第七至第九階段：上市、禁售及做市

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上市協議

中心化交易所根據由交易所草擬的協議上市代幣。這些協議的核心條款甚少可以磋商，並對發行人施加義務，發行人的法律團隊應把這些義務視作監管承諾來看待。標準條款要求發行人保證代幣在指明司法管轄區不屬證券，並提供具此效果的法律意見書。條款亦要求披露代幣分配及歸屬安排、通知重大事件、不得操縱市場，以及向交易所作出彌償。上市費、做市保證金及「推廣承諾」以代幣或穩定幣支付，必須在發行人帳目中列作開支或服務代價。基金會如以價值數十萬美元的代幣向外國交易所支付上市費，所作的是一筆其監督機關可能要求其按宗旨說明理據的付款。楚格稅務機關只會在有文件證明的情況下把該筆款項視作開支。

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禁售及歸屬

禁售有兩個作用。禁售使團隊及早期投資者在一段時間內與項目利益一致，同時向市場表明流通量受到控制。禁售亦是第I章的稅務及證券問題重新出現之處，因為解除禁售對瑞士僱員而言屬歸屬事件，對新加坡僱員而言則屬收入。因此，禁售條款應在代幣計劃、SAFT及認股權證中一致訂明。第I章的稅務規劃應圍繞解禁時間表制定。以智能合約執行的禁售，比單靠合約執行的禁售更具證明力，因為兩地監管機構及兩地稅務機關均可在鏈上核實。

做市及市場失當行為

發行人在上市後委聘做市商在交易所提供流動性。有關協議有兩種形式：一是把代幣借予做市商並附以固定價格行使的認購期權，二是聘用做市商以發行人帳戶買賣發行人的代幣。兩種形式都接近市場失當行為的界線。瑞士《金融市場基礎設施法》禁止操縱已獲准在瑞士交易場所買賣的證券，其刑事條文同樣適用於證券。不屬證券、只在外國交易場所買賣的代幣，不在法定禁制範圍之內。《刑法典》的詐騙條文及一般侵權法仍可適用。[1]新加坡《證券及期貨法》禁止在資本市場產品方面進行虛假交易及操控市場。新加坡金融管理局（MAS）已表明，持牌人操縱數碼支付代幣市場，將被視為違反其牌照條件及適當人選要求。[2]

結構上的解決方法，是訂立一份把做市商限於在指定價差內作雙向報價的做市協議。協議禁止洗售交易、幌騙及與發行人協同交易。協議要求做市商向發行人的合規部門報告存貨及交易，並參照可核實的基準預先釐定期權價格。借貸加期權的結構較為危險，因為它令做市商有誘因在行使期權前壓低價格；第N部分的多宗執法個案正涉及這種誘因。

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實務提示

在簽署做市協議前，發行人董事會應能以書面回答四個問題。做市商獲得哪些代幣、來自哪一分配額，以及這些代幣是否計入向交易所披露的流通供應量？除報價外，做市商可如何使用這些代幣？期權價格如何及何時釐定，由誰核實基準？發行人會收到哪些報告，由誰閱讀？未能回答這些問題的董事會，將面對協助操縱自家代幣的指控。

註釋

1. Financial Market Infrastructure Act of 19 June 2015 (FinMIA; FinfraG)，SR 958.1，第143條（市場操縱：對獲准在瑞士交易場所或DLT交易設施買賣的證券的行政禁制）及第155條（刑事市場操縱）；Swiss Criminal Code (SCC; StGB)，SR 311.0，第146條（詐騙）。參見第E部分第X章及第H部分第I章。 ↩

2. Securities and Futures Act 2001，第197至201條（虛假交易、操控市場、操縱資本市場產品）；MAS，"Response to Public Consultation on Proposed Measures on Market Integrity in Digital Payment Token Services"，2023年7月2日（持牌人須制定防止不公平交易行為的政策）。參見第K部分第III章及第N部分第I章。 ↩

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