集保

VOL.241

雙月刊

2018年12月號

臺灣集中保管結算所

TDCC Taiwan Depository & Clearing Corporation

■發 行 人：林修銘
■編 輯 者：集保結算所期刊編輯委員會
■發 行 者：臺灣集中保管結算所
■地　　址：台北市復興北路 363 號 11 樓
■電　　話：02-2719-5805
■網　　址：www.tdcc.com.tw
中華郵政台北誌字號第 917 號執照登記為 (雜誌) 交寄

編輯室的話

本期國際要聞內容包括「資產管理機構表達對科技供應商post-MiFID II過度依賴之擔憂」、「Broadridge針對MiFID II交易後報告義務率先推出解決方案-FundAssist 新服務」、「Clearstream與泰國證券交易所 (SET) 就連結雙方基金平台事宜簽署備忘錄」及「新交所提議為證券市場增設 “收盤交易” 時段」等4篇報導。本期國際要聞內容分別從Global Custodian及新加坡交易所網站摘錄各國證券金融市場最新動態新聞，俾提供讀者對世界各國證券金融市場最新訊息有更進一步的認識與瞭解。

本期特別報導刊載證期局秘書林曉韻、研究員陳其財、稽核翁谷倫、稽核黃姵蓉及專員蘇郁如合著之「證券投資信託及顧問法與相關子法修正」，金管會為提升國內資產管理業競爭力及健全證券投資信託事業及證券投資顧問事業之經營，配合於本年（107年）陸續修正「證券投資信託基金管理辦法」、「境外基金管理辦法」及「證券投資信託事業證券投資顧問事業經營全權委託投資業務管理辦法」等三項子法。資產管理事業是管理眾人的財產。國內資金充沛，具備發展資產管理之利基，隨著國人投資理財觀念的普及化，我國資產管理市場仍有很大的成長潛力與空間。金管會期望藉由法規與業務之鬆綁，協助我國資產管理業務多元發展並增加規模，進一步提升產業競爭力，協助業者朝向國際化發展，對內提升在地服務規模、對外建立大中華投資管理專家之國際形象。

本期專欄刊載中國文化大學法律學系專任教授戴銘昇著之「美日股權獎酬激勵機制面面觀（上篇）」。依據公司法，台灣法定公司種類分為無限公司、有限公司、兩合公司及股份有限公司。其中，影響台灣經濟最深者，莫過於股份有限公司制，因其有所謂的「股份」制度之設計，得以向公眾募集資本，成就巨型企業。然而，隨著經濟社會的進步，「股份」不再只是募資的工具，在先進國家，更成為激勵及留住優秀員工之手段，本文稱之為「股權獎酬激勵機制」。依產業創新條例第19條之1之規定，股權獎酬激勵機制包括發給員工酬勞之股票、員工現金增資認股、買回庫藏股發放員工、員工認股權憑證及限制員工權利新股等方式，在種類上仍有學習其他國家經驗之空間存在。本文將介紹美國及日本實務上較常見之股權獎酬激勵機制，做為台灣未來的參考。

國際要聞

- 資產管理機構表達對科技供應商 post-MiFID II 過度依賴之擔憂
- Broadridge 針對 MiFID II 交易後報告義務率先推出解決方案 -FundAssist 新服務
- Clearstream 與泰國證券交易所 (SET) 就連結雙方基金平台事宜簽署備忘錄
- 新交所提議為證券市場增設“收盤交易”時段

資產管理機構表達對科技供應商 post-MiFID II 過度依賴之擔憂

在今年初MiFID II實施之後，各大資產管理公司的監管專家已提醒，買方太過依賴科技供應商。

在倫敦舉辦的InvestOps會議，針對了資產管理機構對MiFID II於1月3日在歐洲生效的因應方式進行討論。結果指出，科技供應商或監理科技公司的使用，是買方之間持續發酵的議題。

M&G投資公司全球法規主管 Katy Stevens說：「監理科技很有趣，而且帶來了很棒的契機。但隨著法規改變，要執行及建造對的產品可能不容易。」

「許多新科技供應商是隨著新法規才紛紛湧現，因此沒有相關紀錄或客戶群。然而，一旦這些法規實施上路，很多買方公司會依賴這些供應商。我們還不知道這是否會產生問題。」

安本標準投資管理的資深法規修改專家Kyra Brown也同意Stevens的看法，但其補充說明，就算有困難，資產管理公司仍必需掌握最新科技。Brown表示，「若沒有確切的監管依歸或細節，打造一個產品是非常困難的。可是我們必須一直了解市場的新產品，以及競爭者所使用的科技。」

此會議一致認同，MiFID II後最大的阻礙之一就是買賣與交易報告要求，因為其造成了買方一大部分的額外成本。

道富環球投資管理歐洲監管計畫的主管Darryl Cornelius說：「就我們遵循規定所需的成本與基礎結構而言，買賣與交易報告一直是我們營運成本大幅提升的原因。」

Brown也提出警告，指出與買賣交易報告相關可能隨之而來的罰則。她補充說明，報告內容的領域大幅增加，加上資產管理機構需逐條報告，意味著在某種程度上，以後買方機構很可能會因為微小報告失誤而被罰款。

（資料來源：Global Custodian, 2018/09/18）

Broadridge 針對 MiFID II 交易後報告義務率先推出解決方案 -FundAssist 新服務

繼今年5月收購FundAssist，Broadridge透過FundAssist 新業務，為投資經理人提供MiFID II交易後報告之解決方案。

Broadridge今年五月收購總部位於都柏林的公司，以擴大該公司對歐洲資產管理者的監管溝通能力。

根據MiFID的第50條規定，投資公司有義務提供交易後報告，載明所有對客戶提供的金融工具和投資服務的相關成本和費用。

Broadridge強調，2018年的訊息必須在2019年4月底之前提供給客戶，並且必須根據實際支出的成本進行客製化，並顯示這些成本對投資回報的累計影響。

Broadridge國際投資者通訊解決方案業務總裁Patricia Rosch表示：「MiFID II的遵循性增加了監管面改革的規模性和複雜性，影響了在歐洲司法管轄區運營的公司」。「提供串聯性的先進技術及專業法規知識解決方案，有助於投資公司管理這方面高度複雜的監管問題，及準備好下一步。」

Broadridge表示該公司的解決方案將匯總及處理投資人與產品資料，計算出客製化訊息的成本並產生完成版的投資者報表。

自動化的直通流程將有助於投資公司履行其監管義務，並在監管截止日期之前提交投資者聲明。

（資料來源：Global Custodian, 2018/09/10）

Clearstream 與泰國證券交易所 (SET) 就連結雙方基金平台事宜簽署備忘錄

未來泰國證交所的FundConnext共同基金平台將可連結Clearstream的Vestima全球基金處理平台。

外國投資人佈局泰國基金市場的需求升溫催生了此次備忘錄簽署。雙方合作範圍將涵蓋委託路徑簡化、資產服務以及提供泰國國內投資基金交割服務。

Clearsteam Banking共同執行長兼投資基金服務事業主管Philippe Seyll表示：「我們很高興能宣佈連結FundConnext的消息，讓全球投資人更容易進入泰國基金市場，同時也可讓泰國投資人無縫接軌全球投資基金市場。」

Seyll還表示此次合作是Clearstream亞洲基金戰略計畫的最新成果。計畫的宗旨就是要讓更多國際投資人能更容易參與地方基金市場。

FundConnext與Vestima的連結將於2019年初生效，屆時泰國投資人也可參與全球市場。

（資料來源：Global Custodian, 2018/09/06）

新交所提議為證券市場增設“收盤交易”時段

新加坡交易所（新交所）正就在證券市場增設收盤交易 (TAC) 時段的提議徵詢公眾意見，計畫將該時段放在收盤競價時段結束之後。

在時長 5 分鐘的 TAC 交易時段，參與者將只能以收盤競價時段設定的收盤競價價格執行訂單。TAC 交易時段將適用於現貨和單股市場。

新交所市場服務主管 Nico Torchetti 表示： ‘收盤交易’時段的推出將使投資者能夠以固定價格（即證券收盤價）進行交易，同時保持價格發現過程的完整性。這反應了新交所為現有及潛在市場參與者改進市場結構並促進交易方面所作出的努力。

借助 TAC 交易時段，新交所將把正常交易日收盤時段之前的交易階段縮短 5 分鐘至下午 4 時 55 分，如果是半天交易，則為上午 11 時 55 分。收盤時間仍為下午 5 時 06 分和中午 12 時 06 分。

新交所提議的 TAC 交易時段具有三個主要特點：

1. 如果沒有收盤競價價格，則不存在 TAC 交易時段；

2. 只能以收盤競價價格並根據時間優先順序來匹配定單；以及

3. 定單可以修改，但必須全部以收盤競價價格訂價。

TAC 交易時段推出後，收盤競價價格的重要性將有所上升。新交所將繼續對監管保持警醒態度。

公眾在 2018 年 10 月 11 日前，就推出 TAC 交易時段的提議提交回饋意見。有關公眾意見徵詢的詳情，包括相關問題，請參考新交所網站。如果獲得採納，新交所將於 2019 年 7 月實施所提議的 TAC 交易時段。

（資料來源：新加坡交易所 , 2018/09/21）

特別報導

證券投資信託及顧問法與相關子法修正

證期局 秘書一**林曉韻**　證期局 研究員一**陳其財**
證期局 稽核一**翁谷倫**　證期局 稽核一**黃姵蓉**
證期局 專員一**蘇郁如**

壹 前言

「證券投資信託及顧問法」(以下簡稱「投信投顧法」)於93年6月30日制定公布，並自同年11月1日施行，嗣後雖分別於99年1月、6月及104年2月歷經三次修正，惟並非與實質業務相關之重大修正。

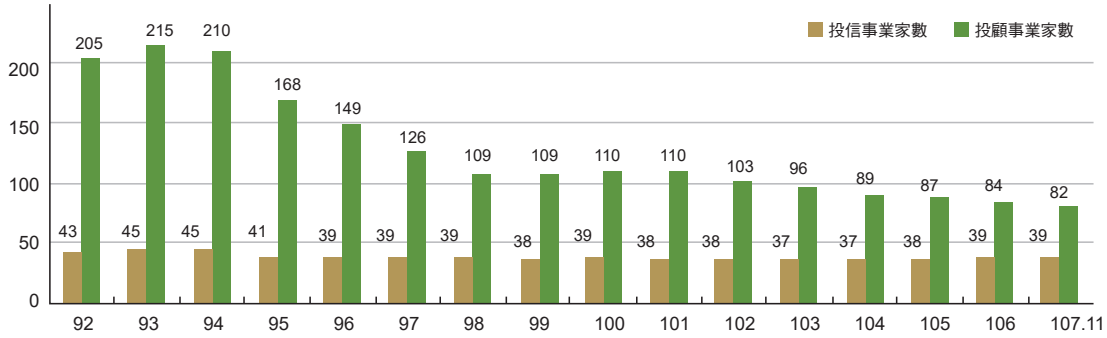
金管會為提升國內資產管理業競爭力及健全證券投資信託事業及證券投資顧問事業(以下簡稱投信投顧事業)之經營，自103年12月起研議修正「投信投顧法」，並於104年5月22日及105年4月15日召開兩次公聽會進行討論；嗣考量金融科技發展趨勢、業者業務推動迫切性與金融監理強化之必要性等面向調整修正條文，最終經立法院106年12月29日三讀通過後，於107年1月31日經總統華總一義字第10700012041號令修正公布。金管會並配合於本年(107年)陸續修正「證券投資信託基金管理辦法」、「境外基金管理辦法」及「證券投資信託事業證券投資顧問事業經營全權委託投資業務管理辦法」等三項子法。本文乃就「投信投顧法」及相關子法之修正條文內容與配套措施作一整合簡要之介紹說明。

貳 投信投顧事業概況

一、投信投顧事業家數：

截至107年11月底，我國計有39家投信事業、82家投顧事業。近年來投信事業家數呈穩定狀態，投顧事業則因95年5月2日修正「證券投資顧問事業設置標準」，將投顧事業資本額由1千萬元提高至2千萬元，並要求應於1年內補正，故97年至98年投顧家數減少。

