SPECIAL ISSUE 2010特刊

研究 思考 探索

- 国际评级业和评级监管的发展与演变
  The Development and Evolution of International Credit Rating Industry and Credit Rating Regulation
- IOSCO 三大监管支柱及对我国评级监管的启示
  The IOSCO Three Pillars of Regulation and Their Inspiration to China Credit Rating Regulation
- 我国资信评级行业的发展历史、问题及建议
  The Development History, Problems and Recommendations of the Credit Rating Industry in China

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前 言

资信评级是金融基础设施建设的重要组成部分，是金融体系健康发展的重要前提。近几年来，在监管部门政策推动和信用债券市场快速发展的大背景下，我国资信评级行业取得了长足发展，评级机构在制度、技术等方面日益完善，逐步引起社会各方的关注。特别是金融危机爆发之后，社会舆论对资信评级行业的关注程度日益增加，引发了包括官员、学者、业内人员等各方人士对评级业存在问题的积极讨论，资信评级成为市场的焦点话题。整体来看，各方观点不尽相同，立论基础不同，产生了一定的认识误区，不利于人们正确理解资信评级行业的本质，阻滞了资信评级行业的发展。

新世纪公司在过去的几年中，对国际评级业监管和中国评级业发展等方面进行了系列的研究，并积极与证监会、人民银行、保监会等多部委相关人士进行沟通与交流，同时通过对标准普尔总部及部分子公司进行调研、考查，最终形成了涵盖国际监管演变、对国内监管的启示、以及国内评级行业现状的研究、思考、探索三方面的研究成果。

这三篇文章已经在新世纪公司的《专刊》和《研究报告》中陆续刊出，为使监管部门、媒体、投资者、发行人、同行业人员及社会各方能更系统、更准确地了解国际监管及国内评级业现状，推动中国评级业的健康发展，兹特别刊出，以供参考。

编者

2010.12

FOREWORD

Credit rating is an important part of the financial infrastructures. It is crucial to the healthy development of the financial system. The credit rating industry in China has been developed rapidly with both promotion of the regulatory authorities and rapid development of the credit and bond markets in recent years. Credit rating agencies (CRAs) in China have improved their governance and refined their rating methodologies to a large extent. The credit rating industry in China has drawn the increasing attention from the media since the financial crisis. It has also trigged discussion and debates over the issues arising from the nature of the credit rating industry among government officials, scholars and professionals from CRAs. As a result, the credit rating has become a very hot topic of the market. The views from different parties vary due to their different positions. Consequently, there are some unclear understandings which are conducive to neither better understanding of the rating industry, nor the development of the rating industry.

The Shanghai Brilliance Credit Rating and Investors Service Co., Ltd. (Shanghai Brilliance) has conducted a series of researches on the regulations of the rating industry in various jurisdictions within the international community and the development of the rating industry in China in the past few years. The Shanghai Brilliance has actively communicated their views with the officials from the regulatory authorities including the People's Bank of China, China Securities Regulatory Commission and China Insurance Regulatory Commission. The Shanghai Brilliance has also conducted field studies in Standard and Poor's headquarters and some of its subsidiaries. The Shanghai Brilliance has summarized such researches and studies in three articles: The development and evolution of international credit rating industry and credit rating regulation, the IOSCO three pillars of regulation and their inspiration to China credit rating regulation, and the development history, problems and recommendations of the credit rating industry in China.

The Shanghai Brilliance has published these three articles in the journals of Special Report and Research Report. The Shanghai Brilliance compiles them in this Special Issue for the reference of the regulatory authorities, media, investors, issuers, peer agencies and other concerned parties in their better understanding of the current status of regulation of both international rating industry and the rating industry in China to advance the healthy development of the rating industry in China.

Editor
December 2010

目 录

第一篇 国际评级业和评级监管的发展与演变 1
一、评级业的起源：信息传播 1
（一）评级业的起源与早期的市场优胜劣汰 1
（二）声誉资本与评级在政府法规中的使用 2
（三）法律责任归属溯源 公共利益特权 2
二、NRSRO概念：促进评级业的转型和发展 3
（一）NRSRO概念的提出 3
（二）初期对NRSRO标准的衡量 4
（三）金融服务业的转型 4
三、安然事件影响下评级行业监管走向法制化 5
（一）美国监管部门对评级机构功能调查及对NRSRO的规则提案 5
（二）国际证监会组织（IOSCO）制定的基本准则 6
（三）美国《2006年评级机构改革法案》......6
四、次贷危机以来评级行业监管的强化和国际协调 7
（一）美国SEC对NRSRO监管的强化 7
（二）欧盟对评级机构的监管措施 8
（三）IOSCO对基本行为准则的修订及G20峰会对其的认可 9
五、对我国评级行业监管的几点思考 9
第二篇 IOSCO三大监管支柱及对我国评级监管的启示 11
一、IOSCO的三大监管支柱 11
（一）独立性和利益冲突管理 12
（二）透明度和信息披露 12
（三）评级过程质量控制 12
二、IOSCO的三大监管支柱在国际上的实行 12
（一）IOSCO三大监管支柱在美国的实行 12
（二）IOSCO三大监管支柱在欧盟的实行 13
（三）IOSCO三大监管支柱在印度的实行 14
（四）亚洲资信评估协会对IOSCO三大监管支柱的推行 14
三、IOSCO三大监管支柱给我国资信评级行业监管的启示 15
（一）强化基于评级机构市场化运作基础上的独立性制度构建 15
（二）重视透明度和知识产权保护的协调 16

（三）完善评级过程的质量控制体系 17
（四）促进统一监管，降低监管成本 18
第三篇 我国资信评级行业的发展历史、问题及建议 19
一、我国资信评级行业的发展历史 19
（一）中国资信评级业的诞生 19
（二）银行间债券市场快速发展促进中国评级业的成长 20
二、中国资信评级业面临的主要问题 21
（一）资信评级业发展的理论混乱 21
（二）资信评级业的社会认知不足 21
（三）资信评级业的多头监管问题突出 21
（四）资信评级行业协会重叠或交叉设立 21
（五）资信评级业的政府介入过深 22
（六）资信评级业市场地位较低 22
（七）资信评级的业务品种较少、规模较小 22
（八）存在以信用级别确定发行利率的倾向 22
三、推动我国资信评级行业规范发展的若干建议 23
（一）统一监管主体仍需明确，监管思路仍需理清，法律建设仍需推进 23
（二）统一行业自律组织建设需要推进 24
（三）做好评级制度安排，避免监管主体、行业协会和评级机构的错位，禁止金融机构进入评级市场，禁止金融机构入股评级机构 24
（四）提高收费水平，提升资信评级行业地位，稳定分析师队伍 24
（五）推进债券市场发展，推动交易对手主体评级，推动理财产品资信评级 25
（六）加强评级机构的基础建设 25
（七）坚持资信评级机构的市场化、本土化和国际化的发展方向 26

Table of Contents

Article One The Development and Evolution of International Credit Rating Industry and Credit Rating Regulation 27

Executive Summary 27

I. The Origin of the Credit Rating Industry: Information Dissemination 27

A. The Origin of the Credit Rating Industry and the Early Market Survival of the Fittest 27

B. The Use of Reputation Capital and the Reference of Credit Rating in Government Regulations 28

C. The Origin of Legal Liability Attribution: Public Interest Privilege 29

II. The NRSRO Concept: Promotion of the Transformation and Development of the Rating Industry 30

D. The Proposal of the NRSRO Concept 30

E. The Early Measurement of the NRSRO Standards 31

F. The Transformation to the Financial Service Industry 31

III. Influence of the Enron Collapse: Legitimation of Rating Industry Regulation 32

G. The Investigations on Functions of CRAs and Designation of NRSRO Rules by the U.S. Regulatory Authorities 32

H. The Basic Principles of the Technical Committee of the International Organization of Securities Commissions (IOSCO) 34

I. The U.S. Credit Rating Agency Reform Act of 2006 34

IV. The Strengthening and International Coordination of the Regulation of the Rating Industry since the Subprime Crisis 35

J. The Strengthening of the SEC Oversight of CRAs 35

K. The European Union's Regulatory Measures on the CRAs 37

L. The IOSCO's Revisions and G20's Recognition of the IOSCO CRA Code 38

V. Some Thoughts on the Regulation of China Rating Industry 39

Article Two The IOSCO Three Pillars of Regulation and Their Inspiration to China Credit Rating Regulation 41

Executive Summary 41

I. The IOSCO Three Pillars of Regulation 41

A. Independence and Conflicts of Interest 42

B. Transparency and Timeliness of Ratings Disclosure 43

C. Quality and Integrity of the Rating Process 43

II. International Implementation of the IOSCO Three Pillars of Regulation 43

D. Implementation of the IOSCO Three Pillars of Regulation in the United States 43

E. Implementation of the IOSCO Three Pillars of Regulation in the European Union 44

F. Implementation of the IOSCO Three Pillars of Regulation in India 45

G. Implementation of the IOSCO Three Pillars of Regulation in the Association of Credit Rating Agencies in Asia 46

III. Inspiration from the IOSCO Three Pillars of Regulation to China Credit Rating Regulation......47

H. Strengthening of an Independent System Formation Based on Market Mechanism of CRAs 48

I. Emphasis on the Coordination between Transparency and Intellectual Property Protection 49

J. Improvement of the Quality Control System of the Rating Process 50

K. Promotion of the Unified Regulation and Reduction of the Regulatory Costs 52

Article Three The Development History, Problems and Recommendations of the Credit Rating Industry in China 53

I. The Development History of the Credit Rating Industry in China 53

A. The Birth of the Credit Rating Industry in China 53

B. The Rapid Development of the Inter-bank Bond Market Promoted the Growth of the Rating Industry in China 54

II. Major Issues Faced by the Rating Industry in China 55

C. Theory Confusion in the Rating Industry Development 56

D. Insufficient Social Cognition on Credit Rating 56

E. Prominent Problem in Multi-regulation of Credit Rating 56

F. Overlapping or Crossing Establishment of the Associations of the Rating Industry 57

G. Excess Government Intervention to the Rating Industry 57

H. Low Status of the Rating Industry in the Market 58

I. Few Rating Products and Small Rating Market 58

J. The Tendency of Bond Coupon Rate Determined by the Credit Rating 58

III. A Number of Recommendations on Advancing Standardized Development of the Rating Industry in China 59

K. Define a Unified Regulatory Authority, Clarify the Regulatory Mentality and Advance the Legislation 59

L. Establish a Unified Industry Self-regulatory Organization 60

M. Make a Rating Institutional Arrangement, Avoid Misplaced Regulatory Authorities, Industry Associations and CRAs, and Ban Financial Institutions' Entry to the Rating Market and Equity Investment to CRAs 61

N. Increase the Rating Compensation, Raise Status of the Rating Industry and Stabilize the Analyst Team 61

O. Advance Bond Market Development and Promote Counterparty Rating and Investment Product Rating 62

P. Strengthen Infrastructure of CRAs 63

Q. Adhere to Marketization, Localization and Internationalization as CRAs' Development Direction 64

国际评级业和评级监管的发展与演变

文 / 朱荣恩 应娟

摘要：评级业起源于信息传播，在市场之手及政府推动的作用下，评级业完成了向金融服务业的转型，并获得了市场影响力。安然事件后尤其是本轮次贷危机发生以来，对评级业的监管趋于法制化、规范化、协调化。国际评级业和评级监管发展历程启示我们：监管的宗旨是通过促进评级机构发展来更好地发挥资信评级对社会的促进作用，监管措施是伴随行业发展而发展的；基于评级业内在风险属性，法律责任的追究要慎重，尤其是在行业发展初期；对于评级收费，评级业历史演变所选择的发行人付费模式，不是理论上的最佳但却是切实可行的。

一、评级业的起源：信息传播

（一）评级业的起源与早期的市场优胜劣汰

众所周知，世界上最早的资信评级机构产生于美国。19 世纪中叶，美国西部大开发，铁路产业空前繁荣，在银行和直接投资不能满足所需资本的情况下，铁路产业开始大量通过私募债券市场进行融资。与联邦和地方政府债券组成的债券市场不同，私募债券市场信息不对称的问题非常严重，同时由于投资者质疑铁路债券发行中的金融机构利用其信息优势获取利益，因而市场对独立第三方提供的信息产生了强大的需求，这直接催生了评级业的产生。1909 年穆迪公司发布了第一份铁路债券评级报告。

随着评级机构评级意见的发布，信息传播的深度、广度大幅提高，信息不对称问题得到了有效地缓解，越来越多的企业（包括原来难以通过债券市场融资的中小企业）开始进入债券市场，融资项目也从原本较为熟悉的东部中部地区进一步深入到当时广袤而鲜为人知的西部。评级行业的发展反过来促进了债券市场的发展，市场各方主体逐步意识到了评级的作用。

从国际三大评级机构的起源看，大多能找到出版行业的影子，如标准普尔公司的前身为普尔出版公司（Poor's Publishing Company，1916）和标准统计公司（Standard Statistics Company，1922），惠誉公司的前身为惠誉出版公司（Fitch Publishing Company，1924）。且从评级机构此时的盈利模式看，均系通过出版相关刊物、向投资者出售评级报告等方式获取收益。综合来看，资信评级行业起源更确切的说是信息传播业，评级机构则是信息供应商。

在此阶段，评级行业处于完全的市场竞争阶段，评级机构的生存和发展遵循市场的优胜劣汰法则。没有

监管部门对评级行业进行监管，也没有相关政策的扶持和推动。

（二）声誉资本与评级在政府法规中的使用

在市场之手的作用下，国际评级机构良好的业务记录使其成为优秀的预言家，从而初步赢得了市场的认可，建立了声誉资本。尤其在 1929-1933 年大萧条中，债券违约事件层出不穷，如 Hickman（1958）对美国公司债券的研究发现，1932 年以前发行的、1932 年之后到期的债券中有 23% 发生了违约，但被评级机构定位为高级别的债券却很少出现在违约公司名单中，这使投资者和监管者确信，资信评级可以为投资者提供保护。评级的市场认可度逐步提高。

随后，美国证监会（SEC）和银行监管部门先后作出一些具体规定，在限制对一些高风险债券进行投资的同时，利用评级机构的评估结果作为投资的准则。例如 1931 年美国的货币审计署（the Office of the Comptroller of the Currency）明确规定，如果银行持有的债券按照面值入账，则该债券必须经过至少一家评级机构评级，且公开评级不得低于 BBB 级，否则应按照市场价值进行减值，因此导致的账面损失的 50% 冲减银行的资本。1936 年，货币审计署和美联储进一步规定，禁止银行持有 BBB 级以下的债券，且银行持有的所有债券必须经过至少两家评级机构的公开评级。

可以说，政府部门对评级结果的使用，有效地扩大了评级的市场需求，从而推动了评级行业的进一步发展。在此阶段，尽管监管机构和投资者将评级机构的观点作为决策依据，但并没有明确的政府监管主体，不存在统一的认可和监管措施对评级机构进行规范，评级行业还是完全依赖各家评级机构建立于声誉资本之上的自律和市场淘汰法则的约束。这一监管体系是与评级行业处于发展初期、评级业务相对简单等特点息息相关的。

