Association de
Banques Privées Suisses
Vereinigung
Schweizerischer Privatbanken
Association of Swiss Private Banks

Swiss Financial Market Infrastructure Act: an issue of competitiveness

In December 2013, the Swiss Federal Council launched a process of consultation on the draft Financial Market Infrastructure Act (FMIA). The Association of Swiss Private Banks (ASPB) recognises the necessity to adapt Swiss legislation to international standards and emphasises that this adaptation should aim to maintain the competitiveness of the Swiss financial centre.

The Swiss financial centre is largely open to the world; most of the transactions conducted here have an international dimension. Because of this interconnectedness with other financial centres, it is crucially important that we adapt to regulations currently being developed internationally. Hence the ASPB recommends aiming for equivalence with international standards when developing a regulatory framework for Switzerland, especially rules in place in the US and in Europe. This does not imply that we should adopt laxer rules than elsewhere, at the risk of not being recognised as equivalent, nor does it mean imposing stricter rules, with the addition of a "Swiss Finish" that could negatively impact Switzerland's competitiveness by pushing certain activities abroad.

The main innovation of the draft Act consists in new rules on derivatives trading. Swiss legislation should adapt to requirements already enforced abroad, namely in the US (Dodd-Frank Act) and the European Union (EMIR). In this context, we should aim to do just enough but not too much, to minimise added obstacles and costs for all participants in the Swiss financial centre. In this regard, the following aspects of the draft Act could be improved:

- Swiss banks are already required to report certain derivatives transactions to foreign trade repositories, and it is essential that this practice be allowed to continue uninterrupted: recognition of foreign repositories should be automatic rather than conditional, and the use of a Swiss repository optional rather than obligatory;

- The notion of derivative should be defined more precisely and, as is the case abroad, should explicitly exclude securitised products (e.g. structured products, certificates) and exchange-traded derivatives, since these products present none of the risks that the law aims to curb;

- Standard foreign exchange transactions (currency forwards and swaps) should be exempted from certain obligations defined in the draft Act, as in other international laws.

- To avoid distorting competition, the definition of "small counterparties" should be based solely on the volume of derivatives used, determined in a simple and transparent manner, and derivatives linked to transactions designed to reduce specific risks (e.g. commercial, financial, or real estate risk) should not be exempted.

- Collaboration with foreign authorities should not be modified at this stage, especially not at the expense of clients' rights; in fact we see no practical reason to include this aspect in the draft Act.

- Lastly, the Federal Council, and not the supervisory authority, should be responsible for implementation provisions.

Moreover, to ensure that the Swiss solution complies with international practices, which will undoubtedly continue to evolve, it would be wise to include in the Act a clause calling for automatic revision at regular intervals.

It is particularly important that the Act be adopted quickly, so as to resolve the current lack of equivalence and the ensuing costs, especially for intra-group transactions, as soon as possible. At present, Switzerland lags behind other jurisdictions in this regard.