International Comparative Legal Guides

Derivatives 2026

A practical cross-border resource to inform legal minds

Seventh Edition

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1 Documentation and Formalities

1.1 Please provide an overview of the documentation (or framework of documentation) on which derivatives transactions are typically entered into in your jurisdiction. Please note whether there are variances in the documentation for certain types of derivatives transactions or counterparties; for example, differences between over-the-counter ("OTC") and exchange-traded derivatives ("ETD") or for particular asset classes.

As regards OTC derivatives, the industry-standard documentation used in OTC derivatives transactions traded on a cross-border basis are ISDA Master Agreements governed by English or New York law and the definitions published by ISDA for the different asset classes, jointly with the relevant supporting documents published by ISDA (including credit support documents, such as variation margin (VM) credit support annexes (CSAs) for transactions subject to VM requirements, and initial margin (IM) collateral transfer agreements (CTAs) with the relevant security agreements for transactions subject to IM requirements). The transactions are documented in confirmations under such ISDA Master Agreements.

For OTC derivatives traded in the domestic market with Swiss end-users or transactions traded between Swiss banks and their clients in the wealth management business, we frequently see Swiss Master Agreements (SMAs) for OTC derivatives transactions in the form published by the Swiss Bankers Association. This agreement is subject to Swiss law as the governing law and available in English, German, French and Italian. The SMA was first published in 2003 and a revised version was published in 2013. The SMA of 2013 has a set of its own definitions that allow documentation with confirmations referring to such definitions. To the extent that the parties wish to use ISDA definitions under an SMA, the SMA of 2013 can be entered into in a version that includes the relevant bridge language, allowing the use of the most frequently used ISDA definitions (by way of incorporation by reference into the SMA). The Swiss Bankers Association also published CSAs as the relevant supporting documents to be used for the purposes of exchanging collateral. This includes a CSA that may be used for the purposes of exchanging VM.

As regards ETDs, the Swiss ETD market involves Swiss banks acting as clearing brokers or clients of clearing brokers providing Swiss end-users with access to the clearing services of a central counterparty (CCP) of the relevant exchange where the ETDs are traded. There is no Swiss ETD exchange or Swiss CCP for ETDs. For this reason, the Swiss parties involved in the clearing chains always access the clearing services provided by foreign CCPs. Often, Swiss end-users of ETDs access the clearing chain directly through a foreign clearing services provider without the involvement of a Swiss bank in the clearing chain.

Swiss banks providing indirect clearing services to clients usually have their own trade documentation to use in ETDs with clients. However, the Swiss Bankers Association also published a standard Master Agreement for Exchange Traded Derivatives, which is sometimes used by certain banks. In relations between a Swiss bank and international clearing services providers, the prevailing international documentation is used.

1.2 Are there any particular documentary or execution requirements in your jurisdiction? For example, requirements as to notaries, number of signatories, or corporate authorisations.

There are no particular execution formalities applicable in the Swiss market to be highlighted. As regards the form of notices provided under the relevant Master Agreements, the terms of the relevant Master Agreement are applied according to the agreed terms.

To the extent that Swiss law is the governing law, under Swiss contract law principles, written notices are generally deemed to be received when the recipient has access to the delivered notice or this may be assumed on the basis of the prevailing market practice (this depends on the delivery method, e.g. delivery in person, by mail, by registered mail or by email).

As regards the capacity of Swiss corporations entering into derivatives transactions, any transactions entered into by an authorised person on behalf of the corporation will legally bind the corporation, provided that these transactions fall within the corporation's corporate purpose/scope of business. The Swiss Federal Supreme Court held that transactions falling within the corporate purpose/scope of business of a joint stock corporation include transactions that (i) benefit the corporation, or (ii) are entered into in the ordinary course of business of such corporation. The court held further that transactions falling within the scope of a corporation also include transactions that are unusual to a corporation's business, provided that they are not expressly excluded by the corporate purpose/scope of business of such corporation. The definition of the corporate purpose/scope of business is typically set out in the articles of association/statutes of the corporation.