（三）法律责任归属溯源：公共利益特权

评级机构能在美国稳步发展，并为日后构建世界范围内的影响力打下扎实基础，除了美国旺盛的市场需求、较为成熟的金融体系和较为完善的市场配套制度外，还有一点不可忽视，那就是其法制环境。

资信评级是对债务人或者特定债务未来偿付可能性的判断，客观地说对未来进行“预测”的业务性质本身就存在着风险，我们可以称之为“揭示风险的风险”。这一业务的内在风险属性决定了其很难划清评级意见的失误是内在风险属性使然，还是技术不足或缺乏应有的审慎造成，甚或是人为失误导致，很多时候是众多因素共同作用的结果。在这种情况下如果评级机构头顶时刻高悬“追究法律责任”的达摩克利斯之剑，瞻前顾后的评级机构就不会自由地表达其评级观点，而且很可能一不小心就官司缠身而遭受覆顶之灾。这在业务前期表现地更加充分，若违约、判断失误等概率事件发生在评级机构的起步阶段，若因为这些概率事件而追究评级机构的法律责任，甚至使其永久退出市场，那么它就丧失了机会来证明其长期的评级表现是令人满意的。因此，基于评级业务内在风险属性和信息传播业的特点，在法律责任界定和追究方面要谨慎且适度，尤其在行业发展的初期。

美国的法律环境和司法实践将资信评级视为“新闻媒体”，而新闻媒体的出版自由是受到法律保护的。美国第一宪法修正案明确规定，公民自由发表言论的权利神圣不可侵犯。美国法院的很多案例都肯定了评级机构对外发布评级信息属于出版行为，它的出版自由受宪法保护。此外，金融信息出版机构向公众提供信息能解决信息不对称问题，有利于投资者的利益和资本市场的稳健，因而这符合公众利益。典型的法律判例在美国可追溯到“沙利文原则”（英国则是“雷诺兹特权”），或者说是“公共利益特权”。即涉及公众“有权获知”的出版，即使后来证明有错，仍有可能受到特权保护，除非这种出版被证明含有实质上的恶意（actual malice）。只要不怀恶意，出版公众领域的相关信息时，不得因这些出版机构发布的信息含有错误的内容而使他们受到法律追诉。在 1993 年杰斐逊县学区诉穆迪、1994 年橙县诉标准普尔的案例中，评级机构以法律保护出版自由，不存在实质性恶意等抗辩理由而获得了法官的认同。

二、NRSRO 概念：促进评级业的转型和发展

（一）NRSRO 概念的提出

在市场之手的作用下，资信评级在解决信息不对称等问题上的作用赢得了市场的认可，同时监管部门相关决策中对评级结果的使用也极大地促进了评级的市场需求，评级结果使用范围日趋广泛，评级机构初步建立了其市场公信力。

进入 20 世纪 70 年代，美国经济出现了高通货膨胀和高利率的现象，使得债券市场受到了很大的影响。在石油危机背景下，1974 年美国发生了自 30 年代大萧条以来的最严重的经济衰退。本次危机暴露了一个新的特点，即一些被资信评级机构给与较高信用级别的公司，仍然发生了债券违约现象。当时著名的“宾州中央铁路公司违约事件”发生之前，资信评级机构给与其发行的商业票据的资信等级就是最高的。这让投资者发现，并非所有评级机构得出的评级结论都能很好地揭示风险，因而在使用评级结果的过程中需要对不同评级机构进行甄别，从而提高信用级别的信息含量。

为了规范评级结论的使用，1975 年 SEC 通过“无异议函”（no-action letter）的方式将当时三家主要的评级公司——穆迪、标准普尔和惠誉公司确认为第一批“全国认可的统计评级机构”（Nationally Recognized Statistical Rating Organizations，NRSRO），并将这些机构的评级结果用来确定净资本规则（Net Capital Rule）下的经纪公司的净资本。SEC 当时引入 NRSRO 的初衷很简单，就是根据《证券交易法》15c3-1 规定，提供一种根据债务类证券的不同评级来确定资本扣除的方法，即那些被 NRSRO 评为投资级别的证券，允许相对较低的扣减，因为这些证券通常比那些低级别的证券具有更好的流动性，且价格的波动更少。但随着时间的推移，市场和监管机构越来越多地依赖于信用评级，NRSRO 认可的重要性日益突出。例如美国国会在证券交易法第 3(a)(41) 款中定义“抵押证券”（mortgage related security）并将其作为 1984 年二手抵押市场促进法（the Secondary Mortgage Market Enhancement Act of 1984）的一部分时，要求这些证券至少由一家 NRSRO 评为两种最高级别中的一种（即 AA 级别以上）；1989 年国会进一步将 NRSRO 概念引进联邦储蓄保险法（the Federal Deposit Insurance Act），认为公司债券要成为投资级，至少要一家

NRSRO 将其评为四种最高级别中的一种（即 BBB 级别以上）等。评级结果除在联邦和州立法中作为基准外，在金融和其他监管机构、外国监管制度和私人金融合约中也得到了广泛的使用，如美国教育部根据 1965 年高等教育法第四章，使用 NRSRO 的评级为那些希望参加学生自助计划的机构建立金融责任的标准，在领土外管辖权中使用 NRSRO 概念，以及私人合约中评级扳机（rating trigger）的使用等。

监管机构对评级资质的认可，以及众多法规和合约中对 NRSRO 概念和 NRSRO 评级结果的使用，大幅度增强了 NRSRO 的市场影响力。正是在市场之手和政府力量的双重推动下，国际性评级机构逐步形成了强大的话语权。在此阶段，NRSRO 地位的授予包含了极少的、非正式的监管，因为当时仍然主要依靠市场接受度而非监管标准；就具体监管内容来看，主要集中在资质认可所产生的市场准入方面，没有针对评级机构的内部管理、评级业务流程，评级从业人员的执业行为等方面提出明确的要求。

（二）初期对 NRSRO 标准的衡量

SEC 对 NRSRO 地位的评估，核心的考虑就是该评级机构是全国公认的，意思是评级机构在全国被认为是可信的，可靠地，并且其评级结果被资本市场的主要用户广泛接受。但是对于怎样才算可信可靠，怎样才算被用户广泛接受，SEC 并没有给出特定的评价标准。此外，对于 NRSRO 的认可方式，SEC 没有通过透明的法律形式，而是以无异议函的方式进行默认。这种缺乏明确标准的资质认定以及以无异议函这种缺乏法律支持的方式进行认可，受到了市场的广泛诟病。

市场观点认为，标准和认可程序的不透明，给市场新进入者带来了巨大的障碍，严重的限制了评级行业的市场竞争。且由于美国 SEC 最初认可的 NRSRO 数量较少，市场竞争不充分，标准普尔和穆迪公司因先发优势在市场上占有了绝对的垄断地位，NRSRO 认可制度客观上促成了评级行业市场垄断格局的形成。

（三）金融服务业的转型

1970 年宾州中央铁路公司的倒闭是美国历史上最大规模的破产案，这一事件震惊了美国的债券市场，并推动发债人和投资者更为清楚地认识到，必须更好地确定和了解债务发行中所包含的风险水平。而当时的评级主要根据公开获得的信息，通过统计方法得到，并通过投资者订购的方式付费，这一现状与市场的需求产生了脱节。第一，债务发行规模和复杂度的飞速发展，要求资信评级机构提高评级方法的准确性，不能完全依赖基于统计方法驱动的分析，而应该采取新的评级方法论，后者包括了更多的基本面分析，更多的私有信息含量，以及综合运用现代金融理论和数学工具来定量评估信用风险进行辅助判断。这就要求评级机构不单纯是金融信息的供应商，还应该对金融信息进行深度分析、加工、提炼，从而提供有更多增值价值的金融服务；第二，投资者订购方式信息传播范围窄、及时性差，级别信息对整个社会的外部正效应因传播低效率而被削弱。而债务市场的快速发展和违约事件的发生促使整个社会对评级信息传播的透明度和及时性提出了更高的要求，从而有利于投资者及时作出风险决策，提高资源配置的效率；第三，因为评级机构向订购的投资者提供信用级别、完整的评级报告以及受评对象重要私有信息等，随着互联网等技术的逐步发展，这种信息提供模式不

利于机密信息的保护和评级公司的知识产权；第四，由于投资者付费模式下评级机构面临的有效需求相对偏少，评级机构的收益难以支持其向金融服务业转型中对人员、评级方法、数据库等方面的投入，从而影响了评级机构的持续发展；而与此同时，NRSRO资质的认可和评级结果使用范围的日趋扩大客观上也使得评级机构有一定的话语权去向发行人收取评级费用。正是在这多重因素的影响下，评级行业在历史演进中选择了发行人付费这种主流收费模式，同时评级行业在此间也完成了从信息传播业向金融服务业的转变。

三、安然事件影响下评级行业监管走向法制化

（一）美国监管部门对评级机构功能调查及对NRSRO的规则提案

随着全球资本市场的发展，评级业务得到了前所未有的发展机遇，主要评级机构规模迅速壮大，评级产品日趋复杂，并在全球范围内逐步拓展其影响力。但与此同时，国际性评级机构暴露出的问题也日益引起市场的关注。20世纪90年代，SEC和国会研究了一系列关于评级机构监管的问题，考虑了多种方案，其中3个主要方案分别是（1）在SEC的有关法规中撤消对NRSRO评级结果的依赖；（2）保持现状不变；（3）强化监管。但当时并没有达成一致意见。其后在墨西哥金融危机、1998年亚洲金融危机、阿根廷金融危机，以及安然事件、世通破产案件中国际性评级机构的表现差强人意，市场质疑声不断。为重拾投资者信心，美国相关监管部门逐步加强了对评级机构的监管活动。具体见下表：

表1: 安然事件之后美国监管部门活动一览表

时间	部门	法规/提案/报告	基本要求/建议/议题
2002.3	参议院政府事务委员会	“评级者的评级：安然与资信评级机构”听证会	要求：SEC明确NRSRO任命的条件；SEC应该通过常规的监控活动来确保评级机构遵循这些条件。
2002.6	美国国会	萨班斯—奥克斯利法案	SEC对评级机构在资本市场运行中的角色和功能进行研究。包括（1）提高评级过程的信息流；（2）潜在的利益冲突；（3）所谓的反竞争或不公平竞争；（4）进入资信评级行业的潜在监管障碍；（5）对资信评级机构的持续监管等等。
2002.10	参议院政府事务委员会	报告“安然的财务监管：SEC和私人部门看门人”	批评了三大评级机构没有及时地向公众警告，并要求对评级机构进行额外的监管和培训。
2002.11	SEC	两次听证会	资信评级机构当前的角色和功能；评级过程中的信息流动、对评级机构的关注事项（如利益冲突等）以及评级机构的监管（包括潜在的进入壁垒等）
2003.1	SEC	“资信评级机构在资本市场上的角色和功能”的报告	内容包括：评级机构的角色及对证券市场的重要性；资信评级机构发挥作用过程中面临的障碍；进入评级行业的壁垒；以及评级机构面临的利益冲突等。除此之外，报告还对诸如反竞争或不公平执业、在执业过程中应有的职业关注水平以及SEC对评级机构的监管方式和程度等.
2003.6	SEC	“评级机构和评级在联邦证券法下的使用”的概念公告	内容包括：是否继续在联邦证券法下将资信评级作为监管目的，如果还继续使用的话，哪家公司的资信评级结果可以使用，如何对这些评级机构进行监管等等。
2005.4	SEC	对“NRSRO”术语进行定义的规则提案	所谓的NRSRO是一个实体：（1）能够发布公开可获得的资信评级，对债务人当前的信誉进行评价，特别是对特定的证券或货币市场工具进行评级；（2）作为一个可信和可靠级别的发布者，该机构在金融市场上被广泛接受，包括对特定行业或特定区域的评级被证券级别的使用者广泛接受；（3）使用系统的程序来确保评级的可信性和可靠性、管理潜在的利益冲突，并防止非公开信息的误用，有足够的财务资源来确保对这些程序的执行。

从安然事件后监管部门的活动以及上述报告的内容看，基本的结论主要体现在以下几个方面：（1）评级机构在资本市场中发挥着重要的作用，这种作用应该继续发挥；（2）应该向市场公开 NRSRO 的认可原则，以增加评级机构认可程序的透明性；（3）应该对认可的评级机构进行持续的监控，并保证得到认可的 NRSRO 发布的级别具有高质量；（4）监控的主要内容应该包括评级人员（如分析师的经验、能力、业务压力和持续培训等）；评级程序（如保持与发行方亲密接触、检查信息来源渠道和准确性等）；评级结论（保证级别的客观公正等）；内部管理程序（如保护内部信息不会被不恰当的使用，保证评级不会存在利益冲突或者受到政治、经济的压力等）。

（二）国际证监会组织（IOSCO）制定的基本准则

2003 年国际证监会组织（IOSCO）出台了《IOSCO 信用评级机构基本准则声明》，主要表现在以下四个方面：（1）评级过程的质量和公正性；（2）独立性和利益冲突；（3）评级披露的透明性和及时性；（4）保密信息。该原则性声明发表后，包括很多评级机构在内的市场人士认为，IOSCO 需要出台一个更有针对性的、更详细的行为准则来指导该原则的具体应用。正是在这一需求背景下，IOSCO 经过进一步讨论于 2004 年发布了《信用评级机构基本行为准则》（以下简称《基本行为准则》），为前述原则性声明提供了一系列的实际措施作为实施原则目标的指导和框架。

从 IOSCO《基本行为准则》具体内容和精神实质来看，其特点主要体现在三个方面：首先，基本准则搭建了较为统一的框架，具有可操作性。准则对政府监管、非政府法定的监管机构开展监管、行业规范及评级机构构建内部政策和程序等方面都具有参考价值。其次，基本准则尊重具体法律和市场环境的差异，灵活性较强。相关监管机构、评级机构等均可以根据具体环境构建适合的管理政策。再次，基本准则侧重执业行为，对评级方法等方面的监管不做统一强制性的规定，有利于促进评级技术提升和保护创新动力。

（三）美国《2006 年评级机构改革法案》

尽管安然事件后，美国对评级机构的监管逐步走上了法制化的道路，监管范围也拓展至利益冲突管理、评级流程管理等方面，但真正要对评级业进行实质性监管看起来仍然有很多的障碍。

正当市场参与者认为监管部门不会在近期针对评级行业推出新的监管规则时，2006 年 9 月 29 日，美国总统布什签署了《2006 年评级机构改革法案》（the Credit Rating Agency Reform Act of 2006，后文简称法案），授权 SEC 采取规则，对希望注册为 NRSRO 的评级机构进行注册、档案管理、财务报告和监管。法案的初衷是通过提高评级质量以保护投资者，并强化责任、提高透明性以及促进资信评级行业的竞争来保护公众利益。

