

The Challenges to Financial Regulation in the FinTech Era: Envisaging the Regulatory Structure for Crypto-Asset Trading Platforms

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Abstract

This paper studies the regulation of crypto-asset trading platforms (hereinafter “trading platforms”) to explore how financial regulators should address the regulatory issues of emerging FinTech industries in a FinTech era. This paper firstly reviews the development of trading platforms in the world and Taiwan. It then, based on the risks and regulatory toolkits identified by IOSCO in 2020, reflects on the trading platform scandals and the regulatory status quo in Taiwan. Based thereon, this paper conducts comparative law studies which summarize the regulatory models for trading platforms around the world into three: the Zen approach (represented by the United Kingdom and Canada), the special payment regulation approach (represented by New York State and Japan), and the special securities regulation approach (represented by Thailand and Malaysia). Lastly, after considering the development status of Taiwan’s trading platforms, this paper proposes Taiwan’s Financial Supervisory Commission to take a moderate regulatory intervention to control the risks of potential consumers for promoting trading platform development. Specifically, it proposes the regulation to be based on the special securities regulation model and characterize trading platforms as special securities or futures businesses to cover various dimensions of risks associated with trading platforms. It further proposes Taiwan’s Financial Supervisory Commission to place the regulatory focus on financial consumer

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protection and user asset protection at the initial stage. After trading platforms gradually grow and the regulatory data is collected, the regulator can further introduce market integrity duties and price discovery mechanisms. The regulator should also permit traditional financial institutions such as banks to engage in crypto-asset businesses to balance the competition between traditional financial institutions and emerging FinTech businesses.

Keywords: FinTech, crypto asset, blockchain, distributed ledger, crypto asset trading platform, centralized trading platform, financial consumer protection, payment regulation, securities regulation, IOSCO.