

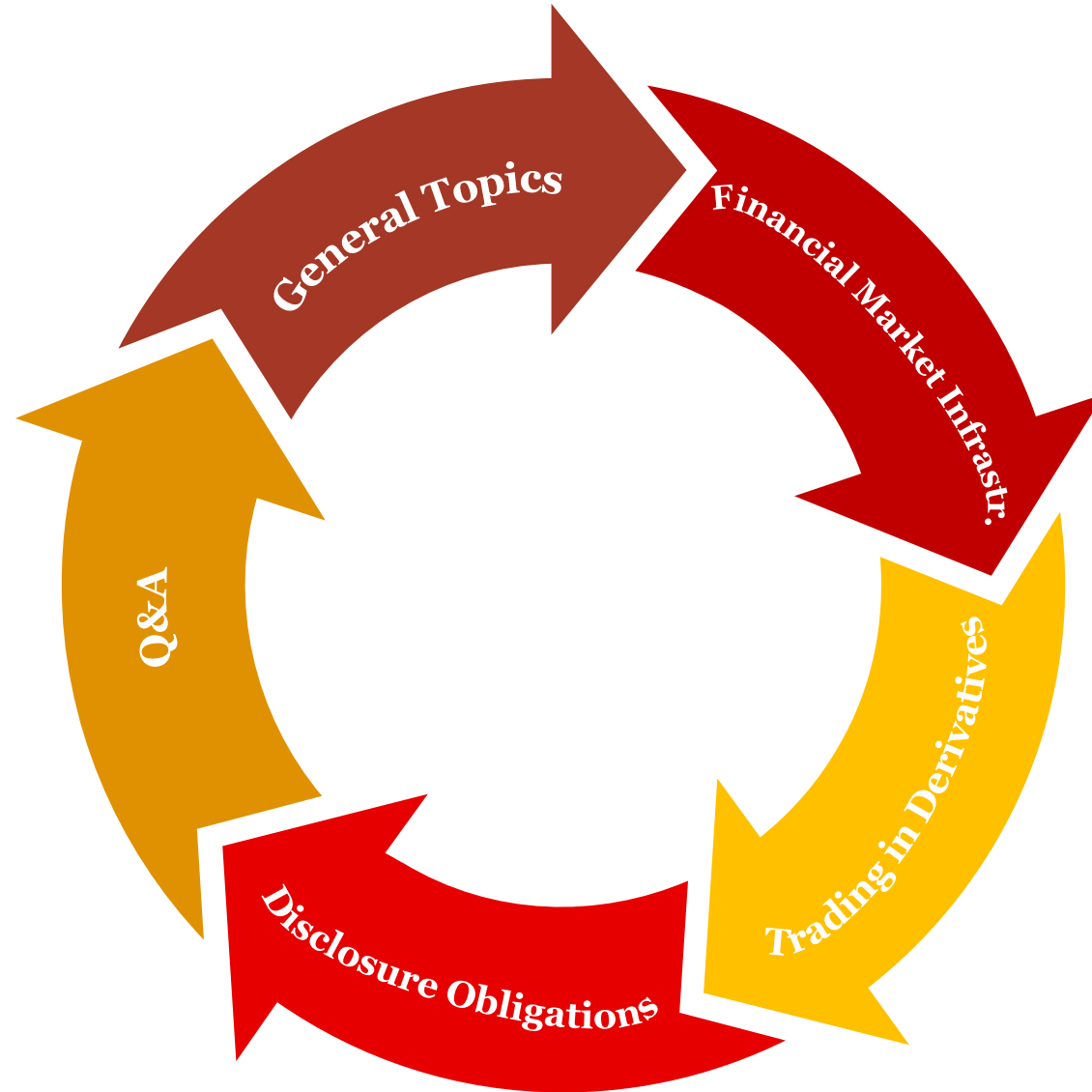
# *The new Swiss Financial Market Infrastructure Act and Ordinances*

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Swiss Finance Institute  
17 September 2015

