



Swiss SPTC Meeting

Regulatory Developments

Simon Pabst, 26. March 2018

Agenda

Europa

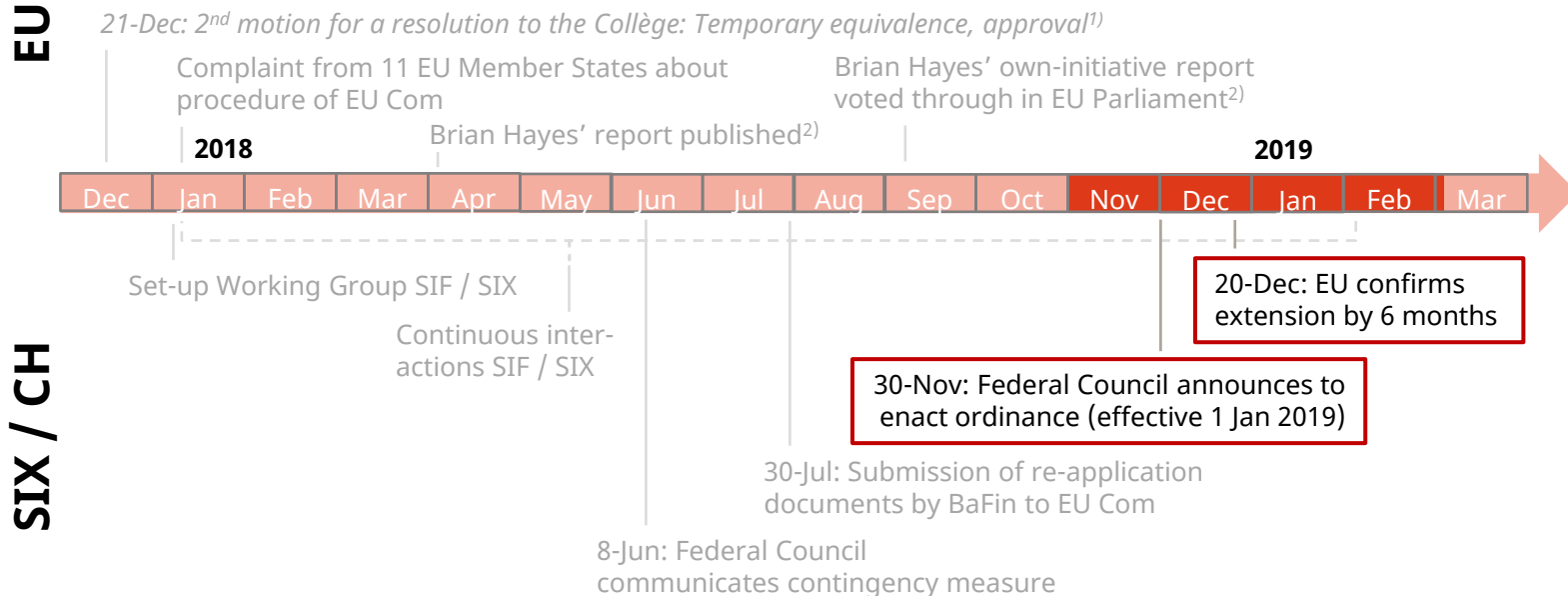
1. Update Exchange Equivalence
2. Update Brexit

Schweiz

3. Consultation on partial revision of Banking Act
4. Consultation on improving framework conditions for Blockchain/DLT

1. Update Exchange Equivalence

Recap: Overview of developments – Focus on last 4 months



Note:

- 1) The approval was given on the basis that, in the event of a rejection, no equivalence would have been granted on 3 January 2018
- 2) Brian Hayes' own-initiative report on relationships between the EU and third countries concerning financial services regulation and supervision, outlining some deficiencies of the current equivalence process.

Federal Council enacts an Ordinance that introduces a new recognition regime for foreign trading venues

- On 30 November 2018, the Federal Council (“FC”) announced the **implementation of an Ordinance** as already communicated in June 2018
- This Ordinance **introduces a new Swiss recognition obligation for foreign trading venues** that admit Swiss shares to trading **by 30 November 2018 (effective 1 January 2019)**
- A **recognition will only be granted** if the jurisdiction, in which the foreign trading venue is located, permits firms in that jurisdiction to trade in Swiss shares in Switzerland without restriction
- The aim of the Ordinance is that Swiss shares will no longer be admitted to trading on EU trading venues in case of no extension of equivalence and thus the **Share Trading Obligation would not apply anymore**
- The **final Ordinance text** defines special treatment of **dual-listed shares** of Swiss incorporated companies like ABB, Aryzta, LafargeHolcim (total 5 shares); also, **foreign companies** with a primary listing on SIX (like ams, Cassiopea, Cosmo, LLB and VP Bank (total 13 shares) are not in scope of the Ordinance
- **Enforcement** according to Art. 44 FINMASA which allows FDF to **open criminal sanctions** against BoD and senior management of the unauthorized EU trading venues

 The **intended effect** will be that **EU investment firms** could continue trading Swiss shares on SIX **irrespective of equivalence being granted or not**

