

FINMA Guidance 09/2020

Financial Market Infrastructure Ordinance: exchange of collateral / further extension of transitional period for equity options

12 November 2020

With the entry into force of the FMIA / FMIO in Switzerland on 1 January 2016, a duty to exchange collateral for non-centrally cleared OTC derivatives was introduced. In line with EU law, a new transitional period was established in the summer of 2017 in the course of the partial revision of the FMIO. On the basis of Article 131 para. 6 FMIO, FINMA issued Guidance 04/2019 on 13 December 2019, extending the transitional period specified in Article 131 para. 5bis FMIO for the duty to exchange collateral for non-centrally cleared OTC derivative transactions involving options on individual equities or index options to 4 January 2021. With this extension, FINMA contributed to the harmonisation of the international regulatory framework for derivatives trading, particularly in respect of EU legislation.

In the consultation process in respect of the DLT Ordinance¹, it is envisaged that, in keeping with ongoing regulatory developments in the EU and the general review of the FMIA announced by the Federal Council in 2018, the transitional period of Article 131 para. 5bis FMIO should be extended until 1 January 2024, in order to achieve consistency with the period specified in Article 130 para. 1 lit. c FMIO. The DLT Ordinance is expected to enter into force towards the middle of 2021 at the earliest. This would result in a gap arising between the end of FINMA's original extension to 4 January 2021 and entry into force of the extended transitional period pursuant to the revised FMIO, in which collateral would have to be exchanged for equity options for a few months between 4 January 2021 and the entry into force of the DLT Ordinance. The State Secretariat for International Financial Matters (SIF) therefore suggested that FINMA should introduce a bridging period extension.

In order to cover the period of time up until entry into force of the DLT Ordinance, FINMA is extending (for reasons of proportionality and to avoid disadvantages arising for Swiss derivatives traders) the transitional period of Article 131 para. 5bis FMIO **until entry into force of the DLT Ordinance, but until 1 January 2022 at the latest**. Furthermore, in view of the ongoing regulatory debate in the EU, a prompt deadline extension pursuant to Article 131 para. 6 FMIO is needed.

¹ www.admin.ch > Bundesrecht > Vernehmlassungen > laufende Vernehmlassungen