Global Financial Services Regulatory Guide - United States of America

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

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# 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.

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