

*SECA Breakfast Event:  
Regulatory Update for  
Corporate Finance  
Advisors & Asset  
Managers*

*6 November 2015*

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# *Agenda*

- Hot News
- Market Abuse Regulation
- FinfraG
- Capital Market Union
- Q&A

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# *Market Abuse Regulation*

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## ***Main changes***

### ➤ **Significant changes**

- Significant changes to the European laws on market abuse are due to come into effect on July 2016. On implementation, the new measures will replace the four current European directives on market abuse.

### ➤ **Pan-European criminal regime**

- A new European Market Abuse Directive (MAD 2) introduces a pan-European criminal regime for «serious cases» of market abuse.

### ➤ **Market soundings**

- MAR creates a new regime relating to the taking of market soundings. This will be highly relevant to issuers and their advisers as well as buy-side firms which are sounded out.

### ➤ **Market abuse**

- The new Market Abuse Regulation (MAR) covers other cases of market abuse. Legislative measures extend to:
  - A wider range of markets and types of issuer than under the current European law, including SME markets and issuers;
  - Cross-manipulation of spot commodities markets;
  - Certain high frequency/algorithmic trading strategies;
  - Benchmark manipulation.

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## ***Scope of application***

### **➤ Scope of the legislation**

The legislation also covers all areas currently covered by the existing market abuse directives, including:

- Insider dealing;
- Improper disclosure of inside information;
- Market manipulation;
- Stabilisation of share buy backs;
- Timely disclosure of inside information;
- Insider lists;
- Transactions by Persons Discharging Managerial Responsibilities;
- Analysts' independence/conflicts of interests;
- Suspicious transaction reporting and off-market trades.

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# ***Market sounding***

## Requirements for market sounding

### ➤ **Prior to market sounding**

- Check whether insider information will be disclosed
- Record results of the examination in writing

### ➤ **Examination prior to disclosure**

- Solicit consent of the addressee of the market sounding activities
- Information of the addressee about the confidentiality and insider dealing

### ➤ **Documentation**

- What information will be transferred to whom and from whom (including time and place)
- Disclosure to authorities (upon request)

### ➤ **After disclosure**

- Information to addressee if insider information loses these characteristics
- Audit requirement of the addressee about the possession of insider information
- Documentation and presentation to an authority (upon request)
- Further specification by FINMA

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## ***Insider lists***

### ➤ **Affected persons**

- Issuers: stock exchange, MTF or OTF (new)
- Exception: KMU-growth market
- All persons acting on behalf or on the order of the issuer

### ➤ **Duties**

- Establishment of a list of all persons who have authorized access to insider information
- Ongoing update
- Affected persons acknowledge their duties in writing
- Recording period: 5 years since establishment

### ➤ **Content**

- Identity of the affected persons (according to template: Name, Adr., ID-Number, Firm, Function, date of birth)
- Reason for being on the list
- Date and time of entry
- Date of establishment of the insider list

### ➤ **Updates**

- Reason for being on the list changes
- New persons have access to insider information
- Persons do not have access any more to insider information

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## ***Prevention and detection of market abuse (Suspicious Transactions & Order Reporting, “STOR”)***

### **➤ Affected persons**

- Operators of markets and investment firms that operate a trading venue
- Persons that professionally execute or intermediate transactions

### **➤ Duties**

- Establishment and maintenance of rules, systems, and procedures for the prevention and detection of insider dealing and market manipulation
- Immediate reports of suspicious transactions to the responsible administration

### **➤ Amendments in the MAR**

- Increased number of reports expected based on the enlarged scope of application
- Not just «transactions», but also «orders»