该法案明确了 SEC 对 NRSRO 注册和资格认定的独特权利，使得 SEC 对评级机构的监管主体地位得到法律的认可。与此同时，法案对评级机构的注册、持续监管等提出了一系列的改革要求，如要求评级机构披露历史表现，按照评级业务的种类分别按照短期、中期、长期的违约率和级别下调率等信息；对评级机构的

组织形式、职业道德操守、利益冲突及管理等提出导向性意见；甚至对评级的基本程序、分析师及监控人员的责任、经验、从业经历等信息也有所要求。该法案也授权 SEC 对评级机构进行现场检查并对违法行为采取惩罚性措施，但它禁止 SEC 监管信用评级业务中使用的程序和使用的评级方法。

四、次贷危机以来评级行业监管的强化和国际协调

尽管 IOSCO 为评级行业的监管提供了统一的操作性较强的框架，且美国《2006 年评级机构改革法案》对保护投资者利益也起到了有力的推动作用，但次贷危机的爆发再次将评级机构推向了风口浪尖，评级机构在业务运作中的利益冲突、透明度和独立性不足等问题在结构化产品的评级中表现地更为明显。市场要求进一步强化对评级机构的监管，针对收费模式带来的利益冲突、评级过程中的透明度缺乏等问题给出更有针对性的措施。此外，全球化过程中评级机构市场辐射力的地域拓展，也要求行业监管不能仅仅局限在单一国度，而应该从国别监管走向以国际标准为基础的统一协调监管。

（一）美国 SEC 对 NRSRO 监管的强化

随着次贷危机的爆发和危机进程的深入，市场上对评级机构强化监管的呼声日益高涨。在此背景下，承受压力的 SEC 在对 NRSRO 监管方面进行了多次修改，包括对有关格式和规则进行修订等，主要内容包括：

（1）提议对已有法律法规中涉及到参考评级结果的条款删除，尽量减少监管部门对评级结论的依赖；

（2）对那些必不可少的监管条例，尤其是评级结论对投资者的决策有显著影响的法定评级要求，则建议提高评级机构的信息披露，如提高评级机构历史表现的统计要求及评级方法的披露；在网站上披露每一类信用评级的评级行为示例；强化备案和年度报告；强化工作底稿的规范，包括所有的初始级别、上调、下调、观察或撤销的记录，如果评级中涉及模型的，模型得出的结论（如为 A 级）与评级委员会得出的结论不一致（如为 AA 级），则需要对此显著差异做出合理解释并予以记录在案等等；

（3）通过信息披露，强调对级别购买问题以及利益冲突的预防和管理。比如当受评方能够在证券发行前向评级机构要求提供一个初始级别，当这个级别无法满足发行方的要求时，发行方就会寻找另一个机构，直至其能够选择最有利的级别；而评级机构也了解发行方的这个特征，为了获得该项就有动机来报出“高”级别来迎合发行方的要求，因此披露发行方选择不同机构级别的过程，有利于投资者了解其所获得的不同级别，以及初始级别与最终级别之间的差别和原因；增加对可能产生利益冲突行为的限制（例如，禁止评级机构就评级对发行人进行建议和禁止评级人员参与费用讨论或协商）；此外还要求评级机构剥离非评级业务，主分析师定期轮换、设立独立的监控岗位来调查评级机构可能存在的利益冲突及其管理效果等。

除外部监管力量的强化外，评级机构自身也开始采取相关措施来改进不足，重新赢回投资者信心。对于次贷危机中批评很多的“评级机构过多参与到结构性融资产品的设计中”，评级机构通过主辅业、披露结构性融资产品的假设等措施加以改进。以标准普尔为例，危机发生后标普迅速做出反应，在 2008 年 2 月公布

了27条改革措施，主要集中在公司治理、分析方法、信息披露和投资者教育这四个方面。且随着危机的发展，标普围绕这四个核心主题在相关举措上进行了强化。

总体上看，次贷危机后美国政府对评级行业的监管大幅度强化，在监管措施上向具体的评级业务流程、评级方法（包括模型、假设等）等实质性层面深入。对于是否就结构融资建议要求NRSRO改变其评级符号或者实质性地消除对NRSRO评级的参考方面，SEC尚未作出决议。

2010年7月22日，美国总统奥巴马签署了自经济大萧条以来规模最大的金融改革法案——《多德-弗兰克华尔街改革和个人消费者保护法案》，该法案提出对评级的监管加以改进，内容包括加强对NRSRO的监管、问责制和透明度；对信用评级分析师资格标准的检查；加强信用评级机构独立性研究等多个方面。

（二）欧盟对评级机构的监管措施

相较于美国而言，欧洲的评级业发展相对滞后，虽然欧盟各国也对评级机构采取了相关的监管措施，但总体上看借鉴美国较多，处于监管主导地位的仍为美国。次贷危机爆发之前，欧盟对评级机构的监管还主要集中在资格认定、遵守IOSCO基本行为准则和评级机构的自律等方面。

次贷危机发生后，欧盟财长批准了关于危机的一系列行动措施，其中包括对评级机构在此次危机中所扮演的角色进行评估并揭示有关的缺陷，欧盟委员会检查的内容主要包括在评级过程中可能产生的利益冲突、评级方法的透明度、复评的滞后问题及监管支持程序等。

2008年7月欧盟委员会宣布将在欧盟境内展开对评级机构的监管工作。2008年12月12日，欧盟委员会出台了针对信用评级机构监管的建议性规则，拟在整个欧盟范围内实施相同的监管方法，目的在于通过确保评级的可靠性和信息的准确性以恢复和重树市场及投资者信心，其相关条例与美国信用评级机构改革法案之修正案的有关细则类似。该建议性规则的精神可概述如下：（1）确保评级机构避免以及恰当地管理利益冲突；（2）确保评级机构对其评级方法论和其出具的评级保持审慎；（3）增进评级的透明度；（4）实施有效的审核和监督措施以防级别要标和监管套利。

2009年4月欧洲议会批准了一项关于信用评级机构的监管规则，对评级机构的监管达成初步协议。欧盟27国代表组成的欧洲证券管理委员会临时负责信用评级机构的登记注册，而每个信用评级机构都将受到由其业务所在国家监管部门联合组成的一个联席机构的监管。

欧洲主权债务危机爆发后，欧盟提出要进一步严管评级机构。2010年6月欧盟委员会出台立法建议，设立一个名为“欧洲证券和市场管理局”的新机构，统一接受评级机构的注册登记和监管。该机构有权对评级机构的评级决定展开调查，如发现违反欧盟规定的行为，则有权对评级机构实施惩罚，包括罚款、暂停评级资格乃至吊销执照等。通过该机构，欧盟将把对评级机构的监管权力从各个成员国手中收回，统一了监管主体。

从欧盟监管之路可以看出，欧洲对评级机构的监管催生于次贷危机的爆发，在主权债务危机中得到进一步强化。欧盟对评级机构的监管，借鉴了很多美国的经验，但在主权债务危机爆发后，欧盟监管独立性和监管措施力度明显增强。从监管具体举措上，集中在注册登记、利益冲突管理、信息披露、监管协调等方面。

（三）IOSCO 对基本行为准则的修订及 G20 峰会对其的认可

为了回应结构融资中评级机构的角色，IOSCO 于 2008 年修订了《基本行为准则》，其中对四大类准则进行了强化。这些修订包括强化评级程序质量、保障评级的后续监督和及时性、禁止分析师参与结构证券设计、增加公开披露、定期检查薪资政策、将结构融资评级与其他种类进行区分等一系列措施。为了避免跨国监管的割裂，IOSCO 提议使用《基本行为准则》作为评级机构监管的模板，并开发了一个模型检测模块以方便检查人员。

2009 年 4 月签署的《关于强化金融体系的声明》中，20 国集团领导人同意评级结果用于监管目的的信用评级机构应当被纳入包括注册所在地监督机制下，其行为应保持与《基本行为准则》一致。同时，也同意通过国内监管当局实施该准则（而国际证监会组织扮演协调角色），评级机构应当区分结构产品评级并增加披露。最后，G20 要求巴塞尔委员会检查审慎监管中外部评级的角色并识别出那些需要处理的负面动机。IOSCO《基本行为准则》得到了 G20 的认同，并且逐步成为全球评级机构和评级监管的基准标准。

五、对我国评级行业监管的几点思考

上述对评级行业发展以及伴随行业发展的监管发展路径的综述，可以给我们很多的思考。当前，我国评级行业处于发展初期，行业成熟度和公信力有限；与评级行业息息相关的债券市场近几年虽发展迅速但总体上与国外成熟市场差距甚大；在国际大背景影响下评级监管大幅加强并将逐步融入国际监管框架。针对这些现实情况，我们认为以下几点值得我们思考：

第一，监管的目的是促进评级行业的健康发展，充分发挥资信评级的风险揭示作用，促进资源的有效配置，从而更好促进社会的发展。这是监管的宗旨。虽然说相关监管举措从短期看会给评级机构带来成本的增加，但从长远看应该是能使评级机构获益的，并且通过各微观主体的发展带动整个评级行业的壮大。如若监管仅为顺应国际潮流、确保所监管范围内不发生风险事件、体现监管者政绩，而不是聚焦被监管评级机构的长远发展，那么这样的监管就脱离了宗旨，也是缺乏生命力的。

第二，行业监管是伴随着行业的发展而逐步发展的，需要与行业所处的发展阶段相适应。监管的滞后，尤其是存在监管真空，当然会带来很多问题，如次贷危机的爆发就暴露出这样的现实：面对金融创新带来的复杂金融产品，行业监管理念和手段没有跟上很快就会导致风险的蔓延。但对于监管的过度，却容易被市场忽视，而且监管过度带来的风险短期内不会产生明显的不良后果，但却是以行业发展滞缓为代价的。尤其在全球范围内强化评级行业监管的呼声甚高的背景下，面对国内相对弱小的评级行业，行业监管很容易从一个

极端走向另一个极端。

第三，从当前国际形势看呈现出这样一种趋势，国际标准与国别直接监管相结合，即各国统一遵循 IOSCO 制定的《基本行为准则》，制定适合本国国情与国际信用评级标准相适应的监管法规政策，并由主权国家或地区实施监管。中国也要融入该监管潮流中，积极参与游戏规则的制定，从而在制度层面考虑中国国情，促进国内评级行业的发展。

第四，随着金融创新所带来的产品的复杂化以及对创新产品监管存在真空层，评级判断的失误率可能会有所上升。而且现在评级对市场的影响力已远甚从前，级别的调降可能对市场产生剧烈的冲击，甚至就可能如媒体所评论的那样“推波助澜”、“落井下石”，进一步恶化市场预期。因此，如果评级失败确实是寻求收益而放松标准等人为因素导致，我们认为评级机构需要承担相应的责任。但鉴于评级业务本身内在的风险属性，以及责任边界界定的复杂性，我们认为对于要求评级机构承担法律责任，需要严谨、审慎、科学、适度，这在行业发展的初期尤其必要。

第五，对于评级收费模式的批评，我们认为需要以历史的、客观的态度去对待。当前收费模式主要有“发行人付费”、“投资者付费”和“政府公共事业付费”模式，就市场参与者希望从评级中获取的质量而言上述模式各有优缺点。当前大部分评级机构采用发行人付费的方式，但历史上国际三大评级机构无不开始于投资者付费模式，而且美国 NRSRO 中的 Egan-Jones 现在依然采取投资者付费模式。没有哪一种付费模式能完全满足市场需求，同时又规避所有的不足，发行人付费模式是多年评级实践历史演变所选择的结果，它可能不是理论上的最佳，但却是最符合实际情况的。此外，不同投资者的需求也千差万别，允许市场的多元化选择，通过实践检验不同付费模式的生命力，而不是对现有机构的评级收费做出强制性改变，这是一种客观务实的态度。

第六，对于评级监管的具体措施，我们认为应该聚焦在利益冲突管理、信息披露方面，通过这些措施提升评级机构的独立性和透明度。而对于评级模型、评级假设、评级具体方法等内容，不适宜做强制性规定，以鼓励评级机构通过创新提升评级技术。同时对于评级方法方面的信息披露，也需要适度。

IOSCO 三大监管支柱及对我国评级监管的启示

文 / 朱荣恩 郭继丰 应娟

摘要：本文以 IOSCO 基本行为准则的独立性、评级过程质量控制和透明度三大监管支柱为基础，阐述了美国、欧盟、印度以及亚洲资信评估协会对这三大监管支柱的实施情况，分析了我国实际情况，认为我国既要强化评级行业外部监管，也要尊重市场化运作机制；既要重视透明度，也要注重知识产权保护；需要完善评级过程的质量控制，需要统一监管，降低监管成本。

关键词：独立性、利益冲突、评级质量控制、透明度

资信评级在美国次贷危机引发金融危机中暴露出来的问题，使得 G20 接受 IOSCO 关于资信评级监管的基本原则，作为资信评级国际监管的框架。

一、IOSCO 的三大监管支柱

2003 年，国际证监会组织（IOSCO）出台了《IOSCO 关于信用评级机构基本准则的声明》。在此基础上经过进一步讨论，IOSCO 于 2004 年发布了《信用评级机构基本行为准则》，要求评级机构在“遵守或解释”基础上自愿采纳如下四个方面的基本从业规则：（1）评级过程的质量和公正性；（2）独立性和利益冲突的避免；（3）对公众投资者和发行人负责，包含评级披露的透明度和及时性、机密信息的处理这两部分；（4）自身行为准则的公开。金融危机爆发后，为了回应结构融资评级中评级机构的角色，IOSCO 于 2008 年 5 月修订了《信用评级机构基本行为准则》，对上述准则进行强化。

IOSCO 所倡导的基本准则能获得国际社会的认可，在于该基本准则技术上的一系列独到优势：首先，基本准则搭建了较为统一的框架，具有可操作性。准则对政府监管、非政府法定的监管机构开展监管、行业规范及评级机构构建内部政策和程序等方面都具有指导价值。其次，基本准则尊重具体法律和市场环境的差异，灵活性较强。相关监管机构、评级机构等均可以根据具体环境构建适合的管理政策。再次，基本准则侧重执业行为，对评级方法等方面的监管不做统一强制性的规定，有利于促进评级技术提升和保护创新动力。

从 IOSCO 基本准则的核心内容以及 IOSCO 于 2008 年修订的基本行为准则增加内容所反映的精神实质来看，基本准则由三大支柱构成。

（一）独立性和利益冲突管理

独立性及利益冲突管理在 IOSCO 基本准则中占有重要地位，可以说是该基本准则的基石。IOSCO 基本准则要求信用评级机构避免评级行为与评级机构、发行人、投资者、其他市场参与者有关的潜在影响（包括经济的因素、政治的因素和其他因素等），评级机构和分析师要维护程序上和实质上的独立性和客观性，级别的决定因素应该只是那些和风险相关的因素。除了这些基本原则外，IOSCO 基本准则在评级程序和政策、评级过程的公正性、信用评级机构分析师和雇员的独立性等方面做出了具体的规定。2008 年 5 月 IOSCO 对基本行为准则进行修订，增加了禁止分析师参与结构证券设计、定期检查薪资政策、将结构融资评级与其他种类进行区分等一系列措施。2010 年 5 月 IOSCO 针对评级机构监管基本原则执行情况出具了一份咨询报告，在“独立性和利益冲突”上强调评级机构应该从股权结构设置、评级业务活动、评级机构员工的利益等方面规避可能产生的利益冲突，并且将股权结构上的独立放在了首要的位置。

