

Financial Services and Products: The Key Regulatory and Compliance Challenges

Rolf Haudenschild, Head of Regulatory and Risk Services for Ingenia, an independent support service provider based in Singapore, is an expert in the regulatory and compliance issues facing wealth management. Hot topics include how digitalisation requires its own tailored regulation as well as the challenges of regulatory hurdles when it comes to the cross-border promotion and sale of financial services and products. Haudenschild advises a thorough understanding of the prevailing regulatory demands.

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HAUDENSCHILD GAVE A PRESENTATION at the Hubbis Compliance in Asian Wealth Management Forum in Singapore.

New accredited investor regime

Focussing first upon the changing accredited investor legislation, Haudenschild explained we are currently seeing some very important changes. The updated legislation is due for implementation in April this year.



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Major changes for individuals are the limitation of the value of the primary residence to SGD 1 million for the calculation of the net personal assets and, the introduction of net financial assets of SGD 1 million to qualify as accredited investor. Moreover, a joint account holder will be able to tag on the accredited investor qualification of another joint account holder. For entities, the scope for qualifications has also been expanded. All corporations entirely held by accredited investors qualify themselves; not only investment entities. Trusts also qualify as accredited investors, if all beneficiaries are accredited investors, or if the settlors are accredited investors, the trust is revocable and the settlors retain all investment powers. In wealth management, challenges will remain where high net worth individuals create trusts for the benefit of their children and grandchildren that do not themselves qualify as accredited investors. A question also arises, if discretionary management of the trust's assets will invalidate the qualification based on the

accredited investor status of the settlors given that they would need to retain the investment powers.

Promotion of financial services

When promoting financial services Haudenschild elucidated, firstly you are subject to licensing requirements. You can only pitch a financial service when you are appropriately licensed. Secondly, there are regulations regarding disclosure requirements and the clarity of information that you provide. There must be no smoke and mirrors or hidden costs, everything must be clear and concise.

Digitalisation offers the financial industry some helpful tools for the on-boarding of new clients, for example non-face-to-face identification. Although non-face-to-face identification must be at least stringent as face-to-face identification, the range of options is ever increasing starting with MyInfo, the governments data that can be fully relied on, to video calls and call back. Moreover, applications are now available for smartphones that integrate means such as facial recognition,

fingerprint identification and verify against Google and Facebook IDs, Haudenschild reported.

In the increasing realm of digital financial services additional requirements apply. For example, in crowdfunding, which Haudenschild quipped is also about the selling of financial products and in some cases restricted to accredited and institutional investors, the platforms are required to implement multiple gates in the on-boarding process to ensure suitability. Crowdfunding platforms must subject prospective investors to a knowledge or experience test or a suitability assessment test and provide general warnings before the prospect can gain access to their platform.

Where robo-advisory is concerned, Haudenschild indicated that MAS requires the robo-adviser to obtain extensive information from the prospect. If the robo-adviser is however fully automated, lesser information is required. There must be knock-out questions to preclude unsuitable clients, algorithms built in to detect inconsistencies in client information, and clients' financial

capability and risk tolerance must be assessed.

Promotion of financial products

October saw a real shake-up in and the regulatory classification for financial products, Haudenschild continued. Financial products are organised into many types of different categories for different purposes; importantly capital markets products and investment products.

While the promotion of capital markets products also requires the respective license for this activity, the financial products must be licensed in addition. Disclosure requirements apply to the financial product and prohibition of misleading statements; Commonly, a prospectus with all information must be issued. Safe harbours may lessen the burdensome requirements.

Again, additional requirements are placed upon digital channels. For example, the Monetary Authority of Singapore expects crowdfunding platforms to disclose past interest rates and non-performing loan rates for financial instruments they have offered, going back three years. “If you are a bank offering financial products through digital channels, I strongly recommend you stick to these regulations,” Haudenschild warned. “

Last year, digital assets such as cryptocurrencies were becoming extremely popular. “It is apparent now that digital assets are subject

to the same requirements as other capital markets products” Haudenschild explained. As the next step, the Payment Services Bill will extend a regulatory framework to other digital tokens and e-currencies.

Cross-border promotion

Singapore is a small country, with a limited market, Haudenschild began. However, when we look beyond our shores there is huge market potential, which should only be accessed with a sound understanding the regulatory landscape in the target jurisdictions. Again, you first need to know, if you can provide the specific service in the respective jurisdiction. At the second level, you then need to check, if you the specific financial product can be offered in the jurisdiction and what information must be provided with the offer.

Cross-border promotion exposes you to three different types of risks. Most clearly, you are exposed to regulatory risk. The foreign regulatory may take action against you for actions without the required license. Even your fit and proper may be damaged in Singapore for regulatory breaches abroad. Second, non-compliant marketing may jeopardise your agreements under private law. In the worst case, your contract is invalid. Finally, you need to consider the tax implications for your bank, for the relationship manager himself, and, most

importantly, the specific tax effects on your client that differ from one jurisdiction to another. This is an important consideration when recommending products to your clients.

“So, how can you manage these cross-border risks?” asked Haudenschild rhetorically. Your first option are licenses. Certain markets allow for cross-border licenses, meaning that you can legitimately operate in those markets. For example, in Malaysia temporary licenses are available for investment services into Malaysia.”

As a second option, safe harbours may be available. Beyond the common safe harbours, it is critical to understand under what conditions regulation is triggered. For example, in the Philippines financial regulation only applies when you actually begin to perform a service. You can thus search for and promote to clients in the Philippines without becoming subject to financial regulation and, in effect, without a license.

“It is important that your financial institution and your staff understand all of these rules for each separate country” Haudenschild concluded. You must establish regulatory manuals for each individual market, including the safe harbours. At the same time, you must ensure your staff are fully aware of and trained in these matters. Finally, you must monitor who is interacting with which clients and the activities undertaken. ■