圖一：投信投顧事業家數

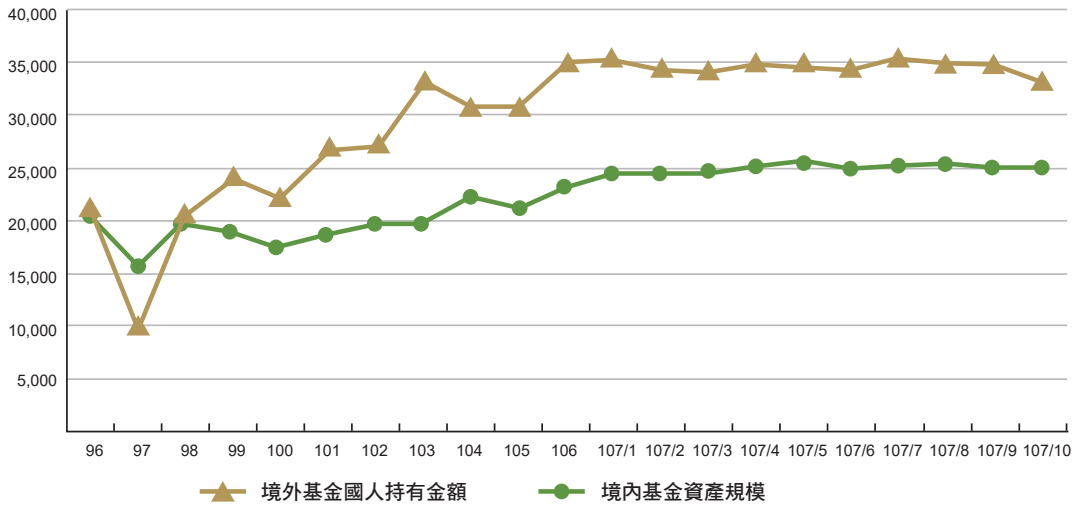


二、投信投顧事業之資產管理業務規模：

截至107年10月底止，我國全體投信投顧事業之資產管理業務規模達新臺幣(下同)7.8兆元。投信基金部分，國內39家投信事業共發行850檔公募投信基金，基金規模達2.5兆元，私募投信基金計55檔，資產規模366 億元；境外基金部分，計有40家投信或投顧事業擔任69家境外基金機構之總代理人，在我國募集銷售1,034檔境外基金，國人持有金額達3.3兆元；另全權委託投資業務之管理資產總額為1.9兆元。

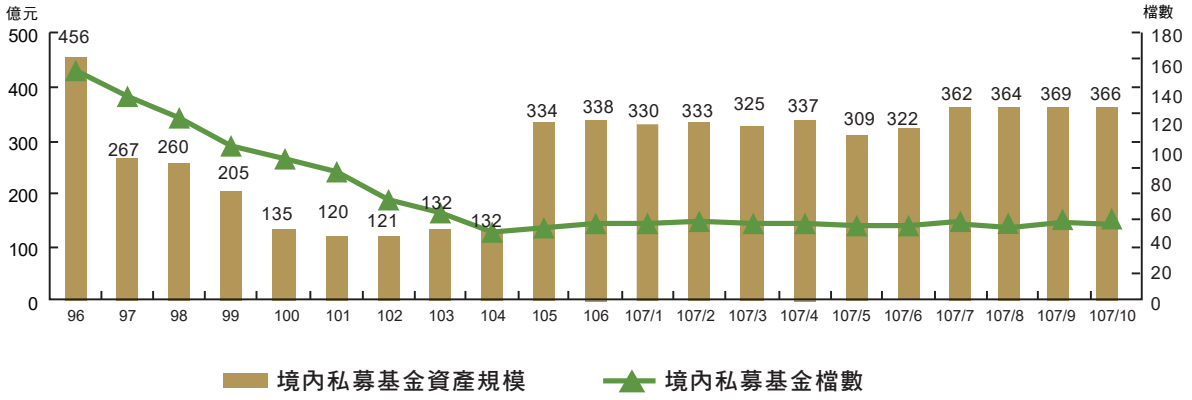
（一）公募投信基金與境外基金之規模相較僅微幅成長：我國投信事業發行之公募投信基金規模，除97年受全球金融海嘯影響減少外，大致維持在1.7兆元至2.6兆元間；而國外基金公司發行之境外基金，97年在臺銷售規模雖劇跌至1兆元，但隔年即重新達到2兆元且嗣後明顯成長，103年即已超過3兆元。

圖二：公募投信基金與境外基金規模比較



（二）私募投信基金之檔數及規模仍有成長空間：截至107年10月底止，私募投信基金規模為366億元，僅約公募投信基金規模之1.5%。

圖三：私募投信基金檔數及規模



（三）全權委託投資業務之國際化程度不足：截至107年10月底，來自外國法人客戶之委託金額約36億元，僅占整體全權委託資產規模0.2%。

表一：全權委託投資業務資產規模 (契約金額)

單位：百萬元

投資人類別	委任方式		信託方式		合計
	契約數	契約金額	契約數	契約金額	%
本國自然人	145	8,461	99	3,309	0.67%
外國自然人	0	0	0	0	0.00%
本國法人	152	448,843	27	5,011	25.89%
外國法人	**3**	**3,038**	**2**	**548**	**0.20%**
政府基金	111	543,572	0	0	31.01%
企業職工退休基金	2	142	0	0	0.01%
集合管理運用帳戶			12	3,622	0.21%
投資型保單	262	736,211			42.00%
合計	**675**	**1,740,267**	**140**	**12,490**	**1,752,758**
		99.29%		**0.71%**	**100.00%**

參 「投信投顧法」修正重點

本次增修條文共10條，包括修正第11條、第17條、第30條、第62條、第105條、第108條及第111條，新增第6條之1、第16條之1及第105條之1。

一、修正第11條，放寬私募基金應募人人數：

（一）修正內容：「投信投顧法」第11條第1項規定投信事業得對兩款對象進行基金受益憑證之私募，包括：銀行業、票券業、信託業、保險業、證券業或其他經主管機關核准之法人或機構（第1款），以及符合主管機關所定條件之自然人、法人或基金（第2款）；本次放寬第2款應募人總數上限自35人至99人。另依據同法第16條第2項，境外基金之私募亦應符合前述規定。

（二）預期效益：提升私募投信基金之規模與操作效率。

（三）說明：基金私募應募人數之限制過低，將使基金規模難以成長，所收取之經理費及保管費時有無法支應基金運作之最低成本，且使保管銀行及海外次保管銀行承作私募基金意願低落，影響基金操作效率，為提升投信事業私募受益憑證之彈性及操作效率，擴大投信事業管理資產規模，爰參考美國「投資公司法」第3條將一百人以下之私募基金豁免須註冊登記投資公司之規範，以及「期貨信託基金管理辦法」第13條第2項有關期貨信託事業對符合主管機關所定條件者募集期貨信託基金人數不得超過99人之規定，為期一致，爰放寬「投信投顧法」第11條第2項私募基金應募人數不得超過99人。

（四）相關規範：

1. 修正「投信事業私募投信基金申報書」：【107年2月26日金管證投字第1070303897號公告】

   (1) 私募對象：符合「投信投顧法」第11條第1項第2款資格者，放寬應募人總數不得超過99人。

   (2) 受文者由「行政院金融監督管理委員會」修正為「金融監督管理委員會」。

2. 修正私募投信基金應募人條件：【107年2月26日金管證投字第10703038972號令】

(1) 現行依「投信投顧法」第 11 條第 1 項第 1 款規定，投信事業得對銀行業、票券業、信託業、保險業、證券業或其他經主管機關核准之法人或機構私募受益憑證，金管會 94 年 3 月 23 日核准政府四大基金為其他經主管機關核准之對象。

(2) 考量「投信投顧法」第 11 條第 1 項第 1 款所定之應募人係指專業投資機構，為使對「專業投資機構」之定義與其他金融監理法規所定範圍一致，參考「金融消費者保護法」（下稱「金保法」）第 4 條第 2 項授權規定，修正原金管會 94 年 3 月 23 日金管證四字第 0940001262 號令：

I. 核准除銀行業、票券業、信託業、保險業、證券業外，其餘「金保法」第 4 條第 2 項所定之專業投資機構，為「投信投顧法」第 11 條第 1 項第 1 款所定「其他經主管機關核准之法人或機構」之範疇。

II. 原列公務人員退休撫卹基金、勞工退休基金、勞工保險基金及中華郵政股份有限公司等政府四大基金已含括於前述「金保法」定義之專業投資機構範圍及原「投信投顧法」第 11 條第 1 項第 1 款所定「銀行業」範圍，爰刪除之，前三者屬國內政府基金、退休基金；至「中華郵政股份有限公司」係因「郵政儲金」並非一基金，故以簽約主體名義列為核准範疇，另依「金融監督管理委員會組織法」第 2 條規定，「郵政機構之郵政儲金匯兌業務」係屬「銀行業」之範圍。

二、新增第16條之1及修正第111條，增訂投信投顧事業破產隔離法據，並配合訂定相關罰責：

（一）條文內容：新增「投信投顧法」第 16 條之 1，規定投信事業或投顧事業依法規以自己名義為投資人取得之資產，與投信事業或投顧事業之自有財產，應分別獨立。投信事業或投顧事業就其自有財產所負債務，其債權人不得對前項資產，為任何之請求或行使其他權利。另配合於同法第 111 條增訂違反前開資產獨立性之罰責，得處 60 萬元以上 300 萬元以下罰鍰，並責令限期改善；屆期不改善者，得按次處二倍至五倍罰鍰至改善為止。

（二）預期效益：以利協助投信投顧事業推展基金網路銷售平台等業務模式，得比照銀行等其他基金銷售機構以自己名義為投資人申購基金，並保護投資人資產之安全。

（三）說明：依據「證券投資信託事業募集證券投資信託基金處理準則」第24條第1項規定，基金銷售機構除依特定金錢信託方式或經金管會核准者外，不得以自已名義為投資人申購投信基金。近年來因應金融科技潮流，部分投顧業者反映擬建置網路平台辦理基金銷售業務，若能以業者名義為投資人申購基金，則可每日將所有平台客戶的申購要求統整後，做成一筆申購單傳輸給各基金公司，簡化相關作業。為利是項業務之開放並保障投資人資產之安全，爰先於「投信投顧法」增訂投信投顧事業因業務為投資人取得之資產應與該事業自有財產區隔。

（四）相關規範：已核准投顧事業擔任投信基金銷售機構，透過證券集中保管事業指定之銀行專戶辦理款項收付者，得以自己名義為投資人申購投信基金【107年5月10日金管證投字第1070312395號令】。

三、修正第17條，簡化投信事業投資作業流程：

（一）修正內容：原於第17條第1項規定投信事業運用投信基金投資或交易，應依據其分析報告作成決定，交付執行時應作成紀錄，並按月提出檢討報告，其分析報告與決定應有合理基礎及根據；並於第2項規定前開分析報告、決定、執行紀錄及檢討報告，均應以書面為之，並保存一定期限；此外，第3項並規定前述書面之格式、應記載事項及保存期限，由主管機關定之。本次修正已刪除第1項及第2項投信事業投資或交易應撰寫書面報告及第3項制式書面格式應記載事項之規定，並於第2項規定分析、決定、執行及檢討之方式，由投信事業內部控制制度規範及相關控制作業應留存紀錄並保存一定期限(5年）。另依據同法第58條第1項，投信事業或投顧事業運用全權委託投資資產之投資決定，準用第17條規定。

（二）預期效益：簡化投信事業投資交易作業流程。

（三）說明：本次修正條文係比照國際作法，針對投信基金投資分析、決定、執行及檢討等作業回歸投信事業內控規範。為確保各投信事業之內控品質足夠完善、投資四流程(分析、決定、執行、檢討）相關作業符合基本規範，金管會已督導中華民國證券投資信託暨顧問商業同業公會(以下簡稱投信投顧公會）訂定「證券投資信託事業運用證券投資信託基金投資或交易流程實務指引」、配合修正「證券投資信託事業經理守則」、「會員自律公約」及「投

信公司運用基金資產買賣非屬股票之有價證券及其他經金管會核准之投資標的交易流程準則」等自律規範【107年7月27日中信顧字第1070003736號函】。

四、修正第30條，配合金融監理架構調整酌修文字：

修正內容：配合金管會成立後，金融監理業務業由財政部轉由金管會職掌，故刪除現行關於投信基金持有流動資產之比率報請財政部訂定之規定。

五、修正第62條，放寬全權委託投資業務規範：

（一）修正內容：

1. 原第62條第3項規定運用全權委託投資資金買賣有價證券所收取證券商之手續費折讓，應作為客戶買賣成本之減少；本次修正為「運用委託投資資產買賣有價證券、證券相關商品或其他經主管機關規定得投資或交易項目者，所收取證券商、期貨經紀商或其他交易對手退還之手續費或給付之其他利益，應作為客戶買賣成本之減少」。

