

電子商務環境下適合性原則之運用 及紛爭解決機制之因應 —以美國及我國證券市場為中心

王 怡 蘋*

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責任編輯：黃右瑜

* 國立臺灣大學法學院博士班研究生，曾任金融消費評議中心評議處處長（101-102 年）。

摘 要

在電子商務環境下，證券商與客戶間的溝通不再單純是傳統的對話模式，尚須考慮各種非對話型態之訊息傳遞，且容有程度不一的客戶行為參與其中。本文藉由分析美國證券市場適合性原則相關法規及實務運用，歸納適合性義務的構成要件及不同案中適用程度之差異。在爭端解決上，證券商是否履行適合性義務應從兩大端點觀察：1. 證券商對其推介商品服務是否具備專業程度的理解；2. 證券商對於客戶投資目的、財務狀況、風險承受能力等是否具備合理認識。其中，推介行為尚須進一步考慮證券商如何利用所認識之客戶資料及如何期待客戶之回應，以適度合理限縮適合性義務外延，並具體化適合性義務之內涵。本文最後則就適合性義務在我國證券市場之運用及紛爭解決機制之因應提出評估及建議。

The Application of Suitability Principle and the Response to the Relevant Dispute-Resolution Scheme under E-Commerce - on the US and Taiwanese Stock Markets

-Focused on Securities Markets in Taiwan and The U.S.

Yi-ping Wang

Abstract

Under the E-commerce, communication between brokers and customers depend not simply on oral conversations, but rather, on various types of non-dialogue modes in which different customer behaviors may involve. By analyzing the suitability principle as well as its operation in the U.S. stock market, this article outlines the legal elements of the suitability obligation and the variable extent of its application case by case. In terms of the resolution of disputes, the performance of brokers' suitability obligation should be observed in two main aspects: 1. whether the broker perform professional to customers as to his recommendation of financial products or services; 2. whether the broker realizes the customer's investment purpose, financial status, risk-taking capability etc., on a reasonable basis. In order to have the scope of the suitability obligation properly limited and specified, the recommendation, among others, shall be further examined by considering what the way the customer information is utilized by brokers and how the customer's response is respected. Finally, this article will evaluate the suitability obligation in Taiwan stock market on both of its application and response to the relevant dispute-resolution scheme.