

首次代幣發行的美麗新世界？ 我國證券型代幣之規範架構評釋

黃朝琮^{*}

摘 要

首次代幣發行（initial coin offering，以下簡稱「ICO」）乃近年來廣受討論之募資方式，其一方面使募資者得以迅速募集資金，但另一方面又因其涉及廣泛大眾，若有糾紛將有廣泛影響，而為金融監理機關所矚目。對此，我國金融監督管理委員會（以下簡稱「金管會」）藉由核定具證券性質之虛擬通貨為有價證券的方式，將 ICO 中之證券型代幣發行（security token offering）引入證券交易法的規範當中，並就證券型代幣之發行與交易建置相關機制，料將對於 ICO 於我國發展產生深遠影響。本文就金管會之規範框架進行，就 ICO 之分類、證券型代幣之定義、申報豁免規定、資訊揭露內容及外國法規定適用等面向，若干觀察與思考，期促進後續對話與規範之完善。

關鍵詞：首次代幣發行、證券型代幣、Howey 測試、區塊鏈、金融監理沙盒

^{*} 宏鑑法律事務所合夥律師；美國賓州大學法學碩士。本文若干想法得益自與蔡昌憲教授、楊岳平教授之討論，初稿並於第二十三屆全國科技法律研討會提出，蒙林建中教授及趙冠緯博士惠賜寶貴評論，特此致謝，惟相關文責仍由作者自負。

投稿日：2019 年 7 月 14 日；採用日：2019 年 10 月 7 日

Cite as: 6 NCTU L. REV., March 2020, at 151.

A Brave New World for ICO? On Taiwan’s Regulatory Framework of STO

Chao-Tsung Huang *

Abstract

Initial Coin Offering (“ICO”) is a financing method that is widely discussed recently. On the one hand, ICO allows the issuer to quickly obtain the funding required, but on the other hand, it involves the general public and may have broad impact in the event of disputes. By including the virtual assets with the nature of securities as one of the securities to be regulated, the Financial Supervisory Commission (“FSC”) subjects one type of the ICO, the security token offering (“STO”), to the regulatory framework of Taiwan’s Securities and Exchange Act and establishes the mechanism for the issuance and trading of security tokens, which would bring significant implications to the development of ICO in Taiwan. This article observes and ponders on FSC’s regulatory framework of STO with respect to classification of ICO, definition of security token, exemption of application, information disclosure and application of foreign law, aiming to facilitate the conversations and to improve the regulatory framework in the future.

Keywords: Initial Coin Offering, Securities Token, Howey Test, Blockchain, Financial Regulatory Sandbox

* Partner, Chen & Lin Attorneys-at-Law; LL.M., University of Pennsylvania, U.S.A.