

金融英语世界

THE WORLD OF FINANCE ENGLISH



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格



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2004年
第1辑

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2004年第1辑(总第3辑)

金融监管

- 1 Regulation to Mutual Funds 对美国共同基金的法律监管
..... 符文佳 译

金融产品

- 6 Understanding the Complex World of Derivatives 理解复杂的衍生
工具世界 李·伯顿 文 闫同林 译注
- 14 Certificates of Deposit (CDs) 定期存单
..... 布赖恩·考 文 乐为 译注

风险防范

- 21 E-Finance Risks and Supervisory Challenges 电子金融风险和对
监管的挑战 汉斯·克里斯蒂森 文 李永辉 译注

银行制度

- 27 In Search of the Right Currency Regime 寻找合适的货币制度
..... 多明戈·凯沃龙 文 欧群萍 译

市场扫描

- 34 Rough Waters 水流湍急 王倩芳 译注

- 39 Broadening Corporate Responsibility 扩大企业责任感
..... 苏珊·阿瑞尔·阿然逊 文 王琳 译
-

金融服务

- 44 Multi-Media Difficulties 多媒体困境
..... 帕温·班塞尔 张 鹏 宋李健 译
-

热点追踪

- 50 Let the Dollar Drop 静观美元跳水..... 钱晓华 译
57 The BRICs Are Coming - Fast BRICs 正在迅速崛起
..... 耿汇泉 译
-

金融观察

- 62 Managing Assets Via "Alpha" 用阿尔法管理资产
..... 安卓·P·胡佛 文 何国伟 译
68 The Trade-off Theory of Capital Structure 资本结构权衡理论
.....
理查德·A·布雷利 斯图尔特·C·迈尔斯 文 邵靖 译注
-

投资理财

- 75 Why Investors Should Put Up to 30% of Their Stock Portfolio in Foreign Funds 为什么投资者应该投资其股票组合的 30% 在国外基金上 乔纳森·克莱门茨 文 肖蓉 译
81 The Property Master 掌握财富的人
..... 布瑞安·欧瑞利 文 石彦方 王倩芳 译
93 An Overview of Active Equity Portfolio Management Strategies 积极资产管理策略概览
..... 弗兰克·K·瑞雷 基思·C·布朗 文 江鹏程 译
-

证券走廊

- 102 Mission Improbable 不可能的任务
..... 布廉·卜普仁 文 孔学峰 译注

世界与中国

- 109 Bulls Let Loose in the China Shop 投机商追捧中国股
..... 弗雷德里克·柏福 文 燕溢 译

人物视窗

- 115 Nobel Laureate North Argues Institutions Have Crucial Role in Economic Growth 诺贝尔奖得主诺斯认为制度在经济增长中扮演着一个重要角色 张运鹏 译

知识空间

- 124 常见银行英语词汇 武珞

法律广角

- 130 The Basel Capital Accord—Background and History 巴塞尔协议:背景与历史 博得·罗夫斯 文 童林 译

-
- 136 稿约 本刊编辑部
-

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Regulation to Mutual Funds 对美国共同基金的法律监管

符文佳 译

Regulation Mutual funds are governed by the Securities Act of 1933 (the 1933 Act), the Securities Exchange Act of 1934 (the 1934 Act), the Investment Company Act of 1940 (the 1940 Act), the Investment Advisers Act of 1940, relevant sections of the Internal Revenue Act and Blue Sky laws of each state in which a fund operates. The success of these statutes in creating a climate of investor confidence is evidenced by the extraordinary growth of the mutual fund industry over the past decades.

The Securities Act of 1933 and Securities Exchange Act of 1934. The 1933 Act requires mutual funds to file registration statements with the SEC. All purchasers of "Fsecurities" (the definition of which includes mutual fund shares) must be provided with a prospectus. The 1934 Act requires that broker/dealers who sell mutual funds must register with the SEC. Bank employees are exempt from this requirement as long as they do not receive transaction-related compensation (commissions).