### **➤ Further specifications by ESMA (see RTS)**



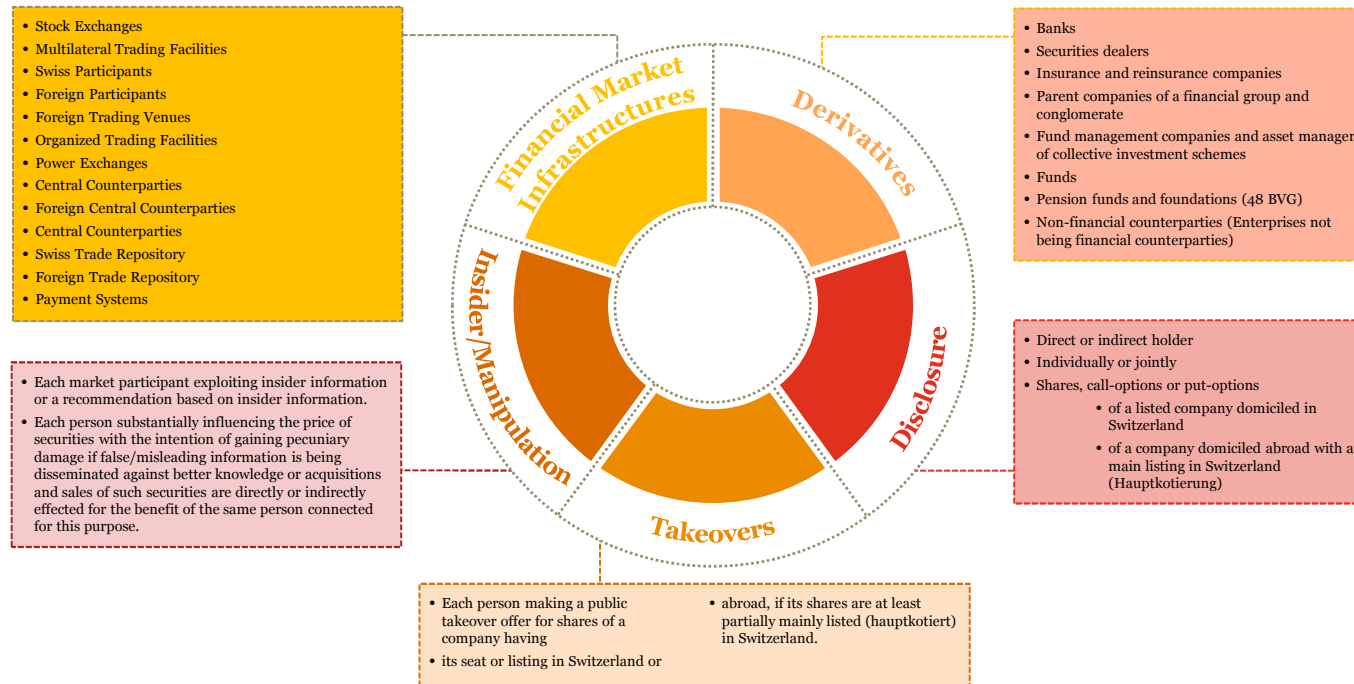
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# *Swiss Financial Market Infrastructure Act*