The signing authority of persons acting for Swiss counterparties registered with the Swiss Commercial Register is visible in the Swiss Commercial Register.

1.3 Which governing law is most often specified in ISDA documentation in your jurisdiction? Will the courts in your jurisdiction give effect to any choice of foreign law in the parties' derivatives documentation? If the parties do not specify a choice of law in their derivatives contracts, what are the main principles in your jurisdiction that will determine the governing law of the contract?

As regards ISDA documentation, the most frequent set-up is the choice of English or New York law as the governing law.

The Swiss conflict of laws rules applied by Swiss courts honour the choice of foreign law, provided that it is freely made. However, the choice of law would not override the application of Swiss insolvency law. Also, to the extent that any derivatives transaction was entered into with a consumer, the choice of law of a jurisdiction other than the place of domicile of the consumer could not be validly made.

We do not see derivatives documentation used in the Swiss market without specifying the governing law in the agreement. In the event that no governing law is specified, the Swiss conflict of laws rules would point to the party providing the "characteristic performance" of the contract, which would depend on the type of transaction entered into. A transaction with elements of a sale/purchase would be subject to the law of the place of domicile of the seller (e.g. a forward or an option). However, this would not be a practicable solution for all transactions, as it may not be possible to determine with certainty which party provides the "characteristic performance" (e.g. for a swap).

2 Credit Support

2.1 What forms of credit support are typically provided for derivatives transactions in your jurisdiction? How is this typically documented? For example, under an ISDA Credit Support Annex or Credit Support Deed.

To the extent that parties are subject to the regulatory obligation to exchange VM, under ISDA documentation, this is usually documented in the VM CSA published by ISDA or by amending a CSA to be in line with the VM requirements. To the extent that an SMA is used, the exchange of VM is usually documented with the VM CSA published by the Swiss Bankers Association.

To the extent that parties fall into the scope of exchanging regulatory IM, they usually opt for the use of ISDA documentation as opposed to an SMA. However, Swiss parties may choose to appoint SIX SIS to act as the custodian of the IM. SIX SIS has the relevant documentation in place for a solution to document the exchange of IM both under ISDA terms and, as regards transactions with domestic counterparties, in the event that an SMA is used.

To the extent that derivatives are traded between parties not subject to the regulatory obligation to exchange margin (not even VM), the parties may not have in place any CSA or other collateral documentation. As regards derivatives transactions traded with private wealth management clients of a bank in particular, such counterparties are not in scope of VM requirements and the banks usually do not enter into bilateral margin documentation with such clients, but a one-sided general deed of pledge under which the client provides collateral to the bank for its exposure to the client.

2.2 Where transactions are collateralised, would this typically be by way of title transfer, by way of security, or a mixture of both methods?

To the extent that transactions are entered into by parties subject to regulatory margin requirements, the collateral is exchanged for purposes of complying with the VM requirements under bilateral CSAs that provide for a title transfer security arrangement.

To the extent that the parties also fall into the scope of IM collateral requirements, the collateral is exchanged under the market-standard IM documentation, which provides for a pledge of the IM collateral for the benefit of the collateral taker.

In the event that transactions are not subject to regulatory margin requirements, but the parties voluntarily decide to exchange collateral on a bilateral basis, this is customarily done under title transfer CSAs. However, where derivatives are traded by banks with their wealth management clients, the bank often requires collateral from the client only on a one-way basis and, for these purposes, the bank may use a general deed of pledge over assets held by the client with the bank. Such documentation normally provides for the creation of a "regular pledge" governed by Swiss law over all the assets held by the client on account with the bank (e.g. cash and securities held on account) for the benefit of the bank in order to provide collateral for the bank's exposure to the credit risk of the client resulting from the derivatives transaction. In such documentation, the bank defines the method of calculating the secured obligations and it normally defines a right to request margin calls at its discretion.