管制 共同基金由《1933年证券法》、《1934年证券交易法》、《1940年投资公司法》、《1940年投资顾问法》、国内税收法的相关条例以及基金所运作的各州的蓝天法所监管。这些法律在增强投资者信心方面成效显著,这可由共同基金业在过去几十年中的迅速发展所证明。

《1933年证券法》和《1934年证券交易法》
《1933年证券法》要求共同基金必须在SEC(美国证券交易委员会)登记注册,所有购买“证券”的投资者(“证券”的定义中包括共同基金股份)必须被提供招股说明书。《1934年证券交易法》要求销售共同基金的经济商/交易商必须在SEC登记注册。银行雇员若没有收取与

交易相关的报酬(佣金),则不受该要求的限制。

The Investment Company Act of 1940.

The 1940 Act requires that investment companies register with the SEC. The registration statements must include information about the investment objectives and strategies of the fund. These policies can not be changed without approval of the majority of investors in the fund. The Act also imposes restrictions on the amount of leverage that a fund may employ. Among other major provisions, the 1940 Act empowers the National Association of Securities Dealers (NASD) to regulate sales charges (loads) on mutual funds.

A fund's board of directors will determine which firms should be awarded contracts, and at what levels of compensation, for providing the services needed to maintain operations. Because a fund's sponsor may perform many of those services, and would have selected the original board, The 1940 Act addresses this problem by establishing that the investment advisers and the board of directors of a fund have a fiduciary obligation to the investors of the fund. The composition of the board is further restricted by the 1940 Act to enhance its indepen-

《1940 年投资公司法》

《1940 年投资公司法》要求投资公司在 SEC 注册。注册书必须包括与基金投资目标和策略相关的信息。这些投资政策在未经基金的多数投资者许可之前不得更改。该法同时规定了基金能采用的杠杠程度。《1940 年投资公司法》授权国民证券交易商协会(NASD)对共同基金的销售费用进行管理。

基金的董事会将决定和哪些公司签订合同以及向维持运营所需的服务提供多少报酬。因为基金的发起人提供了许多这样的服务并且将选举最初的董事会,所以《1940 年投资公司法》确定基金的投资顾问和董事会对投资者负有信托责任。《1940 年投资公司法》进一步限制了董事会的组成以增强其相对于发起人和其他“利益人”的独立性。同时,投资者必须同意所有的管理

dence from sponsoring organizations or other "interested parties." Furthermore, shareholders must approve all management contracts. The 1940 Act also requires investment companies to provide semiannual statements to investors and empowers the SEC to establish appropriate accounting standards. The SEC is authorized to regulate all sales literature and advertisements of investment companies.

The Investment Advisers Act of 1940 .

The investment adviser is the key provider of services to a mutual fund. The Advisers Act requires that investment advisers register with the SEC. However, banks (though not bank affiliates) acting as investment advisers to mutual funds are explicitly exempted from these provisions. The Advisers Act also imposes restrictions on the contracts that mutual funds enter into with their advisers. These provisions require that the terms of the agreement not exceed two years, that a majority of outside directors approve all renewals, and that the contract may be terminated, without penalty, by the fund at any time with 60 days' notice.

The Internal Revenue Act. Mutual funds can avoid a direct income tax assessment and pass taxable income and

合同。《1940 年投资公司法》同时要求投资公司向投资者提供半年度报表并且授权 SEC 建立适合的会计准则。SEC 还被授权监管投资公司所有的销售推广书和广告。

《1940 年投资顾问法》

投资顾问是共同基金服务的重要提供者。《1940 年投资顾问法》要求投资顾问在 SEC 登记注册。然而,银行(尽管不包括银行附属机构)作为共同基金的投资顾问可以免除这些条例的限制。《1940 年投资顾问法》同时对共同基金和它们的投资顾问签订的合同进行了限制。这些条例要求合同的期限不超过两年,但由多数外在董事同意后可以延期,并且合同可以被终止而不受任何惩罚,只要提前 60 天进行通知即可。

国内收入法 共同基金能规避直接的收入税评估并且能将应税所得和资本利得

Finance Regulation

capital gains through to the fund's investors. Subchapter M of the Internal Revenue Code defines a series of tests that a mutual fund must pass in order to qualify as a "regulated investment company" (RIC). The failure of a mutual fund to meet all of the following requirements would result in an onerous tax obligation:

* The mutual fund must be registered under the 1940 Act for the entire taxable year.