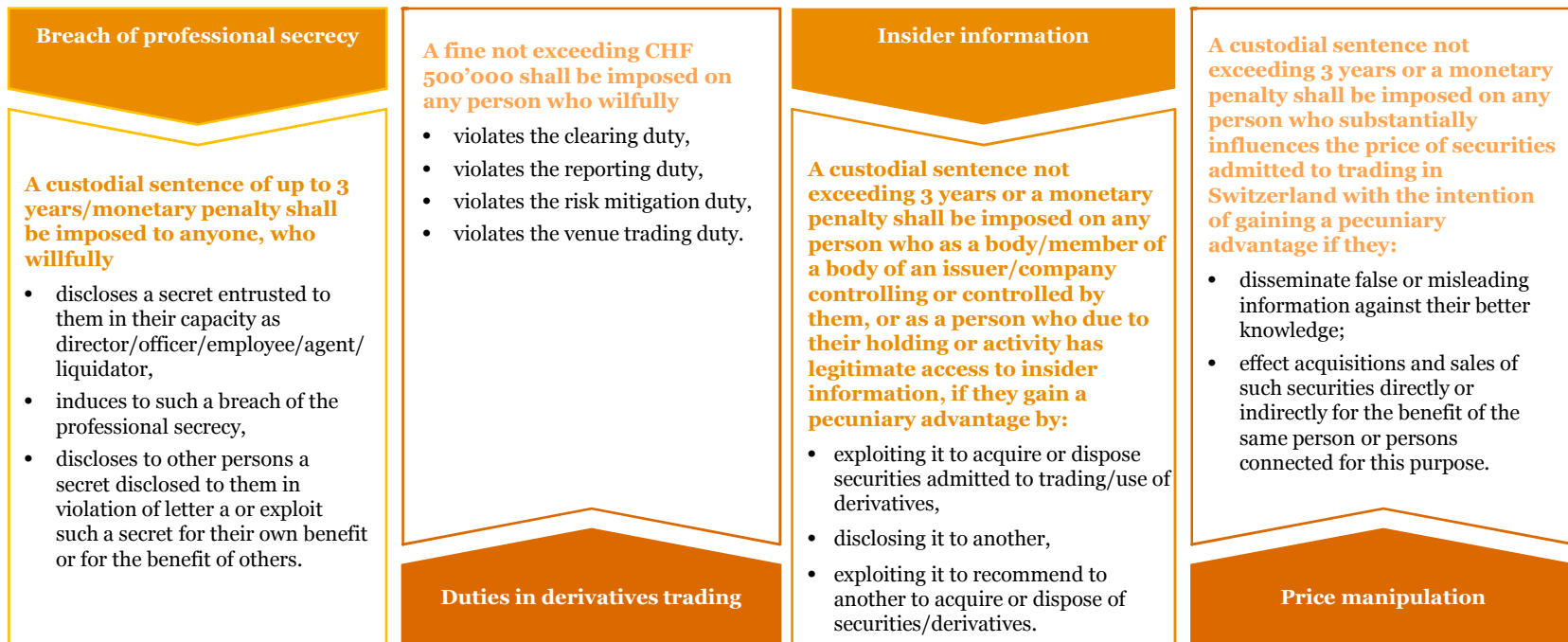
## Overview scope of application of the FMIA



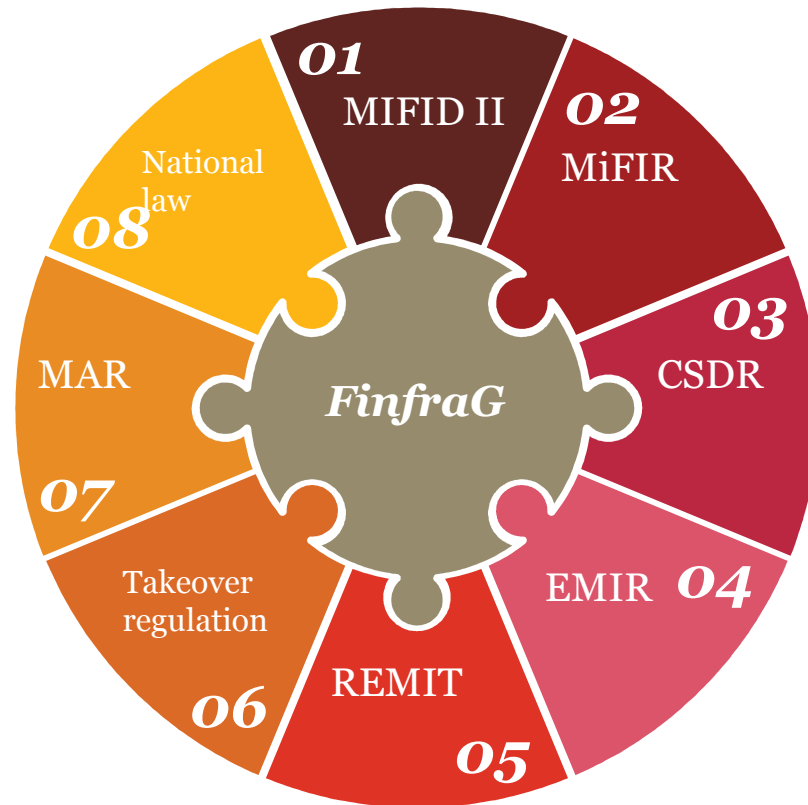
## Who falls within the scope of application of the FMIA?



