

Summary of the Swiss Financial Market Infrastructure Regulation and Counterparty Categories under FMIA

A. What is FMIA?

The Swiss Financial Market Infrastructure Act (“**FMIA**”), amongst other things, regulates the way in which “**over-the-counter**” derivatives (“**OTC derivatives**”) are traded and also how information regarding all derivative contracts is publicly reported and recorded. In particular, FMIA imposes regulatory requirements in relation to confirming derivative trades, clearing certain OTC derivatives, mitigating risks relating to non-centrally cleared OTC derivatives and reporting information about derivative trades to recognised and authorised trade repositories.

Does it matter if you are established outside Switzerland?

Although FMIA is a Swiss regulation, it may be relevant to you because its requirements could apply either because you are established in Switzerland and/or because the counterparty to your OTC derivative is a Swiss Goldman Sachs entity (such as Goldman Sachs Bank AG).

As such, even if you are established outside Switzerland, you may fall within the scope of FMIA. Therefore, you should assess whether you would fall within any of the counterparty categories for FMIA described below as if you were based in Switzerland and complete the application form accordingly.

B. Financial Counterparties

You will be a **Financial Counterparty** if:

- a. you are established in Switzerland and are one of the following:
 - a bank in accordance with Article 1 para 1 of the Swiss Banking Act of 8 November 1934;
 - a securities dealer in accordance with Article 2 letter d of the Swiss Stock Exchange Act of 24 March 1995;
 - an insurance or reinsurance company in accordance with Article 2 para 1 letter a of the Federal Act of 17 December 2004 on the Supervision of Insurance Companies;
 - a parent company of a financial or insurance group or financial or insurance conglomerate;
 - a fund management company or asset manager of collective investment schemes in accordance with Articles 32 and 24 of the Swiss Financial Institutions Act of 15 June 2018 (“**FinIA**”);
 - a collective investment scheme in accordance with CISA;
 - an institution for occupational pension schemes or an investment foundation in accordance with Articles 48-53k of the Federal Act of 25 June 1982 on Occupational Old Age, Survivors and Invalidity Pension Provision; or
- b. you are established outside of Switzerland but would fall within any of the above categories of firms/undertakings if you were based in Switzerland.

C. Small Financial Counterparties

You will be a Small Financial Counterparty if:

- a. you fall under one of the above categories of firms/undertakings under (a) and (b) above; and
- b. the rolling average for your gross position in all outstanding OTC derivatives transactions calculated over 30 working days is below the threshold of CHF 8 billion at the level of the financial or insurance group.

D. Non-Financial Counterparty

You will be a Non-Financial Counterparty if:

- a. you are not a Financial Counterparty; and
- b. you are established in Switzerland and registered in the register of commerce; or
- c. you are established out of Switzerland and are a legal entity, trust or similar institution according to the applicable laws in your jurisdiction; and
- d. you would be subject to the clearing obligation under FMIA. Broadly speaking, under FMIA, you will be subject to the FMIA clearing obligation if you, together with any other fully-consolidated group companies, take an aggregate position in OTC derivatives (not including positions that are for hedging purposes) that exceed any one of the following thresholds per OTC derivative asset class:
 - CHF 1.1 billion in outstanding gross notional value for OTC credit derivative contracts
 - CHF 1.1 billion in outstanding gross notional value for OTC equity derivative contracts
 - CHF 3.3 billion in outstanding gross notional value for OTC interest rate derivative contracts
 - CHF 3.3 billion in outstanding gross notional value for OTC foreign exchange derivative contracts
 - CHF 3.3 billion in outstanding gross notional value for OTC commodity derivative contracts and any other OTC derivative contracts not described above.

If you exceed one of the thresholds above, you will be treated as exceeding the thresholds for all of the classes of OTC derivatives described above.

E. Small Non-Financial Counterparty

You will be a **Small Non-Financial Counterparty** if you are not a Financial Counterparty or a Non-Financial Counterparty as described above and you are either (i) established in Switzerland and registered in the register of commerce, or (ii) established out of Switzerland and are a legal entity, trust or similar institution according to the applicable laws in your jurisdiction.

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