

## Client Alert



June 17, 2014

### **Proposed Regulatory Framework for Financial Products in Switzerland 2014-6-17**

Two new pillars of financial markets regulation are currently being elaborated in Switzerland. The proposed laws will have a strong impact on banks, securities dealers, issuers and distributors of financial products, fund management companies, external asset managers, individual client advisors, and trading venues with respect to the legal structuring, distribution, trading, and clearing and settlement of financial products. This client alert provides a brief overview on the expected key points of the new laws and sets out their potential effects on financial product providers in Switzerland.

#### **1. Introduction**

The collapse of Lehman Brothers on 15 September 2008 and the following financial crisis (including the Madoff Scandal) have led to various global regulatory changes. In this context, the legislation in the European Union (EU) has (and continues to have) a strong impact on Swiss regulatory developments. Consequently, the changes that are in the process of being introduced in the EU by the Markets in Financial Instruments Directive (MIFID II) and the European Market Infrastructure Regulation (EMIR) are similarly being implemented in Switzerland through two new pillars of financial markets regulation: The proposed Financial Services Act (FFSA) and the new Financial Market Infrastructure Act (FMIA).

#### **2. Financial Services Act (FFSA)**

##### **■ Scope of the new Law**

The new law targets a cross-sector regulation of financial products and services, mandates extended investor protection at the point of sale, and enhances the supervision of certain market participants.

##### **■ Key Points**

The FFSA is expected to cover the following key points:

1. Prospectus duty for all securities
2. Key Investor Information Document (KIID) for all complex financial products
3. Stricter duties at the point of sale
4. Client segmentation
5. Regulation of external asset managers
6. Licensing requirements for individual client advisors
7. Regulation of cross-border activities into Switzerland

## ■ Indicative Timetable

The following timetable represents an indicative schedule for the implementation of the FFSA. Financial product providers should be aware that the legislative process may differ from the dates set out below.

Timetable regarding the Entering into Effect of the FFSA										
2013	2014				2015				2017	2018
Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1-4	Q1-4
Hearing and examination phase ( <i>Vernehmlassung</i> )			Preparation Message of the Federal Council ( <i>Botschaft</i> )	Submission of Message by the Federal Council ( <i>Botschaft</i> )	Consideration 1 (National Council or Council of State)	-	Consideration 2 (Council of State or National Council)	Resolution of differences ( <i>Differenzbereinigungsverfahren</i> )	Entering into effect of the FFSA	

## ■ Possible Effects on Financial Product Providers

The FFSA will have a strong impact on financial product providers, in particular, with respect to the legal structuring of financial products.

## 3. Financial Market Infrastructure Act (FMIA)

### ■ Scope of the new Law

The purpose of the FMIA is to enhance the functioning, the stability, and the transparency of financial markets as well as the protection and equal treatment of investors.

### ■ Key Points

The FMIA will set out rules on the following key aspects:

1. Regulation of trading venues
2. Regulation of post-trading infrastructure
3. Trading transparency
4. Derivatives trading
5. Rules on market conduct
6. Penal provisions

### ■ The Road to FMIA

The following timetable represents an indicative schedule for the implementation of the FMIA. However, the legislative process may differ from this indicative schedule and readers should be aware that the below stated dates may not be accurate.

Timetable regarding the Entering into Effect of the FMIA										
2013	2014				2015					
Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4		
Hearing and examination phase ( <i>Vernehmlassung</i> )	Preparation Message of the Federal Council ( <i>Botschaft</i> )	Submission of Message by the Federal Council ( <i>Botschaft</i> )	Consideration 1 (National Council or Council of State)	Consideration 2 (Council of State or National Council)	Resolution of differences ( <i>Differenzbereinigungsverfahren</i> )	Entering into effect of the FMIA				

## ■ Possible Effects on Financial Product Providers

The FMIA will affect the clearing and settlement of OTC-derivatives, including structured products, either directly and/or with respect to hedging transactions.

## 4. Conclusion

The entering into effect of the FFSA and the FMIA will initiate a new era of financial product regulation in Switzerland. Once the drafts of the new laws are published, market participants need to assess whether and to what extent, their business will be affected.

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