（二）透明度和信息披露

透明度和信息披露体现在两个主要方面：对公众投资者和发行人的负责、自身行为准则的公开。IOSCO 基本准则对于“机密信息的处理”有明确的规定，要求保护信息的安全性。对于需要公开的信息，IOSCO 基本准则则强化了信息披露的力度，如级别信息的披露、各级别历史违约率信息、评级政策和程序、可能涉及到利益冲突方面的信息披露等。从 2008 年 5 月 IOSCO 对基本行为准则修订后所增加的内容看，增加了公开披露、提高透明度的宗旨。该项要求也成为 IOSCO 基本准则的核心之一。

（三）评级过程质量控制

评级过程中的质量控制也是 IOSCO 基本准则中不可或缺的内容，它和上述两部分内容构成 IOSCO 基本准则的三大支柱。对于如何进行质量控制，IOSCO 基本准则在评级过程、监控和更新等方面做出了具体规定，如使用严谨、系统的评级方法、历史经验验证、评估方法的统一，评级过程中的资源保障等。在 IOSCO 于 2008 年基本行为准则的修订版中，对于质量控制方面增加了大量的内容，以强化评级程序的质量，保障评级的后续监督和及时性。

IOSCO 的三大监管支柱充分展现了 IOSCO 对资信评级行业的监管理念，对于不同国家和地区的评级行业监管而言，它在求同存异的基础上构成了“求同”的“最大公约数”，因而赢得了市场的广泛认同（如 G20 对其的认可等），并已成为全球的基础标准。

二、IOSCO 的三大监管支柱在国际上的实行

（一）IOSCO 三大监管支柱在美国的实行

2006 年 9 月 29 日，美国时任总统布什签署了《2006 年信用评级机构改革法案》（the Credit

Rating Agency Reform Act of 2006，简称法案）。法案要求美国证券交易委员会（SEC）对那些寻求成为全国统计评级机构（NRSRO）的信用评级机构制定监管规则，包括注册、档案管理、财务报告和日常监管等，致力于通过提高评级质量来保护投资者，并强化责任、提高透明度以及促进信用评级行业的竞争保护公众利益。

尽管法案对保护投资者利益有了强有力的推动，但随着次贷危机的爆发和危机进程的深入，强化对评级机构监管的呼声日益高涨。在此背景下，承受压力的 SEC 在对 NRSRO 监管方面进行了多次修改。

法案从法律层面确立了 SEC 对评级行业的监管主体地位，并且 SEC 修订的规则对 NRSROs 具有强制约束力，这与 IOSCO 性质及其制定的基本准则是存在差异的。尽管 SEC 对 NRSROs 的监管在某些具体措施上有别于基本准则，但从核心内容看，SEC 的规则提案遵循了 IOSCOs 基本准则的三大支柱，是在这三大支柱基础上的深入和细化。如：要求制定书面规章制度和流程以应对和管理利益冲突；对于某些情况，禁止授予或保持信用评级，如评级对象提供的净收入占净收入总额的 10%（含）以上的情况，对债务人等提出有关债务人或证券发债人的公司、法律架构、资产、负债或活动的建议情况；要求向 SEC 递交年度财务报告，包括明细收入和收入占比等；创建和保留评级历史记录，包括形成信用评级基础的内部记录，与评级活动有关的外部与内部通勤等；对评级历史进行适当披露等。

（二）IOSCO 三大监管支柱在欧盟的实行

次贷危机爆发前，欧洲证监会（CESR）的监管建议是与 IOSCO、SEC 合作，力求建立一个统一的执业规范。同时，关注各个评级机构对 IOSCO 颁布的基本准则的遵循情况，而评级机构则只要满足所在国的监管部门要求即可。CESR 认为，应该让评级机构自律，而不宜采取严厉的监管措施。

次贷危机的爆发促使欧盟开始强化对评级机构的监管。2008 年 7 月，欧盟委员会宣布将在欧盟境内展开对评级机构的监管工作。2009 年 4 月 23 日欧盟出台了有关信用评级机构法规的议案，并于 2009 年 12 月 7 日正式生效。

欧盟委员会对信用评级机构的核心监管规定包括：（1）信用评级的使用。欧盟金融机构仅能使用在欧盟注册的信用评级机构发布的评级，要求现有评级机构在 2010 年 6 月 7 日至 9 月 7 日申请在欧盟注册。（2）独立性与避免利益冲突。此项内容规定很多，包括要求评级机构内部设立监督委员会，永久和有效的合规性职能，禁止就结构融资工具的设计提出竞标或建议，评级方法保持独立，有关雇员的相关规定等。这些措施更多的是体现在评级流程中的质量控制和独立性保持方面。（3）信息披露。包括披露评级假设、结构融资评级标识码、现有与潜在冲突、报酬安排的一般性规定、年度透明度报告等。

综合来看，在危机爆发前，欧盟就赞同在 IOSCO 基本准则的统一框架下对评级机构进行监管，但此时更多的是依赖评级机构的自律；危机爆发后，欧盟强化了监管力度，对评级监管做出了很多具体的、具有约

束力的规定，但核心还是围绕着 IOSCO 基本准则的三大支柱。

（三）IOSCO 三大监管支柱在印度的实行

除了美国和欧盟外，新兴市场国家在资信评级行业监管方面具有自己的特色，我们选取较有特点的印度作为事例。

印度对资信评级行业的监管要点如下：（1）评级机构或其他附属机构其他行为的披露。印度证券交易委员会条款规定信用评级机构应该将其信用评级活动与其他活动（咨询、研究、软件开发等）保持一定的距离。（2）"发行人付费"模式中的利益冲突。印度证券交易委员会认为其他收费模式不可取或不可行，因而建议继续使用"发行人付费模式"，但在此模式下需提高向公众披露信息的透明度，包括利益冲突的披露，酬劳支付方式的披露等。（3）评级机构的管理规范。印度证券交易委员会要求评级机构建立自己的内部行为守则管理其内部运作，并作为雇员履行其职责的基准。这些规范条款包括保持专业技能和标准、完整性、保密性、客观性，避免利益冲突，股权和权益的披露等。此外比较有特色的是条款还涉及评级委员会的建立和管理，以及服务于这种委员会员工的职责的程序和指导方针等。（4）披露评级机构对 IOSCO 法规的遵守情况。要求评级机构依据 IOSCO 基本准则，披露其自身的行动守则，并描述其守则对 IOSCO 基本准则精神的贯彻情况，若评级机构的行为守则偏离 IOSCO 条款，评级机构应该说明存在偏离，并解释其原因。（5）谨慎使用评级，降低对评级结果的依赖。

（四）亚洲资信评估协会对 IOSCO 三大监管支柱的推行

亚洲资信评估协会（ACRAA）成立于 2001 年 9 月，设立于亚洲开发银行（ADB）旗下，截至 2010 年 10 月，其会员增至 28 个，遍布亚洲 15 个国家和地区，代表了亚洲一流的资信评级水平。ACRAA 成立以来，一直致力于推动亚洲评级行业的发展，包括技术和观点交流、评级规范和标准体系建设、行业自律及与其他监管主体的交流等。

2008 年 12 月，在 ACRAA 的努力下 ADB 出台了一份《国际评级最佳实践手册》，该手册将评级机构的实践分为必不可少的最佳业务操作和期望达到的最佳业务操作两部分，对于该业务操作在评级机构的执行制定了三步走的战略。在必不可少的最佳业务操作部分，该手册对评级业务开展前的要求、信用等级和违约率定义、评级政策和流程、保密要求、独立性以及对利益冲突的规避、委托评级、公开评级、评级流程监督等方面进行了明确的规定，且信用等级和违约率定义、评级政策和流程、委托评级、公开评级、评级流程监督等具体板块，均对信息披露做出了相关规定。总体上看 IOSCO 三大监管支柱在该手册中得到了很好的执行。此外，该手册还明确要求亚洲评级机构要正式采用 IOSCO 制定的基本行为准则，ACRAA 将对执行情况进行监督。

2010 年 6 月，针对会员评级机构对上述手册的执行情况，ACRAA 下发问卷进行调查。问卷涵盖

手册中必不可少的最佳业务操作和期望达到的最佳业务操作两部分下的每一子项内容，如管理利益冲突的政策、公布交易和投资政策、制定其他政策以保证独立性和避免利益冲突。此外，有别于上述手册，该问卷特意将“IOSCO 行为准则”一项单列，重点调查各家评级机构对 IOSCO 行为准则的遵守和执行情况。

三、IOSCO 三大监管支柱给我国资信评级行业监管的启示

近几年，随着我国资信评级行业的发展，评级监管和相关的法律、法规建设趋于加强。2003 年 11 月，中国人民银行成立了征信管理局，2006 年 3 月发布了《信用评级管理指导意见》，2006 年 11 月发布了《信贷市场和银行间债券市场信用评级规范》，对信用评级主体、信用评级业务和评级业务管理三个方面进行了规范。

除中国人民银行外，证监会、发改委和保监会均在各自职责范围内出台了针对资信评级行业的监管法规、规定和通知等。2007 年 8 月，证监会发布《证券市场资信评级业务管理暂行办法》，对公司债券、可转换债券、资产支持证券等产品的资信评级从制度层面进行了规范。国家发改委没有出台明确的法规，但通过业务资格认定赋予相关评级机构具有企业债的评级资质。保监会针对资信评级的法规和规范性文件主要有《保险机构投资者债券投资管理暂行办法》，以及以通知形式对资信评级机构业务资质的认可等。

除上述监管部门外，银行间市场交易商协会、证券业协会等行业自律组织也在上述监管部门搭建的监管框架下，针对资信评级行业出台了自律性文件，如《银行间债券市场非金融企业债务融资工具中介服务规则》、《证券资信评级行业自律公约》等。

随着我国债券市场的发展和资信评级行业的壮大，尤其是次贷危机引发的全球金融危机中全球监管部门对评级行业强化监管的影响下，我国评级行业的监管也正走向规范、强化的道路。在此过程中，IOSCO 的监管理念和具体监管措施将给我国诸多的借鉴和启示。

（一）强化基于评级机构市场化运作基础上的独立性制度构建

IOSCO 认为评级机构在资本市场中扮演着重要的角色，制定一套系统的指导评级机构业务活动的原则对于监管部门、评级机构以及评级结果的使用者会有很大作用。IOSCO 基本原则考虑不同环境下的评级机构业务操作和监管模式，尊重市场机制作用的发挥。从三大监管支柱监管举措聚焦问题来看，要重视评级机构在市场化运营机制下的自律体系建设，外部监管解决的是评级机构自身无法防范的利益冲突问题、透明度不足问题，从而提高评级过程中的独立性和公正性。在我国当前的市场环境下，政府有形之手力度较大，如采用行政权力关停不达标企业以解决节能减排问题，动用行政力量调控房地产市场等。在资信评级领域，政府调控之手有直接伸向具体的评级活动的趋势。虽然行政化手段见效快，满足短期政策目标要求，但从长远看其对市场信号的扭曲、资源配置的低效还是不容忽视的。结合 IOSCO 基本原则以及我国的实际情况，认为在评

级领域需要进一步明确政府和市场的边界，市场性的业务就交给市场，重视市场对评级机构的约束和淘汰作用，构建评级机构的自律体系，在此基础上强化外部监管，促进评级机构独立性制度构建。

专题一：利益冲突的主要环节与独立性的制度建设

独立性是利益冲突防范的基础原则，利益冲突反过来会弱化独立性。资信评级机构在经营活动中存在四个主要环节的利益冲突：股权结构确定的治理结构、市场竞争、付费模式、评级环节。

公司股权结构确定的治理结构与评级市场是否独立，是评级机构独立性的首要利益冲突。在一般的监管规则中都要求评级机构、评级机构的高级管理人员与发行主体存在股权关系，或评级机构的高级管理人员或直系亲属曾或现在发行主体任职，则采取回避制度，不得对本主体的债券进行评级。正是因为如此，资信评级机构一般以个人、教育和科研院所、基金的股权为主，而较少或基本不采用政府、金融机构或工商企业控股的股权结构。在债券市场上，政府、金融机构或工商企业都是债券的发行主体，极易产生发行主体与评级机构之间的利益冲突。因此，以个人、教育和科研院所、基金等为评级机构股东的股权结构和治理结构能更有效的保持评级机构的独立性，也更能促进评级机构以自身的信誉作为发展的基石、避免短期的盈利目的。

市场拓展是评级机构扩大市场规模获得收益的重要手段，市场拓展成员与发债主体之间容易产生密切关系，从而产生利益冲突，可能弱化评级机构的独立性。为此，评级机构内部设立了防火墙制度与评级人员收入固定化制度来防范利益冲突。即市场拓展部门的成员不得参与评级活动、不得参加专家委员会对债项进行评级；评级部门的人员待遇与公司的经营收入、利润水平之间不存在相关性，采用相对固定的收入制度。

付费模式一般被市场认为是目前产生利益冲突的主要环节，即发行人付费机制容易产生利益冲突，事实上无论采用什么付费方式，包括投资者付费、政府付费，都会产生利益冲突。投资者付费模式容易使得评级机构演变为投资者的“黑嘴”，配合投资者买进或卖出债券；政府付费模式也同样产生利益冲突，因为政府本身就是债券的发行者，且政府付费还容易滋生寻租行为下的贪污腐败。为了避免发行者付费模式下的利益冲突，中国的评级机构通常在评级入场前进行收费，从而避免付费对评级的干扰。

评级环节存在的利益冲突主要是评级人员与发债主体之间的关系，表现为评级人员与发债主体的股东、自身或直系亲属在发债主体任职，或发债主体对评级人员的寻租。对此，评级机构建有回避制度和职业操守。即评级人员与发债主体存在利益相关的，则回避本债券评级；评级人员不得接受发债主体的馈赠，不得参加超过一定金额的餐饮和娱乐活动等。

（二）重视透明度和知识产权保护的协调

在我国，由于国内评级行业起步晚，评级产品、评级方法、级别符号等，因不同评级机构而存在较大的区别，这给市场带来了一定的混淆，尤其是识别能力相对有限的个人投资者等。为规范行业的发展，相关监管部门对不同产品评级要点、评级方法、评级要素、级别符号、评级报告组成以及各部分的核心内容等均作了较为

