非同质化代币

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除非构成证券，否则不在监管范围内

2022年2月，正值NFT市场的高峰期，MAS在一份国会答复中阐明了其对NFT的立场。国务资政兼主管MAS的部长表示，MAS并不对NFT本身进行监管。代表独一无二数字收藏品的NFT，不在SFA和《支付服务法》的范围内。如果NFT具有资本市场产品的特征，例如代表对一篮子资产的碎片化权益或分享利润的权利，立场就会改变。[1]这一立场至今未变。作为艺术品、会员资格或游戏内物品之唯一表征的NFT不是DPT，因为它不是交换媒介。它也不是资本市场产品，因为它不赋予任何投资权利。

有三种结构会使NFT落入监管范围。第一是碎片化。假设一个NFT被分割为代表该NFT份额的可互换代币，并以期待其升值获利的方式出售给投资者。这些可互换代币即为集体投资计划中的单位；如果NFT通过一家公司持有，则为该公司的股份。[2]第二是利润权。使持有人有权分享底层作品、某一协议或某项业务之收入的NFT，属于债权证或集体投资计划单位。第三是实质上的可互换性。一个由一万个"独一无二"的NFT组成、但实际上可以相互替代、按地板价交易并作为投资推广的系列，更接近可互换代币而非收藏品，MAS保留透过形式审视实质的权利。

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NFT平台

为收藏品买卖双方撮合交易并收取费用的NFT交易市场，并未提供DPT服务，因为NFT不是DPT。但如果它同时为NFT计价所用DPT的兑换提供便利，例如运营一个供用户持有以太币购买NFT的钱包，或为用户将法币兑换为代币，那么它就在提供DPT服务。因此，新加坡的大多数NFT平台要么与持牌DPT提供商合作处理支付环节，要么要求用户自带钱包。该交易市场还须遵守有关消费者保护、知识产权和《2012年个人资料保护法》的一般法律，并须接受适用于任何高价值商品交易商的反洗钱分析。[3]

反洗钱这一点值得强调。NFT不是DPT，NFT交易市场也不是《1992年腐败、贩毒及其他严重犯罪（没收利益）法》下的金融中介。尽管如此，它仍是一种在身份识别薄弱的情况下转移价值的工具。可疑交易报告办公室已将NFT洗售交易和自我交易列为洗钱类型。忽视这一模式的平台，会使其董事面临该法下一般洗钱罪的风险，这些罪行适用于任何处理犯罪所得的人（参见第L部分第IV章）。[4]

实务提示

如果您在新加坡运营NFT平台，只要遵守三条规则，就可以留在牌照制度之外。不要持有用户的代币或法币：让用户连接自己的钱包，并在链上结算。不要提供任何将NFT分割为可互换单位或附带收入权的产品，除非已就此进行SFA分析。不要把无需牌照等同于无需履行反洗钱义务：要对交易对手和系列进行制裁风险和洗售交易筛查，并保存记录。如果您的平台发展到包括代币钱包、法币入金通道或以NFT为抵押的借贷功能，每一项新增功能都会使您更接近《支付服务法》，应在上线前进行审查。

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注释

1. MAS，国务资政兼主管MAS的部长对关于非同质化代币监管之国会质询的答复，2022年2月，表示MAS不监管代表独一无二数字收藏品的NFT，但在NFT具有资本市场产品特征时将适用SFA。 ↩
2. SFA，第2(1)条，“collective investment scheme”和“securities”的定义，适用于单一资产的碎片化权益；MAS Guide to Digital Token Offerings（2020年），关于代表资产权益之代币的案例研究。 ↩
3. Consumer Protection (Fair Trading) Act 2003；Copyright Act 2021；Personal Data Protection Act 2012；参见第J部分第III章和第IX章。 ↩
4. Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992，第50至54条（经2020年修订版重新编号的洗钱罪），以及第45条（报告可疑交易的义务）。 ↩

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