

[www.pwc.com](http://www.pwc.com)

# *The Swiss chapter of the Commodities Market Council Europe*

**CMC**  
COMMODITY MARKETS COUNCIL

CMC Europe's Member Meeting

Geneva 28 June 2019

**pwc**

---

## *Activities of the Swiss Chapter in the last year*

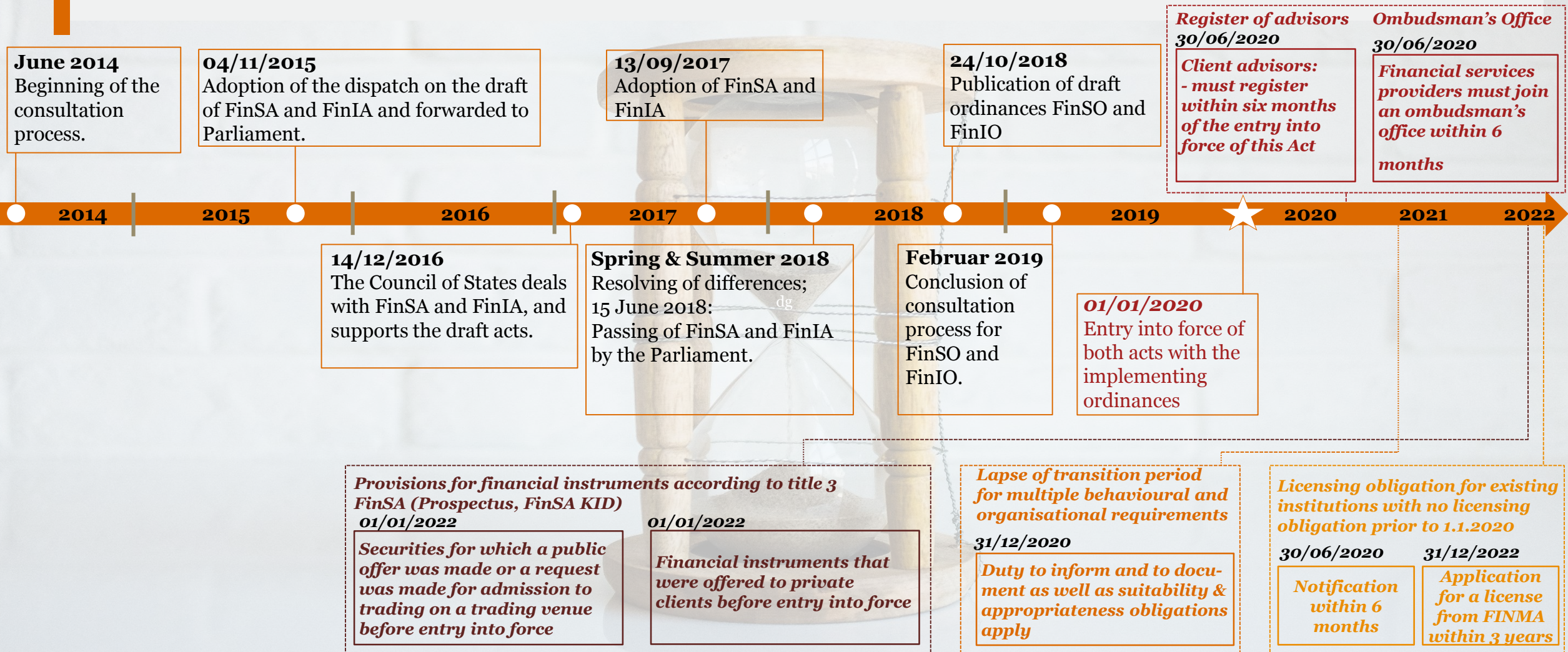
The Swiss chapter has been focusing its work in the last year on the following key topics:

- Swiss Financial Services Act
- Swiss Financial Institutions Act
- Swiss Financial Market Infrastructure Act
- Potential Swiss version of a Securities Finance Transaction Regulation

# The Swiss Financial Services Act



After a lengthy parliamentary discussion, the Financial Services Act (FinSA) and the Financial Institutions Act (FinIA) were adopted by Parliament on **15 June 2018**. The two acts will come into force on January 1, 2020.



# How does FinSA apply to commodities traders?



A financial service provider is someone who provides on a professional basis **financial services** in Switzerland or **for clients** in Switzerland.



*Do you offer one of the following services?*



*Do these services concern the following financial instruments?*



---

## *The Swiss Financial Services Act*

### Conclusion:







- The Swiss Financial Services Act does not apply to commodities traders that trade on their own behalf in commodities derivatives for hedging or directional purposes, **because they are not trading for clients.**
- The Swiss Financial Services Act might apply to commodities traders that provide hedging solutions by means of OTC derivatives for third parties that are clients (either trade execution or investment advise).



