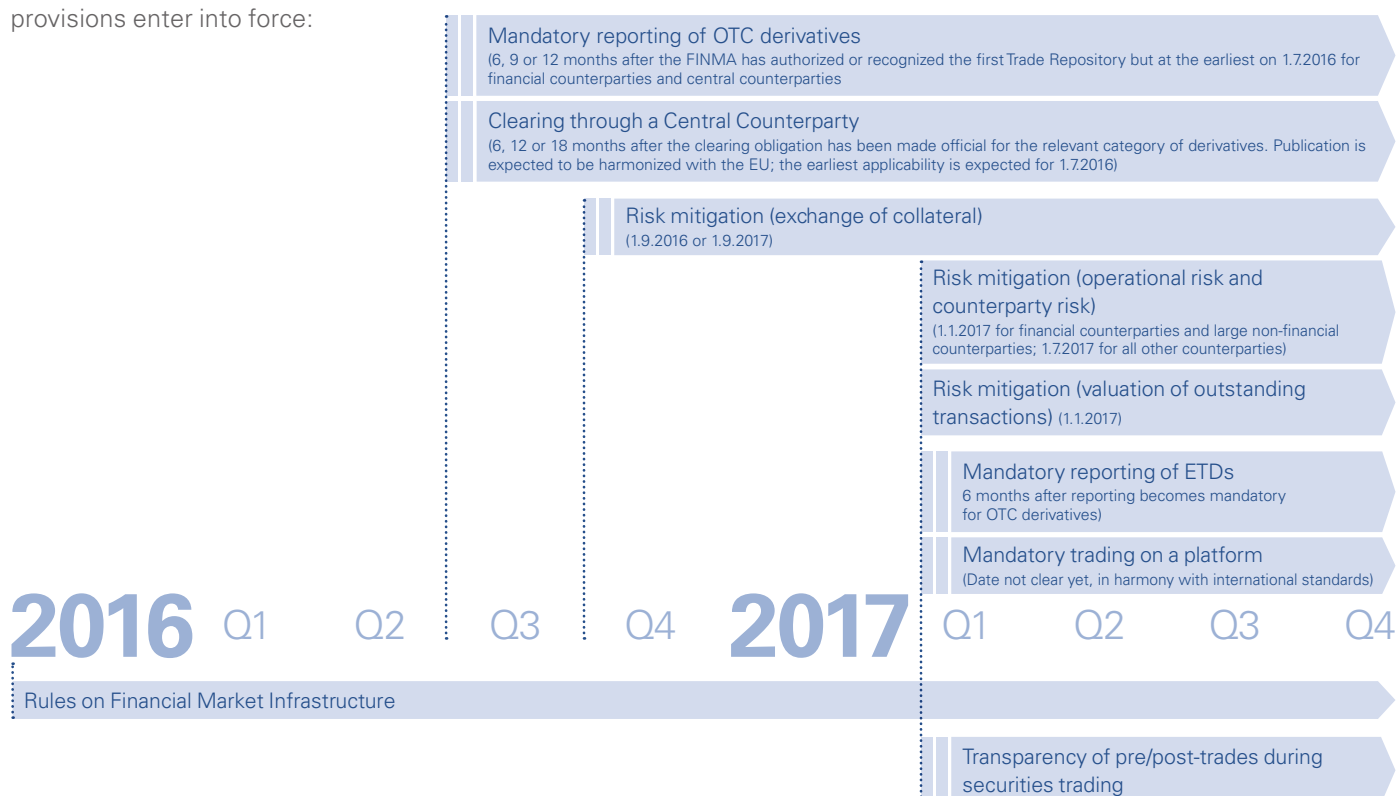
Client information



FMIA (FinfraG) is of relevance to anyone involved in the trading of derivatives or financial instruments

With the adoption of the Financial Market Infrastructure act (FMIA), Switzerland adjusts its existing regulations on financial market infrastructures and derivatives trading to international standards. The act has implications for operators of financial market infrastructures and their participants. Not only financial intermediaries, such as banks, brokers, insurance companies and others, but also industrial corporations (which so far were not affected by financial regulations) will have to become familiar with the provisions on derivatives trading, regardless of whether they conclude derivatives contracts for hedging or speculative purposes.

This act entered into force on 1 January 2016; there are various transitional periods for the different obligations which arise from this new law. The first provisions regarding derivatives trading will become effective in Q3 or Q4 2016 and the first audit will take place in respect of the business year 2016. The following timeline provides a better idea of when the different provisions enter into force:



Financial Market Infrastructures

The FMIA standardizes how Financial Market Infrastructures should be organized and operated. The type of institutions affected are stock exchanges, multilateral trading facilities, central counterparties, central securities depositories, trade repositories and payment systems. The FMIA also poses new requirements for institutions used to trade securities and other financial instruments whose purpose is the exchange of bids and the conclusion of contracts based on discretionary rules (Organized Trading Facilities).

