Global Financial Services Regulatory Guide - United States of America

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# 1. Who regulates banking and financial services in your jurisdiction?

## Who regulates banking and financial services in your jurisdiction?

Banks

The United States has a dual banking system comprising both federally chartered and state-chartered banks. In addition, the United States permits banks to have a corporate structure, including bank holding companies and financial holding companies, some of which may now be designated “systemically important financial institutions.”

All banks engaging in banking activities, including the acceptance of deposits, must obtain a bank charter before conducting business in the United States. There are many different charters available to banks in the United States, each with different financial powers as prescribed by state and federal laws. The principal categories of banks in the United States include national banks, state member banks and state non-member banks. Foreign banks may also establish a presence in the United States by obtaining authorization to operate various types of offices depending on the types of activities to be conducted. Other types of banks that are included within the US banking system, but which are smaller in number, include private banks, uninsured state banks, bankers’ banks, trust companies, industrial banks and savings banks.1

Almost all banks are subject to the regulatory authority of more than one bank regulatory agency. All banks fall under the supervision and regulation of their chartering authority at either the state or federal level. If deposit insurance is obtained (which almost always is), a bank is subject to certain statutes of the Federal Deposit Insurance Act, and in the case of a state non-member bank, to direct supervision by the Federal Deposit Insurance Company (FDIC). If a state bank becomes a member of the Federal Reserve System, the Federal Reserve is its primary federal supervisor. Bank holding company and financial holding company structures subject their bank and other subsidiaries to an additional layer of regulation and supervision at the parent company level.

The regulatory agencies primarily responsible for supervising commercial banks and administering state and federal banking laws include the Federal Reserve System, the Office of the Comptroller of the Currency (OCC), the FDIC and the state banking agencies.

**The Federal Reserve System**. The Federal Reserve directly supervises state-chartered banks that choose to become members as well as foreign banking offices and Edge Act corporations.2 The Federal Reserve is also the primary supervisor of bank holding companies and financial holding companies. The Federal Reserve has broad enforcement powers, including authority to issue cease-and-desist orders, remove bank and holding company officers and other affiliated parties, levy fines, revoke membership, and order divestiture or termination of financial holding company activities.

**The Office of the Comptroller of the Currency**. The OCC is the primary supervisory agency for national banks, savings associations and federal branches of foreign banks. The OCC is a bureau of the US Department of Treasury and is responsible for chartering national banks, reviewing national bank branch and merger applications, implementing regulations, and examining and supervising all national banks. The OCC also has broad enforcement powers.

**The Federal Deposit Insurance Corporation**. The FDIC provides federal insurance of deposits at commercial banks. Deposit insurance is mandatory for Federal Reserve member banks and may be extended to non-member banks with the approval of the FDIC. Nearly all non-member banks are FDIC-insured. The FDIC is empowered to examine all banks with FDIC insurance; however, to prevent regulatory duplication, the FDIC only directly supervises and examines state-chartered banks that are not members of the Federal Reserve System.

As part of its insurance responsibilities, the FDIC also acts as a receiver for failed banks and administers the deposit insurance funds. The FDIC may make special examinations of banks to determine the condition of the bank for insurance purposes. The FDIC also holds broad enforcement powers, and it may also appoint itself a conservator or receiver of an insured depository institution.

**State banking agencies**. Every state has its own regulatory agency responsible for chartering and supervising state banks and foreign banks located within the state. Banks chartered by the state must follow all applicable state laws and regulations. In addition, if a state bank takes out deposit insurance or becomes a member of the Federal Reserve, it must also comply with the appropriate federal regulations. State regulatory agencies issue bank charters, conduct bank examinations, construct and enforce bank regulations, and decide on proposed branch and merger applications. All state regulatory agencies can impose sanctions such as revoking a state bank’s charter, issuing cease-and-desist orders, removing bank officials and levying fines.

**Other regulators.** Other state and federal regulatory agencies are also responsible for various supervisory and other matters over US banks, with some agencies more active and more powerful than others.  Generally, these state regulators are principally responsible for non-bank lending institutions. Some of the more important agencies are the Consumer Financial Protection Bureau (CFPB), the Financial Crimes Enforcement Network, the Federal Financial Institutions Examination Council, the Department of Justice, the Securities and Exchange Commission, and the Federal Trade Commission.

