借贷、再抵押与托管的终点

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借贷开始之处，便是托管终止之时。如果托管人可以为自己的账户使用客户代币、将其出借给第三方或予以质押，那么它所持有的是对客户的债务，而非客户的资产。这是Celsius、Voyager以及新加坡的Hodlnaut和Vauld留下的教训：这些平台的客户在2022年发现，所谓"赚币"账户其实是向一家濒临倒闭的公司提供的无担保贷款。第J部分第V章和第N部分第IV章分析了新加坡的相关程序。就本章而言，技术要点很简单：如果条款允许托管人为自身目的转移代币，任何密钥管理架构都无法恢复客户的地位。链上会显示代币离开了托管人的地址，破产法会把客户视为债权人。

瑞士法对此有直接规定。《瑞士债务执行与破产法》第242a条只保护托管人承诺"始终"为客户持有的资产。使用权会破坏这一保护，使安排转变为存款，而这需要根据《银行法》第1条或第1b条取得银行牌照或金融科技牌照。[1]新加坡则通过合同法和信托法得出类似的结果。允许使用的条款与信托不相容，客户只剩下合同上的债权。

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注释

1. Banking Act，SR 952.0，第1b条第1款（在不付息、不用于投资的情况下吸收最高1亿瑞士法郎的公众存款）；Banking Ordinance，SR 952.02，第5a条（托管人可处分的加密资产视为存款）。第E部分第II章。 ↩

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