

由比較法觀點論金融機構之適當性義務^{*}

陳 肇 鴻^{**}

目 次

- 壹、前言
- 貳、現行我國（臺灣）法制
- 參、比較法觀點
 - 一、英國
 - 二、新加坡
 - 三、香港
- 肆、分析與比較
 - 一、適用之法律關係型態
 - 二、客戶之知識、經驗及能力之判定
 - 三、適當性之標準
 - 四、資訊取得
 - 五、權利拋棄及免責條款
- 伍、結論

關鍵字：推介適當性、妥適性、適合性、行為規範、比較法、投資顧問、連動債（結構債）、衍生性金融商品、結構型產品。

Keywords：Suitability, appropriateness, conduct of business, comparative law, investment advice, structured notes, derivatives, structured products.

^{*} 本文感謝二位匿名審查人提供寶貴審查意見。

^{**} 陳肇鴻，新加坡管理大學助理教授，英國倫敦大學法學博士。

摘要

本文之主要目的，在經由比較法的研究，來檢討我國法下金融機構銷售結構型商品之適當性義務之規定以及若干問題。於金融海嘯之後，主管機關有透過行政命令課以金融機構若干程度之適當性義務，然而，由比較法的立場，我國之現行規範之適用範圍相當狹礙，且就用適用之法律關係上未更細緻地區別不同的法律關係，同時，現行規範亦未更明確界定適當性之標準。本文以為，可由風險的分類的角度出發更進一步細緻化產品適當性的問題，就結構型商品，並應同時建立更專業完整之合約審閱之機制，以明確化適當性的標準以供金融機構遵循，以利能更有效達成適當性義務之目的，並建構更完整且有效率之投資人保護機制。

Construction of Suitability Obligation of Financial Institutions When Selling Structured Products: from Comparative Law Perspective

Chen, Chao-Hung

Abstract

The purpose of this article is to examine the suitability rules regarding structured products under Taiwan law from a comparative law perspective. After the global financial crisis, Taiwan has imposed specific suitability obligations on financial institutions when they promote derivatives and structured products. However, the suitability rule is only placed in administrative regulations and its scope is also limited. In addition, Taiwan law does not distinguish different types of relationships between a financial institution and a client. Furthermore, the biggest challenge to the suitability rule is to define the meaning of 'suitable'. This article argues that the starting point is the analysis of risk suitability. However, the analysis of return aspect should not be ignored. As to product due diligence, regulators must further venture into the review of documentation and offer more detailed guidelines to financial institutions in order to serve the purpose of the suitability rule and create an efficient mechanism for investor protection.