2.3 What types of assets are acceptable in your jurisdiction as credit support for obligations under derivatives documentation?

The collateral assets are traditionally limited to cash and government bonds. However, collateral assets may also include high-quality bonds of corporate issuers, high-quality covered bonds, shares forming part of a main share index, gold, money market funds and collective investment schemes in the sense of securities funds with a daily valuation and with such other assets as listed above as the invested assets or derivatives on such assets.

2.4 Are there specific margining requirements in your jurisdiction to collateralise all or certain classes of derivatives transactions? For example, are there requirements as to the posting of initial margin or variation margin between counterparties?

The regulatory margin requirements are aligned with the European Market Infrastructure Regulation (Regulation (EU) No. 648/2012 (EMIR)) and include an obligation to exchange VM for OTC derivatives entered into between parties qualifying as "financial counterparties" (FCs) or "non-financial counterparties" (NFCs) that are crossing the clearing threshold. To the extent that the average aggregated notional amounts (AANA) of the parties exceed 8 billion Swiss francs, the parties become also subject to an obligation to exchange IM.

The obligation to exchange IM only applies for parties exceeding 8 billion Swiss francs in AANA, as calculated at the end of March, April and May of any year. To the extent that the parties cross such threshold, the obligation to exchange IM applies from 1 January of the following year. With this timeline, the parties should have sufficient time to put in place the relevant IM documentation. In line with international standards, IM must only be exchanged when it crosses a threshold of 50 million Swiss francs. However, the parties are responsible for putting in place the relevant documentation ahead of crossing this threshold for the first time.

The Swiss rules exempt physically settled foreign exchange (FX) forwards and swaps from the risk mitigation obligations for uncleared OTC derivatives generally, including margin requirements. Also, physically settled commodity derivatives in the form of OTC derivatives are not subject to derivatives regulation, including margin requirements.

For options on single shares, share baskets or equity index options, the obligation to exchange variation and IM has been postponed until 1 January 2029. However, as part of the reform of Swiss derivatives regulation that is currently in preparation, such temporary exemption shall become permanent.

ETDs are not subject to such regulatory margin requirements, but the requirements to provide variation and IM apply on the basis of the requirements set by the relevant CCP and the clearing services providers involved in the clearing chain.

2.5 Does your jurisdiction recognise the role of an agent or trustee to enter into relevant agreements or appropriate collateral/enforce security (as applicable)? Does your jurisdiction recognise trusts?

Under Swiss law, it is possible to appoint a counterparty or third party (e.g. the account bank where the collateral assets are held) to act as the collateral manager. Such collateral manager may act as the agent of the relevant party for the purposes of exchanging collateral with the counterparty.

While there is no "Swiss law trust", it is possible to appoint a trustee to act under a trust governed by a jurisdiction that recognises the concept of a trust. Switzerland is a member state of the Hague Trust Convention. Moreover, Swiss bankruptcy law recognises that the assets held in a trust are segregated from the insolvency estate in the bankruptcy of the trustee.

However, to the extent that any regular pledge is created under Swiss law, the pledgee must also be the creditor of the secured claim. Therefore, to the extent a security agent or a security trustee was involved for the benefit of a third-party creditor, the agent or trustee would need to either also become the creditor of the secured claim under a "parallel debt" mechanic or, as an alternative, the structure would need to be set up as a "direct representation" by the agent of the creditor, which would not be compatible with a trust arrangement.

2.6 What are the required formalities to create and/or perfect a valid security over an asset? Are there any regulatory or similar consents required with respect to the enforcement of security?

The creation of the security under a title transfer security arrangement requires the outright transfer of the relevant collateral asset to the transferee. In a default scenario, the transferor's claim regarding the return of the transferred collateral asset is part of the close-out netting arrangement and the transferee can keep the transferred collateral asset, subject to the obligation to return any excess collateral.