具体的规定。这一监管规定体现了我国当前国情和评级行业发展的特点，但从长远来看这并不能有效促进行业的发展。就广义而言，评级方法包括评级理念、评级要素、评级模型和模型假设等多个方面。评级机构的评级技术，很大程度体现在评级方法上。不同的评级机构有选择不同评级方法的自由，并通过较长时间的实践检验完善评级方法。此外，信用评级表达的是债务人或者特定债务未来偿付能力和意愿的一种评价意见，表达自由会提高信用评级对投资者的参考价值。因此，对评级方法以及评级观点的表达不宜做强制性监管，因为这会限制竞争，削弱各家评级机构通过自身努力提升评级技术的动力。我们认为，对于评级方法论方面的监管要相对弱化，外部监管所做的在于保证评级流程中的公正性、独立性，防范评级机构自身也难以阻止的利益冲突对独立性、公正性的损害，防范外部对评级观点表达的不当干预。对于评级方法方面的信息披露也需要适度，这有利于知识产权的保护。

专题二：披露内容与知识产权保护

透明度要求评级机构需要对外进行披露相应内容，同时，如果披露过多就会涉及评级机构的知识产权，从而形成透明度与知识产权保护之间的矛盾。例如，由于我国资信评级仍处于发展初期，知识产权的保护意识较差，已经形成了评级报告全文披露的惯例。这一惯例不仅与国际惯例不相融合，而且无法保护评级机构的知识产权，也无法有效对被评级主体的有关信息保密。在国际上，所披露的评级报告一般为评级结论报告，而不是评级的详细分析报告。中国的这种翔实报告披露方法从另一方面使得评级机构的收益拓展空间压缩，即无法通过出售评级翔实报告获得收益，从而使得依据评级质量促进评级事业发展的路径被以市场竞争的利益冲突所取代，不利于评级行业的发展。

为了维护评级机构的知识产权、促进评级机构走上健康发展的道路，在披露内容上应该有个适合的度。在通常情况下，评级机构应该公布评级的程序、评级的基本要素、评级的等级系统及其含义、评级结果（包括信用等级、基本观点、基本数据）、评级结果的统计与分析；而不应该公布评级指标体系的参数、内部基本模型及其运算过程、评级报告的工作底稿、评级报告的详细分析过程及其翔实报告。这也要求监管机构通过相应规章制度加以规范。

（三）完善评级过程的质量控制体系

从 IOSCO 三大监管支柱看，对评级质量的控制覆盖了评级的整个业务流程，且独立性和利益冲突的避免、提高信息披露也体现在每一个评级业务流程中。如：建立防火墙制度，对业务承接环节的利益冲突予以规避；评级业务中评级机构及其分析师要遵守相关规定，维护评级程序上和实质上的独立性、客观性，对于可能的利益冲突及时、完整披露等。可以看出，IOSCO 对评级行业的监管是将三大监管支柱的精神实质渗透到评级的每一个业务环节，通过业务流程的规范性和透明度监管来达到强化监管的目的的。但在方法论方面，IOSCO 基本准则没做强制性约束。对此，美国 SEC、欧盟等也达成了共识，如在监管大幅度强化的背景下，SEC 对 NRSROs 的监管仍强调不对评级机构的方法进行干预和规定。

专题三：评级质量的过程控制与配套体系

评级是评级人员以研究体系为基础、以评级对象为客体的分析活动。为了保证评级质量，仅就评级业务的活动过程，设置了实地调查、三级审核制度，并依据中国人民银行的规定，评级人员严格执行调研、撰写报告的时间要求，不得少于规定的时间；为了尽可能获得最佳可信的信用等级，研发部门作为一个独立的体系，依据已公布级别和相应变量之间的关系，开发信用等级预测模型，作为评级对象最终级别确定的参考。在评级过程中，评级公司根据证监会的要求，设立了合规部，对每个评级环节的合规性进行监督和检查。

对于评级质量的保证除了与评级活动直接相关的规章制度外，评级质量的基础保证在于评级机构的研发体系，包括从宏观信用风险、行业信用风险到评级对象评级要素特征、评级指标体系、指标权重的参数设计，及其在宏观信用风险、行业信用风险发生变化条件下，评级指标权重的动态调整。而这一研发体系及其相应指标选择、指标权重设计及其动态调整的制度和规则，则构成了评级质量保障的基础性保障体系。

为了对评级质量进行检验，在我国债券市场发展时间较短尚不存在违约的条件下，评级机构建立了以利差分析为基础的质量检验机制，根据新世纪的统计结果，主体信用等级与利差之间形成了层次较为分明的对应关系，表明信用等级在客观上起到了反映信用风险大小的作用，对防范和化解信用风险、金融风险具有重要的作用。

（四）促进统一监管，降低监管成本

IOSCO 基本准则提供了一个不同环境下协调监管的框架，有利于不同司法环境下不同监管主体间在“最大公约数”下取得更大的监管效益。对于监管主体，IOSCO 基本准则并未明确提及，因为该问题不具有普遍性，但在中国却表现的较为突出。美国、欧盟等都有明确的监管机构，对资信评级机构在市场准入、业务资质、主体监管、评级业务的持续监控等方面进行统一的管理。在国内，中国人民银行征信管理局具有对评级机构主体进行监管的权力，但在具体评级产品的监管方面则分别归属于不同业务管理部门，如公司债评级业务归口证监会，企业债评级业务归口国家发改委等。不可否认，我国的场内交易市场与场外交易市场并存有其特殊性，不同部门的监管也有其特定性。但从长远来看，监管主体不一的弊端也是显而易见的，已经体现出来的缺点就是市场混乱。目前，国内市场上相关评级机构针对不同监管部门建立有不同的评级法律主体，对于市场上的投资者而言，他们很难分清两者的区别、市场范围、竞争优势等；即使是同一评级机构，也因为多头监管的存在而过多地承担了信息备案、披露等成本。对于监管而言，我们认同为行业规范发展而付出的短期成本，因为监管效应更多体现在对被监管行业长期健康有序的发展方面，但当不同监管部门间利益诉求不一，重复监管严重、被监管成本高而监管的长期效应微乎其微时，就应该引起高度重视。

我国资信评级行业的发展历史、问题及建议

文 / 朱荣恩 郭继丰 鞠海龙

中国评级行业经过二十多年的发展，取得了一定的成果，为中国债券市场和信贷市场的发展、信用风险控制的人才培养做出了重要贡献。但资信评级行业的发展不仅仅是行业本身的问题，也会受到所面临的生态环境的严重影响。中国资信评级行业在过去的发展过程中，既会因生态环境的优化而快速发展，也会因生态环境的恶化而步履蹒跚。在全球金融危机发生以来，我国资信评级行业生态环境在仍有部分历史问题未能解决的情况下，又涌现出了很多的新问题。因此，资信评级行业亟需监管机构、行业协会、资信评级机构以及社会各方的共同努力，来优化行业的生态环境，共同促进资信评级的健康发展。

一、我国资信评级行业的发展历史

（一）中国资信评级业的诞生

中国资信评级业的发展与中国债券市场的发展密切相关。1987 年，国务院发布《企业债券管理暂行条例》，企业债券市场由此开始发展。为规范发展债券市场，中国人民银行和国家经济体制改革委员会提出发展资信评级机构，各地开始组建资信评级机构，其中以人民银行系统内组建的资信评级机构为主。1988 年，中国第一家独立于金融系统的外部资信评级机构成立。1992 年，国务院下发《国务院关于进一步加强证券市场宏观管理的通知》，将资信评级作为债券发行审批的一个重要环节，从而确立了资信评级机构在债券发行中的地位。随后，一批外部评级机构相继成立。

1997 年 12 月，人民银行为了进一步规范资信评级业的发展，颁布了《关于中国诚信证券评估有限公司等机构从事企业债券信用评级业务资格的通知》（银发【1997】547 号），初步确认了远东、新世纪、中诚信等 9 家评级机构企业债券的资信评级资格，标示着中国资信评级行业走上了认可制的发展道路，标示着人民银行系统组建的资信评级机构退出了资信评级行业，标示着中国资信评级行业发展走上独立化、正规化的发展道路，为中国资信评级行业的发展奠定了坚实的制度基础。

1997 年，人民银行在《贷款证管理办法》（1995 年 11 月）、《贷款通则》（1996 年 6 月）的基础上，在上海、深圳等地区陆续开展了贷款企业的信用评级试点工作，不仅有力地推进了资信评级机构管理、标准、

技术的进步，而且拓展了资信评级的业务市场，为资信评级的发展奠定了市场基础。因此，从资信评级机构的诞生与发展看，人民银行在制度建设、评级业务推进上，起到了重要的作用。

（二）银行间债券市场快速发展促进中国评级业的成长

2005 年，人民银行颁布《短期融资券管理办法》，推出短期融资券评级业务，极大促进了资信评级业务的发展，使得资信评级行业在队伍、技术和市场的影响力不断扩大、提高。人民银行在市场创新和监管创新上也不断推动和规范着资信评级行业的发展。

在市场创新上，人民银行不仅推出了短期融资券，而且推出了中期票据、中小企业集合票据等新产品，推动了我国债券市场的发展，逐渐改变着我国以银行信贷为主的融资格局，逐步解决中小企业融资难的困局。债券融资的主体结构、期限结构逐步完善，资信评级的业务品种日益丰富，资信评级的业务规模逐渐扩大。

在监管方面，中国人民银行于 2003 年 11 月成立征信管理局对资信评级行业进行监管，推进信贷评级市场的发展和评级业务的规范。2005 年，人民银行确定了重庆、南京、长沙、武汉、成都、天津等 8 个省市实施由独立第三方的资信评级机构对信贷企业开展评级的试点，后扩展到多个省市，扩展了信贷评级的区域，扩大了企业信贷评级的业务规模。2006 年 3 月，人民银行颁布了《信用评级管理指导意见》（银发【2006】95 号），11 月颁布了《信贷市场和银行间债券市场信用评级规范》，加强了对信贷评级行业的规范和指导。

此外，人民银行在 2007 年成立了中国银行间市场交易商协会（简称“交易商协会”）作为银行间债券市场的行业自律组织，包括资信评级行业自律。交易商协会成立后，颁布了《银行间债券市场非金融企业债务融资工具注册规则》、《银行间债券市场中期票据业务指引》等自律规则和指引，并于 2010 年 10 月成立了信用评级专业委员会，在有效地推进银行间债券市场发展的同时，也推进了资信评级机构的规范和发展。

在人民银行推进债券评级、信贷企业评级的同时，证监会推出《公司债发行试点办法》、《证券市场资信评级业务管理办法》等，并确认了 5 家具有公司债评级资质的资信评级机构，分别为新世纪、中诚信证券评估有限公司、联合信用评级有限公司（原为天津中诚）、大公和鹏元资信评估有限公司，并于 2010 年设立了资信评级专家委员会制度。发改委于 2008 年颁布《推进企业债券市场发展、简化发行核准程序有关事项的通知》，对企业债券的发行核准程序进行了简化改革，有效促进了企业债券市场的发展。

人民银行、证监会和发改委共同推进资信评级行业发展的同时，中国评级业对中国债券市场和金融行业的发展也做出了应有的贡献，包括市场配合、人员培养和输送等。人民银行的制度奠基和业务奠基，培育和促进了中国资信评级行业的发展，同时一支建制完全、基础力量存在的资信评级机构，能够有效地配合债务融资工具的评级，也有力地促进了中国债券市场、信贷市场的发展和风险防范。资信评级作为一个实践性的行业，随着评级业务的发展，培养了一批具有专业评级知识的人才，既保证了评级行业发展，也为保险公司、证券公司、金融租赁公司等金融机构后续兴起的内部评级输送了专业化的人才。

二、我国资信评级行业面临的主要问题

（一）资信评级行业发展的理论混乱

评级行业发展的理论混乱主要体现为对评级的地位、功能、作用和属性的基础理论研究混乱，包括高估资信评级的地位、功能、作用的“定价权理论”；把评级机构归于国家公权的“公共产品理论”；以及“经济警察”理论等。事实上，评级作为金融基础设施的一部分，基本功能是减缓市场各方的信息不对称，作用是为投资者提供可信的评级服务，促进债券市场发展及金融资产的有效配置。评级机构作为盈利性组织，属私人部门，提供的是私人产品和服务。评级机构作为信用信息、信用报告的提供商，不参与也无力对金融产品的价格进行确定，所表达的只是对被评级对象信用质量的一种意见，而不是投资建议，其未来的发展和话语权形成也依赖于可靠的信息、可信的评级质量，以及必要的政府支持。

（二）资信评级的社会认知不足

评级行业的社会认知不足与基础理论混乱存在密切关系。由于理论混乱，引起了一些学者、媒体的误解，造成社会认知的混乱，包括金融危机制造论、阴谋论、控制论等。事实上，评级机构既不是金融产品的提供者，也不是投资者，无法制造风险和危机。三大评级机构在金融危机发生之前或之中，也仅是指出了信用衍生产品存在的风险。但由于其巨大的影响力引起了社会共鸣，加大了市场的共振。评级机构无法通过自己任意或随意的级别调整，对金融市场稳定性进行干预，更无法以阴谋的手段达成某种目的。就中国评级机构与国际评级机构的合资、技术合作而言，也是在符合国家产业政策条件下进行的，不仅合法，而且其级别表现也没有形成国际评级机构对国内的控制局面。在金融危机下，不顾美国三大评级机构存在的实际问题及国内评级行业发展的阶段性，以金融危机制造论、阴谋论和控制论片面传播信息，不仅对三大机构形成了非理性攻击，而且对国内合资或技术合作的评级机构也进行了情绪化的打击。

（三）资信评级的多头监管问题突出

中国目前债券市场分割（发改委管理企业债、人民银行管理短期融资券和中期票据等、证监会管理公司债）、业务监管多头并存。中国债券市场的分割源于中国行政管理体系，在短期内难以形成统一市场。但是，如果在债券市场分割前提下，分割资信评级市场，则会造成资信评级市场的混乱。这种混乱体现为同一资信评级机构分拆为不同的公司应对不同的债券市场；同一资信评级机构不同资信评级产品信用等级之间的释义不尽相同等。这些混乱一方面分散了政府的监管力量，造成了监管成本的上升（包括监管主体的成本与被监管对象的成本）；另一方面也会造成市场的混乱，产生监管标准不同条件下发债主体的监管套利，以及评级机构不同产品之间的矛盾与冲突。

（四）评级行业协会重叠或交叉设立

当前，我国资信评级行业多头监管造成了以不同监管主体牵头的行业协会或类行业协会重叠或交叉设立，

这不利于形成资信评级市场的统一监管标准，甚至产生一定的矛盾，从长远看不利于评级机构的协调发展。统一行业自律体系的缺失，是导致资信评级行业理论认识不清、社会认知不足的重要原因，也是导致资信评级机构存在非理性竞争的重要原因，尤其是在缺少行业标准的评级领域（例如中小企业集合票据评级市场）为获得市场而进行压价竞争，扰乱评级秩序，损害评级形象。