Expected impact of the Federal Council's announced Ordinance

Equivalence extended

- Nothing will change and trading can continue as before

Equivalence not extended

- **Trading members:** Will have to re-route their trade flows and adjust their order routing engines in order to ensure orders are directed to SIX in the future and not to EU trading venues
- **Equity securities of issuers with registered offices in Switzerland:**
 - *No dual-listing in EU:* Swiss and EU investment firms can trade Swiss shares directly on the Swiss exchange, irrespective of whether equivalence is granted or not
 - *With dual-listing in EU:* Shares can be traded on the Swiss exchange (by Swiss members) as well as the EU exchange where these shares are dual listed (by EU members), but not on EU MTFs
- **Foreign issuers of equity securities:** Foreign shares primary listed on SIX are not in scope of the Ordinance and therefore may remain subject to the EU Share Trading Obligation
- **Post-trading:** SIX x-clear and SIX SIS are not impacted by this Ordinance and thus, it does not negate any authorisations both companies currently have

➔ While the impact of the Ordinance on **SIX clients and business** is **expected to be limited**, the **aim of protecting the Swiss financial market infrastructure** will be **achieved**

Equivalence extension by 6 months and next steps

6 months extension

- On 20 December 2018, the **EU Commission confirmed the equivalence** of Switzerland's legal and supervisory framework for stock exchanges and announced an **extension of Switzerland's exchange equivalence until the end of June 2019**
- In their announcement, the EU Commission stated they had **considered the outcome of the negotiations of the Institutional Framework Agreement** and extended the equivalence with a view to **provide time to Switzerland to finalise its internal consultation**
- A **precondition for any future extensions** of Switzerland's exchange equivalence status would be a **full, final and clear endorsement by the Federal Council** of the current text of the Institutional Framework Agreement

Next steps

- As a result of the EU Commission's decision, **nothing has changed** for the time being **for SIX clients** and other stakeholders; trading volumes so far this year have not been impacted
- **The political process for consultations** on the draft Institutional Framework Agreement in Switzerland **has started**
 - Interactive political consultations will be held in the form of meetings with the groups concerned, providing an opportunity to explain the draft agreement and answer questions
 - The Federal Council will review the status of these consultations in the spring and decide on next steps based on a recommendation by the FDFA

2. Update Brexit

Latest events

Caveat on what follows as the situation is fluid, rapidly evolving and with huge uncertainty.

Last Thursday the **EU agreed to extend the Brexit deadline from 29 March 2019**. UK Government is expected to put forward legislation to change this date domestically this week.

The UK has **until 12 April** in which to either:

a) **agree the current Withdrawal Agreement** and if this happens **Brexit date will be 22 May 2019**

or

b) if UK **cannot agree the Withdrawal Agreement** then either the **UK leaves with no-deal on 12 April** or it requests a further extension to the Brexit date (to an unknown date) but must participate in the EU elections on 23 May 2019.

The **UK Prime Minister** has made various public statements (but positions are fluid), namely:

- UK will not revoke Article 50 / Brexit
- UK will not participate in EU elections 3 years after the people voted to leave the EU
- UK will not request an extension to Brexit which invalidates the prior statement

This hugely limits the options when viewed against the dates the EU has put forward. The current mood on the Withdrawal Agreement in UK Parliament appears to be hardening, not least because the Prime Minister made a televised statement criticising Members of Parliament for not doing their job, the people she needs to convince to back the Withdrawal Agreement. **It still seems that Parliament will vote against the deal which she may bring back for a third meaningful vote next week** (but speculation is she will only do this if she can win).

So if everything said is maintained and the Withdrawal Agreement fails to win support and the Prime Minister holds to her words, the UK will leave without a deal in 12 April 2019.

3. Consultation on partial revision of Banking Act

Partial revision of Banking Act

- Revised rules will be proposed for **bank restructuring, strengthening deposit insurance** and supplementary provisions on the **segregation of intermediated securities**.
- The [consultation](#) will last until 14 June 2019.
- From a SIX perspective namely the segregation of intermediated securities is of interest: **An adjustment to the Intermediated Securities Act will then introduce the obligation for all custodians of intermediated securities to separate their own and clients' portfolios**. If the custody chain leads abroad, the last Swiss custodian has to take measures to protect the intermediated securities booked with the foreign custodian. Within this scope, the information provided to clients also has to be improved.
- The submission is currently **under SIX internal review**. SIX is going to take part in the consultation (not yet sure if in its own name or via associations) .

4. Consultation on improving framework conditions for Blockchain/DLT

Consultation on improving framework conditions for Blockchain/DLT

- The Federal Council initiated the consultation on the adaptation of federal law to **developments in distributed ledger technology (DLT)**.
- It thereby wants to **increase legal certainty, remove hurdles for DLT-based applications and limit risks of misuse**. The draft serves to further improve the regulatory framework for DLT in Switzerland, in particular in the financial sector.
- **The consultation will last until the end of June 2019.**
- The submission is currently **under SIX internal review**. SIX is going to take part in the consultation (not yet sure if in its own name or via associations).

Consultation on improving framework conditions for Blockchain/DLT

Federal Council proposes the following adjustments in particular:

- In the Swiss Code of Obligations, the possibility of an **electronic registration of rights that can guarantee the functions of negotiable securities** is to be created. This is intended to **increase legal certainty** in the transfer of DLT-based assets.
- In the Federal Law on Debt Collection and Bankruptcy, the **segregation of cryptobased assets in the event of bankruptcy is to be expressly regulated**, also to increase legal certainty.
- In financial market infrastructure law, a **new authorisation category for so-called "DLT trading facilities" is to be created**. These are intended to be able to offer regulated financial market players and private customers services in the areas of trading, clearing, settlement and custody with DLT-based assets.
- Finally, it should also be possible in future to obtain a **licence to operate an organised trading facility as a securities firm**. This requires an adaptation of the future Financial Institutions Act.

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