2. 新增第7項，增訂全權委託投資業務之客戶符合主管機關所定條件者，投信事業或投顧事業得與該客戶自行約定委託投資資產之保管、契約簽訂前應辦理事項及帳務處理等事項，不適用同條第3項至第6項(*退還之交易手續費或給付之其他利益應作為客戶買賣成本之減少、應每月定期編製客戶資產交易紀錄及現況報告書送達客戶、淨資產價值減損之通知等*)、同法第53條第1項(*客戶將資產全權委託保管機構保管或信託移轉予保管機構*)、第60條(*簽訂契約前應辦理事項*)及第61條第1項有關由客戶與保管機構簽訂委任或信託契約之規定。

（二）預期效益：協助業者爭取境外專業投資機構全權委託投資業務。

（三）說明：鑒於實務上運用委託投資資產買賣標的除有價證券外，尚含其相關商品或其他經主管機關規定得投資或交易之項目，且買賣證券相關商品之交易對手包括期貨經紀商，及相關交易對手亦可能退還手續費或給付其他利益，均應作為客戶買賣成本之減少，故修正第62條第3項條文。另考量境外基金等專業投資機構有自己之保管機構，且具充分金融商品專業知識

或交易經驗，具有洽定全權委託投資相關事宜之能力，為符合其個別需求，爰新增第 7 項規定，對於該類等符合一定條件之全權委託投資客戶，無必要再要求額外指定國內全權委託保管銀行並簽署保管契約，並給予其與全權委託業者就辦理全權委託投資業務事務作業之彈性空間。

六、新增第105條之1，增訂投信投顧事業從業人員違背職務行為之刑事責任：

（一）條文內容：

「證券投資信託事業、證券投資顧問事業之董事、監察人、經理人或受僱人，意圖為自己或第三人不法之利益，或損害證券投資信託基金資產、委託投資資產之利益，而為違背其職務之行為，致生損害於證券投資信託基金資產、委託投資資產或其他利益者，處三年以上十年以下有期徒刑，得併科新臺幣一千萬元以上二億元以下罰金。其因犯罪獲取之財物或財產上利益金額達新臺幣一億元以上者，處七年以上有期徒刑，得併科新臺幣二千五百萬元以上五億元以下罰金。

前項之未遂犯罰之。

犯前二項之罪，於犯罪後自首，如自動繳交全部犯罪所得者，減輕或免除其刑；並因而查獲其他正犯或共犯者，免除其刑。

犯第一項或第二項之罪，在偵查中自白，如自動繳交全部犯罪所得者，減輕其刑；並因而查獲其他正犯或共犯者，減輕或免除其刑。」

（二）預期效益：強化投信投顧事業從業人員監理。

（三）說明：本次修法前，投信投顧事業從業人員之背信案件係依「刑法」判決，刑度相對較輕，考量投信事業及投顧事業相關人員從事違背職務之行為，致生損害投信基金資產、委託投資資產或其他利益者，對投資大眾之權益侵害甚大，爰參考「證券交易法」第 171 條、「銀行法」第 125 條之 2、「刑法」第 66 條及第 342 條等規定，明定相關刑事責任，期以遏止人員違法，強化人員監理規定，健全投信投顧事業之經營。

七、其他修正內容：

（一）配合「金融科技發展與創新實驗條例」增訂「投信投顧法」第 6 條之 1：

「為促進普惠金融及金融科技發展，不限於證券投資信託事業及證券投資顧問事業，得依金融科技發展與創新實驗條例申請辦理證券投資信託、證券投資顧問及全權委託投資業務創新實驗。

前項之創新實驗，於主管機關核准辦理之期間及範圍內，得不適用本法之規定。

主管機關應參酌第一項創新實驗之辦理情形，檢討本法及相關金融法規之妥適性。」

（二）配合「刑法」沒收新制，修正「投信投顧法」第105條及第108條：關於沒收、追徵、追繳、抵償逕依「刑法」規定，不再適用其他法律之規定，爰配合修正及刪除「投信投顧法」有關沒收、追徵、抵償之規定。

肆 相關子法修正重點

一、「證券投資信託基金管理辦法」

（一）修法緣由：為配合「投信投顧法」之修正，提升投信事業競爭力，增加投信基金操作彈性，金管會於107年7月23日以金管證投字第1070324960號令發布修正「證券投資信託基金管理辦法」部分條文，本次共計修正10條。

（二）修正重點：

1. 配合107年1月31日修正公布之「投信投顧法」第17條規定，投信事業運用投信基金投資或交易，其分析、決定、執行及檢討之方式，投信事業應訂定於內部控制制度，並確實執行；其控制作業應留存紀錄並保持一定期限。（修正條文第4條）

2. 為利增加投信基金之操作彈性，放寬投信基金得投資於正向浮動利率債券，排除不得投資於結構式利率商品之限制；債券型基金主要投資於正向浮動利率債券者，得不受加權平均存續期間應在一年以上之限制規定。（修正條文第10條、第27條、第29條）

3. 考量外國債券市場發行實務與國內不同，現行投信基金投資於外國債券係依「證券投資信託基金管理辦法」第8條第2項所發布之規定辦理，為求規範意旨明確，爰明定僅適用投資於國內次順位公司債或次順位金融債券應遵循之相關規範。（修正條文第17條）

4. 為利提升投信事業競爭力，鼓勵投信事業提供投資人多元及創新之基金商品，明定投信事業符合金管會所定「鼓勵投信躍進計畫」條件者，於募集投信基金投資有價證券時，為符合投資策略所需，經向金管會申請核准，得於證券投資信託契約中明定有關投資國內外有價證券之種類、範圍及比率，不受現行相關投資規定之限制。（修正條文第20條）

5. 投信事業運用指數股票型基金（ETF）及指數型基金，為符合標的指數組成內容而投資有價證券，以追蹤、模擬或複製標的指數表現者，得不受第10條第1項第17款本文規定（*投資任一公司發行、保證或背書之短期票券及有價證券總金額不得超過本基金淨資產價值之10%*）之限制。（修正條文第35條）

6. 配合107年1月31日修正公布之「投信投顧法」第11條第2項規定，投信事業對符合金管會所定條件之自然人、法人或基金進行受益憑證之私募，其應募人總數不得超過99人。（修正條文第51條）

（三）配套措施：金管會於107年7月31日以金管證投字第1070326116號令發布修正投信基金或委託投資資產投資或交易之分析、決定、執行及檢討之方式，刪除應依金管會訂定書面格式撰寫報告，改由投信事業或投顧事業(全權委託投資業務)依據「投信投顧法」第17條及第58條規定，應將投資或交易四大流程之方式訂定於內部控制制度中，所定內控制度應符合投信投顧公會「證券投資信託事業運用證券投資信託基金投資或交易流程實務指引」，並確實執行。

二、「境外基金管理辦法」

（一）修法緣由：為配合「投信投顧法」之修正及增加投顧事業辦理境外基金投資顧問業務之經營彈性，金管會於107年7月13日以金管證投字第1070324202號令發布修正「境外基金管理辦法」部分條文，本次共計修正3條。

（二）修正重點：

1. 修正第4條，增列投顧事業申請經營顧問境外基金業務應具備之資格條件：

(1) 依修正前第4條第2項規定，投顧事業除擔任銷售機構者外，辦理境外基金之投資顧問業務，應與總代理人簽訂提供資訊合作契約。

(2) 考量現今金融資訊管道多元且取得便利，與總代理人簽訂提供資訊合作契約並非取得境外基金相關資訊之唯一管道，且投顧事業若僅係單純為投資人提供投資境外基金之顧問服務，而非以銷售境外基金為考量，其具有即時取得境外基金投資研究相關資訊設備，相較透過總代理人取得境外基金相關資訊，更具獨立性，為提供是類投顧事業辦理境外基金投資顧問業務之經營彈性，爰修正前開規定，增列具有即時取得境外基金投資研究相關資訊設備之投顧事業，亦得辦理境外基金之投資顧問業務。

2. 修正第12條，境外基金級別有恢復交易情事時之核准程序：為加強境外基金資訊揭露，並配合實務作業，增訂總代理人所代理之境外基金於國內募集銷售之級別有恢復交易情事時，應事先送投信投顧公會審查核准，並於核准後3日內公告。

3. 修正第52條，放寬境外基金機構對符合主管機關所定條件之自然人、法人或基金進行境外基金之私募，其應募人總數上限為99人：依「投信投顧法」第16條第2項前段規定，境外基金之私募，應符合同法第11條第1項至第3項規定，並不得為一般性廣告或公開勸誘之行為。為配合「投信投顧法」第11條第2項有關投信事業對符合主管機關所定條件之自然人、法人或基金進行受益憑證之私募，其應募人總數放寬為不得超過99人，爰修正境外基金機構對符合主管機關所定條件之自然人、法人或基金進行境外基金之私募，其應募人總數上限為99人。

三、「證券投資信託事業證券投資顧問事業經營全權委託投資業務管理辦法」

（一）修法緣由：為配合「投信投顧法」之修正，並為吸引境外專業投資機構全權委託國內業者操作，擴大國內資產管理規模，金管會於107年7月30日以金管證投字第1070326730號令發布修正「證券投資信託事業證券投資顧問事業經營全權委託投資業務管理辦法」部分條文，本次共計修正8條。

（二）修正重點：

1. 因應「投信投顧法」第62條增訂第7項，全權委託投資業務之客戶符合金管會所定條件者，投信事業或投顧事業得與該客戶自行約定委託投資

資產之保管、契約簽訂前應辦理事項及帳務處理等事項。考量境外基金等專業投資機構，原已有自己之保管機構，且具充分金融商品專業知識或交易經驗，應有洽定全權委託投資相關事宜之能力，爰明定符合「投信投顧法」第62條第7項之客戶條件為「金保法」第4條第2項所定之專業投資機構且所委託投資資產已指定保管機構者。（修正條文第11條）

2. 配合「投信投顧法」第62條第7項，增訂客戶符合前揭條件者，原規範包括客戶應將資產委託全權委託保管機構保管、應與保管機構簽訂契約、簽訂全權委託投資契約前應辦理事項、退還之手續費或給付之其他利益作為客戶買賣成本減少、每月定期報告義務及淨資產價值減損通知等，不適用之。（修正條文第11條、第21條、第22條、第26條、第28條、第29條）

3. 按現行投信事業取得營業執照並募集成立投信基金，開始運作投信業務後，及投顧事業取得營業執照後，如符合一定條件即可申請辦理全權委託投資業務，其中最近期查核簽證財務報告每股淨值不低於面額一節，考量公司如取得營業執照未滿一完整會計年度，或有因業務尚未步入軌道，營業收入較不穩定，且可能需投入大量固定成本及相關開辦費用，致無法符合每股淨值不低於面額之條件，為利新設事業即時因應市場需求申辦全權委託投資業務，協助其能儘早申請「鼓勵境外基金深耕計畫」，落實對臺貢獻，爰增列該二事業取得營業執照未滿一個完整會計年度者，不受每股淨值不得低於面額之申請條件限制之但書規定。（修正條文第4條、第5條）

4. 配合「投信投顧法」第58條準用第17條修正規定，且為利全權委託投資作業流程更有效率，提升專業投資操作之彈性，爰修正投信事業或投顧事業運用委託投資資產投資或交易，其分析、決定、執行及檢討之方式，應訂定於內部控制制度，並確實執行；其控制作業應留存紀錄，保存期限不得少於5年。另配合「投信投顧法」第62條第3項，修正有關交易手續費退還或其他利益之處理等相關文字。（修正條文第28條）

（三）配套措施：投信投顧公會已配合修正「證券投資信託事業證券投資顧問事業經營全權委託投資業務操作辦法」，並於107年9月12日發布。【107年9月12日中信顧字第1070052260號函】

伍 結語

資產管理事業是管理眾人的財產。國內資金充沛，具備發展資產管理之利基，隨著國人投資理財觀念的普及化，我國資產管理市場仍有很大的成長潛力與空間。

本次修正「證券投資信託及顧問法」部分條文及相關子法，鬆綁投信投顧事業業務操作限制並簡化作業規範，包括放寬私募基金應募人人數上限、開放投信投顧事業得以自己名義為投資人申購基金以推展基金網路銷售平台業務模式、簡化投信事業投資交易之作業規範、放寬全權委託投資業務規範以利爭取國際專業投資機構等客戶。金管會期望藉由法規與業務之鬆綁，協助我國資產管理業務多元發展並增加規模，進一步提升產業競爭力，協助業者朝向國際化發展，對內提升在地服務規模、對外建立大中華投資管理專家之國際形象。