Kundenklassifizierung
Informationspflicht
Angemessenheit und Eignung von Finanzdienstleistungen
Dokumentation
Best Execution
Governance
Organisatorische Massnahmen und notwendige Weisungen
Interessenkonflikte und Inducements
Registrierung von Beratern – Beraterregister
Prospektpflicht und Basisinformationsblatt



# In case of application – the impact of FINSA

Duty to inform	Suitability and appropriateness	Documentation	Best Execution and Governance
<p>The following information must be communicated:</p> <ul style="list-style-type: none"> <li>• <b>General information</b></li> <li>• <b>Business-related</b></li> <li>• <b>Product-specific information</b></li> </ul> 	<p><b>Duty to carry out appropriateness and suitability assessments.</b></p> <p><b>No duty if:</b></p> <ul style="list-style-type: none"> <li>• Professionell clients (assumption)</li> <li>• Institutional clients</li> </ul> <p><b>Inform that no check if execution only.</b></p>	<p><b>Upon his request a copy of the client’s dossier must be made available to client</b></p> <p>Information to be disclosed:</p> <ul style="list-style-type: none"> <li>• <b>Financial services</b></li> <li>• <b>Portfolio</b></li> <li>• <b>Costs.</b></li> </ul> 	<p><b>Best-possible result with regard to:</b></p> <ul style="list-style-type: none"> <li>• <b>Financial aspect</b></li> <li>• <b>Timing of execution</b></li> <li>• <b>Quality of execution</b></li> </ul> <p><b>Governance</b> to ensure that principles</p> <ul style="list-style-type: none"> <li>• are carefully and sustainably implemented and applied in the company.</li> </ul> 
<i>Organisation and instructions</i>	<i>Conflicts of interest and Inducements</i>	<i>Register of Advisors</i>	<i>Ombudsman</i>
<p>Integrated into the <b>‘three lines of defence model’</b> with <b>consistent policies</b>:</p> <p>For example policies for</p> <ul style="list-style-type: none"> <li>• Risk management/ICS and organisational-by-laws</li> </ul> 	<p>Overarching <b>principle</b> in this context is the <b>disclosure of conflicts of interest</b> to clients</p> 	<ul style="list-style-type: none"> <li>• Registration to <b>register of advisors</b></li> <li>• This affects client advisors of financial service providers <b>who are not subject to supervision under FINMASA.</b></li> <li>• The same requirements also apply to <b>foreign financial service providers</b></li> </ul> 	<ul style="list-style-type: none"> <li>• Financial service providers must be attached to an ombudsman function.</li> </ul>

---

## ***The Swiss Financial Institutions Act***

The FINIA is the sister law of the FINSA and regulates Financial Institutions.

The FINIA was advertised not to change anything compared to the prior regime under the SESTA.

This is however not entirely true (no minimal threshold for proprietary traders in securities having their main activity in the financial markets and being a member to a trading venue (threshold under the SESTA, CHF 5 bio.))

The current regime of regulation of commodities traders stays in place as well as the «Swiss version» of the ancillary activity exemption which requires an activity not being «a main activity in financial markets».

A client trading activity for clients (in the own name and on behalf of the client)

---

## *The Swiss Financial Institutions Act*

A trading activity for clients («own name and on behalf of the client») (e.g. ETD) can however trigger a licensing requirement as investment firm if:

- it has more than 20 clients
- which are not
  - Domestic or foreign banks or investments firms;
  - Group companies; or
  - Clients having at least one person that is on a full-time basis taking care of the management of financial instruments



---

## *Other noteworthy developments*

- The Swiss authorities are planning to engage in their own version of a FMIA Refit. The Swiss chapter has already been in contact with the lawmaker and the financial market regulator FMIA and is following the developments closely. We have also submitted a position paper.
- The Swiss National Bank is currently investigating whether it would make sense to introduce in Switzerland the Swiss version of the «SFTR». The Swiss chapter is closely monitoring the developments and is meeting the responsible persons of the Swiss National Bank next week.

---

## *Interactions with Authorities and Stakeholders*

The chapter has been in frequent interaction with key Swiss decision makers, such as:

- Members of the parliament (Level 1 decision maker)
- Members of the government (Level 2 decision maker)
- Members of the regulator FINMA (Level 2 decision maker)

There has also been interaction with other key stakeholders influencing and shaping Swiss politics about commodities trading, such as Economie Suisse.

---

## ***Successes of the Swiss chapter of the CMCE***

The voice of the Swiss chapter is heard by the authorities (parliament, administration, and regulator).

The Swiss chapter of the CMCE was with its position paper about the FMIA successful in initiating a Refit review of the FMIA that will take in 2019.

Said position paper has also brought the authorities to postpone the reporting requirement for NFC- under the FMIA for 4 years to 2024.

Glencore is likely to join the Swiss chapter.

*Thank you for your attention*