**Securities and investments**

The US Securities and Exchange Commission (SEC) is the primary federal regulator of persons engaged in securities business activities.  The SEC regulates brokers, dealers, investment advisers, investment companies (e.g., mutual funds, ETFs, private funds) and other securities market participants, such as exchanges and other self-regulatory organizations (SROs), clearing agencies and transfer agents.  Brokers, dealers and investment advisers may also be subject to state securities regulatory authorities for securities business occurring in those states. In addition, brokers and dealers generally must become members of the Financial Industry Regulatory Authority, Inc. (FINRA) and are subject to FINRA rules.

**Derivatives**

The US Commodity Futures Trading Commission (CFTC), which is an independent federal agency of the US government, has exclusive jurisdiction over transactions in “Commodity Interests” that are executed or booked in the United States. The term “**Commodity Interests**” collectively refers to the following instruments: (i) futures contracts, (ii) options on futures contracts, (iii) swaps, (iv) leveraged retail foreign exchange and commodity contracts, and (v) certain other leveraged products. The CFTC therefore also regulates investment advisers and investment funds investing in Commodity Interests and brokers and platforms facilitating Commodity Interest transactions.

**Insurance**

Individual states and their insurance commissioners or departments have general authority to regulate insurance activities. Companies that desire to engage in insurance activities must comply with state licensing laws and other state insurance laws and regulations.

**Money transmission**

Money transmission services are regulated at the federal and state level.  The Financial Crimes Enforcement Network (FinCEN), a bureau of the US Department of the Treasury, is the primary federal regulator responsible for the registration and supervision for compliance with anti-money laundering (AML) regulations for money services businesses (MSBs).  In addition, state regulatory authorities regulate money transmission services occurring within their state.  A money transmitter is a type of MSB, which also includes entities such as issuers of stored value products, check cashers or dealers in foreign exchange.

1 Although not covered in this chapter, credit unions are another type of financial institution in the United States that are similar to banks, but operate as cooperative, non-profit entities. Credit unions are regulated by the National Credit Union Administration, and are subject to independent statutes, rules and regulations under the Nation Credit Union Act.

2 An Edge Act corporation is a subsidiary of a US or foreign bank that engages in foreign banking operations; these entities were first created in 1919 by an amendment to the Federal Reserve Act of 1913.

# 2. What are the main sources of regulatory laws in your jurisdiction?

## What are the main sources of regulatory laws in your jurisdiction?

**Banking**

Financial institutions, their holding companies and their affiliates are extensively regulated under federal and state laws in the United States. Federal and state banking statutes, related regulations, and less formal guidance, interpretations, letters and notices from the regulatory agencies impose a comprehensive regulatory system on financial institutions.

**Federal banking statutes**. The primary banking statutes are the following:

National Bank Act of 1864 - This created the national bank charter and the first federal banking agency in the United States (OCC), and regulated the distribution of currency national banks were authorized to issue. The authorization of the national bank charter created the parallel scheme of state and federally chartered banks still in place today.

Federal Reserve Act of 1913 - This created the Federal Reserve System and the Board of Governors of the Federal Reserve System. It granted the Federal Reserve the power to make loans secured by eligible paper of member banks, which allowed banks to obtain funds to meet large cash withdrawals or increases in credit and authorized the Federal Reserve to hold reserves of member banks and to conduct monetary policy through open-market operations.

Home Owners’ Loan Act (HOLA) - This created a dual system for savings associations, allowing for federal savings associations in addition to state savings associations.

Federal Credit Union Act - This established the federal credit union system, which is now regulated by the National Credit Union Administration.

Federal Deposit Insurance Act (FDIA) - This created the Federal Deposit Insurance Company (FDIC) to administer a deposit insurance program for banks, and provided for the primary regulation and supervision of state non-member banks and the secondary regulation and supervision of national banks and state member banks.

The Bank Holding Company Act of 1956 (BHCA) - This gave the Federal Reserve the authority to regulate the formation and operation of bank holding companies (BHCs), and limits the nonbanking activities of all BHCs to those that are “so closely related to banking as to be a proper incident thereto.”