本期專欄

美日股權獎酬激勵機制面面觀（上篇）

中國文化大學法律學系專任教授—**戴銘昇**

壹 前言

依據公司法，台灣法定公司種類共分為四種：無限公司、有限公司、兩合公司及股份有限公司。其中，影響台灣經濟最深者，莫過於股份有限公司制。證券市場之參與者，亦僅餘股份有限公司，而不包括其餘三類公司。為何會如此？原因正是僅股份有限公司有所謂的「股份」制度之設計，使其得以向公眾募集資本，成就巨型企業。然而，隨著經濟社會的進步，「股份」不再只是募資的工具，在先進國家，更成為激勵及留住優秀員工之手段，本文稱之為「股權獎酬激勵機制」。

此制在產業創新條例第19條之1中稱為「獎酬員工股份基礎給付」，在稅捐上之優惠為，員工可「於取得股票當年度或可處分日年度按時價計算全年合計新臺幣五百萬元總額內之股票，得選擇免予計入當年度應課稅所得額課稅，一經擇定不得變更。但選擇免予計入取得股票當年度課稅者，該股票於實際轉讓或帳簿劃撥至開設之有價證券保管劃撥帳戶時，應將全部轉讓價格、贈與或作為遺產分配時之時價或撥轉日之時價，作為該轉讓或撥轉年度之收益，依所得稅法規定計算所得並申報課徵所得稅。」(同條第1項)得享受此一優惠者，必須於公司服務累計達2年以上，也就是讓公司得以此留住員工至少2年的時間(同條第2項)。[1]兼任經理人職務之董事長及董監事均非屬員工；而員工之範圍可包括子公司之員工(同條第4項)。

依產業創新條例第19條之1之規定，股權獎酬激勵機制包括發給員工酬勞之股票(公司法第235條之1)、員工現金增資認股(公司法第267條)、買回庫藏股發放員工(公司法第167條之1、[2]證券交易法第28條之2)、員工認股權憑證(公司法第167條之2)[3]及限制員工權利新股(2011年公司法增訂於第267條)[4]等方式(同條第5項)。種類並不算豐富，有學習其他國家經驗之空間存在。本文將介紹美國及日本實務上較常見之股權獎酬激勵機制，做為台灣未來的參考。

貳 美國股權獎酬激勵機制

在過去30年左右，公司之薪酬政策大幅的改變，使用買回庫藏股及採取以股票為基礎之支付手段越來越普遍。[5]股票選擇權計畫在美國原本滲透度就很高，而這個做法在1990年代也開始影響了歐洲。[6]在西方工業化國家，股票選擇權計畫已成為經營階層薪酬的基本成分。在2001年的統計資料顯示，在美國、英國、法國及德國，大約有75%至100%的大型公開上市公司已採取了股票選擇權計畫。[7]不過，這個趨勢也引起許多論者批評經營者以犧牲股東及員工為代價而增加自己的財富。更具體的說，經營者被指控為私益而濫用股票選擇權，藉其缺乏透明性及複雜性，而讓外部人難以完全了解其意涵及控制其使用。[8]

一、股票選擇權計畫

(一)激勵性股票選擇權

激勵性股票選擇權(incentive stock option, ISO)是稅捐上較為優惠之股票選擇權，國會創造此種選擇權是「為了提供重要的激勵機制予公司，藉由給予可能取得公司股份之機會，吸引新的經營階層及挽留可能離職之經營者。[9]」通常是發放經營階層之員工。[10]

於內地稅法(Internal Revenue Code, I.R.C.)Part II[Certain Stock Options]中，「激勵性股票選擇權」一詞係指，僱用公司或其母公司或其子公司給予一自然人連結至其與公司間之僱傭關係之選擇權(得購買此等公司之股票)，但須符合下列規定：

(1)選擇權係依據選擇權計畫(須包含得依選擇權而發行之總股數及有權取得選擇權之員工或員工種類)而給予，[11]且須於此等計畫採納之前或之後的12個月內取得股東會同意；

(2)選擇權於計畫採納後或經股東會同意後(以孰早者為準)10年內發放；

(3)選擇權於發放之日起滿10年後，不得行使；[12]

(4)選擇權價格不得低於其發放時，股票之公平價格；[13]

(5)此等選擇權不得轉讓(除非係依遺囑或繼承法規)，且僅得由本人於生存時行使選擇權；且

(6)此等自然人於取得選擇權時，並未擁有僱佣公司或其母公司或其子公司之各種股權合併高於10%之表決權。

若依選擇權之條件，將不被當作激勵性股票選擇權者，則不包括之。如果選擇行使§83(i)者(關於行使此等選擇權而取得股票)，亦不包括之(I.R.C. §422(b))。[14]

有下列情形時，選擇權仍應被視為是激勵性股票選擇權：(A)員工得以公司股票作為支付對價時，(B)於行使選擇權時，員工有權取得財產者，或(C)選擇權受限於任何不符合subsection (b)之條件者。只有在§83適用於所轉讓之財產時，Subparagraph (B)才能適用(I.R.C. §422(c)(4))。[15]

於本條規定中，除了無到期日之限制外，股票公平市價之決定不應考量各種限制(I.R.C. §422(c)(7))。[16]

如已誠實的努力、但仍未符合subsection (b)(4)之規定時，於主管機關規定之範圍內，Subsection (b)(4)之要件應被視為已符合(I.R.C. §422(c)(1))。[17]

若於選擇權發放時，選擇權價格至少為股票公平價格之110%，且於選擇權發放日起滿5年後不得行使者，Subsection (b)(6)的規定不適用之(I.R.C. §422(c)(5))。 於適用§422(b)(6)之持股比例限制時，(1)應將直接或間接由(或為)其兄弟姊妹(無論是否同父母所生)、配偶、尊親屬及卑親屬之持股計入；且(2)直接或間接由(或為)公司、合夥、遺產或信託持有之股票，應被視為係比例地由(或為)其股東、合夥人或受益人持有(I.R.C. §424(d))。[19]

於Part II中，如依據選擇權購買股票之條件經變更、展延或更新，此等變更、展延或更新應被視為給予新選擇權(I.R.C. §424(h)(1))。[20]「變更」一詞原則上係指選擇權條件之任何改變，給予員工更多的利益(I.R.C. §424(h)(3))。[21]

1.行使選擇權之限制

任何人於任何年度(基於僱佣公司及其母公司及其子公司之所有選擇權計畫)行使激勵性股票選擇權認購之股票之公平市價總額超過$100,000者，此等選擇權應被視為非屬激勵性股票選擇權(I.R.C. §422(d)(1))。[22]於Paragraph (1)，任何股票之公平市價，應以選擇權發放時之股價決定之(I.R.C. §422(d)(3))。[23]

2.持有期間及繼續受僱要求

員工行使激勵性股票選擇權移轉股票，若符合下列規定，則適用§421(a)[租稅優惠]之規定：

(1)未於取得選擇權之2年內或取得股票之1年內將股票予以處分，且

(2)於取得選擇權時起至行使之前3個月，員工必須繼續維持與發放選擇權之公司(或其母公司或其子公司)間之僱傭關係(I.R.C. §422(a))。[24]

惟若員工死亡後即不受上開限制(I.R.C. §421(c)(1)(A))。[25]

員工處分股票若違反§422(a)(1)持有期間之規定，則因其處分行為所增加之收入(員工)或扣除額(公司)，均應被視為於處分行為發生之課稅年度之收入或扣除額(I.R.C. §421(b))。[26]

除Paragraphs(2)、(3)及(4)另有規定外，「處分」(“disposition”)一詞包括出售、交易、贈與或所有權之移轉，但不包括：

(A)由被繼承人移轉至遺產，或由遺產所做之移轉；

(B)適用§354、§355、§356或§1036 (或如同關於§1036之§1031)之交易；或

(C)僅係做為擔保品(I.R.C. §424(c)(1))。[27]

以員工及其他人之名義共同取得股票之所有權、或由此等共有關係取得股票之移轉，不會被視為是處分，但是，於此等共有關係(若係由員工取得股票所有權，則除外)終止後，於終止時，應被視為是處分(I.R.C. §424(c)(2))。[28]

夫妻依據§1041之規定所為之股票移轉行為，[29](A)此等移轉行為於Part II 中不被當作處分行為，且(B)轉讓人依據Part II所得享有之稅捐待遇，亦適用於受讓人(I.R.C. §424(c)(4))。[30]

夫妻依據§1041之規定所為之股票移轉行為，[31](A)此等移轉行為於Part II 中不被當作處分行為，且(B)轉讓人依據Part II所得享有之稅捐待遇，亦適用於受讓人(I.R.C. §424(c)(4))。[32]

3.遵守持有期間及繼續受僱要求的效果：稅捐優惠

如果股票移轉予員工之行為符合§422(a)[激勵性股票選擇權]或§423(a)[員工購買股票計畫]之規定，則：

(1)於員工行使選擇權而取得股份時，不產生所得；

(2)公司(或其母公司或其子公司)不得依據§162扣除交易或營業費用；且

(3)除基於選擇權所支付之費用外，應視為公司未取得其他收入(I.R.C. §421(a))。[33]

激勵性股票選擇權的好處是讓員工可以將所得遞延至股票出售時認列。[34]激勵性股票選擇權之取得人於取得選擇權時，不適用聯邦所得稅之規範。於行使選擇權時，亦不適用之，不過，行使選擇權時購買股票之價格與股票之公平市價間之價差(雖然於行使時無須課稅)為稅捐優惠之項目，且可能須負替代最小賦稅(alternative minimum tax)。如果符合稅法規定之要件，則取得人係依資本利得稅率納稅。反之，若是未遵守持有期限等要求，則應繳納一般所得稅(ordinary income tax)。[35]資本利得稅率最高為15%，一般所得稅率最高為35%。[36]

對於公司而言，若員工行使選擇權符合法定要件，則公司不得扣抵任何稅額。於公司發行股份予員工時，不認列所得或損失。不過，若員工處分股票未符合要件，則公司得以員工認列之一般所得稅額扣抵之。[37]

簡言之，對於員工而言，激勵性股票選擇權的優點是，當其行使選擇權認購股票時，不須認列所得(除非發生不合要件之處分)，惟可能須適用替代最小賦稅。於將股票出售之年度，則依資本利得稅率課稅。[38]

(二)非適格股票選擇權

非適格股票選擇權(non-qualified stock option，簡稱NQSO or NSO)有時又稱為非法定股票選擇權(non-statutory stock option)。[39]之所以稱為「非適格」，係指其不符合I.R.C. §422規定之激勵性股票選擇權之法定要件；[40]只要是不符合法定要件之所有其他股票選擇權，均屬於非適格股票選擇權。[41]性質上屬於一種報酬股票選擇權(compensatory stock option)。[42]非適格股票選擇權之發放，可以根據書面計畫，也可以根據董事會之決議。[43]

對於選擇權持有人而言，主要的缺點是，當取得選擇權時，並未獲得利益(此係指一般情形)，而且可能根本沒有機會行使選擇權(如果僱傭關係在期前終止)。選擇權最終之價值是取決於市場。[44]

非適格股票選擇權最大的特色在於「極具彈性」，[45]不必遵守激勵性股票選擇權所受之限制。公司對於行使選擇權購買股票之價格、行使期間、員工之工作狀態等事項之決定，享有完全的裁量權。而且，公司也可以對非適格股票選擇權設定類似於激勵性股票選擇權之限制。[46]

非適格股票選擇權與激勵性股票選擇權之不同處，例如：(1)行使激勵性股票選擇權時，不必課稅；反之，行使非適格股票選擇權時則必須課稅。(2)若符合持有期間等法定要件，行使激勵性股票選擇權之收入(按，即取得股票時)屬於資本利得；反之，非適格股票選擇權則是在實現時(按，即賣出股票時)，始做為資本利得。(3) 非適格股票選擇權可以發給非員工以外之人，如顧問及非員工董事等人。(4) 非適格股票選擇權之稅捐不可遞延。[47]

1.員工之稅捐

(1)取得選擇權時

通常，選擇權持有人於「取得時」不必認列任何收入。[48]於取得時，選擇權若有可容易確認之市價，則例外必須課稅；然而，通常此等選擇權均屬不可轉讓者，因此並無可容易確認之市價，而且，即使選擇權得轉讓，法律上也會採取選擇權的市價無法決定之立場。[49]即使選擇權有可容易確認之市價，除非選擇權已處於現時得轉讓之狀態、無重大被沒收之風險，否則，仍無須於取得時認列為收入。[50]

(2)行使選擇權時

行使選擇權時，公平價格與購買價格間之價差，為選擇權持有人之報酬收入；[51]不過，此係指權利人之財產已可轉讓或無重大被沒收之風險時，始能算入其總所得中(I.R.C. §83(a))。[52]與激勵性股票選擇權不同，非適格股票選擇權持有人行使時，價差應做為一般所得課稅。此一報酬收入並非適用替代最小賦稅之稅捐優惠項目。[53]即，按一般稅率課稅。[54]