* At least 90 percent of the RIC's gross income must be derived from dividends, interest, gains on sales of securities, and other qualifying income from investments in securities. Examples of non-qualifying income would include income derived from partnerships investing in real estate or oil drilling leases.

* Less than 30 percent of a RIC's gross income may be derived from the sale of instruments held less than three months.

* At the end of each quarter, at least 50 percent of the RIC's portfolio must consist of cash, cash items, U. S. Government securities, securities of other RICs and other securities in which no

返还给投资者。国内税收法第 M 节定义了共同基金必须通过的一系列测试以满足“受监管的投资公司”的要求。共同基金若不能满足所有的下列要求将被征收繁重的税收:

* 共同基金必须在整个税收年度中根据《1940 年投资公司法》进行注册。

* 受监管的投资公司要将至少 90% 的收入发放给投资者,这些收入包括红利、利息、证券销售收入和其他合法的证券投资收入等。非合法的收入包括投资于房地产或石油钻探租赁所获取的收益等。

* 受监管的投资公司不到 30% 的总收入将从期限少于 3 个月的证券销售中获得。

* 在每个季度末,受监管的投资公司最少有 50% 的投资组合必须由现金、现金项目、美国国库券、其他受监管的投资公司的证券和其

one issuer's securities will exceed five percent of the RIC's assets and no more than ten percent of any issuer's outstanding voting securities are held by the RIC.

* At least 90 percent of the RIC's income must be distributed to the investors.

Blue Sky Laws. States have authority, subject to the primacy of federal laws, to regulate the securities activities that occur within their respective borders. Mutual funds must register, and pay filing fees, with the state securities agency in each of the 50 states, Puerto Rico and the District of Columbia, in which the fund will be distributed. Because there are variances in the procedures followed by each of the 52 jurisdictions, Blue Sky law can be complicated.

他证券组成,受监管的投资公司持有的单个发行人的证券不得超过其资产的5%,持有的发行人的有投票权的证券不得超过10%。

* 受监管的投资公司至少90%的收入必须分配给投资者。

蓝天法 根据基本的联邦法,美国各州有权管理发生在本州内的证券活动。共同基金必须在其分布的50个州以及波多黎各和哥伦比亚地区进行注册并交纳注册费。因为这52个行政区有不同的程序,所以蓝天法是很复杂的。

Understanding the Complex World of Derivatives*

理解复杂的衍生工具世界

By Lee . Breton

闫同林 译注

What are derivatives anyway, and why are people saying such terrible things about them?

什么是衍生工具？为什么人们把它说得如此恐怖？

Some critics see the derivatives market as a multi-trillion-dollar house of cards composed of interlocking, highly leveraged transactions¹. They fear that the default of a single large player could stun the world financial system.

许多评论家把衍生工具市场看成一个由相互关联的高杠杆交易组成的数以亿计的美元存储卡，他们担心一个大的参与者的违约将摧毁世界金融体系。

Because the science of derivatives is relatively new. There's no easy way to gauge the ultimate impact these instruments will have. There are now more than 1200 different kinds of derivatives on the market, most of which require a computer program to figure out. Surveying this complex subject, dozens of derivatives experts offered these insights.

由于对衍生工具的研究相对来说刚刚起步，因而没有一种简单的方法来衡量这些工具的最终影响。现在市场上有 1200 多种不同类型的衍生工具，它们当中的大部分需要用计算机程序进行计算。在对这一复杂的学科进行的问卷调查中，许多衍生工具专家发表了如下的见解：

* Source: Lee Berton, "Understanding the Complex World of Derivatives," The Wall Street Journal, June 14, 1994.

Q: What are the most common forms of derivatives?

A: Derivatives come in two basic categories, option-type contracts and forward-type contracts. These may be exchange-listed, such as futures and stock options, or they may be privately traded.