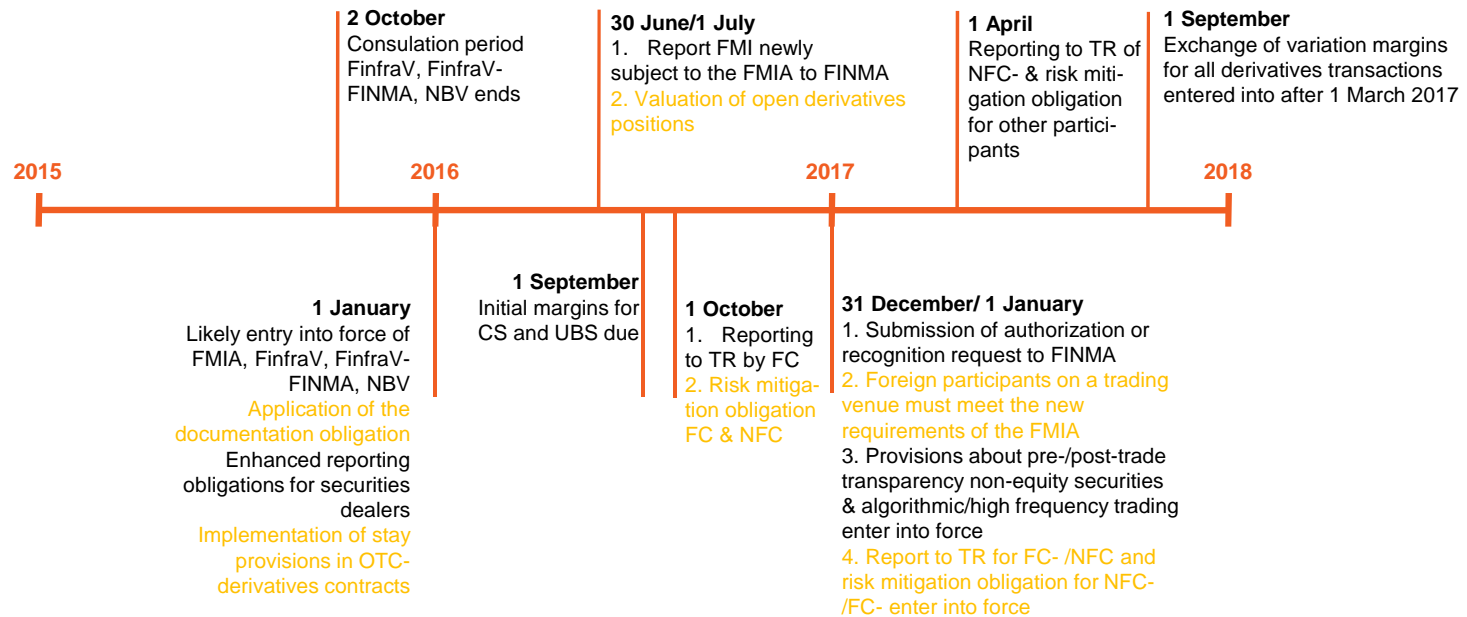
## Penal provisions



**European Counterparts**



## Some important dates



# Important questions

## 1 *Are we talking about a derivative?*

- Generally each financial contract whose value is being derived from one or multiple underlyings and is not a cash transaction is a derivative if no exceptions are applicable.

## 2 *What is the legal nature of the counterparty?*

- Is the counterparty a FC or an NFC?
- Is the counterparty small?

## 3 *Which obligations are applicable?*

- Is there a clearing or reporting obligation?
- Are there risk mitigation measures?
- Is there a trading obligation?

## 4 *Who must fulfil the obligation?*

- Who must report to the Trade Repository?

## Are we talking about a derivative?

	Kassa	Elektrizität/Gas	Commodities	Übertragbare Wertpapiere/ Wertrechte	Derivate in Form einer Einlage	Forex swaps/ futures	Structured products	Securities lending/ borrowing	ETD	Andere OTC
Gegenpartei-klassifizierung	X	X	X	X	X	X	X	X	X	✓
Abrechnung	X	X	X	X	X	X	X	X	X	✓
Meldung	X	X	X	X	X	✓	X	X	✓	✓
Portfolio Reconciliation	X	X	X	X	X	X	X	X	X	✓
Dispute Resolution	X	X	X	X	X	X	X	X	X	✓
Valuation Reporting	X	X	X	X	X	X	X	X	X	✓
Collateral Reporting	X	X	X	X	X	X	X	X	X	✓
Bilateral Margining	X	X	X	X	X	X	X	X	X	✓
Plattformhandelspflicht	X	X	X	X	X	X	X	X	X	✓