International Banking Act of 1978 - This provides equal treatment for foreign and domestic banks in the United States with respect to branching, reserve requirements and other regulations.

Significant amendments to the banking statutes above include the following:

The Gramm-Leach-Bliley Act of 1999 ("**GLBA**") was adopted in order to allow affiliations among banks, securities firms and insurance companies under a financial holding company supervised by the Federal Reserve. The GLBA also provides privacy safeguards for limiting disclosures of personal information.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("**Dodd-Frank Act**") significantly reformed the US supervisory and regulatory framework applicable to financial institutions and capital markets The Dodd-Frank Act created 13 new federal offices, including the Consumer Financial Protection Bureau (CFPB), and required numerous regulations to be adopted by the bank and other financial institution regulators.

**Federal regulations.** Federal regulations applicable to banks in the United States are located in Title 12 of the US Code of Federal Regulations. The OCC, Federal Reserve, FDIC and the CFPB each have their respective regulations in Title 12.

**Securities and investments**

There are many laws and regulations in the US that govern securities and investment-related activities, products and services. The following are the primary federal statutes applicable to securities and investment activities and products:

**Securities Act of 1933 ("Securities Act):** This governs the issuance and distribution of securities in the primary market and requires issuers of securities to register each public offering with the SEC, unless an exemption is available, so that investors receive financial and other significant information concerning the securities being offered. The Securities Act also prohibits deceit, misrepresentations and other fraud in the sale of securities.

**Securities Exchange Act of 1934 (**"**Exchange Act**"**):**This broadly provides the regulatory framework for the trading of securities in the secondary market.It granted the SEC broad authority to register, regulate and oversee market participants in the secondary market broker-dealers, transfer agents, stock exchanges, self-regulatory organizations (SROs) and clearing agencies. The Exchange Act prohibits certain market conduct and gives the SEC disciplinary powers over regulated entities and their associated persons. The SEC also has broad enforcement powers over any market participant, whether or not directly regulated, found to engage in fraudulent conduct, or manipulative or deceptive practices in connection with securities trading.

**Investment Company Act of 1940 (**"**Company Act**"**):** This regulates the organization of companies, including mutual funds, that engage primarily in investing, reinvesting and trading in securities on behalf of investors.

**Investment Advisers Act of 1940 (**"**Advisers Act**"**):** This regulates persons providing securities investment advice The Advisers Act also requires such persons and entities to conform to standards and regulations designed to protect investors.

Each of these statutes is complemented by comprehensive SEC regulations, orders and interpretations.

In addition to complying with the federal statutes, broker-dealers are required to register with the SEC and must also become members of the Financial Industry Regulatory Authority (FINRA). FINRA rules contain a comprehensive set of rules regulating all aspects of the business of a broker-dealer. All FINRA rules are approved by the SEC prior to adoption.

Each state has its own set of securities laws and regulations designed to protect investors against fraudulent sales practices. Although laws vary from state to state, most states require security offerings to be registered before being sold in that state, unless a specific-state exemption applies or such securities are regulated exclusively by Section 18 of the Securities Act, which pre-empts state law application. States may also require registration of personnel or entities engaged in securities and investment activities, unless an exemption is available.

**Derivatives**

Transactions in Commodity Interests are governed by the Commodity Exchange Act (CEA), as amended by Title VII of the Dodd-Frank Act, and the rules, orders and interpretations of the Commodity Futures Trading Commission (CFTC).

**Insurance**

Each state has its own insurance laws and regulations. Insurance products that have links to any securities or securities products will also be governed by securities regulators.

**Federal regulations:** The Bank Secrecy Act (BSA) generally requires money services businesses (MSB) to register with FinCEN and establish anti-money laundering (AML) programs, recordkeeping, and certain transaction reporting.The USA PATRIOT Act amended the BSA to strengthen AML program requirements, conduct customer due diligence, and enhance customer identification programs.

**State regulations:** Each state has laws and regulations applicable to money transmission businesses. While there are efforts to harmonize these regulations, currently these regulations vary state by state in terms of licensing requirements, exemptions and regulatory interpretation.Many states also have regulations designed to protect consumers who use money transmission services.