Options² give buyers the right, but not the obligation, to buy or sell an asset at a preset price over a specific period. The option's price is usually a small percentage of the underlying asset's value.

Forward-type contracts, which include forwards³, futures⁴ and swaps⁵, commit the buyer and the seller to trade a given asset at a set price on a future date. These are "price fixing" agreements that saddle the buyer with the same price risks as actually owning the asset. But normally, no money changes hands until the delivery date, when the contract is often settled in cash rather than by exchanging the asset.

Q: In business, what are they used for?

A: While derivatives can be powerful

问:衍生工具最普遍的形式有哪些?

答:衍生工具可以分为两个基本的种类,即期权型合同和远期型合同,它们可以在交易所注册交易(如期货和股票期权),也可以私下交易。

期权给予期权购买者在特定日期内以预先设定的价格购买和销售某一资产的权利,而非义务。期权的价格通常是基础资产价值的一个很小的百分比。

远期型合同,包括远期、期货和互换,是买卖双方在将来某一日期以设定的价格交易特定资产的承诺。这些“固定价格”型协议使购买者承担了与实际拥有资产相同的价格风险。但通常,在交割日合同经常以现金结算而不是进行资产的交换,交割日之前则没有货币的换手。

问:企业把衍生工具用于何种目的?

答:虽然衍生工具是强

Finance Products

speculative instruments, businesses most often use them to hedge. For instance, companies often use forwards and exchange-listed futures to protect against fluctuations in currency or commodity prices, thereby helping to manage import and raw-materials costs. Options can serve a similar purpose, interest-rate options such as caps and floors⁶ help companies control financing costs in much the same way that caps on adjustable-rate mortgages do for homeowners.

Q: How do over-the-counter derivatives⁷ generally originate?

A: A derivatives dealer, generally a bank or securities firm, enters into a private contract with a corporation, investor or another dealer. The contract commits the dealer to provide a return linked to a desired interest rate, currency or other asset. For example, in an interest-rate swap, the dealer might receive a floating rate in return for paying a fixed rate.

Q: Why are derivatives potentially dangerous?

A: Because these contracts expose the two parties to market moves with little

有力的投机工具,但企业经常用它们来对冲风险。例如,公司经常使用远期和期货来保护货币或商品价格的波动,因而用于进口和原材料的成本管理。期权被用于相似的目的,上限和下限利率期权用于公司融资成本的控制,这同房屋所有者使用利率上限对可调整利率抵押进行保护是非常相似的。

问:柜台市场衍生工具通常是如何产生的?

答:衍生工具交易商(通常是银行或证券公司)同公司、投资者或其他交易商达成私下的合同,合同保证交易商得到与所要求的利率、货币或其他资产相联系的回报。例如,在利率互换中,交易商可通过支付固定利率而收到浮动利率回报。

问:为什么衍生工具具有潜在的危险?

答:因为这些合同使双方暴露在市场的运动当中,

or no money actually changing hands, they involve leverage. And that leverage may be vastly increased by the terms of a particular contract. In the derivatives that hurt P&G, for instance, a given move in U. S. or German interest rates was multiplied 10 times or more.

When things go well, that leverage provides a big return, compared with the amount of capital at risk. But it also causes equally big losses when markets move the wrong way. Even companies that use derivatives to hedge, rather than speculate, may be at risk, since their operation would rarely produce perfectly offsetting gains.

Q: If they are so dangerous, why are so many businesses using derivatives?

A: They are among the cheapest and most readily available means at companies' disposal to buffer themselves against shocks in currency values, commodity prices and interest rates. Donald Nicoliasen, a Price Waterhouse expert on derivatives, says derivatives "are a new tool in everybody's bag to better manage business returns and risks."

Recent experience has shown that

并且很少或没有货币换手,因而具有杠杆性质,并且杠杆会因为特定的合同条款而被大量放大。例如,在重创宝洁公司的衍生工具中,美国或德国利率的既定变化被放大了10倍或更大。

当情况改善时,与风险资本额相比,杠杆提供了高额回报;但当市场向不良的方向运动时,杠杆也会引起同样大的损失。即使公司把衍生工具用于对冲而非投机,但由于其操作很难产生完全抵消(风险)的回报,因而公司同样会承担风险。

问:如果衍生工具是如此的危险,为什么那么多商业机构使用衍生工具?