As regards the creation of the security under a Swiss law-governed regular pledge, the perfection requirements for the creation of the security depend on (i) the type of asset concerned, and (ii) whether the pledgee is also the account bank of the pledgor or whether the pledgee is a third party not acting also as the account bank. The creation of a pledge over claims (including cash held on a cash account) or securities held on custody accounts requires a pledge agreement in writing and, to the extent that the pledgee is not the account bank, a tripartite/control agreement with the account bank. In a default scenario, the secured party has to enforce the pledge against the pledgor, which would require either the exercise of a right of private sale or appropriation or enforcement in the applicable bankruptcy proceedings. Once bankruptcy proceedings have commenced, a right of private sale or appropriation can no longer be exercised as regards cash collateral.

3 Regulatory Issues

3.1 Please provide an overview of the key derivatives regulation(s) applicable in your jurisdiction and the regulatory authorities with principal oversight.

OTC derivatives fall into the scope of the regulatory obligations applicable to derivatives transactions according to article 93 *et seq.* of the Swiss Financial Market Infrastructure Act (FMIA), including obligations to comply with reporting obligations, risk mitigation obligations and bilateral margin requirements for uncleared transactions (FMIA Obligations). At present, the FMIA Obligations only include a clearing obligation for certain interest rate derivatives transactions and index Credit Default Swaps (CDS). While the FMIA provides for the statutory basis to implement a venue trading obligation, the Swiss Federal Council has so far not implemented such obligation.

The FMIA Obligations are, to a certain extent, aligned with those of the European Union according to EMIR. However, with the adoption of EMIR 3.0, there will now be significant differences in some respects (e.g. with respect to the determination of clearing thresholds).

The scope of the FMIA Obligations depends on the classification of the trading counterparties as a large financial counterparty (FC+), small financial counterparty (FC–), large non-financial counterparty (NFC+) or small non-financial counterparty (NFC–). Dealers (assuming they are regulated as a bank or investment firm) fall into the category of FCs. They are an FC+ if they cross the threshold of 8 billion Swiss francs in outstanding gross notional amounts of OTC derivatives across all asset classes in the aggregate (also taking into account hedging transactions, but excluding OTC derivatives that are not subject to the FMIA Obligations, such as physically settled commodity derivatives not traded on a trading venue or on an organised trading facility, and excluding physically settled FX forwards and physically settled FX swaps). The calculation must be made on a group-wide basis by aggregating the positions of all FCs in the group (but excluding funds and collective investment schemes in the group). It is made on an average of 30 business days (i.e. looking back for 30 business days and taking the average position as of the day the calculation is made). If dealers do not qualify as an FC+, they are an FC–. As part of reform proposals, it has been proposed that such determination shall be made on an annual basis by reference to the month-end positions over the last 12 months as opposed to requiring a continuous calculation.

OTC derivatives trades between dealers fall into the scope of the reporting obligation. However, the reporting obligation is one-sided and it falls on the Swiss dealer that is an FC+ if it deals with a Swiss FC–. For a trading relationship between two Swiss FC+s, the reporting obligation falls on the seller and, if it is not clear who the seller is, the ISDA tie-breaker rules are used to determine the reporting party. If a Swiss dealer trades with a foreign counterparty, the reporting obligation falls on the Swiss dealer. As regards an OTC derivatives trade between a Swiss FC and an NFC, the Swiss FC is subject to the reporting obligation.

Except where they are cleared with a CCP recognised by the Swiss Financial Market Supervisory Authority (FINMA), trades between dealers qualifying as FCs are subject to risk mitigation obligations and margin requirements. As under EMIR, the risk mitigation obligations include exchanging trade confirmations on a timely basis, agreeing portfolio reconciliation and dispute resolution (PRDR) clauses (e.g. by entering into an FMIA Agreement as published by the Swiss Bankers Association), and performing portfolio reconciliation, carrying out periodic portfolio compressions and exchanging valuations.