因行使選擇權而產生之所得，公司必須代為扣繳稅款。[55]亦可從預計發行之股數中預扣之。[56]

於取得選擇權後，於股價大幅上漲的狀況，行使選擇權時，必須負擔的稅額可能相當高。[57]再者，當員工行使選擇權後，即使沒有現金，也必須負擔納稅之義務。[58]因此，為了繳稅，員工可能會因此將所取得之股份一部或全部盡速賣出。[59]

行使選擇權後所取得之股票，若仍不得轉讓或有重大被沒收之風險時，則無須課稅。不過，當事人亦可選擇在「行使選擇權時」就課稅，此須於取得股票後的30日年向國稅局提出「83(b)選擇」(“83(b)

election”)。「83(b)選擇」給予員工在實際的限制取消前(原本的課稅時點)自行決定課稅時間及稅額的彈性。[60]

(3)賣出股票時

選擇權持有人將股票賣出後，出售價高於行使時股票之公平市場之價差，應依資本利得課稅。[61]也就是於取得股票後至出賣時，股票之增值應依資本利得稅率課稅。[62]

2.公司之稅捐

(1)取得選擇權時

由於員工取得選擇權時，並未認列所得，對公司而言亦未產生現金費用，如果發給選擇權時係依據公平市價，則公司亦無獲利。[63]選擇權發行時，亦得低於股票之公平市價，惟至少不得少於25%。[64]此時，公司須於發給選擇權時，將價差列為其獲利。

(2)行使選擇權時

於員工行使選擇權時，公司無現金支出，惟員工所應申報之報酬收入稅額，公司得以之申報稅捐抵減。[65]若員工是子公司之員工，股票是由母公司發放，則依法得抵減稅額之主體為子公司。[66]此一數額可作為研究成本，對於公司而言，發行非適格股票選擇權之利益遠高於激勵性股票選擇權，因此公司可以提撥額外的現金給員工，以減輕員工之稅捐負擔。[67]

3.短線交易

行使選擇權後取得股票之人若係受1934年證券交易法(Securities and Exchange Act of 1934)§16(b)短線交易規範之經理人或董事，於6個月之期間內，其將被視為受有被沒收之風險，須等6個月期間屆滿後始做為所得(除非當事人選擇於行使時就視為所得)。[68]

二、員工購買股票計畫

於Part II[Certain Stock Options]，「員工購買股票計畫」一詞係指符合下列要件之計畫：

(1)依計畫之規定，選擇權只能授予僱傭公司、或其母公司、或其子公司之員工購買此等公司之股票；

(2)此一計畫已於通過之前或之後12個月內經發放選擇權之公司股東會同意；

(3)依據計畫之條件，如果員工於取得選擇權後即將擁有僱佣公司或其母公司或其子公司之各種股權合併5%以上之表決權或價值，則不得發放。於本Paragraph中，應適用§424(d)以決定自然人之股權歸屬及員工依據選擇權所買進之股票是否應被視為員工所擁有；

(4)依據計畫之條件，選擇權係發放予因其僱用關係而得取得選擇權之所有員工，但得排除：

(A)受僱期間未滿2年之員工；

(B)員工慣常的工作時間，每周為20小時(或以下)；

(C)員工慣常的工作時間，每一曆年不多於5個月；及

(D)高薪酬員工(依§414(q)之定義)；

(5)依據計畫之條件，取得選擇權之所有員工均享有相同的權利及優惠，除非，任何員工依據選擇權購買之股票數額與總薪酬、基本或一般比率之薪酬具一致的關係，計畫中得限制員工購買股票數額之上限，且應適用§83(i)之規定，以決定員工是否有權依該規定提出選擇；

(6)依據計畫之條件，選擇權價格不得低於：

(A)於發放選擇權時，股票公平市價之85%，或

(B)於行使選擇權時，股票公平市價之85%；

(7)依據計畫之條件，選擇權之行使不得逾：

(A)選擇權發放之5年後(如果依據計畫之條件，選擇權之價格不低於行使選擇權時股票公平市價之85%)，或

(B)選擇權發放之27個月後(如果選擇權之價格無Subparagraph (A)規定之情形時)；

(8)依據計畫之條件，每一年度員工依據選擇權取得其僱佣公司、或其母公司、或其子公司之股票，價值不得高過此等股票之公平市價$25,000。於本Paragraph中：

(A)於年度中當可行使選擇權時，有權依據選擇權購買股票；

(B)有權依據選擇權規定之價格購買股票，但於任一年度中，不得超過此等股票公平市價(依選擇權發放時決定)$25,000；且

(C)依據一選擇權得購買之股票之權利，不得高於任何其他選擇權；且

(9)依據選擇權之條件，員工不得將選擇權轉讓，除非係依遺囑或繼承法規轉讓，且僅得於其生存時、由其本人行使之。[69]

於Paragraph (3)至(9)，選擇權發行時若包含額外條件，此等額外條件應被視為計畫之一部分(I.R.C. §423(b))。

選擇§83(i)而行使之選擇權，不應被視為係員工購買股票計畫(I.R.C. §423(d))。 依§83(i)之規定，如果適格之股票已移轉予適格之員工，其依本Subsection做出選擇者，認定Subsection (a)之數額之課稅年度應由Subsection (a)規定之時點[即，於股票可轉讓時或無被沒收之重大風險時]，改為依Subparagraph (B)認定之時點(I.R.C. §83(i)(1)(A))。[71]課稅年度之認定，依下列規定決定之(以孰早者為準)：

(i)於股票成為可轉讓時(僅限於本條款中，包括成為可轉讓予僱用人時)，

(ii)於員工成為被排除的員工時，[72]

(iii)於發行適格股票之公司之任何股票，可於具健全的證券市場上交易時，

(iv)於員工對於股票之權利得轉讓時或無被沒收之重大風險時起之5年後(以孰早者為準)，或

(V)員工撤回(依主管機關規定時間及方式辦理)本Subsection之選擇時(I.R.C. §83(i)(1)(B))。[73]

於適用§423(b)(3)之持股比例限制時，(1)應將直接或間接由(或為)其兄弟姊妹(無論是否同父母所生)、配偶、尊親屬及卑親屬之持股計入；且(2)直接或間接由(或為)公司、合夥、遺產或信託持有之股票，應被視為係比例地由(或為)其股東、合夥人或受益人持有(I.R.C. §424(d))。

I.R.C. §423(b)(4)(D)規定之「高薪酬員工」一詞係指，符合下列條件之任何員工：

(A)於前一年度之任何時間均為5%之股東，或

(B)於前一年度：

(i)薪酬超過$80,000，且

(ii)如果僱主選擇於前一年度適用此一條款時，員工於前一年度係屬高所得團體(I.R.C. §414(q))。[74]

關於持有期間、繼續受僱要求及稅捐優惠，均與激勵性股票選擇權雷同，茲不贅。[75]

如果選擇權價格低於選擇權發放時股票公平市價，處分符合持有期間限制時、或死亡時(仍擁有股份)，於處分或死亡之年度，下列之數額(以孰低者為準)應算入其總所得之薪酬收入(且非於出售或交換資本資產而有所得時)：

(1)處分時或死亡時之股票公平市價超過所支付股款之部分；

(2)選擇權發放時之股票公平市價超過選擇權價格之部分(I.R.C. §423(c))。

依據I.R.C. §421員工購買股票計畫被視為是一種「適格股票選擇權」。[77]員工購買股票計畫的制度是為了讓幾乎全體員工均能受惠，而不是僅針對特定個人或族群而設。因為，依據員工購買股票計畫，不可以獨厚重要員工，通常只對相信員工若擁有公司股票會有更好的表現、或考量僱用關係之一般性利益之僱主有吸引力。[78]廣泛參與的要求，意味著公司股票可能會被廣泛的持有。僱用人公司股票之流通及證券相關問題便會接踵而來，這可能會讓無健全證券市場及未準備好面對公開發行的證券相關問題之公司打消採取員工購買股票計畫之念頭。[79]

注釋

1. 產業創新條例第 19 條之 1 第 2 項：「公司員工選擇適用前項規定，自取得股票日起，持有股票且繼續於該公司服務累計達二年以上者，於實際轉讓或帳簿劃撥至開設之有價證券保管劃撥帳戶時，其全部轉讓價格、贈與或作為遺產分配時之時價或撥轉日之時價，高於取得股票或可處分日之時價者，以取得股票或可處分日之時價，作為該轉讓或撥轉年度之收益，依所得稅法規定計算所得並申報課徵所得稅。但公司員工未申報課徵所得稅，或已申報課徵所得稅未能提出取得股票或可處分日時價之確實證明文件，且稅捐稽徵機關無法查得可處分日之時價者，不適用之。」
2. 經濟部 91.8.16 經商字第 09102167580 號函指出，公司法第 167 條之 1 之員工，不包含從屬公司員工。惟 2018 年 8 月 1 日新修正之公司法第 167 條之 1 增訂第 4 項：「章程得訂明第二項轉讓之對象包括符合一定條件之控制或從屬公司員工。」
3. 經濟部 91.8.16 經商字第 09102167580 號函 (同前註) 指出，公司法第 167 條之 2 之員工，亦不包含從屬公司員工。惟 2018 年 8 月 1 日新修正之公司法第 167 條之 2 增訂第 3 項：「章程得訂明第一項員工

認股權憑證發給對象包括符合一定條件之控制或從屬公司員工。」

4. 2018 年 8 月 1 日新修正之公司法第 267 條增訂第 11 項「章程得訂明依第九項規定發行限制員工權利新股之對象，包括符合一定條件之控制或從屬公司員工。」
5. 1 WOJCIECH GRABOWSKI, EMPLOYEE STOCK OPTIONS, PAYOUT POLICY, AND STOCK RETURENS: SHAREHOLDERS AND OPTIONHOLDERS IN LARGE U.S. TECHONOLOGY CORPORATIONS (POLISH STUDIES IN ECONOMICS) 9 (2012) (“Among many other phenomena, over the last three decades we witnessed a broad shift in payout policy towards more repurchases and in the compensation practice towards more stock-based pay.”).
6. FLORIAN CORNELIS WOLFF, EMPLOYEE STOCK OPTION COMPENSATION: A BEHAVIORAL FINANCE APPROACH 2-3 (2004) (“While the penetration of stock option plans has been historically high in the US, the last decade has seen the spread of such practices into continental Europe.”).
7. Id. at 2 (“By now, stock option plans have become a standard part of executive compensation in most Western industrialised countries. In 2001, it is estimated (…) that approximately between 75%~100% of the large publicly traded corporations in the US, UK, France, and Germany had stock option plans in place.”).
8. Id. at 4 (“This trend has led many commentators to accuse managers of enriching themselves at the expense of shareholders as well as employees. Moving from the general to the more specific, managers have been particularly charged with abusing stock options for their own purposes, by making use of their lack of transparency, as well as their complexity, which make it harder for outsiders to fully understand their implications and to control their use.”).
9. Eric L. Johnson, Waste Not, Want Not: An Analysis of Stock Option Plans, Executive Compensation, and the Proper Standard of Waste, 26 J. Corp. L. 145, 147 (2000) (“The incentive stock option (ISO) is a tax-favored stock option Congress created ‘to provide an important incentive device for corporations to attract new management and retain the service of executives who might otherwise leave, by providing an opportunity to acquire an interest in the business.’”).
10. Carol C. Brown, Equity Based Compensation, SF09 ALI-ABA 337, 339 (2000) (“Typically ISOs are awarded only to management employees.”).
11. 此處所指之計畫，應係指書面計畫。Nancy Williams Bonnett, Nonqualified Arrangements and Equity Based Compensation, SFA2 ALI-ABA 233, 260 (2001) (“ISOs must be granted pursuant to a written plan that includes the aggregate number of shares which may be issued, and the employees (or class of employees) eligible to receive options.”).
12. 員工必須於僱傭關係終止後之 3 個月內 (死亡或失能時為例外) 或於選擇權發放後 10 年內 (以孰早者為準) 行使選擇權。Id. at 260 (“An optionee also must exercise his option within three months of termination of employment (except in the case of death or disability, or ten years from the date of grant, whichever first occurs.”).
13. 所謂之選擇權價格，係指行使選擇權時之認購價格。EMPLOYEE SHARE PLANS: INTERNATIONAL LEGAL AND TAX ISSUES, SECOND EDITION 341 n.1 (Paul Ellerman ed., 2011) (“To qualify for ISO status, which allows the employee to defer award income until the stock purchased with the option is sold, the option must be granted with an exercise price that at least equals the fair market value of the stock at the time of grant, and must meet other requirements, including shareholder approval and limits on the term of the option, exercisability, and grant value; and upon exercise, the acquired shares are subject to a post-exercise holding period. See 26 USC, §422 (2000).”).
14. I.R.C. §422:

    (b) Incentive stock option.--For purposes of this part, the term “incentive stock option” means an option granted to an individual for any reason connected with his employment by a corporation, if granted by the employer corporation or its parent or subsidiary corporation, to purchase stock of any

of such corporations, but only if--

(1) the option is granted pursuant to a plan which includes the aggregate number of shares which may be issued under options and the employees (or class of employees) eligible to receive options, and which is approved by the stockholders of the granting corporation within 12 months before or after the date such plan is adopted;

(2) such option is granted within 10 years from the date such plan is adopted, or the date such plan is approved by the stockholders, whichever is earlier;

(3) such option by its terms is not exercisable after the expiration of 10 years from the date such option is granted;

(4) the option price is not less than the fair market value of the stock at the time such option is granted;

(5) such option by its terms is not transferable by such individual otherwise than by will or the laws of descent and distribution, and is exercisable, during his lifetime, only by him; and

(6) such individual, at the time the option is granted, does not own stock possessing more than 10 percent of the total combined voting power of all classes of stock of the employer corporation or of its parent or subsidiary corporation.