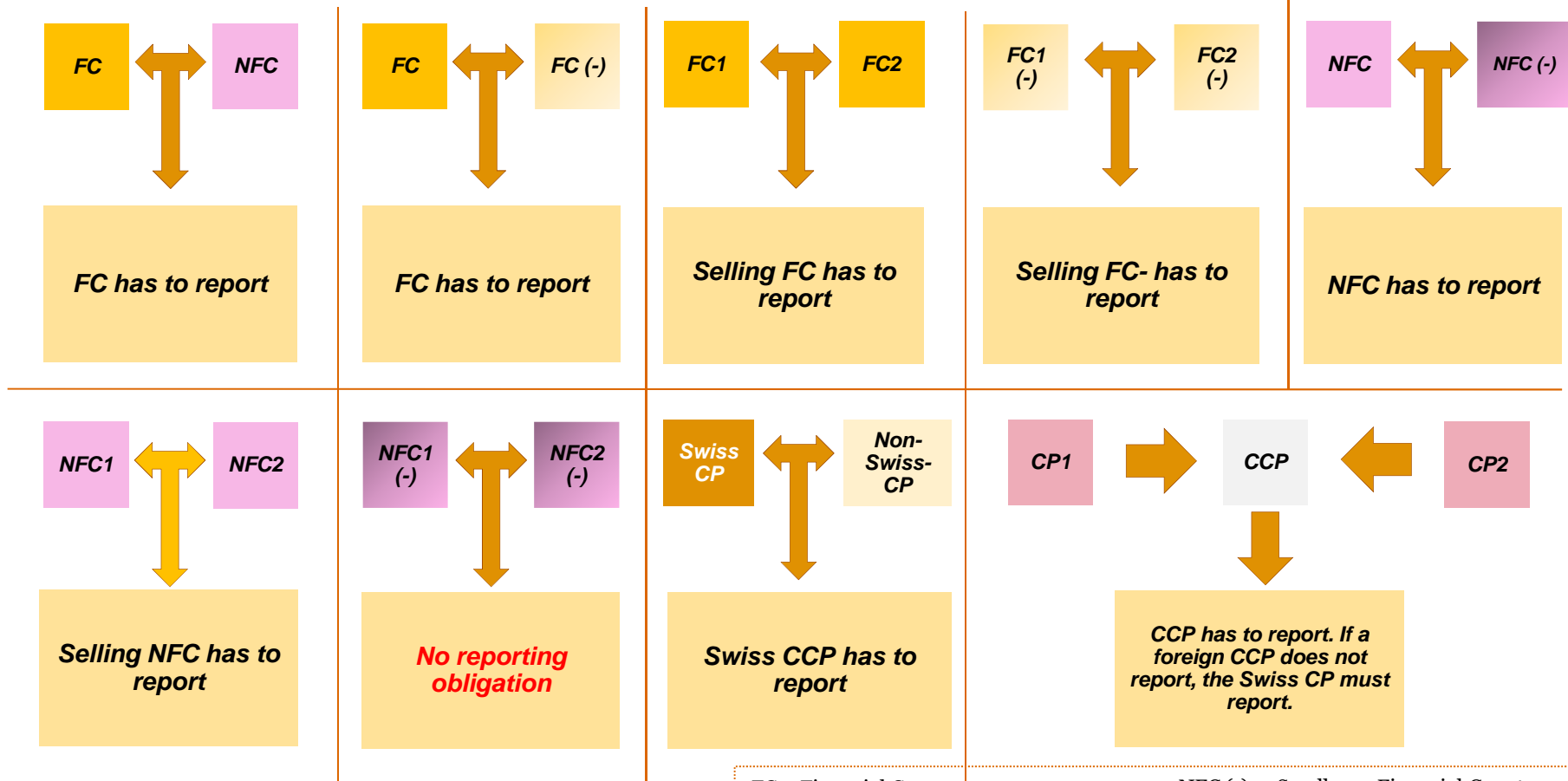
## ***What is the legal nature of the counterparty?***