FINMA recognises the regulation under EMIR and UK EMIR as equivalent for the purposes of complying with the risk mitigation and margin requirements. A Swiss party falling into the scope of the FMIA Obligations is therefore free to comply with these requirements by applying EMIR or UK EMIR on a substituted compliance basis. As regards margin requirements, this also applies to the Commodity Futures Trading Commission margin rules under US law.

3.2 Are there any regulatory changes anticipated, or incoming, in your jurisdiction that are likely to have an impact on entry into derivatives transactions and/or counterparties to derivatives transactions? If so, what are these key changes and their timeline for implementation?

The FMIA is currently under review. With respect to derivatives transactions, some key changes proposed in the reform include the following:

- the determination of parties as small or large FC or NFC becoming an annual determination;
- to the extent that substituted compliance is applicable, this shall also cover the counterparty status;
- the content of the reporting fields shall be aligned with international standards; and
- the obligation to value transactions shall only apply to the large counterparty when a large FC or NFC trades with a small FC or NFC.

However, the reform is still under review and will have to be further discussed, particularly in light of any gaps in EMIR 3.0.

3.3 Are there any further practical or regulatory requirements for counterparties wishing to enter into derivatives transactions in your jurisdiction? For example, obtaining and/or maintaining certain licences, consents or authorisations (governmental, regulatory, shareholder or otherwise) or the delegating of certain regulatory responsibilities to an entity with broader regulatory permissions.

The Swiss rules do not include any licensing or registration requirements. However, FINMA is the competent regulatory authority in charge of interpreting and administering these rules, to the extent that the FMIA and its implementing ordinance give FINMA competence to that effect.

3.4 Does your jurisdiction provide any exemptions from regulatory requirements and/or for special treatment for certain types of counterparties (such as pension funds or public bodies)?

The Swiss rules exempt the sovereign, any entities controlled by the sovereign and the Swiss National Bank and other central banks from complying with the FMIA regulatory requirements. Also, parties that are not "undertakings" in the sense of Swiss derivatives regulation (i.e. Swiss parties that are not registered in the Swiss Commercial Register, e.g. natural persons) are not subject to the FMIA regulatory requirements.

However, a Swiss derivatives dealer as counterparty must still comply with the regulatory obligation to report such transactions to a trade repository.

4 Insolvency / Bankruptcy

4.1 In what circumstances of distress would a default and/or termination right (each as applicable) arise in your jurisdiction?

Events of default and termination events occur according to the terms specified in the trade documentation. The standard provisions include events of default for a failure to pay or deliver, a breach of agreement, a misrepresentation, a credit support default, the occurrence of a bankruptcy event, a cross-default under terms as they are further specified in the relevant elections to the Master Agreement, etc. Termination events include illegality, *force majeure* and tax events.

4.2 Are there any automatic stay of creditor action or regulatory intervention regimes in your jurisdiction that may protect the insolvent/bankrupt counterparty or impact the recovery of the close-out amount from an insolvent/bankrupt counterparty? If so, what is the length of such stay of action?

In the event of bankruptcy of a Swiss counterparty, the trading documentation would terminate automatically and therefore not be affected by a stay.

As regards banks, securities firms, fund management companies, financial market infrastructures and insurance companies, in the context of pre-bankruptcy reorganisation proceedings after the occurrence of a point of non-viability (PONV), FINMA may exercise a right to declare a resolution stay. Such stay is generally limited to a period of two business days. During such period, the derivatives documentation may not be terminated early and no collateral may be enforced.

4.3 In what circumstances (if any) could an insolvency/bankruptcy official render derivatives transactions void or voidable in your jurisdiction?

There are no such competences of a bankruptcy official other than in the context of bank insolvency proceedings, to the extent that FINMA were to exercise bail-in powers. However, Swiss bank insolvency rules provide for a safe harbour that protects the integrity of close-out netting arrangements.