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## *Agenda*



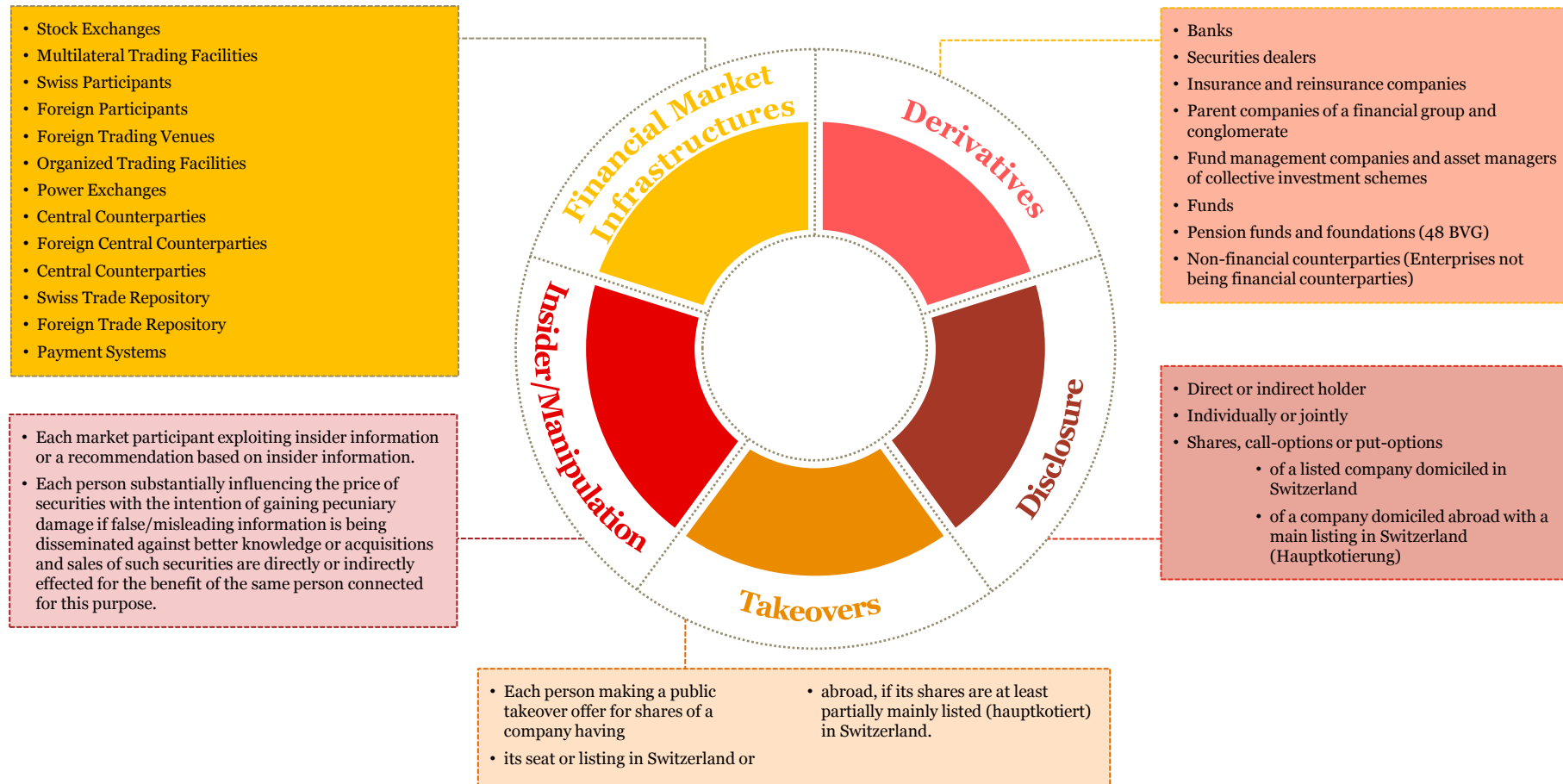
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# *General Topics*

## Overview scope of application of the FMIA



# Who falls within the scope of application of the FMIA?



## Penal provisions

### Breach of professional secrecy

**A custodial sentence of up to 3 years/monetary penalty shall be imposed to anyone, who willfully**

- discloses a secret entrusted to them in their capacity as director/officer/employee/agent/liquidator,
- induces to such a breach of the professional secrecy,
- discloses to other persons a secret disclosed to them in violation of letter a or exploit such a secret for their own benefit or for the benefit of others.

**A fine not exceeding CHF 500'000 shall be imposed on any person who wilfully**

- violates the clearing duty,
- violates the reporting duty,
- violates the risk mitigation duty,
- violates the venue trading duty.

### Duties in derivatives trading

### Insider information

**A custodial sentence not exceeding 3 years or a monetary penalty shall be imposed on any person who as a body/member of a body of an issuer/company controlling or controlled by them, or as a person who due to their holding or activity has legitimate access to insider information, if they gain a pecuniary advantage by:**

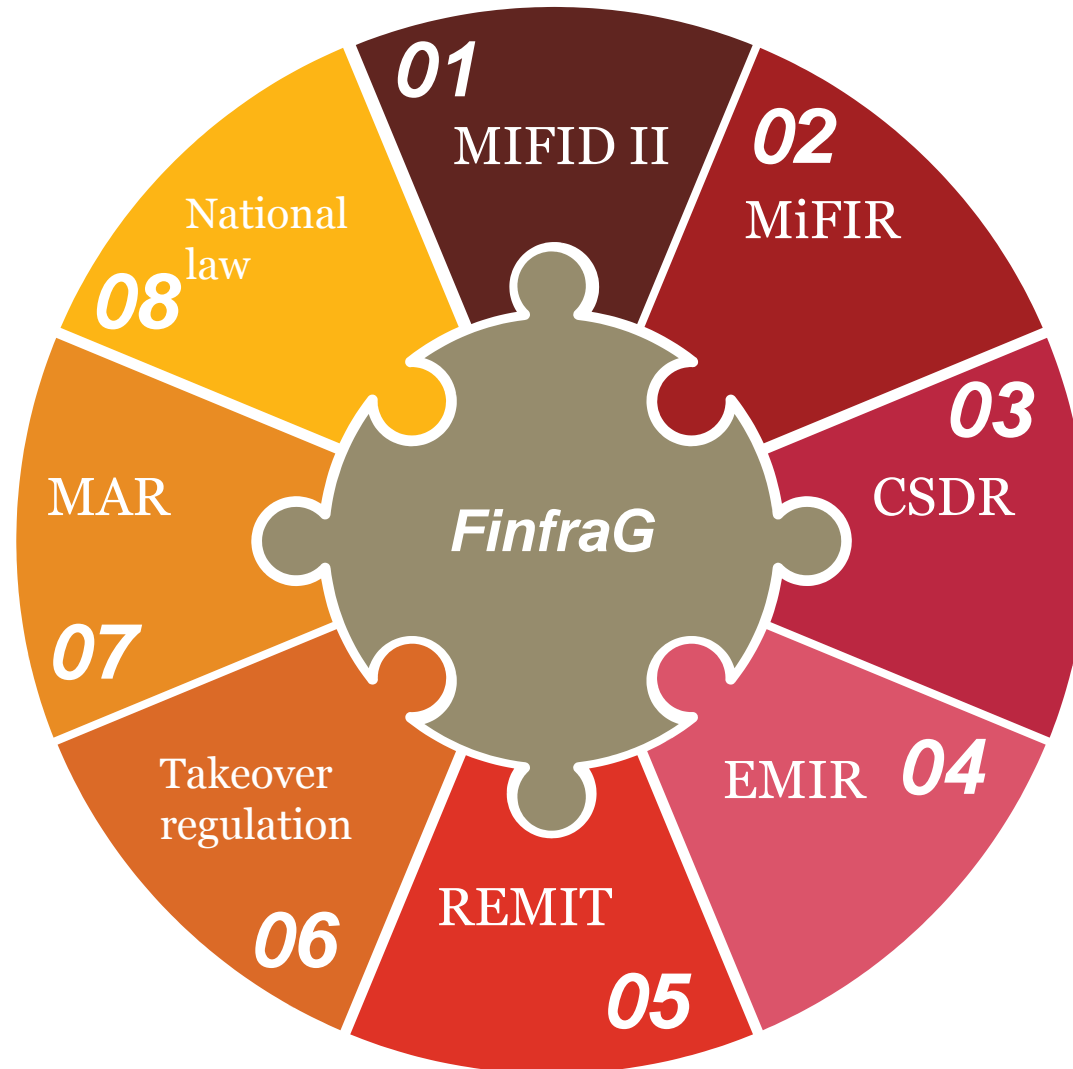
- exploiting it to acquire or dispose securities admitted to trading/use of derivatives,
- disclosing it to another,
- exploiting it to recommend to another to acquire or dispose of securities/derivatives.