**All financial institutions**

The BSA, the USA PATRIOT Act, as well as regulations promulgated by FinCEN and the Office of Foreign Assets Control (OFAC), contain the laws, rules and regulations concerning anti-money laundering controls, processes, reporting, disclosure and other requirements applicable to most financial institutions and other businesses conducting activities that could raise money laundering risks.

# 3. What types of activities require a license in your jurisdiction?

## What types of activities require a license in your jurisdiction?

**Banking**

A broad range of activities may be regulated as banking activities in the US. Examples of such activities include the following:

Soliciting or receiving funds for a deposit, including typical retail banking activities involving the operation of demand deposit, savings or other accounts

Lending activities, including loans to consumers and certain commercial lending

Providing trust services (which may require a separate license or special powers)

**Securities and investments**

**Brokers:** This refers to any person engaged in the business of effecting transactions in securities for the account others.  Acting as a “broker” is interpreted broadly and may include, among other activities: soliciting securities transactions, facilitating the executions of securities transactions, making referrals or identifying potential investors for an issuer, and advising on or negotiating a securities transaction. The receipt of transaction-based compensation in connection with any of these activities is typically viewed as a hallmark of broker activity.

**Dealers:** This refers toany person engaged in the business of buying and selling securities for such person’s own account.  Acting as a “dealer” is interpreted broadly and may include, among other activities: holding out as willing to buy and sell a security on a continuous basis, publicly making a market in a security, engaging in a regular pattern of buying and selling securities that has the effect of providing liquidity to other market participants, running a matched book of repurchase agreements, and underwriting a securities offering.

**Investment** companies: Any person that issues securities and is engaged primarily in the business of investing, reinvesting, or trading in securities or that owns or proposes to acquire a certain amount of investment securities are required to register as an investment company unless an exemption applies.

**Investment advisers:** Any person that advises others or issues reports or analyses regarding securities for compensation is considered an investment adviser and must register, unless an exemption is available.

The United States takes a broad view of the preceding types of activities and requires that a person register before conducting such activities using the mails or "any means or instrumentality of interstate commerce" (commonly referred to as “US jurisdictional means”). Accordingly, any person that uses US phone lines, clearing infrastructure, internet, mail or other jurisdictional means in connection with securities or investment activities may be required to register, unless an exemption is available. While various exemptions are available, they should be carefully analyzed before being relied upon.

**Derivatives**

Unless an exemption applies, a broad range of activities related to derivative and commodity interests are regulated and require registration, including, the following:

**Soliciting or accepting orders to buy/sell Commodity Interests and accepting deposits**. A futures commission merchant (FCM) is a person that: (i) solicits or accepts orders to buy or sell commodity interests; and (ii) accepts money or other assets from customers to support such orders. FCMs essentially operate as brokers that execute transactions in futures contracts.

**Soliciting or accepting orders to buy/sell Commodity Interests, but not accepting deposits**. An introducing broker (IB) is a person who solicits or accepts orders to buy or sell Commodity Interests but does not accept money or other assets from customers to support such orders.

**Providing commodity trading advice**. A commodity trading advisor (CTA) is a person who, for compensation or profit, advises others as to the value of or the advisability of buying or selling Commodity Interests.

**Operating a commodity pool**. A commodity pool is an enterprise (e.g., collective investment vehicle) in which funds contributed by a number of persons are combined for the purpose of trading Commodity Interests or to invest in another commodity pool. A commodity pool operator (CPO) is a person that operates a commodity pool or solicits funds for that commodity pool. Commodity pools allow investors to invest in Commodity Interests under the direction of one or more CTAs (which may also be the CPO).

**Swaps dealing**. A swap dealer (SD) is a person or entity that: (i) holds itself out as a dealer in swaps; (ii) makes a market in swaps; (iii) regularly enters into swaps with counterparties as an ordinary course of business for its own account; or (iv) engages in any activity causing the entity to be commonly known in the trade as a dealer or market maker in swaps.

**Security-based Swaps Dealing.** A security-based swap dealer (SBSD) is a person or entity that: (i) holds itself out as a dealer in security-based swaps; (ii) makes a market in security-based swaps; (iii) regularly enters into security-based swaps with counterparties as an ordinary course of business for its own account; or (iv) engages in any activity causing it to be commonly known in the trade as a dealer or market maker in security-based swaps.