（五）资信评级行业的政府介入过深

政府对评级行业介入过深主要体现为政府派出机构或投资的金融机构投资入股评级机构，存在以监管机构为主制定统一的评级技术标准倾向。政府派出机构本身是监管机构，国有金融企业是债券的投资者，国有金融企业的下属或相关企业可能是发债主体，其入股评级机构，难以保证评级结果的独立性，容易产生利益冲突；不利于减缓信息不对称，同时容易造成市场竞争秩序的混乱。在国外，对评级机构的监管主要是对其独立性及相对应的利益冲突、评级过程的质量控制、透明度的监管，而在国内，评级机构监管存在监管机构介入评级机构技术标准的倾向，试图以监管主体组织制定统一的评级技术标准，这必然削弱中国评级机构的技术进步和竞争能力，同时也容易产生评级机构技术同质化。

（六）资信评级业市场地位较低

评级行业的市场地位低体现为收费水平低，由此导致评级机构运营艰难、人员流动性大等。在债券融资中，评级费用仅占债券总融资费用的 0.42% 左右，是债券发行所有中介机构中收费最低的。与国际评级机构相比，以发行 10 亿美元的债券对比，我国评级机构的收费仅为国际评级机构的十分之一。而且，债券评级收费的价格已经多年未有调整，但其他各种成本，包括员工工资水平、交通费用、日常营运所需资金却有大幅上涨，由此导致评级机构勉强维持正常运转。同时，较低的行业地位导致评级从业人员流动性大。近几年，评级机构平均人员流动率在 20%~30% 的水平，大多都流向了金融机构，分析师的流失势必对评级机构的健康发展产生不利的影响。

（七）资信评级的业务品种较少、规模较小

我国评级行业生存和发展主要依赖于债券市场。我国债券市场的相对规模与发达国家相比还相当小，决定了我国评级市场的规模较小。在国际上评级不仅仅是对债券和债券发行主体的评级，还包括金融产品交易对手评级，包括银行、保险公司、基金公司、证券公司等，而我国尚缺乏对交易对手评级的制度安排，也造成了我国评级的市场规模较小。我国评级产品的品种也较少，主要以短期融资券等债券产品为主，是以债券发行为前提，对债券评级并由此对主体进行评级的模式，而国外是以主体评级为主并进一步对债券进行评级。我国的这种以债券评级为主的模式，易使得企业为发债而优化债券信用品质而忽视主体信用品质，也易导致发债主体注重短期行为而忽视长期行为。

（八）存在以信用级别确定发行利率的倾向

评级机构评出的信用等级在国外表现为等级与违约率之间较好的对应关系，在国内由于缺乏违约率数据，使得国内评级机构评出的信用等级只能与市场反映的利差建立相互对应关系，投资者可以根据、也可以不根据评级机构出具的信用报告及其信用等级来确定是否进行投资，及投资所需要的风险利率水平。目前，在我国利率尚未完全市场化的条件下，根据信用等级进行市场询价具有合理性，但是，需要明确这是信用等级参考功能下的询价机制，而不是以信用级别确定发行利率。若不区分评级机构、发债主体所属行业、发债规模等相关信息，仅依靠信用级别进行窗口指导，就容易产生依据信用级别确定利率的倾向。

三、推动我国资信评级行业规范发展的若干建议

上述评级行业生存环境问题由多方面因素造成，既有认识问题，也有体制问题，还有市场和政策问题。这些问题的解决不可能一蹴而就，也不可以对此熟视无睹，要本着实事求是、循序渐进的态度去面对，去解决。

（一）统一监管主体仍需明确，监管思路仍需理清，法律建设仍需推进

从监管角度看，统一监管主体仍需明确。多头管理的模式不仅增加了政府的监管成本，包括监管人员、监管制度设置、监管行政设置等，而且也增加了评级机构适应不同监管体系的成本，包括材料报备、监管沟通等。因此，对于评级行业而言，需要形成评级行业的统一监管，即中央政府授权专门的机构对评级机构进行认证和监管。

而在监管思路上，要推动资信评级行业健康、快速发展，应在理清监管思路的基础上加强监管，这是评级行业健康发展的必要保证。监管思路应以评级的本质为出发点进行监管，参考借鉴国际证监会组织（IOSCO）对资信评级监管的重点，着重于通过监管增强评级机构评级行为的独立性，提高评级流程和评级方法的透明度和信息披露程度，使其评级结果更加公正，更能真实地反映被评对象的信用质量高低。

实际上，无论是 IOSCO 在金融危机后出台的资信评级基本行为准则以及后来出台的基本行为准则，还是美国 2010 年 7 月新近颁布的《Dodd-Frank 华尔街改革与消费者保护法》中对资信评级机构的要求来看，监管的核心部分都集中于通过监管保证评级机构的独立性、防范利益冲突以及增强信息披露和质量控制。以 IOSCO 基本准则为例，独立性及利益冲突管理在 IOSCO 基本准则中占有重要地位，准则要求资信评级机构避免评级行为与评级机构、发行人、投资者及其他市场参与者有关的潜在影响；而在透明度和信息披露方面，则主要体现在对公众投资者和发行人负责，以及自身行为准则的公开两个方面。在评级过程中的质量控制方面，IOSCO 基本准则在评级过程、监控和更新等方面做出了具体规定，如使用严谨、系统的评级方法，历史经验验证，评估方法的一致性，评级过程中的资源保障等。

此外，国家还需推进资信评级相关法规的建设，目前我国涉及资信评级的有关规定散见于《证券法》、《公司法》、《企业债券管理条例》、《保险公司投资企业债券管理暂行办法》、《证券市场资信评级业务管理暂行办法》等法规条例，这些法规条例对促进评级行业规范发展起到了一定的积极作用，但同时也存在

法律盲点多、各监管部门规章缺乏统一法律标尺等问题。从国外现状看，美国、欧盟、日本等主要的经济体，以及台湾、香港等地区在金融危机爆发后，都陆续修订了信用评级相关的法律法规，以更好的对评级机构进行监管。因此，建议在目前我国资信评级快速发展的大背景下，对《证券法》进行修订，或者尽快出台专门针对资信评级的上位法，以便更好的对资信评级机构进行监管。

（二）统一行业自律组织建设需要推进

行业自律是行业的自我管理，资信评级行业自律是维护行业核心价值独立、客观、公正、科学促进市场信息透明的必然要求。从国际上看，美国并无评级行业协会，但这主要是为保证信息充分传递，避免三大评级机构为主的评级公司形成利益集团，产生垄断格局，而对外传递一致的声音。

但从我国现实国情看，我国的评级机构呈现小而多的分布特征，行业内单个企业话语权弱，很难在资本市场上争取自己的话语权。因此，在我国资信评级行业发展的初期，在实行行政监管的同时，还应加强评级机构的自律管理，集中行业智慧，加速行业发展，以便更快地与国际评级机构接轨，从而在国际资本市场上发出自己的声音。同时，统一行业自律组织的建设，也有利于评级机构在自律体系内形成统一的自律准则及行业行为标准；有利于在新市场产生后，及时进行相应的制度安排，从而实现有序竞争及和谐发展。

（三）做好评级制度安排，避免监管主体、行业协会和评级机构的错位，禁止金融机构进入评级市场，禁止金融机构入股评级机构

在统一监管、统一行业协会的基础上，建议明确监管主体、行业协会和评级机构各自的职能、地位和行为规则，避免以监管主体牵头、以行业协会为平台，建设统一的资信评级技术标准；避免监管主体以行业协会为平台，变相设置资信评级机构；避免个别资信评级机构不进行技术创新，以资信评级技术标准统一为借口实现“搭便车”的目的；避免个别资信评级机构为一己之利而非理性、不真实传播资信评级的理论、理念；坚持资信评级机构的评级技术标准的自主创新，坚持资信评级机构之间的理性竞争，共同推进中国资信评级行业的发展。

同时，我们建议禁止金融机构进入评级市场，禁止金融机构入股评级机构。金融机构既是金融产品的交易对手，也是金融产品的承销主体，在资信评级的相关环节处于强势地位，金融机构进入评级市场、入股评级机构，无法保持评级的独立性，容易引起评级市场的混乱。

（四）提高收费水平，提升资信评级行业地位，稳定分析师队伍

对资信评级机构而言，拥有一支知识水平较高、专业技术过硬的分析师队伍已成为公司核心竞争力的关键因素之一。然而，当前过高的人员流动性现状制约了评级行业的快速发展。因此，监管部门可以考虑通过提高资信评级行业的收费标准，加大对评级行业技术和研发的扶持等手段，提高资信评级行业的收入水平，提高分析师的待遇标准，提升评级行业的吸引力，更好更快地推动评级行业的发展。

同时，需要通过禁止资信评级行业人员在一定时间内向存在相关利益金融机构的流动，稳定资信评级队伍。金融机构往往是资信评级机构的评级对象，也是评级产品的设计、承销或投资主体，评级机构人员向金融机构的流动，使得评级机构与金融机构之间容易产生人员间难以回避的利益冲突，不利于充分缓减信息不对称，甚至产生隐藏信息、隐藏行为的道德风险。

（五）推进债券市场发展，推动交易对手主体评级，推动理财产品资信评级

我国的间接融资比例高达 70% 之多，使得我国的信用风险主要集中于银行体系。推进债券市场的发展，有利于优化我国的融资结构，有利于降低银行系统的信用风险对经济安全的冲击，有利于显性化金融系统的信用风险，有利于降低金融产品的交易成本和费用，有利于推动信用产品的发展。

推进债券市场的发展，首先应简化发行核准环节和流程，增加现有债券品种的发行规模、不断推出金融创新品种，丰富债券种类和结构，特别是推出不同风险收益特征的债券，如高收益债券等。

推进债券市场的发展，还包括扩大公司债的融资规模。目前，我国债券市场主要以银行间债券市场为主，交易所债券市场发展较慢。其中，既有投资者结构的问题，也包括承销商类型不同所产生的差异等原因。建议证监会推进交易所市场债券的发行，优化上市公司的融资结构，丰富交易所市场的信用产品结构。

推动交易对手主体资信评级，既可以防范主要金融机构信用风险引发的金融市场风险，也有利于扩大资信评级市场。我国证券交易市场已经囊括了各类企业和机构，这些企业和机构既是资金的需求者，也是资金的供给者，很多部门也是金融产品的交易者。这些交易对手中，具有一定规模和影响力的企业或机构发生信用风险，就可能诱发金融市场的系统性风险。例如以雷曼破产为标志的全球性金融危机。因此，对交易对手，包括基金公司、证券公司、银行、保险公司等进行评级，有利于防范系统风险，也有利于扩大资信评级市场规模。

推动理财产品评级，确保投资者的利益，防范理财产品风险。随着我国金融市场的发展，各类理财产品渐次发展。然而，由于我国的理财产品缺少第三方独立信用风险披露机制，使得投资者不能准确理解和把握理财产品的信用风险，金融机构为了利益也存在一定的道德风险，为此，需要推动理财产品资信评级，防范理财产品风险。

（六）加强评级机构的基础建设

评级行业的发展根本上来说是基于自身评级质量的提高和公信力的提升。公信力的提升要求评级机构完善公司治理结构，保证评级独立性；评级质量的提高有赖于评级机构评级基础建设的不断完善。

1. 完善公司治理结构，保持独立性

资信评级机构的声誉具体表现为公信力，是评级结果使用者对评级结果认同度和使用状况的度量，其高低关乎资信评级行业的生存和发展。资信评级机构公信力的培育是一个长期过程，影响公信力的因素很多，

其中最重要的是评级机构的独立性。

影响评级机构独立性的因素存在于方方面面，从上而下来看，完善评级机构治理结构尤为重要。我们认为，从对独立性影响的关联度来看，应尽量避免或限制与评级产业链相关产业的企业对评级机构的入股，特别是成为具有控制权的大股东，这将严重影响评级机构的独立性。从国际角度看，为保持独立性，评级机构的大股东主要分为两类，一类是出版商等信息传播企业，如标准普尔的母公司麦格劳—希尔集团是全球信息服务业巨头；另一类是非营利性质的事业单位，如大学、研究所、基金会等。

2. 大力开展数据库建设，夯实资信评级基石

数据库建设是资信评级最重要的基础建设，不仅体现在评级标准的建立，也体现在评级结果的验证、公信力的形成方面。由于我国评级行业发展的历史时期较短，信用债券更是近年才产生，评级机构普遍存在数据库建设不足、信用数据大量缺乏的窘迫。该项工作对资信评级机构软硬件都存在极高要求，时间上也非一日之功，是资信评级机构基础建设的重点与难点。

3. 加强评级方法与流程披露

评级机构要让自身的评级方法和评级结果交与市场验证。从国际社会所总结的对本次金融危机中资信评级制度的经验、教训来看，评级机构信息披露的对象包括评级的方法、评级的流程等方面。提高评级透明度，有利于减少资信评级机构在评级过程中产生的利益冲突行为，更好地维护独立、客观、公正的立场。

（七）坚持资信评级机构的市场化、本土化和国际化的发展方向

坚持中国资信评级行业的市场化、本土化和国际化为发展的方向。

所谓资信评级行业的市场化是指，中国资信评级行业应坚持以企业（或公司）的组织形式、采取市场竞争的原则，以盈利为基础、以技术水平的提高为手段，为投资者提供可靠的信息、可信的评级结果，推动中国资信评级行业的发展。当然，市场化的运作必然存在市场的失灵，需要政府通过适度的、合理的监管措施和调控手段，弥补市场的不足，促进中国资信评级行业的发展。

所谓资信评级行业的本土化是指，中国资信评级市场的发展应该以本土的评级机构为主、以本土的评级人员为主，研究国际评级机构的发展历程，学习和借鉴国际评级机构的管理、评级和标准技术，结合中国的国情和特色，促进中国资信评级行业的发展。坚持本土化与对外开放的融合，反对本土化下的固步自封。

所谓资信评级行业的国际化是指，中国资信评级行业应伴随人民币国际化的进程逐步走向国际市场，并在政府的政策推动下，通过有限股权合作、技术合作、项目合作等方式，与国际评级机构形成良性互动关系，推动中国资信评级行业形成具有国际水准兼具中国特色的评级标准和技术，立足于中国为国内外的投资者提供服务。

THE DEVELOPMENT AND EVOLUTION OF INTERNATIONAL CREDIT RATING INDUSTRY AND CREDIT RATING REGULATION

By Rongen Zhu and Juan Ying
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Executive Summary

1. The credit rating industry is originated from the information dissemination. It has been transformed to the financial service industry with market influence by the market force and government promotion. The credit rating regulation tends to be legalized, standardized and integrated since the Enron collapse, particularly this subprime crisis. We have drawn inspiration from the development and evolution of the international credit rating industry and credit rating regulation that: (1) The purpose of regulation is to make the credit rating better serve the society by promotion of the development of credit rating agencies (CRAs). Regulatory measures are accompanied with the rating industry development; (2) It should be cautious to seek the legal liability of CRAs, particularly at the initial stage of the industry development, based on the inherent risk of the industry; and (3) As for the compensation model, it is practicable to choose the issuer-pay model evolved from the history, although such model is not the best theoretically.