4.4 Are there clawback provisions specified in the legislation of your jurisdiction that could apply to derivatives transactions? If so, in what circumstances could such clawback provisions apply?

Derivatives transactions are only subject to the general bankruptcy clawback rules that provide for a clawback in the event of an impairment of creditors, which apply in three different forms: (1) a clawback for a transaction at undervalue (e.g. a gift) with a suspect period of one year; (2) a clawback for providing collateral for a transaction without a pre-existing obligation to do so (e.g. outside the context of a margining obligation) or paying a debt prior to its due date at a time when the debtor was already over-indebted with a suspect period of one year; and (3) a clawback for intentionally impairing creditors with a suspect period of five years.

4.5 In your jurisdiction, could an insolvency/bankruptcy-related close-out of derivatives transactions be deemed to take effect prior to an insolvency/bankruptcy taking effect?

This would only be possible to the extent provided according to the terms of the agreement.

4.6 Would a court in your jurisdiction give effect to contractual provisions in a contract (even if such contract is governed by the laws of another country) that have the effect of distributing payments to parties in the order specified in the contract?

Contractual close-out netting provisions are enforceable in bankruptcy proceedings in Switzerland and this would also apply in the context of a title transfer arrangement under a CSA. Other than this, the order of distributing proceeds in insolvency proceedings occurs as specified in Swiss bankruptcy law and could not be overruled by contract. A claim arising from a derivatives transaction (after completing the close-out netting) would, subject to any pledge being provided for the benefit of the creditor, be classified as a third-class claim and would rank behind the claims of privileged creditors (e.g. secured creditors, depositors up to a maximum amount or employees).

5 Close-out Netting

5.1 Has an industry-standard legal opinion been produced in your jurisdiction in respect of the enforceability of close-out netting and/or set-off provisions in derivatives documentation? What are the key legal considerations for parties wishing to net their exposures when closing out derivatives transactions in your jurisdiction?

The Swiss regulatory capital requirements applicable to Swiss banks require netting and collateral enforceability opinions for the purposes of allowing Swiss banks to account for derivatives transactions on a net basis for regulatory capital purposes. Such opinions must cover the enforceability of the netting arrangement and the enforceability of the collateral in the insolvency of the counterparty and under the governing law of the agreement, as well as under the governing law of the transactions.

The Swiss margin rules require opinion coverage for the enforceability of the collateral provided by the counterparty (the "collateral provider opinion") and, as regards IM, for the availability of the collateral to the collateral provider in the insolvency of the collateral taker (the "collateral taker opinion").

For the Swiss market, such netting and collateral enforceability opinions have been prepared under ISDA documentation and, except for IM, under SMAs.

5.2 Are there any restrictions in your jurisdiction on close-out netting in respect of all derivatives transactions under a single master agreement, including in the event of an early termination of transactions?

The Swiss rules do not restrict the close-out netting of all transactions entered into under a bilateral netting agreement between two parties, subject to agreeing AET (as specified below) and subject to the competence of FINMA to declare a temporary stay of certain termination rights (resolution stay) in the context of bank reorganisation proceedings after a bank has reached the PONV.

In line with international commitments, Swiss law requires that banks and securities firms obtain an acknowledgment from the counterparty that FINMA may exercise its resolution stay powers in the event that the derivatives documentation is governed by a jurisdiction other than Swiss law or subject to a choice of non-Swiss courts as the relevant venue in the event of a dispute.

5.3 Is Automatic Early Termination ("AET") typically applied/disapplied in your jurisdiction and/or in respect of entities established in your jurisdiction?

AET should be applied with respect to all Swiss counterparties that may become subject to bankruptcy proceedings under Swiss law (e.g. by applying the rules of the Debt Enforcement and Bankruptcy Act (DEBA) or the bankruptcy proceedings of the Banking Act).

5.4 Is it possible for the termination currency to be denominated in a currency other than your domestic currency? Can judgment debts be applied in a currency other than your domestic currency?