**A custodial sentence not exceeding 3 years or a monetary penalty shall be imposed on any person who substantially influences the price of securities admitted to trading in Switzerland with the intention of gaining a pecuniary advantage if they:**

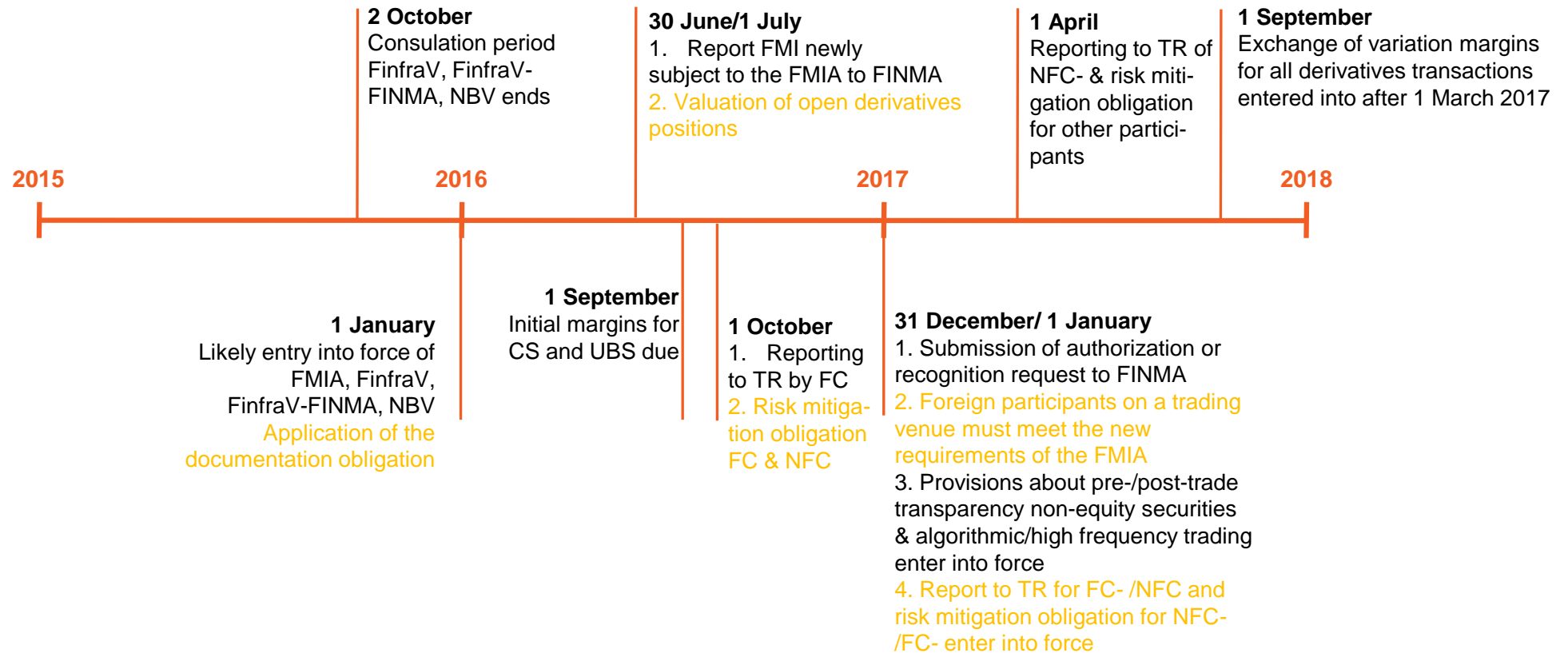
- disseminate false or misleading information against their better knowledge;
- effect acquisitions and sales of such securities directly or indirectly for the benefit of the same person or persons connected for this purpose.

