



FINSA: THE NEW SWISS FINANCIAL SERVICES ACT AND NEW OBLIGATIONS FOR COMPANIES WHICH MANAGE OTHER PARTIES' RISK

The Swiss Financial Services Act ("FinSA"), the Swiss equivalent to MIFID II, will come into effect in stages from 1 January 2020 onwards. The aim of FinSA is different from other Swiss regulations dealing with derivatives, in that its purpose is to protect the customers of financial service providers and to regulate market conduct.

Together with its implementing ordinances, FinSA will affect companies providing financial services within the meaning of the act.

Subject to some exceptions, entities will be deemed to be financial service providers if they provide financial services on a professional basis to Swiss customers or from Switzerland to customers which are located elsewhere.

The term "*financial services*" includes, but is not limited to, any activity which leads to the sale or purchase of a financial instrument by a customer.

Commodity derivatives such as commodity swaps fall within the scope of the meaning of "*financial instrument*", as do some freight derivatives.

Although there is still some uncertainty about how FinSA will be interpreted, it may become relevant to companies managing risks such as price-risk for other companies, for instance by entering into commodity swaps.

FinSA will impose several obligations on financial service providers.

These include the duty to segment customers (including corporate entities) as either professional clients (a sub-set of which includes institutional clients) or retail clients (which can include corporate entities). Depending on how the customer is classified, the financial service provider must offer different levels of protection and different levels of information.

The customers will be able to opt-out of the protections under certain circumstances.

Financial service providers will also be subject to rules of conduct and information duties, and must adopt appropriate organisational measures to identify and avoid conflicts of interest.

They will in due course have to register with an ombudsman and may under some circumstances have to obtain civil liability insurance.

Duties will also be placed on the individuals who provide financial services to customers on behalf of the financial service providers. If they are not employed by an institution which is overseen by the Swiss Financial Market Supervisory Authority, they may have to register as client advisors and obtain appropriate insurance coverage.

In order to be registered as advisors, they will have to satisfy several requirements. Among others, they will have to show that they have sufficient knowledge of the rules of conduct as well sufficient technical knowledge to carry out their tasks.

There is still some uncertainty about how FinSA will be implemented in practice. Nonetheless, companies which offer hedging services to other parties should consider now whether they fall within FinSA's scope in order to prepare for the new obligations which they may have to face.

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