The termination currency does not need to be Swiss francs, but in bankruptcy proceedings, any claims must be filed in Swiss francs.

6 Taxation

6.1 Are derivatives transactions taxed as income or capital in your jurisdiction? Does your answer depend on the asset class?

Swiss tax law distinguishes between personal assets (*Privatvermögen*) and business assets (*Geschäftsvermögen*).

For individuals holding derivatives in their private assets, the Swiss Federal Supreme Court has held that gains from forward transactions (*Termingeschäfte*) are to be treated in the same way as gains from spot transactions and therefore qualify as capital gains. As capital gains on movable private assets are exempt, gains from futures, forwards, swaps and options held privately are tax-free, and the corresponding losses are not deductible, both at federal and at cantonal and communal level. Option premiums received by an option writer are likewise treated as a tax-neutral asset reallocation that ultimately gives rise to a tax-free capital gain.

Where the derivative is held in business assets – including positions held by a person qualifying as a professional securities dealer – the gain is ordinary taxable income, and losses are deductible.

Although the general rule (tax-free capital gain in private assets) applies to all "pure" derivatives, several asset class-specific carve-outs convert part of the return into taxable investment income:

- **Underlyings not capable of producing a tax-free capital gain**: If the underlying is itself not "capital gain-capable" – in particular, bonds with predominantly one-time interest (IUP) – the regime for the underlying takes precedence and (part of) the return is taxed as investment income.
- **Interest rate derivatives (forward rate agreements (FRAs), interest rate futures, interest rate swaps)**: Such derivatives are treated like ordinary forward transactions only if the term is under one year and the pre-financing degree does not exceed 25% of the contract value. Beyond that threshold, or for terms exceeding one year, the embedded interest component is recharacterised as taxable investment income.
- **Low Exercise Price Options (LEPOs) on shares**: LEPOs (call options with prefinancing of at least 50%) are treated as forward transactions only for terms of up to 12 months. For longer-dated LEPOs, the interest component is taxed at redemption or exercise as investment income.
- **Mini-Futures**: Such futures are treated as forward transactions only if the leverage at issuance is at least four. Failing that, classification follows the rules applicable to instruments with the relevant maturity.
- **Combined/structured products**: For capital-protected derivatives, classic and non-classic option/convertible bonds and reverse convertibles, the tax treatment hinges on whether the product is "transparent" or "non-transparent". In transparent products, the bond component is taxed as investment income while the option component remains a tax-free capital gain; in non-transparent products, everything that the investor receives in excess of the originally invested capital is taxed as investment income.

Pure credit and casualty derivatives (CDS, Total Return Swaps, Insurance Default Swaps) are treated like forward transactions, so the premium received by the protection seller is a tax-free capital gain.

6.2 Would part of any payment in respect of derivatives transactions be subject to withholding taxes in your jurisdiction? Does your answer depend on the asset class? If so, what are the typical methods for reducing or limiting exposure to withholding taxes?

Switzerland levies a federal withholding tax (*Verrechnungssteuer*) at the rate of 35% on (i) interest from bonds and customer deposits issued or held by a Swiss-resident debtor, (ii) dividends and similar distributions on participation rights issued by a Swiss-resident company, and (iii) distributions from Swiss collective investment schemes. Two consequences follow for derivatives.

"Pure" derivatives in the sense of standalone forwards, futures, swaps and options that are not embedded in a debt instrument or structured product fall outside the statutory scope of withholding tax. They are neither bonds nor participation rights and therefore generate no taxable item. For lack of a statutory basis, no withholding tax is levied on income from such derivatives, including LEPOs (regardless of term), Mini-Futures, FRAs, interest rate futures and pure credit/casualty derivatives. This holds even where the same payment is recharacterised as investment income for direct tax purposes (e.g. the interest component of long-dated LEPOs).

