



EuropaInstitut

AN DER UNIVERSITÄT ZÜRICH

Herausgeber:
Thomas U. Reutter, Thomas Werlen

Kapitalmarkt – Recht und Transaktionen XI

Inhaltsübersicht

The Federal Act on Financial Market Infrastructures – Impact on Market Participants	7
<i>Prof. Dr. Rashid Bahar, Rechtsanwalt, LL.M., Assoziierter Professor an der Universität Genf, Partner bei Bär & Karrer AG, Zürich</i>	
SIX Exchange Regulation – Quo vadis?	79
<i>Rodolfo Straub, Head SIX Exchange Regulation, SIX Swiss Exchange AG, Zürich</i>	
Investorenkommunikation und Social Media	95
<i>Theodor Härtsch, Rechtsanwalt, Partner bei Walder Wyss AG, Zürich</i>	
Haftung von Ratingagenturen	131
<i>Dr. Jürg Frick, Rechtsanwalt, LL.M., Partner bei Homburger AG, Zürich, und Hanna Jost, Rechtsanwältin, Mitarbeiterin bei Baur Hürlimann AG, Baden</i>	
Kotierung einer Schweizer Gesellschaft im Ausland	195
<i>Dr. Philippe A. Weber, Rechtsanwalt, LL.M., Partner bei Niederer Kraft & Frey AG, Zürich, und Alessandro Stanchieri, MLaw UZH, Junior Associate bei Niederer Kraft & Frey AG, Zürich</i>	
Regulierung und Haftung von Proxy Advisors	229
<i>Dr. Thomas U. Reutter, Rechtsanwalt, LL.M., Partner bei Bär & Karrer AG, Zürich</i>	

The Federal Act on Financial Market Infrastructures – Impact on Market Participants

Rashid Bahar^{*}

Content

I.	Introduction	9
1.	From Pittsburgh to Bern via Basel, Brussels and Washington.....	9
a)	International Standards.....	9
b)	The Implementation of the Global Standards.....	12
2.	The FMIA in the Swiss Context: a Stepping Stone in the New Financial Architecture.....	14
II.	Impact of the Regulation of Financial Market Infrastructures on Market Participants	17
1.	Overview of the Regulation of Financial Market Infrastructures	17
2.	Regulation of Trading Venues and Alternative Trading Facilities and their Impact on Market Participants.....	20
a)	Overview	20
b)	Trade Monitoring and Regulation of Algorithmic Trading	23
c)	Licenses for Foreign Participants	25
d)	Journaling and Trade Reporting	26
3.	Regulation of Central Counterparties and Central Securities Depositories	28
a)	Overview.....	28
b)	Segregation.....	28
c)	Portability.....	30
4.	Insolvency	31
III.	Regulation of Derivatives Trading	33
1.	Overview.....	33
2.	Scope.....	33

^{*} This article is an updated and expanded version of my previous article “Derivative Trading under the Federal Act on Financial Markets Infrastructure”, GesKR 4/2015, 479. I would like to acknowledge and thank Kerstin Arnesson, MLaw, trainee, for her precious assistance in researching and reviewing this article.

a)	Products in Scope	33
aa)	Derivatives	33
bb)	Excluded and Partially Excluded Instruments	36
b)	Entities in Scope	37
aa)	Swiss Entities and Certain Swiss Branches of Foreign Counterparties	37
bb)	Financial and Non-Financial Counterparties	39
aaa)	Financial Counterparties	39
bbb)	Status of Collective Investment Schemes	40
ccc)	Non-Financial Counterparties	41
ddd)	Foreign Counterparties	41
cc)	Exempted Entities	42
3.	Small and Non-Small Counterparties	44
a)	Intra-Group Transactions	47
aa)	Consolidated Approach	47
bb)	Exemption for Intra-Group Transactions	48
cc)	Transfer of Information within the Group	49
b)	Cross-Border Transactions	50
aa)	“As If“ Test and Unilateral Compliance	50
bb)	Substitute Compliance	51
cc)	Exemption for Conflicting Rules	52
4.	Clearing Obligations	53
a)	Overview	53
b)	Entities Subject to Clearing Requirements	53
c)	Derivatives Subject to Clearing Requirements	54
d)	Phase-in	55
5.	Reporting Obligations	56
a)	Overview	56
b)	Scope	57
c)	One-Sided Reporting Model	58
d)	Content, Format and Timing of Reporting	60
e)	Phase-in	62
6.	Risk Mitigation	62
a)	Overview	62
b)	Operational Risks	63
aa)	Timely Confirmation	63
bb)	Portfolio Reconciliation	65
cc)	Dispute Resolution	66
dd)	Portfolio Compression	67
c)	Daily Valuation	68
d)	Exchange of Collateral/Margin Rules	69
e)	Phase-in	71
7.	Compliance and Enforcement	73
a)	Documentation Requirements	73

b) Audit.....	74
aa) Financial Counterparties.....	74
bb) Non-Financial Counterparties.....	74
cc) Administrative Criminal Sanctions.....	75
IV. Conclusion.....	76