

Annex: Jurisdictions’ authority and process for exercising deference in relation to OTC derivatives regulation

In Switzerland, legislation aiming at implementing FSB recommendations in the area of OTC derivatives and revising regulatory framework of the financial market infrastructure is not in place yet. Presumably, it will come into force along with implementing measures at the end of 2015. From then on, Swiss authorities will not only start with the process of recognizing foreign CCPs and TRs but also determine and decide on the equivalence of foreign OTC derivatives regulatory regimes. Against this backdrop, the following answers reflect the regime as contained in the draft legislative proposal published in December 2013.

Part A: With respect to the **authorisation and supervision of:** OTC derivatives market participants; TRs; CCPs; and exchanges or electronic trading platforms:

<p>A.1 What legal capacity, if any, do authorities in your jurisdiction have to defer to another jurisdiction's regulatory framework and/or authorities? Which authorities can exercise this capacity? Please also indicate if/when ‘partial’ or ‘conditional’ deference decisions can be made.</p>	<p>According to the draft Financial Market Infrastructure Act (draft FMA), the Swiss Financial Market Supervisory Authority FINMA has the legal capacity to determine and take decision on whether foreign securities dealers, trading venues, CCPs as well as TRs are adequately regulated and supervised by their home regulator before gaining access to Swiss derivatives market and/or market participants. Despite of a few adjustments in line with international standards, FINMA’s legal capacity regarding the admission of foreign securities dealers and recognition of foreign trading venues and CCPs will correspond to its existing capacity at present, notably under the Stock Exchange Act.</p>
<p>A.2 Please provide a brief description of the standards that need to be met in coming to a decision as to whether to exercise any such deference, and the criteria/inputs used in assessing whether these standards have been met (e.g. whether “similar outcomes” is the standard used; whether an analysis of enforcement regimes or authority is included as part of the assessment; whether reference is made to implementation of international standards; etc.).</p>	<p>According to the draft FMA the following conditions and criteria have to be met for admission and recognition. The conditions for admitting foreign securities dealers and recognising foreign trading venues and CCPs largely correspond to those at present, notably under the Stock Exchange Act.</p> <p>MARKET PARTICIPANTS</p> <p><u>Securities dealer</u> not located in Switzerland: Admission to the participation at Swiss trading venues is granted if the securities dealer is adequately regulated and supervised by its home regulator. This includes in particular that it is subject to equivalent rules of conduct as well as equivalent record keeping and reporting obligations. Furthermore, the securities dealer’s competent home regulator (1) is not objecting to its activity in Switzerland and (2) grants mutual assistance to FINMA.</p> <p>On the following webpage, http://www.finma.ch/e/beaufsichtigte/pages/aufsicht-ueber-die-boersen-und-maerkte.aspx, FINMA has published a guideline for the applications for</p>

	<p>authorisation as a foreign stock exchange member (remote member). Direct link to the document: http://www.finma.ch/e/beaufsichtigte/Documents/wl-remote-members-e.pdf.</p> <p>Starting point for each assessment and precondition for granting an authorisation is the determination whether the home regulator of the foreign securities dealer is a signatory of the IOSCO MMoU and is adhering as matter of principle to internationally recognised standards for securities regulation, oversight and enforcement.</p> <p>FINANCIAL MARKET INFRASTRUCTURE</p> <p><u>Market venue</u>: Recognition is granted if (a) the market venue is adequately regulated and supervised by its home regulator and (b) the home regulator (1) is not objecting to cross border activity, (2) confirms to inform FINMA of any violation of law or other malpractices and (3) is granting mutual assistance.</p> <p>On the following webpage, http://www.finma.ch/e/beaufsichtigte/pages/aufsicht-ueber-die-boersen-und-maerkte.aspx, FINMA has published a guideline for the applications for authorisation as a foreign stock exchange. Direct link to the document: http://www.finma.ch/e/beaufsichtigte/Documents/wl-boersen-ausl-e.pdf.</p> <p>Starting point for each assessment and precondition for granting an authorisation is the determination whether the home regulator of the foreign market venue is a signatory of the IOSCO MMoU and is as matter of principle adhering to internationally recognised standards for securities regulation, oversight and enforcement.</p> <p><u>CCP</u>: Recognition is granted if (a) the CCP is adequately regulated and supervised by its home regulator and (b) the home regulator (1) is not objecting to its cross border activity, (2) confirms to inform FINMA of any violation of law or other malpractices and (3) is granting mutual assistance.</p> <p><u>TRs</u>: Recognition is granted if (a) the TR is adequately regulated and supervised by its home regulator and (b) the home regulator is (1) not objecting to its cross border activity, (2) confirms to inform FINMA of any violation of law or other malpractices and (c) competent Swiss authorities have direct access to the data collected by the foreign TR.</p>
<p>A.3 Please provide a brief description of the process by which a decision to defer to another jurisdiction is taken, including any</p>	<p>According to the draft FMA, FINMA grants admission to foreign securities dealers and recognition of trading venues, CCPs or TRs upon</p>

