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Financial cross-border activities into and out of Switzerland

Alessandro Bizzozero and Christopher Robinson

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Translated by Daniel Scheinmann

Schulthess §



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Translated and partially updated version of the book «Activités financières cross-border vers et depuis la Suisse», published in September 2010.

On 22 October 2010 FINMA published a Position paper on legal and reputational risks in cross-border financial services of banks and other financial institutions subject to prudential supervision. The Swiss regulatory authority considers the cross-border risk of financial institutions with foreign clients as a major risk. Consequently, banks and financial institutions are expected to be aware and to take due account of foreign supervisory legislation. Risks related to cross-border activity in target countries must be examined and assessed. In addition, banks and financial institutions must take appropriate measures to mitigate or eliminate risks.

This publication covers the legal aspects of financial cross-border activities for Switzerland in both directions. Examining the export of services and financial products from abroad into Switzerland is essential in order to understand the issues which may arise when proposing such services and products abroad from Switzerland. The explanations and examples contained in this book

should help financial market participants better understand and implement FINMA's requirements. In this sense, the publication represents an important aid in complying with these new obligations.

In the first part, we will discuss general aspects of cross-border activity. After defining the concept (Chapter 1), we will present international treaties that concern Switzerland directly or indirectly (Chapter 2). In the second part, we will deal with the conduct of cross-border activity in Switzerland from abroad, in relation to financial services (Chapter 3), sale of products (Chapter 4) and access to Swiss-regulated markets (Chapter 5). In the third part, we will approach the conduct of financial activities abroad, out of Switzerland. After summarising the Swiss regulator's practice in this field (Chapter 6), we will outline our vision of what a regulator's expectations should be. (Chapter 7). The next part will then deal with general issues related to cross-border activities out of Switzerland (Chapter 8).

Finally, we will cover the export of services without a physical presence (Chapter 10), the sale of products abroad (Chapter 11) and access to regulated foreign markets (Chapter 12).

About the authors

Alessandro Bizzozero holds a doctorate in law. He is a lawyer and he lectures at the University of Geneva. Mr Bizzozero has wide experience of regulatory and compliance issues, both Swiss and international, from roles with the Swiss regulator,

top audit firms and banks. He is the author of numerous books and articles on banking law.

Christopher Robinson holds a Master degree in Law and has been admitted to the Geneva Bar. He has acquired a vast experience of the laws and regulations which apply to the private banking industry, both at a Swiss and at an international level. Throughout his career, he has worked in the legal and compliance departments of several important banking institutions.

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