**Insurance**

The license required for insurance-related activities is determined by state law. Activities that require a license include (but are not limited to) soliciting insurance business and selling insurance policies.

**Money transmission**

Money transmission involves facilitating the movement of money or monetary value from one party to another.  While the scope of what constitutes money transmission can vary under federal law and from state to state, it generally includes the following types of activities:

Receiving and transmitting money or monetary value from on party to another

Issuing or selling stored value (i.e., products or services that can hold a certain value for future use)

Issuing or selling payment instruments (e.g., money orders and checks)

Exchanging one currency for another

**Virtual currency and digital assets**

The US does not have a specific regulatory regime for crypto/digital assets, and the regulation of digital assets is the subject of ongoing debate. In general, the relevant regulatory regime depends on whether the characteristics of the asset and related activities fall within one or more existing regulatory regimes, which may depend on the interpretive positions of US regulators. For example, FinCEN takes the view that digital assets that serve as a digital representation of money are considered convertible virtual currency (CVC), subjecting persons engaged in the business of issuing, exchanging or transmitting CVCs to registration as MSBs with FinCEN. Many state regulatory authorities also require persons engaging in such activities to register as money transmitters. At the same time, the SEC and CFTC take competing positions on whether various digital assets (some of which FinCEN views as CVCs) are within their respective jurisdictions. Further, federal banking regulators also have exerted authority over some types of stablecoins.

At the time of writing, there are multiple significant cases in the US federal courts between digital asset market participants and the SEC, as well as various legislative proposals that could create clearer regulatory regimes and/or prohibit certain digital asset business activities.

# 4. How do the licensing requirements apply to cross-border business in your jurisdiction?

## How do the licensing requirements apply to cross-border business in your jurisdiction?

**Banking**

In general, US banking laws and regulations, including licensure requirements, apply if a foreign firm has a presence in the United States where it conducts banking business, or solicits or conducts banking business through employees or agents based in the United States, through employees or agents based outside the United States, but who periodically travel to the United States to meet with customers, or otherwise through the use of US jurisdictional means (e.g., the US mail or US telephone lines). Generally, US federal laws do not prohibit a foreign bank from servicing deposit accounts of US persons outside of the US, nor do they require a bank to obtain a US federal banking license or other approval or consent. However, lending activity, specifically mortgage lending, is generally regulated by state law and will need to be addressed on a state-by-state basis.

**Securities and investments**

Generally, like US persons, any non-US person engaging in the business of a broker or dealer with or for US persons and/or US securities may be subject to registration as a broker or dealer with the SEC, unless an exemption applies. The SEC takes an expansive view of its ability to enforce US securities laws whenever US jurisdictional means are used to solicit transactions with US "persons," and the concept of US "persons" is also quite broadly defined by statute. While exemptions may be available to non-US persons engaging in broker or dealer activity, such exemptions require  adherence to the applicable conditions and may require intermediation by a US registered broker-dealer.  Even if exempt, a non-US person remains subject to securities antifraud laws for conduct within the US and/or conduct outside the US that has a substantial effect within the US.

Investment advisers generally must register with the SEC, but there are limited exemptions for foreign investment advisers with no place of business in the US who advise a de minimis number of US persons, with less than USD 25 million under management. In addition, foreign advisers who only advise private funds are also exempt under certain circumstances.

**Derivatives**

Registration will be required if solicitation, management or advice with respect to futures contracts (and options thereon) occurs in the United States. In particular, registration will be required if a person solicits orders, advises US residents or manages any investments from the United States, absent an exemption.

The Dodd-Frank Act extended US swaps regulation to cross-border activities when such activities have a “direct and significant connection with activities in, or effect on, the commerce of the United States” or when they contravene CFTC rules or regulations aimed at preventing evasion of Title VII.

The application of CFTC swaps rules extraterritorially is governed by a CFTC policy statement (the Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations ("**Guidance"**)) and Rule 23.23, known as the "Cross-Border Rule" ("**Rule**").