答:衍生工具是公司用于缓冲货币价值、商品价格和利率的震荡带来的冲击的最低廉、最易于使用的手段。普华永道公司的一位衍生工具专家唐纳德·尼古里森说过,衍生工具是“每个人更好的管理商业回报与风险的新工具”。

最近的实践表明衍生工

Finance Products

“derivatives” pose their own special brand of risk for both the buyers and sellers of these instruments.

For one thing, derivatives involve at least two parties to the contract that creates them and either party may fail to deliver or pay what is agreed to, exposing the other party to loss (often referred to as counter-party risk). Other forms of risk associated with derivatives include price risk (as their market values change), liquidity risk (because traders may be prevented from carrying out risk-covering transactions), settlement risk (when securities are delivered before payment is received), operating risk (due to faulty internal controls on trading activity), legal risk (if derivative customers sue to recover their losses), and regulatory risk (when regulations are changed or violated). Derivatives can become so complex that it's easy for a trader to become entangled in multiple contracts and lose track of his or her firm's true position and exposure to loss. At the same time, inexperienced traders find it easy to cross the line from prudent risk management to outright speculation for profit.

Indeed, several large companies (such as Bankers Trust Company) recently

具给这些工具的购买者和销售者都带来了特定的风险。

首先,衍生工具合同至少涉及两个当事人,并且每一方都可能违约,不进行交割或付款,这给对方造成了损失(即通常所谓的交易对手风险)。与衍生工具相联系的其他形式的风险包括价格风险(即市场价值的变化)、流动性风险(因交易者无法进行风险抵补交易所产生的风险)、结算风险(当证券在款项收到之前就已交割所产生的风险)、操作风险(交易业务的内部控制失败)、法律风险(顾客提起诉讼)和监管风险(当监管规则发生变化或被违背所产生的风险)。衍生工具是如此的复杂,交易者很容易陷于复杂的交易中并无法认清公司当前的真实处境,进而导致损失发生。同时,没有经验的交易者很容易从谨慎的风险管理转变为完全的利润投机。

实际上,最近几家大公司(如银行家信托公司)都报

have reported large losses from derivatives trading. At the same time, many of the financial firms advising corporations to make heavier use of derivatives have been accused of promising too much and ignoring the welfare of their clients in pursuit of fat commissions.

Still, it's important not to overlook the potential benefits that properly managed derivatives trading offers users. These include saving money on interest costs and better balancing of a business firm's cash inflows and outflows. Moreover, with relatively low cash margins required by most brokers, it is possible to control large amounts of capital with the investment of only limited amounts of cash. And, thanks to a 1993 change in IRS (Internal Revenue Service) regulations, losses from hedging transactions may be treated as "ordinary" losses and, therefore are deductible from taxable income as long as the hedges and the items hedged are clearly identified up front.

Those who use derivatives must learn the principles of prudent risk management and employ up-to-date technology to monitor derivatives trading and settlements and to value any derivatives traded. Derivative-trading firms should have boards or risk committees that set

告了因衍生工具而导致的损失。同时许多向公司建议大量使用衍生工具的金融企业受到了谴责,因为他们为了高额的手续费而不顾客户的利益,向公司做出了种种承诺。

重要的是不能忽略恰当管理的交易给衍生工具使用者带来的潜在收益,这包括节约利息成本和更好的匹配企业的现金流入与流出。而且由于大多数经纪人要求相对低的现金保证金,因而使得仅以有限的资金控制大额资本成为可能。并且由于国内收入署(IRS)的监管规则在1993年发生变化,对冲交易发生的损失可作为正常损失处理,因而只要对冲及被对冲的项目被清楚的界定,这部分损失可以从课税收入中扣除。

那些使用衍生工具的人应了解谨慎的风险管理原则,并使用最新的技术对衍生工具的交易和结算进行监测,对所交易的衍生工具进行评估。交易衍生工具的公司应由董事会或风险委员会