<b>Financial Counterparty (FC)</b>	<ul style="list-style-type: none"> <li>Swiss banks, securities dealers, insurance and reinsurance companies, parent companies of financial or insurance group or financial or insurance conglomerate, fund management companies, asset managers of collective investment schemes, collective investment schemes, occupational pension schemes and investment foundations (Art. 48-53k BVG).</li> </ul>
<b>Non-financial Counterparty (NFC)</b>	<ul style="list-style-type: none"> <li>Non-financial counterparties are companies that are not financial counterparties.</li> </ul>
<b>Small Financial Counterparty (FC-)</b>	<ul style="list-style-type: none"> <li>A financial counterparty is deemed to be small if the rolling average for its gross position in all outstanding OTC transactions calculated over 30 working days of the entire financial group is below the threshold of CHF 8 bio.</li> </ul>
<b>Small Non-financial Counterparty (NFC-)</b>	<ul style="list-style-type: none"> <li>A non-financial counterparty is deemed to be small if all of the rolling averages for its gross positions in relevant outstanding OTC derivatives transactions calculated over 30 working days are below the following thresholds: credit derivatives CHF 1.1 bio., equity derivatives CHF 1.1 bio., interest derivatives CHF 3.3 bio., forex derivatives CHF 3.3 bio., commodities derivatives and other derivatives CHF 3.3 bio.</li> </ul>
<b>Exempted counterparties and counterparties only subject to reporting</b>	<ul style="list-style-type: none"> <li>The chapter on OTC-derivatives do not apply to the Confederation, Cantons, and Communities, the SNB, and the Bank for International Settlements.</li> <li>Multilateral development banks, certain public organizations (incl. social insurances) owned by the Confederation, Cantons, or Communities are subject to the reporting obligations according to Art. 104 FMIA.</li> </ul>

## *Which obligations are applicable?*

	<b>FC</b>	<b>FC-</b>	<b>NFC</b>	<b>NFC-</b>
<b>Clearing obligation</b>	Yes	No	Yes	No
<b>Reporting obligation</b>	Yes	Yes	Yes	Yes/No (if between NFC-)
<b>Risk mitigation measures (confirmation, reconciliation, dispute resolution)</b>	Yes	Yes	Yes	Yes/No (no Portfolio Reconciliation if NFC-)
<b>Risk mitigation measures (valuation)</b>	Yes	No	Yes	No
<b>Risk mitigation measures (exchange of securities)</b>	Yes	Yes	Yes	No
<b>Trading venue obligation</b>	Yes	No	Yes	No

# Who has to fulfil the reporting obligation?



FC = Financial Counterparty  
 FC (-) = Small Financial Counterparty  
 NFC = Non-Financial Counterparty  
 NFC (-) = Small non-Financial Counterparty  
 CP = Counterparty  
 CCP = Central Counterparty

# Some remarks

Topic	Details	Commentary
<b>Extraterritoriality</b>	The FMIA and its ordinances do only set forth a very limited extraterritorial effect. The FMIA does only stipulate a clearing obligation and an obligation to trade on a trading venue which will be further diluted in the FinfraV.	The limited extraterritorial impact as well as the possibility to fulfill the obligations under the FMIA under foreign law are welcome.
<b>Documentation obligation</b>	FC and NFC must establish in writing the procedures/processes implementing the clearing obligation, reporting obligation, risk mitigation measures, and trading venue obligation. Non-financial counterparties can decide in writing not to trade in derivatives.	These procedures/processes must already be established beginning as of January 1, 2016. There are in other words no transition periods set forth in the current draft of the FinfraV for these obligations.
<b>Party self-declaration</b>	A counterparty might in principle rely on the self-declaration of the counterparty about its nature. Such a self-declaration is applicable to all obligations under the chapter related to the OTC-derivatives. Parties must be informed about amendments on time.	The reliance on self-declarations issued by counterparties, especially also regarding the legal nature of foreign domiciled counterparties, are welcomed.
<b>No Frontloading</b>	The obligation to clear derivatives through licensed or recognized central counterparties starts 6 to 12 months after the point in time when FINMA determines the mandatory application of the clearing obligation related to specific derivative categories. Only derivatives transactions entered into after the start of the clearing obligation are subject to the clearing obligation.	The fact that no front loading is required is welcomed from a practical point of view.