Who is affected?	What are the next steps?
Operators of Swiss Financial Market Infrastructures	require authorization from FINMA.
Operators of foreign Financial Market Infrastructures	need to review whether they have Swiss participants. If yes, they need to request a recognition by FINMA.
Operators of systems used for trading in financial instruments	need to review whether they qualify as an organized trading facility. If yes, they must adhere to relevant rules regarding organisation and transparency.
Participants in Financial Market Infrastructures	need to review whether (and to what degree) they are already complying with the new provisions for participants or if there is a need for action in respect of the new provisions.

Market conduct – Trading in derivatives

The FMIA provides standardized market conduct rules for participants in financial markets. The FMIA has incorporated the applicable rules from the Banking Act, the Stock Exchange Act and the National Bank Act and now also addresses the conduct rules for financial market participants (including industrial companies) while trading derivatives.

Who is affected?

All companies incorporated in Switzerland that are involved in the trading of derivatives are affected. The FMIA differentiates between financial and non-financial counterparties in a derivatives transaction. The FMIA introduces the core obligations listed below. Certain exceptions apply for smaller counterparties and for derivatives transactions which are cleared centrally (e.g. ETDs):

Obligation	Product	Financial counterparty	Small financial counterparty ¹	Non-financial counterparty	Small non-financial counterparty ²
Clearing via a Central Counterparty (CCP)	OTC derivatives ³	yes	no	yes	no
Reporting to a Trade Repository	OTC derivatives ETD	yes	yes	yes	yes
Risk Mitigation – operational risk and counterparty risk	OTC derivatives ³	yes	yes	yes	yes ⁴
Risk Mitigation – valuation of outstanding transactions	OTC derivatives ³	yes	no	yes	no
Risk Mitigation – exchange of collateral	OTC derivatives ³	yes	yes	yes	no
Mandatory trading on a platform	OTC derivatives ³	yes	no	yes	no

¹ A financial counterparty is deemed to be small if its average gross notional value of all open OTC derivatives transactions³ amounts to less than CHF 8bn over a 30-workday period.

² A non-financial counterparty is deemed to be small if its average gross notional value of significant open OTC derivatives transactions³ falls below the thresholds over a 30-workday period. Thresholds for each asset class in CHF billions: credit (1.1), equity (1.1), interest rate instruments (3.3), foreign exchange³ (3.3), commodities and others (3.3).

³ Except for FX forwards/swaps, if they are settled physically.

⁴ Portfolio reconciliations are not mandatory.

What are the next steps?

1. All companies must determine whether they engage in derivatives transactions. An impact analysis is a good instrument to determine which duties arise and which measures have to be taken. For this, the focus points are the FMIA classification of the company (threshold calculation), the FMIA classification of the counterparties and the classification of the products traded.

2. In a second step, the following requirements and obligations have to be implemented:

Contracts and client data	Terms on portfolio reconciliation, timely confirmations of transactions and procedures in case of discrepancies must be defined in contracts. FMIA-specific data must be included (FMIA classification, etc.). Client data must be available for transaction reporting.
Transaction data	FMIA-specific product and transaction data (including valuation models) must be prepared, maintained and held available for reporting.
IT and operations	Manual or automated solutions have to be developed for reporting purposes, timely confirmations and portfolio reconciliations.
Collateral and clearing	For OTC derivatives not cleared centrally, additional collateral needs to be exchanged with the counterparty. In view of the mandatory clearing, clearing solutions also have to be prepared.
Business model	The cost / benefit analysis for derivatives transactions has to be updated in view of the new obligations (especially the exchange of collateral) and respective measures have to be defined.
Documentation and controls	The processes used to ensure the compliance with regulatory requirements have to be in written form and embedded in an internal control system.

Our FMIA services

Financial Market Infrastructures	Operators	We can support your authorization or recognition procedures with FINMA.
		We can provide advice in respect of the analysis of systems which could qualify as organized trading facilities and help you implement the requirements.
Market conduct	Financial market participants	We can support your impact analysis of requirements for participants in financial market infrastructure and financial markets, especially for derivatives trading. We can also deliver fundamentals to allow you to evaluate the impact of the new provisions on your business model and your processes and structures, thus helping you to initiate any further measures to implement the requirements.
		We will help you to calculate the threshold of open OTC derivatives transactions in order to determine FMIA classification as small or large counterparty.
		We can support you in the classification of derivatives instruments regarding the applicable obligations.
		We can support you in the implementation of regulatory provisions in your internal processes and systems so that you can meet FMIA requirements in an efficient, complete and timely manner.
		We can review whether the measures you have taken meet FMIA requirements and can draw up an action plan for a complete, efficient and timely implementation.
		We can accompany you on your way to become FMIA compliant and will answer any legal and/or operating questions you may have.

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