### Price manipulation

## *European Counterparts*



## Some important dates

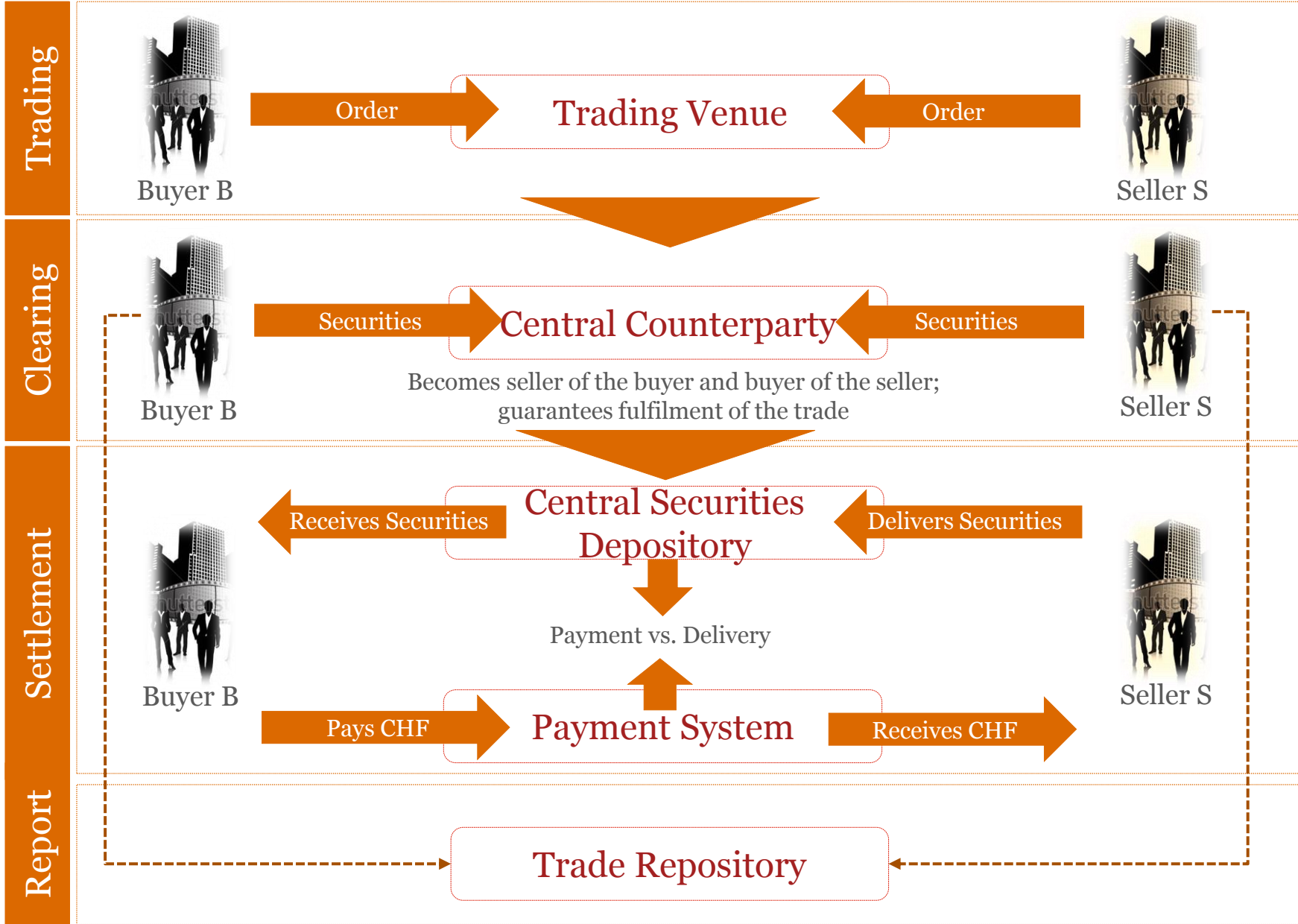




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# *Financial Market Infrastructures*

# Life cycle of an ETD-Trade



Trading



Buyer B

Order

Trading Venue

Order



Seller S

Clearing



Buyer B

Securities

Central Counterparty

Securities

Becomes seller of the buyer and buyer of the seller;  
guarantees fulfilment of the trade