The withholding tax treatment therefore depends on the asset class in two senses: (i) whether the derivative is "pure" (no withholding tax) or contains a bond component (withholding tax on that bond component if the issuer is Swiss); and (ii) whether the underlying is itself a debt instrument, in which case the rules for bonds may bring the return within the scope of withholding tax.

Three methods are typically used to reduce or limit withholding tax exposure: (i) foreign-issuer structuring, i.e. issuing capital-protected derivatives and other bond-based structured products out of foreign group entities, which removes the instrument from the scope of Swiss withholding tax altogether (subject to the economic resident, which prevents pure conduit structures from achieving the same result); (ii) transparent structuring of combined products, i.e. designing the product so that the bond and option components are clearly separable, which limits withholding tax to the interest component of the bond portion; and (iii) reliance on the refund mechanism – for Swiss-resident investors, the withholding tax serves a "safeguarding" purpose and is, in principle, fully refundable through proper declaration in the tax return, provided the investor is the beneficial owner of the income, while non-resident investors may claim a partial refund under an applicable double-tax treaty (typically down to the residual treaty rate, rather than a full refund).

6.3 Are there any relevant taxation exclusions or exceptions for certain classes of derivatives?

The Swiss regime contains a number of further exclusions and special regimes worth noting:

- **Pure derivatives are categorically outside the scope of withholding tax**: This is the single most important systemic exception. Because forwards, futures, swaps and options are neither bonds nor participation rights, derivative income generates no taxable item under the Withholding Tax Act. The practice of the Federal Tax Administration expressly confirms this for LEPOs (regardless of term), Mini-Futures (regardless of leverage), FRAs, interest rate futures and pure credit and casualty derivatives such as CDS, Total Return Swaps and Insurance Default Swaps. Notably, even where these instruments produce taxable investment income under the income tax rules (long-dated LEPOs, interest-rate derivatives exceeding the prefinancing or maturity thresholds, etc.), no withholding tax can be levied for lack of a statutory basis – a structural mismatch between direct tax and withholding tax treatment that is well established in practice.
- **Yield-enhancement products of short duration**: Yield-enhancement products with a maturity of up to one year and without guaranteed payments are treated as a combination of derivatives and are excluded from withholding tax.
- **Asset class-specific qualifications by reference to the underlying**: Where the underlying is itself not capable of producing a tax-free capital gain (in particular, bonds with IUP), the regime applicable to the underlying may take precedence over the derivatives regime. Index and basket certificates on bonds qualify as bonds and follow the bond regime, whereas classic and passive index certificates on shares remain outside the scope of withholding tax. Dynamic, actively managed index and basket certificates on shares are treated as collective investment schemes for withholding tax purposes, but are nevertheless not subject to withholding tax.

7 Bespoke Jurisdictional Matters

7.1 Are there any material considerations that should be considered by market participants wishing to enter into derivatives transactions in your jurisdiction? Please include any cross-border issues that apply when posting or receiving collateral with foreign counterparties (e.g. restrictions on foreign currencies) or restrictions on transferability (e.g. assignment and novation, including notice mechanics, timings, etc.).

There are no material considerations of note.

8 Market Trends

8.1 What has been the most significant change(s), if any, to the way in which derivatives are transacted and/or documented in recent years?

In line with international commitments, derivatives have become subject to regulatory margin requirements, including VM and IM requirements, which has changed the documentation used in the market.

Generally, the share of cleared derivatives has increased, which is – in part – due to the regulatory requirements to clear some derivatives, even if entered into as OTC derivatives (e.g. for certain interest rate products and some index CDS).

8.2 What, if any, ongoing or upcoming legal, commercial or technological developments do you see as having the greatest impact on the market for derivatives transactions in your jurisdiction? For example, developments that might have an impact on commercial terms, the volume of trades and/or the main types of products traded, smart contracts or other technological solutions.

An important development would be the introduction of stablecoins or other digital assets as collateral. However, to implement this, besides amending the product documentation accordingly, the relevant netting and collateral opinions will have to be updated.

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