I. The Origin of the Credit Rating Industry: Information Dissemination

A. The Origin of the Credit Rating Industry and the Early Market Survival of the Fittest

2. It is known that the first credit rating agency (CRA) is originated from the United States (U.S.). In the middle of the 19th century, the west U.S. was developing with a prosperous railroad industry. While banks and direct investments could not meet the capital demand, the railroad industry started raising funds by the private bond market. Compared with the bond market led by federal and state governments, such market was with very serious information asymmetry. Furthermore, the investors doubted that the financial institutions had taken advantage of the information and profited for themselves in the issuance of the railroad bonds. Thus, there was a strong demand for the information provided by an independent third party. The credit rating industry was born. The Moody's issued the first credit rating report on railroad bond in 1909.

3. With CRAs' issuance of the rating reports, the information dissemination was substantially improved in depth and breadth. The information asymmetry was effectively alleviated. More and

more companies, including those small and medium enterprises that could hardly raise funds from the bond market previously, entered the bond market. The projects financed were also from well known middle and east regions to unknown vast west region. The development of the rating industry in turn promoted the development of the bond market. Market participants realized gradually the function of the credit rating.

4. It is drawn from the three international CRAs that most of them could be traced their roots back to the publishing industry. For instance, Standard and Poor's (S&P) was from Poor's Publishing (in 1916) and Standard Statistics (in 1922); and Fitch Ratings was from the Fitch Publishing Company (in 1924). It is also drawn from then compensation model that CRAs earned from the publishing and sale of rating reports to investors. In summary, to be more exact, the rating industry is originated from the information dissemination industry, while CRAs are information providers. At that stage, the rating industry was at the stage of complete market competition. The rule of the Survival of the Fittest was followed in the survival and development of CRAs. There was neither regulator to regulate, nor policy to support and promote the rating industry.

B. The Use of Reputation Capital and the Reference of Credit Rating in Government Regulations

5. In the hand of the market, the good business records made the international CRAs outstanding prophets. They earned the market recognition and established their reputation capital, particularly in the Great Depression from 1929 to 1933, when there was a series of bond defaults. Based on the research of the U.S. corporate bonds by Hichman in 1958, 23% bonds issued before and matured after 1932 were defaulted, while the bonds obtained high ratings from CRAs were hardly among the list of the companies defaulted. It made the investors and regulators believe that the credit rating could protect the investors. The rating was gradually recognized by the market.

6. The U.S. Securities and Exchange Commission (SEC) and banking regulatory authorities issued some regulations thereafter to use the ratings in investment decisions, while limiting investments in high risk bonds. For instance, the Office of the Comptroller of the Currency of the U.S. (OCC) specified in 1931 that a bond had to be rated by at least one CRA with a rating not below BBB, if a bank would like to book a bond at face value. Otherwise, the bank should book the bond at market value, to book a loss, if any; and 50% of such loss should charge to or reduce the capital of the bank. In 1936, the OCC and the Federal Reserve further specified that banks were prohibited to hold any bonds below BBB and banks could only hold those bonds rated by at least two CRAs.

7. It can be said that the use of the ratings by the government expanded efficiently the market demand for the rating and promoted the further development of the rating industry. At that stage, although the regulatory authorities and investors used the rating opinions in decision making, there

was neither specific government regulatory authority, nor uniformed designation and regulatory measure to oversee CRAs; and the rating industry relied completely on the self-disciplines based on the established reputation capital of CRAs together with the restriction of the market elimination. Such system was closely linked to the features of the rating industry at its initial development stage with relatively simple transactions.

C. The Origin of Legal Liability Attribution: Public Interest Privilege

8. It is noted that the U.S. legal environment makes CRAs develop steadily in the U.S. and lay a solid foundation for their worldwide influence, among other factors such as strong market demand, relatively matured financial system and comparatively perfectly matched market mechanism.

9. The credit rating assesses the likelihood a debtor will repay or a particular debt will be repaid in a timely fashion. Objectively, "assesses the likelihood" itself is risky. We may call it "risk in the risk disclosure". Such an inherent risk makes it difficult in finding the cause of a false rating opinion whether it is caused by short of skills or lack of due diligence or negligence. Sometimes it is caused by all or many factors. In such case, if a CRA is always sought the legal liability, under the sword of Damocles, the prudent CRA will not express its rating opinion freely as it may be sued and totally destructed, particularly at the initial stage. If the default or false assessment occurs at the initial stage and if it has to be accounted for the legal liability or expelled from the market for such likelihood assessment event, the CRA will have no opportunity to prove its long-term satisfactory performance. Therefore, it shall be prudent and moderate to seek the legal liability of CRAs especially at the initial stage of the industry development.

10. The U.S. legal environment and the judicial practice have treated the credit rating as the press. The free press is under the legal protection. The First Amendment of the Constitution of the U.S. specifies that the citizen's free speech can never be denied. Many cases of American courts have affirmed that credit ratings are opinions that are matters of public concern equivalent to publishing activities which deserve the protection under the First Amendment. Furthermore, such financial information publishing agencies have alleviated information asymmetry by providing the public with information. They are beneficial to investors' interest and market stability. Therefore, they have satisfied the public interest. The typical court case in the U.S. can be traced back to The New York Times Co. V. Sullivan, the Sullivan Rule (or the Reynolds Qualified Privilege of the United Kingdom) or the public interest privilege. That is, the published information related to the “right to known”, even it is proven false later, can still be protected by the privilege, unless such information is proven to be made with "actual malice". As long as it is not made with "actual malice", the publishing agencies shall not be sued for the false information when they publish the information of public nature. The CRAs won the recognition of the judges for the reasons of free press and no actual malice in the cases of Jefferson County School District v. Moody's in 1993 and Orange

County v. S&P in 1994.

II. The NRSRO Concept: Promotion of the Transformation and Development of the Rating Industry

D. The Proposal of the NRSRO Concept

11. In the hand of the market, the credit rating was recognized by the market in the elimination of the information mismatching. The use of the ratings by the regulatory authorities in their related decision makings promoted greatly the market demand of the rating. The ratings were used widely. CRAs established their initial market credibility.

12. In the 1970s, there was high inflation with high interest rate in the U.S. economy. Such affected the bond market greatly. In the oil crisis, there was a worst recession in 1974 since the Great Depression in the 1930s. A new feature was noticed in that crisis, i.e., those companies obtained high ratings from CRAs were defaulted. Most notably was the Penn Central Railroad Default, although the commercial papers of the Penn Central Railroad got the highest ratings from CRAs. The investors realized from such default that not all ratings obtained from CRAs could disclose risks and there was a need to identify the reliable ones in order to obtain maximum information of the ratings.

13. To regulate the use of the ratings, the SEC introduced the concept of Nationally Recognized Statistical Rating Organization (NRSRO) through the no-action letter process in 1975. Three CRAs were recognized as NRSROs, i.e., Moody's Investors Service, S&P and Fitch Ratings. The SEC's initial regulatory use of the term NRSRO was solely to provide a method for determining capital charges on different grades of debt securities under the SEC's net capital rule for broker-dealers, Rule 15c3-1 under the Exchange Act (the Net Capital Rule). For those securities with NRSROs investment grade, the deduction to the net capital would be lower, as they were more liquid and less volatile in price than those securities with lower ratings. Over time, as the reliance on CRA ratings increased, so too did the use of the NRSRO concept. For example, the mortgage related security, defined in Sec. 3(a)(41) of the Exchange Act and the Secondary Mortgage Market Enhancement Act of 1984, has to obtain the rating AA or above from at least one NRSRO. The NRSRO concept was also incorporated in the Federal Deposit Insurance Act in 1989. The bond with investment grade has to obtain the rating BBB or above from at least one NRSRO. The ratings are used as references in not only the federal and state legislations by financial and other regulatory authorities, but also foreign regulatory system and private financial contracts. For example, ratings need to be obtained for those institutions who would like to participate in Student Assistance defined in Title IV of the Higher Education Act of 1965; the NRSRO Concept is used in the territory of the jurisdiction; and the rating trigger is used in private contracts.

14. The recognition of rating qualifications by regulatory authorities, the use of the NRSRO concept in regulations and the use of the NRSRO ratings in contracts significantly enhanced the market influence of NRSROs. It is driven by both the hand of the market and the government power that the international CRAs gradually have a powerful say. At that stage, the NRSRO status was designated with very little informal supervision, as it was still relied primarily on the market acceptance rather than regulatory standard. In terms of specific regulatory content, it was mainly concentrated on the market access rather than the specific requirement of the internal management, business processes flow and rating practitioners' professional conduct of CRAs.

E. The Early Measurement of the NRSRO Standards

15. The key consideration of the SEC designation of the NRSRO status was that a CRA should be nationally recognized, i.e., the CRA should be nationally recognized as credible and reliable; and its ratings should widely be acceptable to its major clients in the securities market. However, the SEC did not define the designation standards on credibility, reliability and wide acceptance. In addition, the SEC did not use a transparent legal form to designate the NRSRO. The SEC used a no-action letter process instead. Such way of designation, with neither specified standards nor legal support, was widely criticized by the market.

16. The market opinion was that the opaque standards and designation process were huge obstacles to the new market entrants and they limited seriously the market competition of the rating industry. And since there were few NRSROs designated by the SEC, the competition was not sufficient. S&P and Moody's occupied the oligopoly position because of their advantage in the market for starters. The NRSRO designation system promoted the market oligopoly of the rating industry objectively.

F. The Transformation to the Financial Service Industry

17. The bankruptcy of the Penn Central Railroad in the 1970s was the biggest bankruptcy in American history. It shocked American bond market, and made the issuers and investors realize more clearly that they had to understand the risks in bonds. The ratings then were done with publicly available information in statistics method. A subscriber-pay model was used in the rating charge. Such situations could hardly match the market demand:

(1) The scale and complexity of rapidly developed bond issuance required that CRAs improve the accuracy of the rating method, without totally relying on the statistics driven analysis, and use a new methodology in the ratings. The latter required more analysis of the basic situation, more volume of private information and more comprehensive use of modern financial theory and mathematics tool to quantify the credit risk. It required CRAs to be both financial information

providers and financial service providers through in depth analysis, process and refinement of financial information to offer more value-added financial services;

(2) The subscriber-pay model was with narrow and untimely information dissemination. It weakened positive effects of the rating information to the whole society due to low efficiency of transmission. The rapid development of the debt market and the incidents of the default prompted the whole society with higher requirement to the transparency and timeliness of rating information dissemination. Thus, it was beneficial to investors for their timely risk decisions to improve the efficiency of resource allocation;

(3) The subscriber-pay model was hardly beneficial to the protection of confidential information and intellectual property rights of CRAs with the gradual development of Internet technology, as CRAs provided the paid investors with credit ratings, complete rating reports and some important confidential information of the rated entities; and

(4) CRAs faced comparatively little effective demand under the subscriber-pay model. The revenue of CRAs could hardly support their inputs in human resources, rating methodologies, database, etc., for their transformation to the financial service industry. Therefore, the subscriber-pay model affected CRAs' sustainable development. Meanwhile, the gradual expansion of the NRSRO status designation and ratings utilization objectively made CRAs have a say to charge issuers. It is in such influence of multiple factors, that the rating industry chose the issuer-pay model, a mainstream model, in its historical evolution, when it transformed from the information dissemination industry to the financial service industry.

III. Influence of the Enron Collapse: Legitimation of Rating Industry Regulation

G. The Investigations on Functions of CRAs and Designation of NRSRO Rules by the U.S. Regulatory Authorities

18. Along with the development of global capital markets, the rating business got an unprecedented opportunity. Major CRAs expanded their scale rapidly with more complex rating products. They gradually expanded their influence globally. But at the same time, the problems exposed by international CRAs were also increasingly noticed by the market. In the 1990s, the SEC and the U.S. Congress made a series of researches on regulatory issues of CRAs and considered multiple solutions including three main schemes: (1) Remove the references to the NRSRO ratings in the relevant SEC regulations; (2) Maintain the status quo; and (3) Strengthen the regulatory oversight. But they did not reach a consensus. The performance of international CRAs was barely satisfactory and often questioned by the market in Mexico financial crisis, Asian financial crisis in 1998, Argentina's financial crisis, Enron collapse and WorldCom bankruptcy. The U.S. regulatory

authorities gradually strengthened regulatory oversight of CRAs to restore investors' confidence as shown in Table 1 below.

19. Table 1: A List of Regulatory Activities of the U.S. Regulatory Authorities Since Enron Collapse

Date	Regulatory Agency	Act and Rules/ Proposals/ Reports	Basic Requirements/Recommendations/Topics
March 2002	The Senate Committee on Govern-mental Affairs	Hearing:“Rating the Raters: Enron and the Credit Rating Agencies”	Topics: Once the SEC anointed NRSROs, they are left alone. The NRSROs should have some sense of accountability, some oversight, from the SEC to ensure they properly perform their function as watchdogs.
June 2002	The U.S. Congress	Sarbanes-Oxley Act	Basic Requirements: The SEC shall conduct a study of the role and function of CRAs in the operation of the securities market. The study required shall examine: (1) The role of CRAs in the evaluation of issuers of securities; (2) The importance of that role to investors and the functioning of the securities markets; (3) Any impediments to the accurate appraisal by CRAs of the financial resources and risks of issuers of securities; (4) Any barriers to entry into the business of acting as a CRA, and any measures needed to remove such barriers; (5) Any measures which may be required to improve the dissemination of information concerning such resources and risks when CRAs announce credit ratings; and (6) Any conflicts of interest in the operation of CRAs and measures to prevent such conflicts or ameliorate the consequences of such conflicts.
Oct. 2002	The Senate Committee on Govern-mental Affairs	Report: “Financial Oversight of Enron: The SEC and Private-Sector Watchdogs”	Recommendations: The three major CRAs failed to warn the public of Enron’s precarious situation. Committee staff recommends that the SEC set conditions on the NRSRO designation through additional regulation. In addition, the SEC should also require a level of training for analysts working for CRAs.
Nov. 2002	The SEC	Two Hearings on the Credit Rating Agencies	Broad topic areas included: (1) The current role and function of CRAs; (2) Information flow in the credit rating process; (3) Concerns regarding CRAs (e.g., potential conflicts of interest or abusive practices); and (4) The regulatory treatment of CRAs (including concerns regarding potential barriers to entry).
Jan. 2003	The SEC	Report: “The Role and Function of Credit Rating Agencies in the Operation of the Securities Markets”	Topics included: (1) The role of CRAs and their importance to the securities markets, (2) Impediments faced by CRAs in performing that role, (3) Measures to improve information flow to the market from CRAs, (4) Barriers to entry into the credit rating business, and (5) Conflicts of interest faced by CRAs. In addition, the Report addressed certain issues regarding CRAs, such as allegations of anticompetitive or unfair practices, the level of diligence of CRAs, and the extent and manner of the SEC oversight.
June 2003	The SEC	Concept Release: “Rating Agencies and the Use of Credit Ratings Under the Federal Securities Laws”	Contents include: whether credit ratings should continue to be used for regulatory purposes under the federal securities laws, and, if so, the process of determining whose credit ratings should be used, and the level of oversight to apply to such CRAs.
April 2005	The SEC	Proposed Rules: "Definition of NRSRO”	Recommendations:SEC proposed to define the term NRSRO as an entity that (1) issues publicly available credit ratings that are current assessments of the creditworthiness of obligors with respect to specific securities or money market instruments; (2) is generally accepted in the financial markets as an issuer of credible and reliable ratings, including ratings for a particular industry or geographic segment, by the predominant users of securities ratings; and (3) uses systematic procedures designed to ensure credible and reliable ratings, manage potential conflicts of interest, and prevent the misuse of nonpublic information, and has sufficient financial resources to ensure compliance with those procedures.