Seller S

Settlement



Buyer B

Receives Securities

Central Securities Depository

Delivers Securities

Payment vs. Delivery

Pays CHF

Payment System

Receives CHF

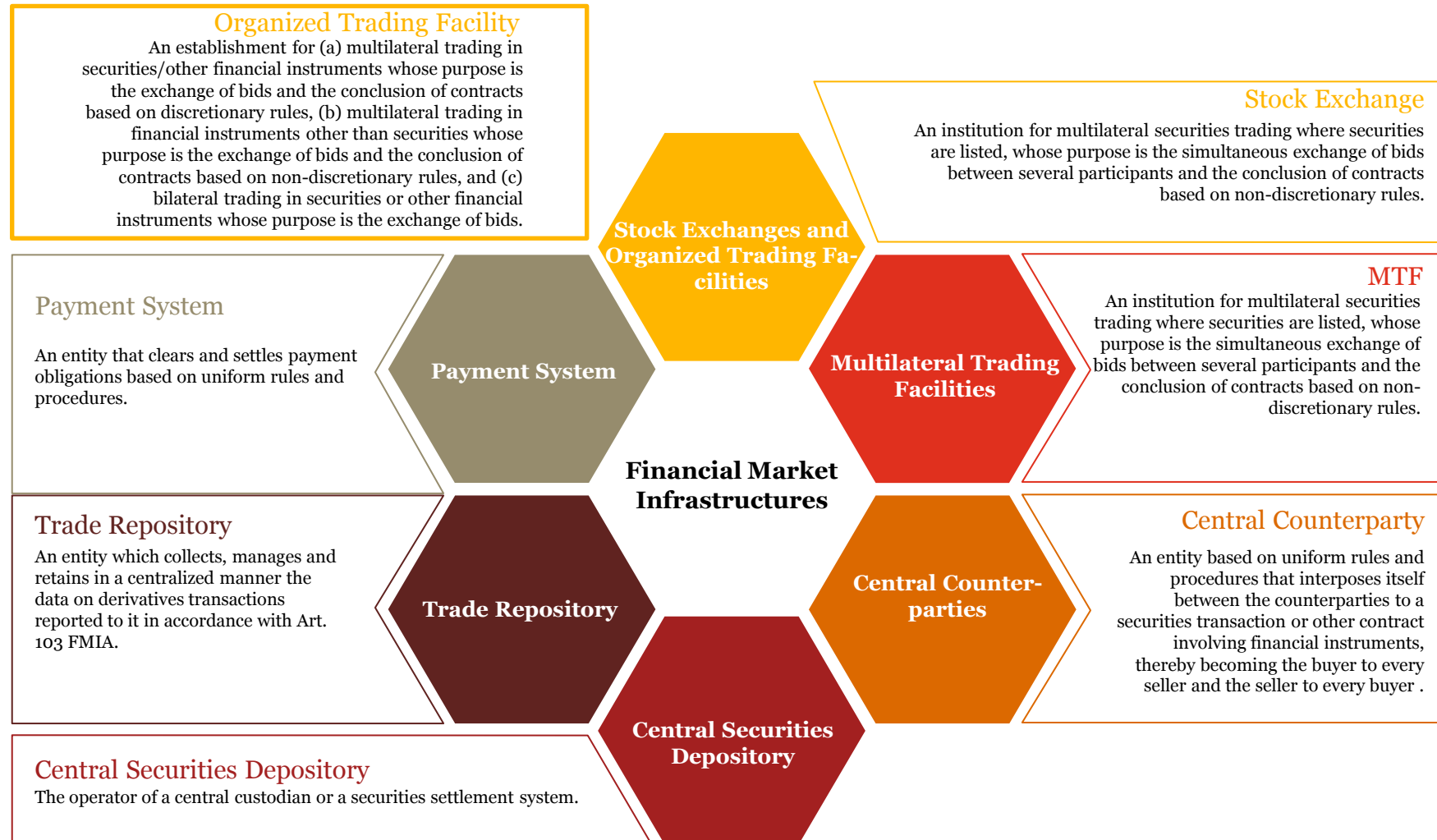


Seller S

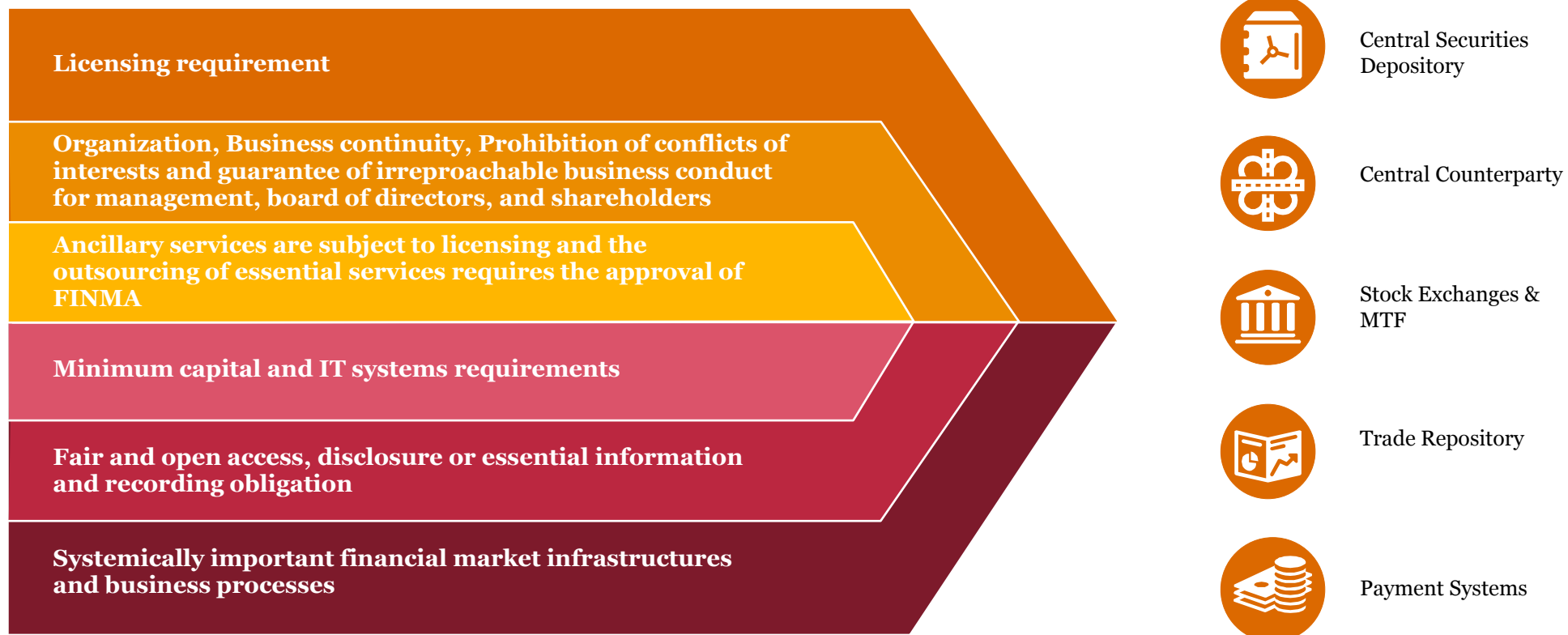
Report

Trade Repository

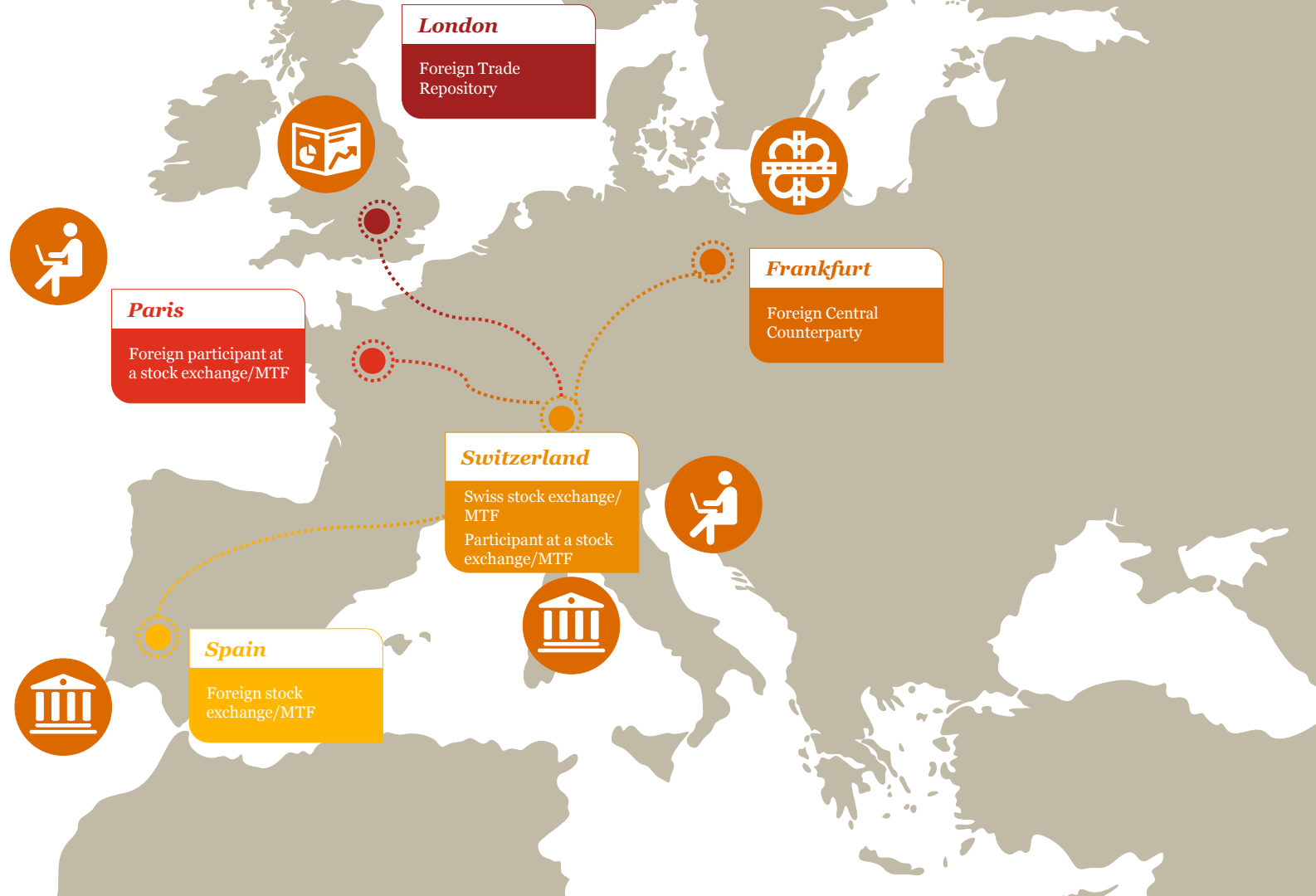
# Financial Market Infrastructures



## ***General section applicable to all financial market infrastructures***



# Recognition of foreign financial infrastructures and licensing of foreign participants on a Swiss trading venue



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# *Trading in derivatives*

# *Important questions*

## **1** *Are we talking about a derivative?*

- Generally each financial contract whose value is being derived from one or multiple underlyings and is not a cash transaction is a derivative if no exceptions are applicable.

## **2** *What is the legal nature of the counterparty?*

- Is the counterparty a FC or an NFC?
