ZURICH
Brandschenkestrasse 24
CH-8027 Zurich

GENEVA
Route de Chêne 30
CH-1211 Geneva 6

LAUSANNE
Avenue de Rhodanie 40C
CH-1007 Lausanne

Federal Council proposes changes to key market infrastructure provisions

On 19 June 2024, the Swiss Federal Council published its proposed revision of the Financial Market Infrastructure Act ("FinMIA"). Among a wide-ranging set of amendments relating to derivatives trading rules and the Swiss market conduct framework, the Federal Council's draft bill also includes a range of amendments relating to market infrastructure, including payment systems, central securities depositaries and trading venues, as well as important amendments to the Swiss transaction reporting regime. The draft bill is open for comments until 11 October 2024.

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AUTHORS		
	Ariel Ben Hattar	Partner
	Patrick Schärli	Partner

1. Payment systems

Currently, payment systems not operated by banks are subject to a tiered registration / licensing and oversight regime: Smaller, Swiss-based payment systems are only subject to the Anti-Money Laundering Act and required to register with a self-regulatory organization without being prudentially supervised. On the other side of the spectrum, systematically relevant (Swiss and non-Swiss) payment systems are subject to oversight from the Swiss National Bank. Additionally, under the FinMIA, where necessary for the proper functioning of financial markets or of market participants, the Swiss Financial Supervisory Authority FINMA ("**FINMA**") may subject payment systems to a licensing requirement. Although this licensing requirement has been in existence since the FinMIA entered into force in 2016, there is to date no entity that holds a FINMA-issued payment system operator license.

Under the proposed FinMIA revision, the Federal Council, by way of provisions in the implementing ordinance, would set thresholds above which a payment system operator is required to obtain a FINMA license to operate. To date, no indication has been given as to what these thresholds will be.

2. Central securities depositaries

The concept of central securities depositary (CSD) was formalized when the FinMIA entered into force in 2016, though it lacked a clear definition of what constitutes a CSD, which resulted in uncertainties, notably in the field of new services providers and infrastructures linked to the distributed ledger technology.

The Federal Council now proposes to clarify in the FinMIA that CSDs are primarily those financial market infrastructures that offer centralized custody of securities and/or securities settlement services *in relation to a stock exchange or multilateral trading facility (MTF)*. In other words, CSDs are first and foremost infrastructures that allow "traditional" trading venues to function.

Importantly, the Federal Council is not proposing to create a new obligation for trading venues to ensure that securities they admit to trading are recorded in and traded through a CSD.

3. Access to foreign trading venues

Today, a foreign trading venue can admit Swiss regulated firms as participants only if such foreign trading venue has obtained an individual license (recognition) to do so from FINMA.

The Federal Council is proposing to replace this system of individual licenses (recognitions) with one based on general recognition by FINMA of certain non-Swiss jurisdictions. Concretely, in order to admit Swiss regulated participants, a foreign venue would need to be established in a state (a) where trading venues are subject to "*appropriate*" regulation and supervision and (b) that guarantees mutual assistance to FINMA; an individual licensing (recognition) request would thus no longer be required. The Federal Council indicates that these conditions should be satisfied in respect of all jurisdictions that are members of IOSCO.

If this proposal is accepted, it would significantly expand the range of trading venues accessible to Swiss regulated participants and it would also lower the administrative burden of non-Swiss trading venues with respect to Swiss participants.

4. Securities transaction reporting obligation

Securities firms and participants to a Swiss trading venue (stock exchange or MFT) are currently required to report a number of transactions they enter into to Swiss trading venues rather than to a regulatory authority. The current system also leaves considerable room for FINMA and trading venues to define what needs to be reported and how, which has occasionally created controversies as to whether there was sufficient legal basis for FINMA and the trading venue's guidance and rules.

The Federal Council proposes relatively significant changes in this area:

- First, transaction reports should in the future be sent directly to FINMA, although such transaction reports may then be shared by FINMA with the relevant trading venues for market surveillance purposes. FINMA would therefore need to operate a technical platform to which participants and securities firms would need to connect.
- Second, the transaction reporting regime should be primarily rooted in FinMIA and its implementing ordinances, with little room left for FINMA to enact generally applicable rules or

guidance documents. FINMA would however retain the ability to grant exemptions to the transaction reporting regime.

Additionally, the changes proposed by the Federal Council in relation to foreign trading venues could have positive side effects on the Swiss transaction reporting regime. Currently, trades entered into on foreign securities through foreign recognized venues are not required to be reported. Because foreign recognized venues are only those that have obtained a FINMA license to onboard Swiss participants, the scope of this exemption is today quite narrow and does not include some of the world's largest (and tightly regulated) stock exchanges. This would change if the proposal to recognize venues by jurisdiction is accepted and the reporting exemption is maintained, as there would potentially be more venues deemed to be recognized, resulting in fewer transaction reports due under Swiss law.

5. Next steps

The Federal Council's draft bill has been released for public consultation, which will run until October 11, 2024. After this period, the Federal Council will draft a revised version to submit to the Swiss Parliament, with this step likely occurring in 2025. Should Parliament pass the draft into law, the implementation will be gradual, with numerous specifics to be determined by the Federal Council.

CONTACTS

CONTACTS	Patrick Schärli	Partner, Zurich patrick.schaerli@lenzstaehelin.com Tel: +41 58 450 80 00
	Patrick Schleiffer	Partner, Co-Head of Capital Markets, Zurich patrick.schleiffer@lenzstaehelin.com Tel: +41 58 450 80 00
	Ariel Ben Hattar	Partner, Geneva ariel.benhattar@lenzstaehelin.com Tel: +41 58 450 70 00
	François Rayroux	Partner, Head of Asset Management, Geneva francois.rayroux@lenzstaehelin.com Tel: +41 58 450 70 00
	Jacques Iffland	Partner, Head of Capital Markets, Geneva jacques.iffland@lenzstaehelin.com Tel: +41 58 450 70 00