Such term shall not include any option if (as of the time the option is granted) the terms of such option provide that it will not be treated as an incentive stock option. Such term shall not include any option if an election is made under section 83(i) with respect to the stock received in connection with the exercise of such option.

15. I.R.C. §422:

(c)(4) Permissible provisions.--An option which meets the requirements of subsection (b) shall be treated as an incentive stock option even if—

(A) the employee may pay for the stock with stock of the corporation granting the option,

(B) the employee has a right to receive property at the time of exercise of the option, or

(C) the option is subject to any condition not inconsistent with the provisions of subsection (b).

Subparagraph (B) shall apply to a transfer of property (other than cash) only if section 83 applies to the property so transferred.

16. I.R.C. §422:

(c)(7) Fair market value.--For purposes of this section, the fair market value of stock shall be determined without regard to any restriction other than a restriction which, by its terms, will never lapse.

17. I.R.C. §422:

(c)(1) Good faith efforts to value stock.--If a share of stock is transferred pursuant to the exercise by an individual of an option which would fail to qualify as an incentive stock option under subsection (b) because there was a failure in an attempt, made in good faith, to meet the requirement of subsection (b)(4), the requirement of subsection (b)(4) shall be considered to have been met. To the extent provided in regulations by the Secretary, a similar rule shall apply for purposes of subsection (d).

18. I.R.C. §422:

(c)(5) 10-percent shareholder rule.--Subsection (b)(6) shall not apply if at the time such option is granted the option price is at least 110 percent of the fair market value of the stock subject to the option and such option by its terms is not exercisable after the expiration of 5 years from the date such option is granted.

19. I.R.C. §424:

(d) Attribution of stock ownership.--For purposes of this part, in applying the percentage limitations of

sections 422(b)(6) and 423(b)(3)--

(1) the individual with respect to whom such limitation is being determined shall be considered as owning the stock owned, directly or indirectly, by or for his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; and

(2) stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust, shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries.

20. I.R.C. §424(h):

(1) In general.--For purposes of this part, if the terms of any option to purchase stock are modified, extended, or renewed, such modification, extension, or renewal shall be considered as the granting of a new option.

21. I.R.C. §424(h):

(3) Definition of modification.--The term "modification" means any change in the terms of the option which gives the employee additional benefits under the option, but such term shall not include a change in the terms of the option--…

22. I.R.C. §422(d):

(1) In general.--To the extent that the aggregate fair market value of stock with respect to which incentive stock options (determined without regard to this subsection) are exercisable for the 1st time by any individual during any calendar year (under all plans of the individual's employer corporation and its parent and subsidiary corporations) exceeds $100,000, such options shall be treated as options which are not incentive stock options.

應被視為非屬激勵性股票選擇權者，係指超額之部分。See Bonnett, supra note 11, at 260 ("ISO is exercisable (determined as of the date of grant) for the first time by an employee during any calendar year, to $100,000.00. Amounts in excess of the limit will be treated as non-ISOs.").

23. I.R.C. §422(d):

(3) Determination of fair market value.--For purposes of paragraph (1), the fair market value of any stock shall be determined as of the time the option with respect to such stock is granted.

24. 49 I.R.C. §422:

(a) In general.--Section 421(a) shall apply with respect to the transfer of a share of stock to an individual pursuant to his exercise of an incentive stock option if--

(1) no disposition of such share is made by him within 2 years from the date of the granting of the option nor within 1 year after the transfer of such share to him, and

(2) at all times during the period beginning on the date of the granting of the option and ending on the day 3 months before the date of such exercise, such individual was an employee of either the corporation granting such option, a parent or subsidiary corporation of such corporation, or a corporation or a parent or subsidiary corporation of such corporation issuing or assuming a stock option in a transaction to which section 424(a) [Corporate reorganizations, liquidations, etc.]applies.

25. I.R.C. §421:

(c) Exercise by estate.--

(1) In general.--If an option to which this part applies is exercised after the death of the employee by the estate of the decedent, or by a person who acquired the right to exercise such option by bequest or inheritance or by reason of the death of the decedent, the provisions of subsection (a) shall apply to the same extent as if the option had been exercised by the decedent, except that--

(A) the holding period and employment requirements of sections 422(a) and 423(a) shall not apply, and

…

26. I.R.C. §421:

(b) Effect of disqualifying disposition.--If the transfer of a share of stock to an individual pursuant to his exercise of an option would otherwise meet the requirements of section 422(a) or 423(a) except that there is a failure to meet any of the holding period requirements of section 422(a)(1) or 423(a)(1), then any increase in the income of such individual or deduction from the income of his employer corporation for the taxable year in which such exercise occurred attributable to such disposition, shall be treated as an increase in income or a deduction from income in the taxable year of such individual or of such employer corporation in which such disposition occurred. No amount shall be required to be deducted and withheld under chapter 24 with respect to any increase in income attributable to a disposition described in the preceding sentence.

27. I.R.C. §424(c):

(1) In general.--Except as provided in paragraphs (2), (3), and (4), for purposes of this part, the term "disposition" includes a sale, exchange, gift, or a transfer of legal title, but does not include--

(A) a transfer from a decedent to an estate or a transfer by bequest or inheritance;

(B) an exchange to which section 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036) applies; or

(C) a mere pledge or hypothecation.

28. I.R.C. §424(c):

(2) Joint tenancy.--The acquisition of a share of stock in the name of the employee and another jointly with the right of survivorship or a subsequent transfer of a share of stock into such joint ownership shall not be deemed a disposition, but a termination of such joint tenancy (except to the extent such employee acquires ownership of such stock) shall be treated as a disposition by him occurring at the time such joint tenancy is terminated.

29. 此係指配偶間之財產移轉行為，或者因離婚而將財產移轉予前配偶之行為。I.R.C. § 1041：

(a) General rule.--No gain or loss shall be recognized on a transfer of property from an individual to (or in trust for the benefit of)--

(1) a spouse, or

(2) a former spouse, but only if the transfer is incident to the divorce.

30. I.R.C. §424(c):

(4) Transfers between spouses or incident to divorce.--In the case of any transfer described in subsection (a) of section 1041--

(A) such transfer shall not be treated as a disposition for purposes of this part, and

(B) the same tax treatment under this part with respect to the transferred property shall apply to the transferee as would have applied to the transferor.

31. 此係指配偶間之財產移轉行為，或者因離婚而將財產移轉予前配偶之行為。I.R.C. § 1041：

(a) General rule.--No gain or loss shall be recognized on a transfer of property from an individual to (or in trust for the benefit of)--

(1) a spouse, or

(2) a former spouse, but only if the transfer is incident to the divorce.

32. I.R.C. §424(c):

(4) Transfers between spouses or incident to divorce.--In the case of any transfer described in subsection (a) of section 1041--

(A) such transfer shall not be treated as a disposition for purposes of this part, and

(B) the same tax treatment under this part with respect to the transferred property shall apply to the transferee as would have applied to the transferor.

33. I.R.C. §421:

(a) Effect of qualifying transfer.--If a share of stock is transferred to an individual in a transfer in respect of which the requirements of section 422(a) or 423(a) are met--

(1) no income shall result at the time of the transfer of such share to the individual upon his exercise of the option with respect to such share;

(2) no deduction under section 162 (relating to trade or business expenses) shall be allowable at any time to the employer corporation, a parent or subsidiary corporation of such corporation, or a corporation issuing or assuming a stock option in a transaction to which section 424(a) applies, with respect to the share so transferred; and

(3) no amount other than the price paid under the option shall be considered as received by any of such corporations for the share so transferred.

34. supra note 13, at 341 n.1 (“To qualify for ISO status, which allows the employee to defer award income until the stock purchased with the option is sold,…”).

35. Bonnett, supra note 11, at 260-261 (“As in the case of a NSO, an ISO optionee is not subject to federal income taxation at the time of grant. Unlike a NSO, the ISO optionee is also not subject to federal income taxation at the time of exercise. I.R.C. § 421(a). However, the difference between the option price and the fair market value of the stock on the date the option is exercised (although not taxable upon exercise) is an item of tax preference to the optionee, and may result in alternative minimum tax liability. If all applicable requirements of the IRC are met, the optionee will be taxed at the time of the sale of the stock at capital gains rates on the difference between the option price and the amount realized upon such sale. If the holding requirements (no disposition by the optionee within two years from the date of grant, and one year from the date of transfer) are not satisfied at the time of disposition of the stock, the optionee will be subject to ordinary income tax in the year of this disqualifying disposition. In such situation the optionee is taxed on the difference between the fair market value of the stock at the time of exercise and the option price. I.R.C. § 421(b). Any appreciation realized on the sale of the stock measured from the date of exercise is taxed at long or short term capital gains rates, to the extent applicable. I.R.C. § 83(a).”).

36. Calvin H. Johnson, Taxing the Consumption of Capital Gains, 28 Va. Tax Rev. 477, 478 (2009) (“The tax law gives a lower tax rate to capital gains, under the unstated assumption that capital gains will be reinvested. Capital gains are the gains from sale of investment property held for the required amount of time. When first adopted in 1921, the lower capital gain rate was 12% at a time when ordinary income was taxed at up to a 54% rate. Under current law, capital gains are taxed at most at 15%, whereas ordinary income is taxed at up to a 35% tax rate.”).

37. Bonnett, supra note 11, at 261 (“As contrasted with NSOs, the corporation is not entitled to any deduction from gross income if all applicable requirements of the IRC are met with respect to the sale of an ISO. IRC Section 421(b). The corporation also realizes no gain or loss upon issuance of its stock under the ISO plan for the performance of services. However, in the event that the optionee makes a disqualifying disposition, the corporation for whom the optionee is employed is entitled to a deduction for compensation expense equal to the amount of ordinary income recognized by the optionee. I.R.C. § 421(b); Prop. Treas. Reg. § 1.422A-l(b)(l).”).

38. Id. at 261 (“c. ISOs have the advantage of not requiring recognition of income on the part of the optionee, as a result of exercise, unless a disqualifying disposition occurs. However, the alternative minimum tax may be applicable, which may be effectively raised as the effective tax liability on the ISO as contrasted with an equivalent NSO. Taxes in the year of sale are at capital gains rates.”).

39. Matthew C. Ryan & Michal J. Halloran, Venture Capital & Public Offering Negotiation, Chapter 15: Tax Implications of Equity-Based Compensation Programs of Portfolio Companies § 5. Options, § B. NONQUALIFIED STOCK OPTIONS, VCPON CH 15 § 5 B (Aspen Publishers | 3rd Edition 2017 Supplement). (“A nonqualified stock option (sometimes referred to as a nonstatutory stock option)

is an option which does not satisfy the federal tax law requirements for treatment as an incentive stock option.”)