- Is the counterparty small?

## **3** *Which obligations are applicable?*

- Is there a clearing or reporting obligation?
- Are there risk mitigation measures?
- Is there a trading obligation?

## **4** *Who must fulfil the obligation?*

- Who must report to the Trade Repository?

## Are we talking about a derivative?

	Kassa	Elektrizität/Gas	Commodities	Übertragbare Wertpapiere/ Wertrechte	Derivate in Form einer Einlage	Forex swaps/ futures	Structured products	Securities lending/ borrowing	ETD	Andere OTC
<b>Gegenpartei-klassifizierung</b>	X	X	X	X	X	X	X	X	X	✓
<b>Abrechnung</b>	X	X	X	X	X	X	X	X	X	✓
<b>Meldung</b>	X	X	X	X	X	✓	X	X	✓	✓
<b>Portfolio Reconciliation</b>	X	X	X	X	X	X	X	X	X	✓
<b>Dispute Resolution</b>	X	X	X	X	X	X	X	X	X	✓
<b>Valuation Reporting</b>	X	X	X	X	X	X	X	X	X	✓
<b>Collateral Reporting</b>	X	X	X	X	X	X	X	X	X	✓
<b>Bilateral Margining</b>	X	X	X	X	X	X	X	X	X	✓
<b>Plattformhandelspflicht</b>	X	X	X	X	X	X	X	X	X	✓