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# *EU Capital Markets Union*

# EU Capital Markets Union

## Financings of Start-Ups, innovation and non-listed companies

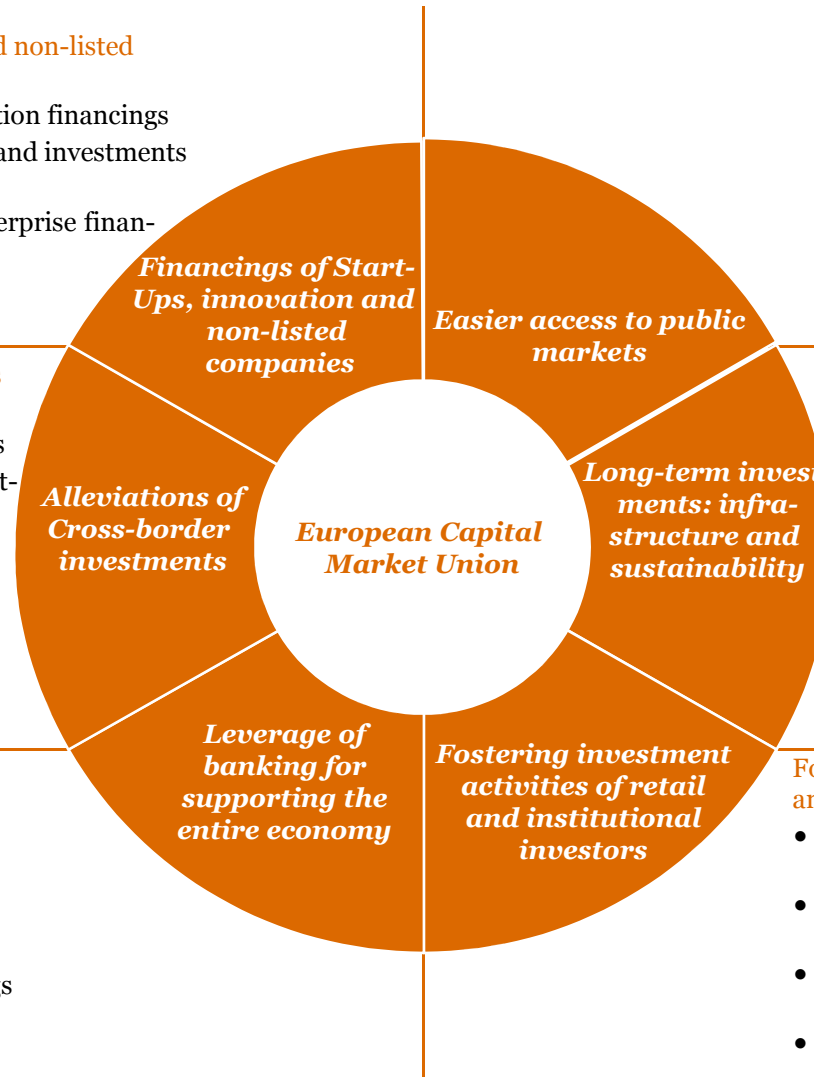
- Support of risk capital and participation financings
- Elimination of information barriers and investments for small-and-mid-sized companies
- Fostering innovative methods of enterprise financings

## Alleviations for cross-border investments

- Elimination of national and tax law obstacles for cross-border investments
- Improvement of the market infrastructure for cross-border investments
- Supervisory law and bankruptcy law convergences

## Leverage of banking for supporting the entire economy

- Enhancement of local financing
- Build-up of European securitisation markets
- Support of financing of the entire economy by means of bank financings



## Easier access to public markets

- Enhancement of the access to public markets
- Improvement of equity financing

## Long-term investments: infrastructure and sustainability

- Fostering infrastructure investments
- Ensuring consistency of the EU-framework for the provision of financial services

## Fostering investment activities of retail and institutional investors

- Increased selection and competition for investors
- Enhancement of the offerings on retail investor markets
- Enhancement of private retirement saving
- More investment opportunities for institutional investors and fund management companies

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## ***Your contacts***

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