向公众发售与白皮书

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第二编适用于在欧盟境内发售ART或EMT以外加密资产的任何发售人，以及寻求获准交易的任何人。发售人必须是法人，必须按照附件一的内容编制加密资产白皮书，必须至少在发布前二十个工作日向其母国成员国的主管机关进行通知，并且必须予以发布。白皮书无需审批，这是其与《金融服务法》招股说明书或SFA招股说明书的区别所在。对于不完整、不公允或具有误导性的信息，发售人须依第15条承担责任。营销信息必须与白皮书保持一致，并可被识别为营销内容。对于直接向发售人购买且尚未获准交易的代币，零售持有人享有十四天的撤回权。[1]

对瑞士或新加坡的发行人而言，有两个特点值得关注。第一，发售人无需在欧盟境内设立。设立于第三国的发售人，其母国成员国为该加密资产首次发售或首次获准交易所在的成员国。因此，一家楚格股份公司（AG）无需设立欧盟子公司，只需向例如德国或法国主管机关通知白皮书，即可向欧洲公众发售其实用型代币。[2]第二，白皮书附件一的内容，与FINMA根据其ICO指引对代币销售文件的期望，以及新加坡SFA私募备忘录所包含的内容，存在大量重叠。按照MiCA标准起草一份披露文件的发行人，通常只需少量补充，即可满足瑞士和新加坡对非证券类代币的要求。反之则不成立。

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示例

一家楚格有限责任公司（GmbH）开发了一个去中心化存储协议，计划于2026年9月向欧洲和亚洲买家公开销售一种实用型代币。该代币可用于获取网络已经提供的存储容量。根据MiCA，该代币属于“其他加密资产”。向欧洲公众销售需要向要约首次开放所在成员国的主管机关通知白皮书，该GmbH为承担责任的发售人。该GmbH自身的一级销售无需CASP牌照。根据瑞士法律，该GmbH需要取得FINMA确认其属于实用型代币的评估意见，无需FIDLEG招股说明书；并且由于其向公众收取加密资产和法币付款，但并不为买家持有这些资产，除非其同时兑换代币，否则无需加入反洗钱自律组织。根据新加坡法律，如果该代币是纯粹的实用型代币，则不属于SFA的规管范围，该GmbH从楚格向新加坡居民进行的销售也不构成DPT服务。若通过一家收取买家资金的新加坡关联公司在亚洲分销，情况则有所不同：参见第K部分第I章。

注释

1. Regulation (EU) 2023/1114，第4至15条及附件一。第4(2)条和第4(3)条规定的豁免涵盖：每个成员国少于150人的发售、十二个月内低于100万欧元的发售、仅面向合格投资者的发售，以及免费发售的代币、通过挖矿或验证产生的代币，或用于已存在的商品和服务的实用型代币。 ↩
2. Regulation (EU) 2023/1114，第3(1)(33)(b)条及第8条。这一点常被忽视，因为第五编中有关CASP的规则确实要求在欧盟境内设立。 ↩

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