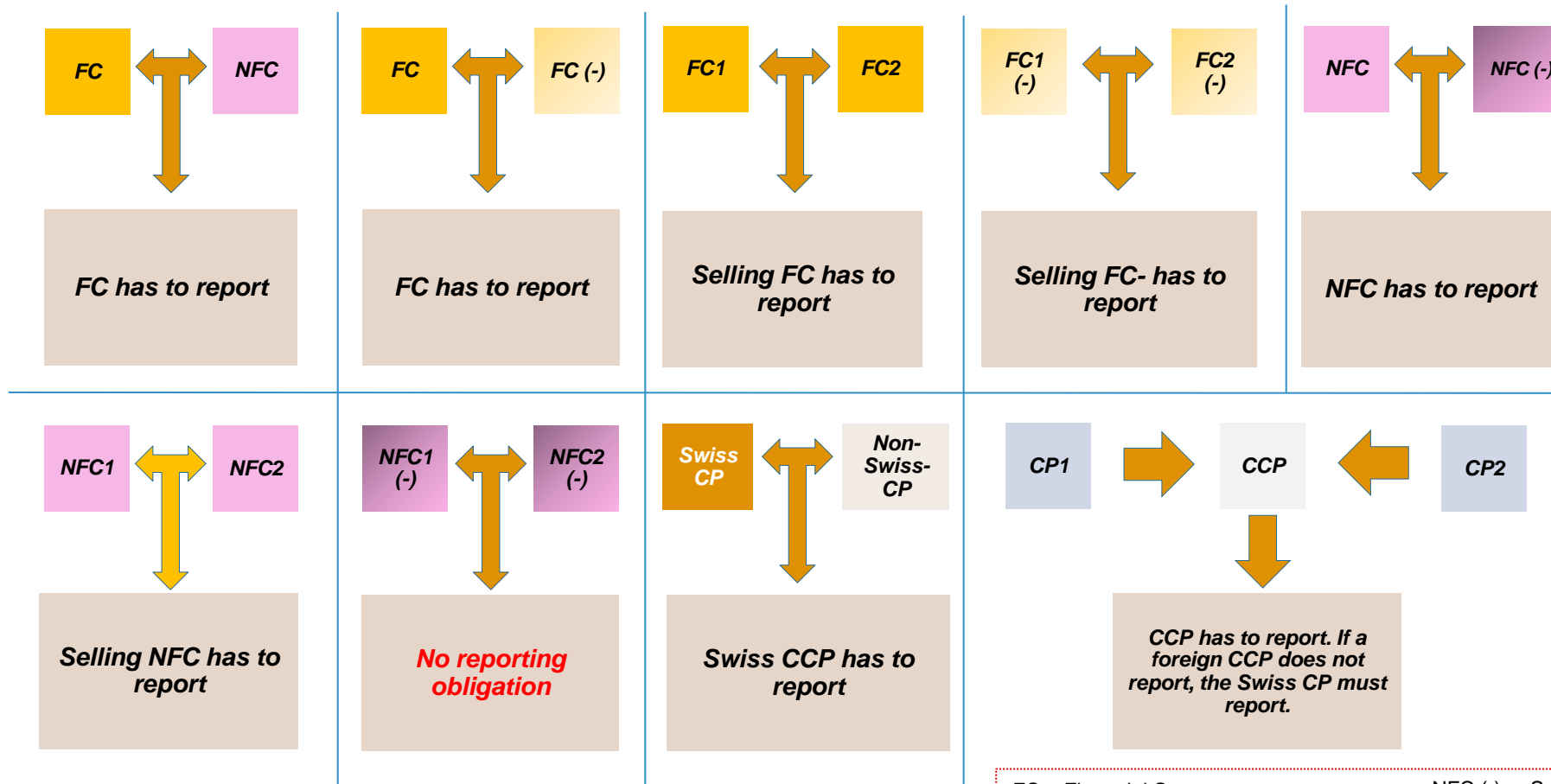
## ***What is the legal nature of the counterparty?***

Financial Counterparty (FC)	<ul style="list-style-type: none"><li>• Swiss banks, securities dealers, insurance and reinsurance companies, parent companies of financial or insurance group or financial or insurance conglomerate, fund management companies, asset managers of collective investment schemes, collective investment schemes, occupational pension schemes and investment foundations (Art. 48-53k BVG).</li></ul>
Non-financial Counterparty (NFC)	<ul style="list-style-type: none"><li>• Non-financial counterparties are companies that are not financial counterparties.</li></ul>
Small Financial Counterparty (FC-)	<ul style="list-style-type: none"><li>• A financial counterparty is deemed to be small if the rolling average for its gross position in all outstanding OTC transactions calculated over 30 working days of the entire financial group is below the threshold of CHF 8 bio.</li></ul>
Small Non-financial Counterparty (NFC-)	<ul style="list-style-type: none"><li>• A non-financial counterparty is deemed to be small if all of the rolling averages for its gross positions in relevant outstanding OTC derivatives transactions calculated over 30 working days are below the following thresholds: credit derivatives CHF 1.1 bio., equity derivatives CHF 1.1 bio., interest derivatives CHF 3.3 bio., forex derivatives CHF 3.3 bio., commodities derivatives and other derivatives CHF 3.3 bio.</li></ul>
Exempted counterparties and counterparties only subject to reporting	<ul style="list-style-type: none"><li>• The chapter on OTC-derivatives do not apply to the Confederation, Cantons, and Communities, the SNB, and the Bank for International Settlements.</li><li>• Multilateral development banks, certain public organizations (incl. social insurances) owned by the Confederation, Cantons, or Communities are subject to the reporting obligations according to Art. 104 FMIA.</li></ul>