40. Joseph W. Bartlett, Equity Finance: Venture Capital, Buyouts, Restructurings and Reorganizations, Part I: Early Stage Investing, Chapter 11: Executive Compensation and Incentives, § 11.4 --NONQUALIFIED STOCK OPTIONS, EQFIN § 11.4 (Aspen Publishers | 2nd Edition 2018 Cumulative Supplement) (“Nonqualified stock options (NSOs) are “nonqualified” in the sense that they do not meet the requirements of § 422”).
41. Tax and Accounting Deductions, Chapter 10: Compensation, Key Issue 10G: Compensating Employees with Nonqualified Stock Options., 1120 Deskbook Key Iss 10G (Twenty-seventh Edition (October 2017)) (“Stock options fit into two broad categories—statutory or qualified stock options and nonstatutory or nonqualified stock options (NQSOs). Qualified stock options, also known as incentive stock options (ISOs), must meet certain statutory requirements outlined in IRC Sec. 422(b). (See Key Issue 10H for further discussion of ISOs.) Nonqualified stock options include all other stock options not meeting the statutory requirements.”).
42. Jeffrey D. Mamorsky, Employee Benefits Handbook, Part VI. Specialized Plans, Chapter 56. Stock Acquisition Plans for Executives, II. Plan Alternatives, § 56:12.Nonqualified stock options—In general, 2 Employee Benefits Handbook § 56:12 (Employee Benefits Handbook | June 2018 Update) (“A nonqualified stock option (“NSO”) is a compensatory stock option that does not meet the requirements of Code Section 422.”).
43. Bonnett, supra note 11, at 258 (“NSOs may be issued pursuant to a plan, or individually, as approved by the corporation’s board of directors.”).
44. Id. at 260 (“The primary disadvantage to the optionee is that he has no benefit upon the grant of the NSO, and may never have the opportunity to exercise his option if his employment is terminated prior to the vesting date. The ultimate value of the option to the optionee is entirely dependent upon the market.”).
45. Brown, supra note 10, at 339 (“NSOs are not subject to the same restrictions as ISOs, so they offer greater flexibility.”).
46. Johnson, supra note 9, at 147-148 (“A nonqualified stock option (NQSO) is the more flexible type of stock option. A NQSO does not have to comply with the requirements that are demanded of an ISO. Basically, the company has total discretion as to what the exercise price will be, how long an employee must wait to exercise it, the employee’s work status, and various other matters. … It should also be noted that a company, although not required, may place restrictions on an NQSO that make it resemble an ISO.”).
47. Mamorsky, supra note 42 (“ISOs and NSOs are governed by different tax rules. The key differences between them are: 1) the exercise of an ISO will never be a taxable event, whereas the exercise of an NSO will be a taxable event; and 2) if the holding period requirements are all met, all of the gain on an ISO will be capital gain, whereas only the gain occurring after the recognition of the NSO gain will qualify for capital gain tax treatment. Unlike ISOs, NSOs can be granted to individuals other than employees of the company such as consultants and non-employee directors With a NSO, the option holder is taxed when the shares are exercised. There is no deferral of tax as with an ISO.”).
48. Ryan & Halloran, supra note 39 (“Generally, an optionee does not recognize any income at the time a nonqualified option is granted.”).
49. Jere D. McGaffey, McGaffey Legal Forms with Tax Analysis, Chapter 7. Stock Options, Analysis, § 7:7. Nonqualified stock option tax treatment, 1A McGaffey Leg. Fms. With Tax Analysis § 7:7 (Westlaw 2018) (“In the case of an option that is not taxed as an incentive stock option, the employee is not taxed upon the grant of the option unless there is a readily ascertainable market value for the option. However, normally such options are nontransferable, so there can be no readily ascertainable market value; and, even if they are transferable, the Service will take the position that

the market value of such option cannot be determined.”).

50. Bonnett, supra note 11, at 258 (“a. An employee will not be taxed upon the grant or vesting of a NSO if (i) the option does not have a readily ascertainable fair market value, and (ii) the grant of the option does not constitute a transfer of the underlying stock. I.R.C. § 83(e)(3)-(4). Even if an option has a readily ascertainable fair market value and, thus, would constitute “property” under IRC Section 83, the optionee will not recognize income upon the grant of the option unless the option is presently transferable or is not subject to a substantial risk or forfeiture. Typically, NSOs are both non-transferable and contingent upon the performance of future services.”).
51. Ryan & Halloran, supra note 39 (“The bargain element or difference (“spread”) between the fair market value of the company stock on the date of exercise and the exercise price of the option, however, is taxed as compensation income to the optionee at the time of exercise.”).
52. I.R.C. §83:

    (a) General rule.--If, in connection with the performance of services, property is transferred to any person other than the person for whom such services are performed,…shall be included in the gross income of the person who performed such services in the first taxable year in which the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture, whichever is applicable. The preceding sentence shall not apply if such person sells or otherwise disposes of such property in an arm’s length transaction before his rights in such property become transferable or not subject to a substantial risk of forfeiture.

53. Bartlett, supra note 40 (“Unlike incentive stock options, the holder will realize ordinary income upon exercise equal to the excess of the fair market value of the stock received (as of the date such stock is free of substantial risk of forfeiture or becomes transferable, according to § 83 of the Code) over the value of the consideration paid…. The holder’s compensation is not a tax preference item for purposes of the alternative minimum tax.”).
54. McGaffey, supra note 49 (“The employee is taxed at the time of exercise at ordinary rates to the extent the fair market value of the shares at such date exceeded the option price.”).
55. Id. (“Furthermore, the income generated upon exercise of such options is subject to withholding tax.”).
56. Id. (“Withholding may be accomplished by withholding the number of shares to be issued. Under the SEC rules, it appears possible to amend a plan to provide for such a feature without stockholder approval. The election to withhold shares must be made under SEC rules during the quarterly ten-day window period or six months prior to the date the option becomes taxable.”).
57. Ryan & Halloran, supra note 39 (“In the case of a nonqualified option on stock which has appreciated substantially in value since the date the option was granted, the amount of taxable income to the optionee--and, in the case of an employee, the amount of tax required to be withheld on exercise of the option--may be significant.”).
58. McGaffey, supra note 49 (“Unfortunately, however, the tax incidence occurs upon exercise of a nonqualified option even though the employee does not have cash with which to pay for the shares at such time.).
59. Id. (“The tax imposed may necessitate the employee’s selling some or all of the employee’s shares shortly after exercise. The employee has had the cash outlay of both exercising the option and the tax expense thereon.”).
60. Bonnett, supra note 11, at 258-259 (“An NSO optionee whose stock is subject to a substantial risk of forfeiture may elect to be taxed at the time of exercise, as if the stock received were not subject to the substantial risk of forfeiture, by filing an “83(b) election” with the Internal Revenue Service within 30 days of acquiring the stock upon exercise of the option. [Thus the optionee may establish the amount of ordinary income tax liability, with any appreciation of the stock value subsequent to

the exercise date taxed as. Filing an 83(b) election gives an insider the flexibility to determine the timing and amount of his tax liability prior to the lapse of actual restrictions, and deferring taxation on appreciation prior to the lapse of restrictions. If an 83(b) election is not filed, an insider will effectively be taxed on any appreciation of the stock from the time the NSO was granted to the date when all restrictions on the stock received lapse.]").

61. Id. at 258 ("Upon the sale of stock by the optionee, the difference between the amount realized on the sale and the fair market value of the stock on the day the option was exercised is taxable as capital gain.").
62. McGaffey, supra note 49 ("The employee does receive a tax basis in the shares equal to the fair market value at the time of exercise upon which the employee has paid tax, and any subsequent appreciation will be taxed at capital gain rates."
63. Bonnett, supra note 11, at 259-260 ("NSOs …Additionally, while the optionee will recognize no income at the time of grant, the corporation (a) incurs no cash expense, (b) receives a tax reduction upon the exercise of the option, and (c) (if granted at fair market value) there is no corresponding charge to earnings.").
64. McGaffey, supra note 49 ("However, it seems likely that an option can be issued at less than fair market value as long as the option price is at least 25% of value. Much larger discounts have been treated as options.").
65. Bartlett, supra note 40 ("Without incurring cash expense, the employer will be entitled to a business expense deduction equal to the amount of compensation taxable to the employee."). I.R.C. §83:

    (h) Deduction by employer.--In the case of a transfer of property to which this section applies or a cancellation of a restriction described in subsection (d), there shall be allowed as a deduction under section 162, to the person for whom were performed the services in connection with which such property was transferred, an amount equal to the amount included under subsection (a), (b), or (d)(2) in the gross income of the person who performed such services. Such deduction shall be allowed for the taxable year of such person in which or with which ends the taxable year in which such amount is included in the gross income of the person who performed such services.

66. McGaffey, supra note 49 ("In a situation in which the employee is an employee of a subsidiary and the parent stock is issued, presumably the subsidiary receives the deduction as the Service has ruled that when a parent or shareholder of a parent transfers parent stock to an employee of a subsidiary, the subsidiary is entitled to deduction for compensation under Section 83.").
67. Id. ("In addition to the possible advantages to an employee of a nonqualified option, a corporation receives a deduction for the amount which the employee must include in income. It has been held that the spread on nonqualified options constitutes wages for claiming research credit under Section 41. Thus, the benefits to the corporation are substantially greater than under a qualified option. Therefore, the employer may provide additional benefits to the employee to provide cash to reduce the employee's tax burden upon exercise.").
68. Id. ("In the case of a holder who is subject to Section 16(b) of the Securities and Exchange Act of 1934 because of being an officer or director, it will be deemed that it is subject to a risk of forfeiture until the period of time of 16(b), namely six months, has expired and thus the income will be measured on the value six months after the date of exercise compared to the option price unless the employee elects to disregard the restriction and treat it as received at the time of exercise. However, the vesting is not delayed by reason of the holder having inside information and being the subject of Rule 10b-5 limitation on sale.").
69. I.R.C. §423:

    (b) Employee stock purchase plan.--For purposes of this part, the term "employee stock purchase

plan" means a plan which meets the following requirements:

(1) the plan provides that options are to be granted only to employees of the employer corporation or of its parent or subsidiary corporation to purchase stock in any such corporation;

(2) such plan is approved by the stockholders of the granting corporation within 12 months before or after the date such plan is adopted;

(3) under the terms of the plan, no employee can be granted an option if such employee, immediately after the option is granted, owns stock possessing 5 percent or more of the total combined voting power or value of all classes of stock of the employer corporation or of its parent or subsidiary corporation. For purposes of this paragraph, the rules of section 424(d) shall apply in determining the stock ownership of an individual, and stock which the employee may purchase under outstanding options shall be treated as stock owned by the employee;

(4) under the terms of the plan, options are to be granted to all employees of any corporation whose employees are granted any of such options by reason of their employment by such corporation, except that there may be excluded--

(A) employees who have been employed less than 2 years,

(B) employees whose customary employment is 20 hours or less per week,

(C) employees whose customary employment is for not more than 5 months in any calendar year, and

(D) highly compensated employees (within the meaning of section 414(q));

(5) under the terms of the plan, all employees granted such options shall have the same rights and privileges, except that the amount of stock which may be purchased by any employee under such option may bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of employees, the plan may provide that no employee may purchase more than a maximum amount of stock fixed under the plan, and the rules of section 83(i) shall apply in determining which employees have a right to make an election under such section;

(6) under the terms of the plan, the option price is not less than the lesser of--

(A) an amount equal to 85 percent of the fair market value of the stock at the time such option is granted, or

(B) an amount which under the terms of the option may not be less than 85 percent of the fair market value of the stock at the time such option is exercised;

(7) under the terms of the plan, such option cannot be exercised after the expiration of--

(A) 5 years from the date such option is granted if, under the terms of such plan, the option price is to be not less than 85 percent of the fair market value of such stock at the time of the exercise of the option, or

(B) 27 months from the date such option is granted, if the option price is not determinable in the manner described in subparagraph (A);

(8) under the terms of the plan, no employee may be granted an option which permits his rights to purchase stock under all such plans of his employer corporation and its parent and subsidiary corporations to accrue at a rate which exceeds $25,000 of fair market value of such stock (determined at the time such option is granted) for each calendar year in which such option is outstanding at any time. For purposes of this paragraph--

(A) the right to purchase stock under an option accrues when the option (or any portion thereof) first becomes exercisable during the calendar year;

(B) the right to purchase stock under an option accrues at the rate provided in the option, but in no case may such rate exceed $25,000 of fair market value of such stock (determined at the time such option is granted) for any one calendar year; and

(C) a right to purchase stock which has accrued under one option granted pursuant to the plan may not be carried over to any other option; and

(9) under the terms of the plan, such option is not transferable by such individual otherwise than by will or the laws of descent and distribution, and is exercisable, during his lifetime, only by him.

For purposes of paragraphs (3) to (9), inclusive, where additional terms are contained in an offering made under a plan, such additional terms shall, with respect to options exercised under such offering, be treated as a part of the terms of such plan.

70. I.R.C. §423:

(d) Coordination with qualified equity grants.--An option for which an election is made under section 83(i) with respect to the stock received in connection with its exercise shall not be considered as granted pursuant an employee stock purchase plan.

