第七至第九阶段：上市、锁定期与做市

Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland and Germany),
Solicitor (England & Wales and Hong Kong)
Of Counsel, KGP Legal LLC
alexander.ressos@kgplegal.com.sg
www.ressos.com.sg

上市协议

中心化交易所依据其自行起草的协议为代币上市。这类协议的核心条款鲜有谈判余地，并向发行人施加各项义务，发行人的法务团队应将其视为监管承诺来审阅。标准条款要求发行人保证该代币在特定司法管辖区不构成证券，并就此出具法律意见书。条款还要求发行人披露代币分配与归属安排、通报重大事件、不得操纵市场，并向交易所作出赔偿承诺。上市费、做市保证金及“营销承诺”以代币或稳定币支付，必须在发行人账簿中记作费用或服务对价。基金会若以价值数十万美元的代币向境外交易所支付上市费，其监督机关可能要求其说明该笔支付与基金会宗旨是否相符。楚格州税务机关仅在有书面记录的情况下才会将其认定为费用。

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锁定期与归属

锁定期有两个作用。它使团队和早期投资者在较长时间内与项目利益一致，同时向市场表明流通量受到控制。锁定期也是第I章所述税务和证券问题再次出现的节点：对瑞士雇员而言，锁定期解除构成归属事件；对新加坡雇员而言，则构成一项收入。因此，代币计划、SAFT和认股权证中的锁定条款应保持一致。第I章的税务规划应围绕解锁时间表展开。通过智能合约执行的锁定期比仅凭合同执行的锁定期更具证明力，因为两地监管机构和两地税务机关都可以在链上加以核实。

做市与市场滥用

发行人在上市后聘请做市商在交易所提供流动性。做市协议有两种形式：一是向做市商出借代币，并附以固定价格行使的看涨期权；二是采用聘用安排，由做市商以发行人的账户交易发行人的代币。两种形式都接近市场滥用的边界。瑞士《金融市场基础设施法》（FinfraG/FinMIA）禁止对获准在瑞士交易场所交易的证券进行市场操纵，其刑事条款同样适用于证券。不构成证券且仅在境外交易场所交易的代币不在该法定禁止范围之内。但《瑞士刑法典》中的诈骗罪条款和一般侵权法仍可适用。[1]新加坡《证券与期货法》禁止就资本市场产品进行虚假交易和操纵市场。MAS已表示，持牌机构操纵数字支付代币市场的行为，将被视为违反其牌照条件及适当资格要求。[2]

在结构设计上，解决办法是订立一份做市协议，将做市商限定于在规定价差范围内进行双边报价。协议禁止对敲交易、幌骗以及与发行人的协同交易。协议要求做市商向发行人的合规部门报告库存和交易情况，并参照可核实的基准事先确定期权价格。借币加期权结构的风险更大，因为它使做市商有动机在行权前压低价格。第N部分中的若干执法案例正是围绕这种动机展开的。

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实务提示

在签署做市协议之前，发行人董事会应能以书面形式回答四个问题。做市商获得哪些代币？来自哪一部分配额？这些代币是否计入向交易所披露的流通供应量？除报价之外，做市商还可以如何使用这些代币？期权价格如何以及何时确定，由谁核实基准？发行人会收到哪些报告，由谁审阅？无法回答这些问题的董事会，将面临协助操纵自身代币的指控。

注释

1. Financial Market Infrastructure Act of 19 June 2015 (FinMIA; FinfraG), SR 958.1，第143条（市场操纵：对获准在瑞士交易场所或DLT交易设施交易之证券的行政禁止）及第155条（市场操纵罪）；Swiss Criminal Code (SCC; StGB), SR 311.0，第146条（诈骗罪）。参见第E部分第X章及第H部分第I章。 ↩
2. Securities and Futures Act 2001，第197至201条（虚假交易、操纵市场、操纵资本市场产品）；MAS, "Response to Public Consultation on Proposed Measures on Market Integrity in Digital Payment Token Services"，2023年7月2日（持牌机构须制定防范不公平交易行为的政策）。参见第K部分第III章及第N部分第I章。 ↩

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Author contact: Dr Alexander Ressos, TEP · contact@ressos.com

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