## Which obligations are applicable?

	FC	FC-	NFC	NFC-	Foreign counterparties
<b>Clearing obligation</b>	Yes	No	Yes	No	Yes
<b>Reporting obligation</b>	Yes	Yes	Yes	Yes/No (if between NFC-)	No
<b>Risk mitigation measures (confirmation, reconciliation, dispute resolution)</b>	Yes	Yes	Yes	Yes/No (no Portfolio Reconciliation if NFC-)	No
<b>Risk mitigation measures (valuation)</b>	Yes	No	Yes	No	No
<b>Risk mitigation measures (exchange of securities)</b>	Yes	Yes	Yes	No	No
<b>Trading venue obligation</b>	Yes	No	Yes	No	Yes

## Who has to fulfil the reporting obligation?



FC = Financial Counterparty

NFC (-) = Small non-Financial Counterparty

FC (-) = Small Financial Counterparty

CP = Counterparty

NFC = Non-Financial Counterparty

CCP = Central Counterparty

## Some remarks

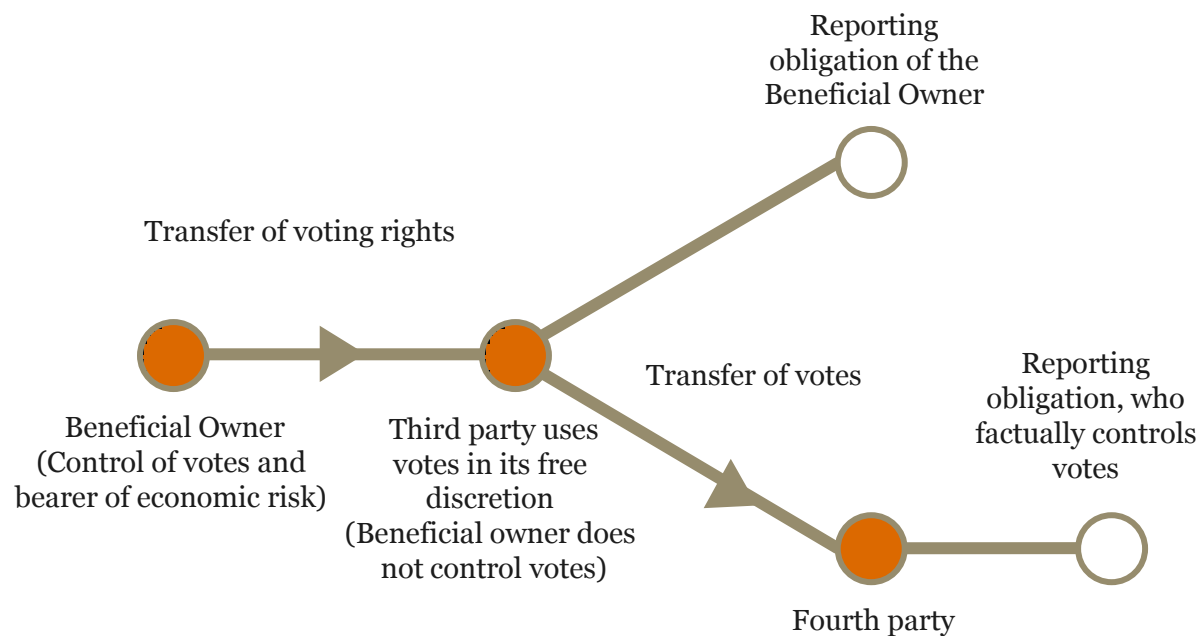
Topic	Details	Commentary
Extraterri- toriality	The FMIA and its ordinances do only set forth a very limited extraterritorial effect. The FMIA does only stipulate a clearing obligation and an obligation to trade on a trading venue which will be further diluted in the FinfraV.	The limited extraterritorial impact as well as the possibility to fulfill the obligations under the FMIA under foreign law are welcome.
Documentation obligation	FC and NFC must establish in writing the procedures/processes implementing the clearing obligation, reporting obligation, risk mitigation measures, and trading venue obligation. Non-financial counterparties can decide in writing not to trade in derivatives.	These procedures/processes must already be established beginning as of January 1, 2016. There are in other words no transition periods set forth in the current draft of the FinfraV for these obligations.
Party self- declaration	A counterparty might in principle rely on the self-declaration of the counterparty about its nature. Such a self-declaration is applicable to all obligations under the chapter related to the OTC-derivatives. Parties must be informed about amendments on time.	The reliance on self-declarations issued by counterparties, especially also regarding the legal nature of foreign domiciled counterparties, are welcomed.
No Frontloading	The obligation to clear derivatives through licensed or recognized central counterparties starts 6 to 12 months after the point in time when FINMA determines the mandatory application of the clearing obligation related to specific derivative categories. Only derivatives transactions entered into after the start of the clearing obligation are subject to the clearing obligation.	The fact that no front loading is required is welcomed from a practical point of view.

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# *Disclosure obligations*

## ***Essential amendments to disclosure obligations***

### ***Reporting obligation of the beneficial owner and a third party with free discretion***



Examples:

Asset management agreement

Securities Lending

Usufruct

Re-delegation in the area of collective investment schemes

## ***Some important new provisions***

<b>Topic</b>	<b>Details</b>
<b>Reporting obligation</b>	Only the beneficial owner and the direct holder must be reported in situations of indirect holdings (indirect holders must not be reported anymore).
<b>Usufruct/ Securities lending</b>	The reporting obligation related to usufruct and securities lending have been abolished and have been replaced by the general twin reporting obligation of both the beneficial owner and the third party having free discretion about transferred voting rights (Art. 120 FinfraG).
<b>Reporting obligation</b>	Legal persons do only have to mention the name and seat of a corporation, but not the address anymore. The contact person must not be reported anymore. The reports must on a mandatory basis be made on the official reporting form.

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# *Q&A*



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## *Your contact*

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