71. I.R.C. §83:

(i) Qualified Equity Grants.--

(1) In general.--For purposes of this subtitle—

(A) Timing of inclusion.--If qualified stock is transferred to a qualified employee who makes an election with respect to such stock under this subsection, subsection (a) shall be applied by including the amount determined under such subsection with respect to such stock in income of the employee in the taxable year determined under subparagraph (B) in lieu of the taxable year described in subsection (a)[such property are transferable or are not subject to a substantial risk of forfeiture].

…

72. Michael B. Snyder, HR Series | July 2018 Update, Part VI. Pensions and Qualified Plans, Chapter 35. Nondiscrimination Testing, I. Overview of Nondiscrimination Testing Rules, F. Ratio Percentage Coverage Test, Compensation and Benefits, § 35:20.Excluded employees, 3 Compensation and Benefits § 35:20 (“Although different Internal Revenue Code provisions apply for purposes of determining the excluded employees for the coverage requirements and the minimum participation requirements, the excluded employees generally will be the same under both tests. The excluded employees generally are:

• employees not meeting the age and service requirements of the plan,

• unionized air pilots,

• employees covered by a collective bargaining agreement, and

• certain nonresident aliens.”)

73. I.R.C. §83:

(i) Qualified Equity Grants.--

(1) In general.--For purposes of this subtitle—

…

(B) Taxable year determined.--The taxable year determined under this subparagraph is the taxable year of the employee which includes the earliest of--

(i) the first date such qualified stock becomes transferable (including, solely for purposes of this clause, becoming transferable to the employer),

(ii) the date the employee first becomes an excluded employee,

(iii) the first date on which any stock of the corporation which issued the qualified stock becomes readily tradable on an established securities market (as determined by the Secretary, but not including any market unless such market is recognized as an established securities market by the Secretary for purposes of a provision of this title other than this subsection),

(iv) the date that is 5 years after the first date the rights of the employee in such stock are

transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier, or

(v) the date on which the employee revokes (at such time and in such manner as the Secretary provides) the election under this subsection with respect to such stock.

74. I.R.C. §414:

(q) Highly compensated employee.--

(1) In general.--The term "highly compensated employee" means any employee who--

(A) was a 5-percent owner at any time during the year or the preceding year, or

(B) for the preceding year--

(i) had compensation from the employer in excess of $80,000, and

(ii) if the employer elects the application of this clause for such preceding year, was in the top-paid group of employees for such preceding year.

…

75. supra note 13, at 342 ("As with ISOs, ESPP recipients enjoys favouable tax treatment under the plan."); Brown, supra note 10, at 340 ("Favorable tax treatment, similar to that of incentive stock options, is available to the employee.").

76. I.R.C. §423:

(c) Special rule where option price is between 85 percent and 100 percent of value of stock.--If the option price of a share of stock acquired by an individual pursuant to a transfer to which subsection (a) applies was less than 100 percent of the fair market value of such share at the time such option was granted, then, in the event of any disposition of such share by him which meets the holding period requirements of subsection (a), or in the event of his death (whenever occurring) while owning such share, there shall be included as compensation (and not as gain upon the sale or exchange of a capital asset) in his gross income, for the taxable year in which falls the date of such disposition or for the taxable year closing with his death, whichever applies, an amount equal to the lesser of--

(1) the excess of the fair market value of the share at the time of such disposition or death over the amount paid for the share under the option, or

(2) the excess of the fair market value of the share at the time the option was granted over the option price.

77. Federal Tax Coordinator, Second Edition, Chapter - H Compensation—Part I, H-2950 Employee Stock Purchase Plans., Tax Consequences of an Employee Stock Purchase Plan, H-2950 EMPLOYEE STOCK PURCHASE PLANS., 1997 WL 507301 (Westlaw 2018) ("ESPP options are treated as "statutory stock options" under IRC s 421.").

78. Michael J. Canan, Qualified Retirement Plans | December 2017 Update, Part I. Plan Selection, Chapter 2. Nonqualified Employee Benefit Plans (Plans Not Described In IRC §§ 401 to 416 & 457), § 2:30.Ownership interest in incorporated business—Employee stock purchase plans—IRC § 423, 1 Qual. Retirement Plans § 2:30 (2017-2018 ed.) ("An employee stock purchase plan is intended to benefit virtually all employees, not just exceptional ones or limited groups. Because the granting of options to purchase employer stock under an employee stock purchase plan cannot discriminate in favor of key employees, usually the plan will appeal only to an employer who simply wants to provide, as a general benefit of employment, the right to buy employer stock, or believes that owning employer stock will act as an incentive to employees to perform well.").

79. Id. ("The broad participation requirements of employee stock purchase plans mean that the stock will probably be widely owned. Problems of marketing the employer stock and the securities problems inherent in issuing shares of stock to a number of employees will probably discourage employers who do not have an established market for their stock, and who have not already faced the securities problems related to public trading in their stock.").

重要紀事

10/10
本公司林董事長率員赴法國巴黎參加JP Morgan 「第九屆退休金投資管理論壇」(9th Annual Multinational Pensions Forum)，並擔任「如何成功推動公司治理」專題座談場次之與談人，將本公司成功推動電子投票及提升臺灣資本市場公司治理之成果與各國機構法人進行經驗分享與交流。

10/15-11/30
為增進各界對公司負責人及主要股東資訊申報平臺申報作業程序的瞭解，本公司與經濟部合作在6都及花蓮舉辦7場宣導說明會，計有3,302人參加；另配合各公(協)會需求，自行舉辦宣導說明會及派員前往宣導說明者，共計39場，計有6,053人參加。

10/16
美國證券交易委員會(SEC)60人參訪股票博物館。

10/17
越南集保公司(VSD)董事長Mr. Nguyen Son率員來訪，就雙方近期業務發展進行交流。

10/20
本公司派員至美國西雅圖及舊金山參加「2018美國金融科技專家海外培訓營」。

10/22
本公司派員赴澳洲雪梨參加環球銀行金融電信協會（SWIFT）舉辦之SIBOS 2018金融業務會議。

10/28
本公司派員赴泰國及印尼，拜訪泰國集保公司（TSD）、印尼集中保管公司（KSEI）與印尼結算所（KPEI）等ACG會員機構，說明本公司申設ACG工作小組提案及邀約參加為小組成員，並進行業務交流。

10/29
本公司派員赴馬來西亞吉隆坡參加2018年亞太區內部稽核研討會(2018 ACIIA Conference)。

11/06
本公司林董事長率員赴馬來西亞吉隆坡參加經濟合作暨發展組織(Organization for Economic Cooperation and Development; OECD)舉辦之2018年亞洲公司治理圓桌論壇會議，並擔任「公司治理架構中之彈性與比例原則使用」專題座談場次之與談人，將本公司推動電子投票業務落實股東權益行動主義之斐然成果與各出席機構進行分享。

11/11
本公司派員赴香港及印度拜訪香港金融管理局（HKMA）、香港中央結算公司（HKSCC）、印度集中保管服務公司（CDSL）、印度全國證券保管公司（NSDL）與印度結算公司(ICCL)等ACG會員機構，說明本公司申設ACG工作小組提案及邀約參加為小組成員，並進行業務交流。

11/12
本公司派員赴中國北京及上海，拜會中國證券登記結算公司（CSDC）、中央國債登記結算公司（CCDC）及上海清算所（SCH）等會員機構，進行債票券市場結算交割業務、區塊鏈新科技的應用與研究及ACG中期計畫與會務等議題交流。

11/12
本公司派員赴日本東京參加顧能公司(Gartner)舉辦2018 Symposium/ITxop論壇。

11/14-15
邀集股務單位舉辦本年度第4梯次股務人員教育訓練活動，共計80人參加。

11/16
HSBC及SKANDINAVISKA ENSKILDA BANKEN AB PUBL瑞典代表來訪，就本公司營運發展近況進行交流。

11/17
本公司為慶祝成立29週年，舉辦公益慈善市集愛心園遊會及仙跡岩親山步道健行活動，林董事長期許同仁，未來更要發揮後檯機構的核心價值，主動創造附加服務，提供多面向、創新與精緻化服務，以提升我國資本市場競爭力，同時持續以實際行動善盡企業社會責任，希冀能為社會注入向上向善的提升能量，創造幸福價值。當天義賣與捐贈金額達新臺幣185萬元，已全數捐贈予中華民國視障愛心協會等11家慈善團體。

11/19
舉辦「集保e存摺App 2.0發表會」，邀請主管機關、證券商公會、證券商代表及媒體記者實際體驗多項新功能，共計80人參加。

11/20、23、28
邀集證券商公會、證券商負責人及經理人於台北、台中、高雄等地區，舉辦3場「集保e存摺2.0業務交流活動」，共計222人次參加。

11/26
韓國集保公司(KSD)證券博物館團隊及釜山股票博物館籌備小組共7人參訪股票博物館，並就博物館建立、營運經驗及重新整修之過程館務進行交流座談。

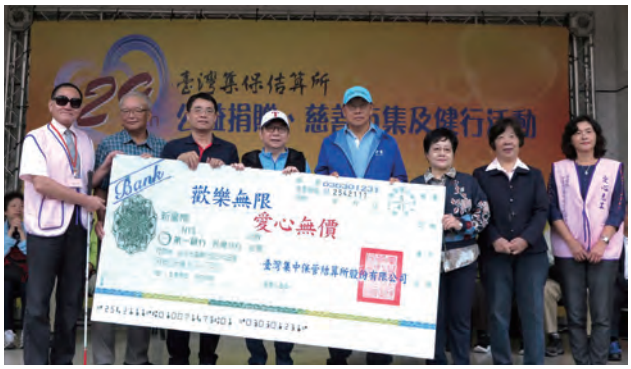
11/26
本公司林董事長率員赴斯里蘭卡可倫坡參加第22屆亞太地區集保組織年會(ACG22)，本公司於會中成功申設「投資人服務工作小組」；並於「亞太地區之集保產業未來展望」專題座談場次擔任與談人，分享本公司基金業務之推動經驗。

圖片集錦

11.19
舉辦「集保e存摺App 2.0發表會」，邀請主管機關、證券商公會、證券商代表及媒體記者實際體驗多項新功能。

11.06
本公司林董事長率員赴馬來西亞吉隆坡參加經濟合作暨發展組織 (Organization for Economic Cooperation and Development; OECD) 舉辦之 2018 年亞洲公司治理圓桌論壇會議，並擔任「公司治理架構中之彈性與比例原則使用」專題座談場次之與談人。

11.26
本公司林董事長率員赴斯里蘭卡可倫坡參加第22屆亞太地區集保組織年會(ACG22)，本公司於會中成功申設「投資人服務工作小組」；並於「亞太地區之集保產業未來展望」專題座談場次擔任與談人。



11.17
本公司為慶祝成立29週年，舉辦公益慈善市集愛心園遊會及仙跡岩親山步道健行活動，當天義賣與捐贈金額達新臺幣185萬元，已全數捐贈予中華民國視障愛心協會等11家慈善團體。

集保結算所提供投資人便捷之查詢服務

查詢**本人**及**被繼承人**之

集中保管有價證券資料

書面申請

請至集保結算所或開戶證券商辦理

網際網路申請（限查詢本人資料）

本人透過「投資人集保資料查詢系統」辦理

相關作業說明請詳閱集保結算所網站：www.tdcc.com.tw

服務電話：(02)2719-5805 分機112、141、185、195、379、395

TDCC 臺灣集中保管結算所

TAIWAN
STOCK EXCHANGE
臺灣證券交易所

逐筆交易

與國際接軌
交易效率提升
資訊透明度高

TAIWAN
STOCK EXCHANGE
臺灣證券交易所
流通證券・活絡經濟

地址：11049台北市信義路五段7號９樓
電話：(02) 2792-8188
網址：www.twse.com.tw

行政院洗錢防制辦公室
Anti-Money Laundering Office, Executive Yuan

保障您的金流安全

客戶詳審查・金流有保固・客戶詳審查・金流有保固・客戶詳審查・金流

洗錢防制大使

洗錢防制

客戶審查詳實　金流安全保固

地址｜10048台北市中正區信義路一段3號5樓　電話｜(02) 2322-2618　傳真｜(02) 2322-2680　網址｜www.amlo.moj.gov.tw/

TAIWAN DEPOSITORY & CLEARING CORP.

臺灣集中保管結算所
TDCC Taiwan Depository & Clearing Corporation

STOCK MUSEUM 臺灣股票博物館
Taiwan Stock Museum
臺灣集中保管結算所 建置

地址：台北市復興北路363號11樓｜電話：02-27195805｜傳真：02-27195403