The extraterritorial application of most CFTC rules (other than margining and segregation of margin) depends, in large part, on whether one of the counterparties to the transaction is a “US person,”as defined in the Guidance. The Guidance defines “US person” broadly to include, but not be limited to the following:

Any natural person who is a resident of the United States

Any estate of a decedent who was a resident of the United States at the time of death

Any corporation, partnership, limited liability company, business or other trust, association, joint-stock company, fund or any form of enterprise similar to any of the foregoing (other than a “US Pension Plan” or a “US Trust,” each as defined below) ("**Specified Legal Entity**"), in each case that is organized or incorporated in the United States or having its principal place of business in the United States

Any pension plan for the employees, officers or principals of a Specified Legal Entity, unless the plan is primarily for foreign employees of such entity ("**US Pension Plan**")

Any trust governed by the laws of a state or other jurisdiction in the United States, if a court within the United States is able to exercise primary supervision over its administration

Any commodity pool or other collective investment vehicle that is not a Specified Legal Entity and that is majority-owned by one or more persons described above ("**US Collective Investment Vehicle**"), except any such entity that is publicly offered only to non-US persons and not offered to US persons

Any Specified Legal Entity (other than a limited liability company, limited liability partnership or similar entity where all the owners have limited liability) that is directly or indirectly majority-owned by one or more persons described above (other than a US Collective Investment Vehicle) and in which such person(s) bear unlimited responsibility for the obligations and liabilities of the entity

"Conduit affiliates" (i.e., non-US entities that have certain trading, ownership or accounting relationships with US affiliates)

Any individual account or joint account (discretionary or not) where the beneficial owner is a US person as described above

The Guidance makes clear that the prongs of the "US person" definition are not exhaustive and that there may be circumstances not fully addressed by those prongs and situations where the Guidance does not “appropriately resolve whether a person should be included in the interpretation of the term ‘US person.'”

The Rule creates a new concept of "significant risk subsidiary" that replaces the "conduit affiliate" category for some types of regulations, provides some additional guidance regarding permissible uses of guarantees, and streamlines some of the categories of US person.

With respect to margining and segregation of margin for uncleared swaps, the CFTC adopted a slightly different definition of “US person.” Accordingly, to the extent that a person engages in swaps transactions, careful analysis of both US person definitions should be conducted to determine the applicable substantive provisions of the swaps regulatory regime.

The SEC has also adopted a "security-based swap" regime for swaps that are deemed to be securities. The SEC swaps regime is similar, though not identical, to the CFTC swaps regime, and a separate analysis of US securities-based swaps activity is necessary.

**Insurance**

State laws in the United States applicable to insurance business will likely be invoked to the extent a foreign company’s conduct involves US persons or entities located within that state.

**Money transmission**

State laws in the United States applicable to money transmission and other money services business will likely be invoked to the extent a foreign company’s conduct involves US persons or entities located within that state. In addition, the federal definition of money transmission may also require registration with FinCEN. Note also that a requirement to license with a state as a money transmitter also requires registration with FinCEN even if the business would otherwise be exempt from FinCEN registration.

# 5. What are the requirements to obtain authorization in your jurisdiction?

## What are the requirements to obtain authorization in your jurisdiction?

**Banking**

As indicated in previous questions,different licenses are available depending on the type of banking institution and the type of activities to be conducted. All banking licenses are obtained by filing an application with the appropriate regulatory agency. The applications are usually extensive and are required to demonstrate, among other things, that the banking institution will be adequately capitalized, well-managed and able to comply with applicable US laws and regulations and requests from the supervising regulatory agencies. Further, the regulators expect licensees to implement robust written compliance and supervisory procedures that address all relevant rules and regulations.

**Securities and investments**

Depending on the type of securities or investment activity to be conducted in the United States, a person will be required to file an application with the applicable securities regulators to become registered. In addition, individual persons associated with or acting in a supervisory capacity with respect to the business will likely be required to file individual applications and pass any required qualification examinations.

Broker-dealers are subject to extensive regulation by the SEC, FINRA and state securities regulators, depending on their business model, and must also ensure that they have adequate net capital and provide adequate protection to customers' funds and securities. Registered investment advisers are subject to oversight from the SEC or the state(s) where they are registered based on assets that they maintain under management.

Investment companies must register with the SEC by filing the appropriate application pursuant to the Investment Company Act. In addition, investment companies issuing securities that do not qualify for an exemption will have to publicly register their securities with the SEC and pay applicable registration fees. Generally, persons managing the portfolios of registered investment companies must be registered as investment advisers.

