

# Navigating the Waters of Innovative Products

December 5, 2019



By Gabriel Edelman and Steve Murphy

## **Overview:**

The financial market is always innovating. Twenty years ago, it was the dot.com wave with everyone scrambling to ride it or, perhaps, just keep up. More recently, blockchain spawned a myriad of products, the most well-known being Bitcoin-related. Other burgeoning products revolve around Opportunity Zones, cannabis, ESG, and the artificial intelligence space.

As an expert provider of compliance services, Foreside is at the forefront of understanding novel products and strategies. From reviewing marketing materials to aiding in distribution, we are continuously getting clients and industry partners up to speed regarding unique challenges in the marketplace. Below is a summary of areas to understand in order to dissect, decipher, and, potentially, benefit from these and other nascent products.

## **Regulatory Landscape**

The regulatory environment for a new product is rife with uncertainty. For example, the treatment of cannabis may vary by country, as well as by federal and state statutes. Regulators might have differing opinions on, for example, whether a digital asset is a security, commodity, or currency. It is crucial to keep abreast of the latest regulations, notices, and legal opinions.

- Federal versus State laws
- The United States versus Foreign treatment
- Differences between regulators (FINRA v. SEC v. CFTC, etc.)

## **Disclosures**

Knowing how and when to appropriately disclose information is front and center to benefit both product issuers and investors. Easier said than done, of course. With an evolving regulatory and market landscape for new products, the key is to offer clear and straightforward explanatory language that not only provides appropriate disclosure but truly educates investors.

- Example: XAI (“Explainable Artificial Intelligence”) born out of the need to take what appears to be a black box and provide insight to regulators, investors, and service providers.

## **Due Diligence**

Foreside cannot overstate the importance of proper due diligence. In the digital asset space, new service providers are joining the fray on what appears to be a daily basis. Being able to choose reliable partners is crucial. The more complex the product, the deeper the necessary dive, such as, for example, selecting a tax expert to aid with an Opportunity Zone fund. Areas to investigate include, at a minimum:

- Vendors/Service Providers (Administrators, Custodians, Counsel, Auditors, etc.)
- Products
- Advisors