<p>action that needs to be initiated to begin the process (e.g. an application from a jurisdiction or an entity), the general time frame for coming to a decision, any processes in place for reviewing a decision, and whether any other agreements or conditions need to be met in order for an affirmative decision to be taken (e.g. confidentiality agreements, supervisory cooperation, or reciprocal arrangements).</p>	<p>their application if the conditions are met as described under A2. As a general rule, FINMA may refuse the admission or recognition if the country in which the applicant is located does not grant Swiss financial market participants or financial market infrastructures access to its market or does not apply the principle of national treatment to them.</p> <p>At present, under the Stock Exchange Act, FINMA grants authorisation as a foreign stock exchange member (remote member) and as foreign stock exchange if the conditions as described under A2 are met. In order to obtain an authorisation, foreign stock exchange members and foreign trading venues have to submit an application to FINMA according to the applicable guidelines and containing all relevant information. If the application is complete, the general time frame for coming to a decision is about two weeks. FINMA may refuse the authorisation if the country in which the applicant is located does not grant Swiss financial market participants or trading venues access to its market and does not apply the principle of national treatment to them (art. 37 Stock Exchange Act).</p>
<p>A.4 Please provide copies of, or weblinks to, any documentation or forms that have been developed for sharing with jurisdictions or entities as part of the comparability or equivalence assessment.</p>	<p>As mentioned under A2 above, guidelines for applications for authorisation as foreign stock exchange member (remote member) and foreign stock exchange can be downloaded on the website of FINMA, under the following link:</p> <p>http://www.finma.ch/e/beaufsichtigte/pages/aufsicht-ueber-die-boersen-und-maerkte.aspx</p>
<p>A.5 Please provide a list of jurisdictions that you have already determined to be comparable or equivalent, if any (and for what regulatory purposes), and please note any jurisdictions for which a determination is pending.</p>	<p>FINMA does not release a list of jurisdictions that have already been determined comparable or equivalent. However, a list of the foreign exchange and the foreign stock exchange members that are authorised in Switzerland can be downloaded under the following link:</p> <p>http://www.finma.ch/e/beaufsichtigte/pages/aufsicht-ueber-die-boersen-und-maerkte.aspx</p>

Part B: With respect to **requirements on market participants** related to: reporting to TRs; clearing transactions through CCPs; capital, margin and/or other risk mitigation requirements; and executing transactions on exchanges or electronic platforms:

<p>B.1 What legal capacity, if any, do authorities in your jurisdiction have to defer to another jurisdiction's regulatory framework and/or</p>	<p>The draft FMA is based on the assumption that the OTC derivatives market is international and that OTC derivatives dealing</p>
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<p>authorities? Which authorities can exercise this capacity? Please also indicate if/when ‘partial’ or ‘conditional’ deference decisions can be made.</p>	<p>is effected on a cross border basis. Therefore, the draft FMA acknowledges that Swiss financial market participants may meet their obligations according to the draft FMA if they clear transactions through foreign CCPs, report them to foreign TRs or execute them on foreign trading venues. However, precondition is that FINMA has determined and decided that the regulation of the relevant jurisdiction is equivalent to the FMA. FINMA has the legal capacity to defer to foreign OTC derivatives regulation in this respect.</p>
<p>B.2 Please provide a brief description of the standards that need to be met in coming to a decision as to whether to exercise any such deference, and the criteria/inputs used in assessing whether these standards have been met (e.g. whether “similar outcomes” is the standard used; whether an analysis of enforcement regimes or authority is included as part of the assessment; whether reference is made to implementation of international standards; etc.).</p>	<p>Conditions and standards to be met will be concretised in implementation measures such as ordinances and regulations.</p>
<p>B.3 Please provide a brief description of the process by which a decision to defer to another jurisdiction is taken, including any action that needs to be initiated to begin the process (e.g. an application from a jurisdiction or an entity), the general time frame for coming to a decision, any processes in place for reviewing a decision, and whether any other agreements or conditions need to be met in order for an affirmative decision to be taken (e.g. confidentiality agreements, supervisory cooperation, or reciprocal arrangements).</p>	<p>The process will be concretised in implementation measures such as ordinances and regulations.</p>
<p>B.4 Please provide copies of, or weblinks to, any documentation or forms that have been developed for sharing with jurisdictions or entities as part of the comparability or equivalence assessment.</p>	<p>-</p>
<p>B.5 Please provide a list of jurisdictions that you have already determined to be comparable or equivalent, if any (and for what regulatory purposes), and please note any jurisdictions for which a determination is pending.</p>	<p>-</p>