Finally, all registrants should implement written compliance and supervisory procedures that address all relevant SEC and/or FINRA rules and regulations.

**Derivatives**

Registration requirements vary depending on the type of registrant. Futures commission merchants, introducing brokers, swap dealers and security-based swap dealers are subject to minimum capital requirements, while commodity pool operators and commodity trading advisers currently are not. All registrants should implement written compliance and supervisory procedures covering the appropriate CFTC and SEC rules and regulations. Individual persons associated with the registrant will need to satisfy examination proficiency requirements.

**Insurance**

Registration requirements vary depending on the state where business will be conducted but will typically require an application. Individual licensure as agents by persons involved in the activities of the insurance company will typically also be required. The state insurance regulators will expect licensees to implement written compliance and supervisory procedures addressing all relevant rules and regulations.

**Money transmission**

A money transmission business generally must register with FinCEN by electronically filing the appropriate form.  State registration and licensure requirements vary depending on the type of activity to be conducted and the state where the business will operate. An application is typically required. While specific state requirements differ, most states require the following items: surety bond; audited financial statements; minimum net worth qualifications; detailed business plan; management and organizational charts; flow of funds charts; AML policies and procedures; state business registrations and certifications of good standing; and a registered agent for service of process.

# 6. What is the process for becoming authorized in your jurisdiction?

## What is the process for becoming authorized in your jurisdiction?

**Banking**

A bank seeking US licensure would have to follow the application process specified by the appropriate bank supervisory authority/authorities. All regulators require an application form and supporting documentation, such as audited financial statements, business plan, fingerprints and background checks for senior management and directors; comprehensive policies and procedures; and required application fees. No banking business may be conducted until the application is approved by the appropriate regulator. In addition, if a holding company structure is utilized, an application to, and approval by, the Federal Reserve is also required.

**Securities and investments**

Broker-dealers are required to submit a New Member Application to FINRA and submit a completed Form BD to the SEC to register with the SEC and FINRA. All materials are submitted online through FINRA. Required application information can include audited financials, a business plan, written compliance and supervisory procedures, forms of customer agreements, fingerprint cards/background checks for individuals registering as associated persons or being listed as principals, and registration fees.

Depending on the amount of assets under management, investment advisers are required to submit a completed Form ADV to either the SEC or the state(s) where the investment adviser will conduct business. The information required in the Form ADV depends on the contemplated business but includes ownership information, proposed business activities and arrangements, background regarding principals, and disclosure and management of conflicts of interest.

Investment companies must register both their securities and their entities with the SEC.

**Derivatives**

To register with the CFTC, applicants must submit applications to the National Futures Association (NFA), which handles the registration process for the CFTC. Depending on the type of registrant, required information may include applications, audited financials, written compliance and supervisory procedures, fingerprint cards/background checks for individuals registering as associated persons or being listed as principals, and registration fees.

**Insurance and money transmission**

Each state has its own process for authorizing insurance companies and money transmitters, but licensing and registration will typically involve the submission of an application, registration fee, background and fingerprints for senior management, and details regarding the intended business.  Most money services businesses will submit state applications through the Nationwide Multistate Licensing System (NMLS), while a handful of states manage the application process directly.

# 7. What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

## What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

**Banking**

The concept of passporting is not available under US banking laws and regulations.

**Securities and Investments**

The concept of passporting is not available under US securities laws and regulations.

**Derivatives**

The concept of passporting is largely not applicable under the US Commodity Exchange Act and Regulations. The CFTC permits certain regulated entities (e.g., swap dealers) that are domiciled outside of the United States to comply with local rules on margin and "entity-level" rules if local rules are comparable to the CFTC rules (i.e*.*, "substituted compliance"). However, "substituted compliance" is largely unavailable when such non-US entities deal directly with US persons.

**Insurance**

Although the appropriate state’s laws should be reviewed to confirm, the concept of passporting is likely not available under state insurance laws.

**Money Transmission**

Although the appropriate state’s laws should be reviewed to confirm, the concept of passporting is likely not available under state money transmission laws.  However, many states provide exemptions from money transmitter licensing for businesses registered or licensed in other capacities (e.g., federally and state-chartered banks and SEC-registered broker-dealers).

# 8. Authors and contact information

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