20. The basic conclusions drawn from the regulatory activities since Enron collapse and the above reports are as follows: (1) CRAs have played an important role in the securities market. Such role should continuously be played; (2) The designation standards of the NRSRO should be open to

the market to improve the transparency of the designation process; (3) There should be continuous oversight to the designated NRSROs to ensure the high quality of ratings; and (4) The main oversight contents should include rating professionals (such as the experience, competence, stress and ongoing training of analysts); rating process (such as close contact with issuers, review of the source and accuracy of information, etc.); rating conclusion (such as the integrity and objectivity of the ratings, etc.); and internal management procedures (such as internal information not to be inappropriately used, no conflicts of interest or political and economic pressures in the ratings).

H. The Basic Principles of the Technical Committee of the International Organization of Securities Commissions (IOSCO)

21. In September 2003, the IOSCO published the IOSCO Statement of Principles Regarding the Activities of Credit Rating Agencies (IOSCO CRA Principles). There are following four principles for the activities of CRAs: (1) Quality and integrity of the rating process, (2) Independence and conflicts of interest, (3) Transparency and timeliness of ratings disclosure, and (4) Confidential information. Following publication of the IOSCO CRA Principles, many market participants, including a number of CRAs, suggested that it would be useful if IOSCO were to develop a more specific and detailed code of conduct giving guidance on how the IOSCO CRA Principles could be implemented in practice. It is under such background, that the IOSCO published the Code of Conduct Fundamentals for Credit Rating Agencies (IOSCO CRA Code), out of discussions with all concerned in 2004. The IOSCO CRA Code provided a series of actual measures as a guide and framework for the implementation of the above IOSCO CRA Principles.

22. The features of the IOSCO CRA Code are broken into three aspects drawn upon the contents and substance of the IOSCO CRA Code: (1) The IOSCO CRA Code offer a set of robust, practical measures that serve as a guide and framework for the implementation of the IOSCO CRA Principles' objectives. These measures are the fundamentals which are referred by governmental and non-governmental regulatory authorities in their regulations and by CRAs in their individual codes of conduct and internal policies and procedures; (2) These measures respect specific legal and market circumstances with flexibility. Regulators and CRAs can consider whether additional measures may be necessary to properly implement the IOSCO CRA Principles in a specific jurisdiction; and (3) The IOSCO CRA Code is not designed to be rigid or formulistic. They are designed to offer CRAs a degree of flexibility in how these measures are incorporated into individual codes of conduct of CRAs themselves. It is beneficial to CRAs in their improvement of rating methodologies and protection of creativity.

I. The U.S. Credit Rating Agency Reform Act of 2006

23. Although the U.S. regulatory oversight of CRAs are gradually legalized and the scope of regulatory oversight are expanded to the elimination of conflicts of interest and management of rating

processes, there exists a lot of obstacles in substantial regulatory oversight of the rating industry.

24. When the market participants thought that regulators would not launch any new regulations of the rating industry in the short period, the U.S. President Bush signed the Credit Rating Agency Reform Act of 2006 (Act) on 29 September 2006. The Act required the SEC to implement registration, recordkeeping, financial reporting and oversight rules with respect to registered CRAs, and directed the SEC to issue final implementing rules. The goals of the Act are to improve ratings quality for the protection of investors and serve the public interest by fostering accountability, transparency, and competition in the rating industry.

25. The Act defined the unique authority of the SEC over the registration and designation of NRSROs and legalized the SEC as a main regulator over CRAs. At the same time, the Act required a series of reforms in registration and oversight of NRSROs, e.g., a CRA will be required to provide information such as historical performance measurement statistics of the CRA; the default rate of the short, medium and long-term securities rated in accordance with the classes of credit ratings and the down grading rate of any; a guiding opinion of CRA's organizational structure, code of ethics, procedures to address and manage conflicts of interest; in addition, the basic rating process, the responsibilities, experience and qualifications of its credit analysts and credit analyst supervisors, etc.. However, the Act specifically prohibited the SEC from regulating an NRSRO's rating methodologies.

IV. The Strengthening and International Coordination of the Regulation of the Rating Industry since the Subprime Crisis

26. Although the IOSCO has provided a unified strong operational framework of the regulation to the rating industry, and the Act of the U.S. has played a strong role in protection of investors' interest, the outbreak of the surprime crisis again pushed CRAs to the cusp. The problems of CRAs' business operations, such as conflicts of interest, lack of transparency, weak independence, etc., were more apparent in their ratings of structured instruments. The market required further strengthening of the regulation over CRAs and more targeted measures to the problems of conflicts of interest brought by the compensation model, lack of transparency in the rating process, etc.. In addition, the market radiation of CRAs in their geographical expansion of the globalization also required that the industry regulation should be coordinated based on international standards without being confined to a single country.

J. The Strengthening of the SEC Oversight of CRAs

27. With the outbreak and deepening of the surprime crisis, the market called further strengthening of the oversight of CRAs. In that contest, the SEC under pressure conducted a number of regulatory changes including amendments to the forms and rules. The main contents of the rule amendments included:

(1) Removing any reference to or requirement of reliance on credit ratings from applicable statutes and regulations to lessen reliance on credit ratings;

(2) To those essential statutes and regulations, especially those required ratings which influence significantly investors decisions, requiring CRAs to: improve the information disclosure, such as to disclose ratings performance statistics and sufficient information about their methodologies; make publicly available in their website a random sample of 10% of their issuer-paid credit ratings and their histories for each class of issuer-paid credit rating for which the NRSRO has issued 500 or more ratings; provide the SEC with an annual report to enhance the file and annual report; enhance the standardization of working papers, such as to make and retain records of all rating actions related to a current rating from the initial rating to the current rating including upgrades, downgrades, affirmations, and withdrawals; If a quantitative model is a substantial component of the credit rating process for a structured finance product, keep a record of the rationale for any material difference between the credit rating implied (e.g., A) by the model and the final credit rating issued (e.g., AA) by the rating committee; and

(3) Emphasizing on the prevention and management of rating shopping and conflicts of interest by information disclosure, e.g., when a issuer requests a CRA for an initial rating before the issuance of a security, if the rating cannot satisfy its requirement, the issuer will find another CRA to rate it till the most favorable rating is obtained. Such feature is known to CRAs. CRAs have the motivation to provide the issuer with a higher rating. Thus, to disclosure the selection process of CRAs by the issuer: (i) is beneficial to investors in their knowledge on the different ratings the issuer got, and the difference and causes of the initial and final rating; (ii) restricts potential activities of conflicts of interest (e.g., prohibits an NRSRO in making rating proposal to the issuer and prohibits a person within an NRSRO who has responsibility for participating in determining credit ratings or for developing or approving procedures or methodologies used for determining credit ratings from participating in any fee discussions or negotiations); and (iii) in addition, CRAs should strip non-rating businesses, regularly rotate chief analysts and establish an independent monitor position to investigate any potential conflicts of interest and management effectiveness.

28. In addition to the strengthened external oversight, CRAs also started adopting relevant measures to improve shortcomings and to restore investors' confidence. CRAs reacted with a number of improvements such as separation of their main business from auxiliary business, disclosure of structured finance product's what if scenario, etc., to the criticism in the subprime crisis that "CRAs involved excessively in the design of structured finance products". For example, S&P responded promptly after the crisis and announced 27 reform measures in February 2008, mainly in four aspects: corporate governance, analysis methodologies, information disclosure and investor education. S&P has enhanced the measures related to these four core schemes, with the deepening of the subprime crisis.

29. Overall, the U.S. government has significantly strengthened the regulatory oversight of the rating industry since the subprime crisis. The regulatory measures have deepened to the specific business process, rating methodologies (including models, assumptions, etc.) and other substantive aspects of the ratings. The SEC has not made the resolution on the proposal of whether to require NRSROs to change their symbols or substantially remove the reference to the NRSRO ratings in the structured financing products.

30. On 21 July 2010, the U.S. President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act") into law. The "Dodd-Frank Act" is the most comprehensive financial reform act since the Great Depression. It required improvements to the regulation of CRAs including enhanced regulation, accountability, and transparency of NRSROs; qualification standards for credit rating analysts; the SEC study on strengthening CRA independence and other aspects.

K. The European Union's Regulatory Measures on CRAs

31. Compared with the U.S., the rating industry development of Europe has been relatively backward. Although they also adopted the relevant regulatory measures on CRAs, overall, the European Union (EU) states have learnt from the U.S. who still dominates the regulatory oversight. Before the subprime crisis, the EU's regulation of CRAs mainly concentrated on the approval of qualification, observation of the IOSCO basic norms and CRAs self-discipline.

32. After the subprime crisis, the EU finance ministers have approved a series of actions including the assessment of the role of CRAs in the crisis and revelation of the relevant defects. The main assessments of the European Commission include the potential conflicts of interests in rating process, transparency of rating methodology, problems of lagging in ratings review and oversight support program.

33. In July 2008, the European Commission decided to regulate CRAs in the EU states. On 12 November 2008, the European Commission adopted a proposal for the Regulation on Credit Rating Agencies (Regulation) within the whole EU. The purpose of the proposal was to restore the confidence of the market and investors through the new rules which designed to ensure reliability of credit ratings and accuracy of the information. The relevant rules were similar to those rule amendments of the Act of the U.S.. The spirit of the proposed rules was to: (1) ensure that CRAs prevent from and appropriately manage conflicts of interest; (2) ensure that CRAs remain vigilant on the quality of the rating methodology and the ratings; (3) enhance the transparency of ratings; and (4) implement an effective review and regulatory measures to prevent from the rating and regulatory arbitrage.

34. In April 2009, the European Parliament reached an agreement and approved the proposed Regulation. The Committee of European Securities Regulators (CESR), with the representatives from the EU-27 member states, would be temporarily responsible for the application and registration of CRAs. The application would be decided upon by the relevant securities regulators grouped in a college. The college of regulators will also be involved in the day-to-day supervision of CRAs.

35. After the European sovereign debt crisis, the European Commission proposed to further strengthen the EU supervision of CRAs. In June 2010, the European Committee adopted a proposal to establish the European Securities and Markets Authority (ESMA), a new agency, to be entrusted with exclusive supervision powers over CRAs registered in the EU. It would have powers to launch investigations of the ratings of CRAs, and to perform on-site inspections. It would also have the powers to launch the punishments to CRAs such as fines, temporary suspend the rating qualification, or revoke the licence, etc., if there is any violation of the EU rules. The EU centralized the supervisory authority of CRAs at the EU level from the individual EU member states with the establishment of the ESMA.

36. It is drawn from the path of the EU supervision that the Europe supervision was born after the outbreak of the subprime crisis and has been strengthened in the sovereign debt crisis. The EU learnt U.S. experience in the oversight of CRAs, however, the EU has strengthened the supervisory independence and measures after the sovereign debt crisis. The specific measures are focused on registration, managing conflicts of interest, information disclosure and supervision coordination.

L. The IOSCO's Revisions and G20's Recognition of the IOSCO CRA Code

37. To respond to the role of CRAs in the structured finance instruments, the Technical Committee of the IOSCO revised the IOSCO CRA Code in May 2008 to strength the four categories of the IOSCO CRA Code including quality and integrity of the ratings process; independence and conflicts of interest; transparency and timeliness of the ratings disclosure; and treatment of confidential information. These revisions include a series of measures to improve the quality of the rating process, ensure the monitoring and updating of the ratings on an ongoing timely basis, prohibit the analyst from participating in the design of the structured finance instruments, enhance the public disclosure, review regularly the salary policy, differentiate ratings of structured financing instruments from traditional corporate bond ratings, etc.. To avoid the cross-board oversight disparity, the IOSCO proposed to use the IOSCO CRA Code as a model to regulate CRAs and developed a testing model to facilitate the regulators.

38. In April 2009, the leaders of the G20 signed a Declaration on Strengthening the Financial System and agreed that all CRAs whose ratings are used for regulatory purposes should be subject to a regulatory regime that includes registration, and that their conducts should be complied

with the IOSCO CRA Code; the IOSCO should coordinate full compliance; and national authorities would enforce compliance and require changes to a CRA's practices and procedures for managing conflicts of interest and assuring the transparency and quality of the rating process. In particular, CRAs should differentiate ratings for structured products and provide full disclosure of their ratings track record and the information and assumptions that underpin the ratings process. The oversight framework should be consistent across jurisdictions with appropriate sharing of information between national authorities, including through the IOSCO; and the Basel Committee should take forward its review on the role of external ratings in prudential regulation and determine whether there are any adverse incentives that need to be addressed. The IOSCO CRA Code has been recognized by the G20 and become the benchmark standards of global CRAs and rating regulations.

V. Some Thoughts on the Regulation of China Rating Industry

39. It makes us think from the above overview on the path of the development of the rating industry along with the regulation of the industry. Currently, China rating industry is at its initial development stage. The rating industry is with limited maturity and credibility; the bond market with which the rating industry is closely associated has developed rapidly in recent years, but in general it is with significant difference from the matured market abroad; and the regulation of the rating industry will be strengthened and gradually integrated into the international regulatory framework with a global impact. In response to these realities, we believe that the following points worth thinking about:

(1) The purpose of the regulation is to promote the healthy development of the rating industry, make the credit rating play a full role in risk disclosure, and promote effective resources allocation and better development of the society. Such is the aim of the regulation. Although they increase the cost of CRAs in the short-term, the relevant regulatory measures will benefit CRAs in the long-term and strength the whole industry through individual CRAs' development. Should the regulation is only for the conforming to the international trend, ensuring of no occurrence of risk event within the scope of regulation and showing of the performance of the regulator, not for the long-term development of regulated CRAs, then such a regulation is either out of the purpose, or lack of vitality;

(2) The industry regulation is accompanied by the gradual development of the industry. It needs to be corresponding to the stage of the industry development. Regulation lag, especially regulation vacuum, of course, will cause a lot of problems including the outbreak of the subprime crisis; and if the concept and means of industry regulation are not kept up with the complex financing products brought by the financial innovation, the rapid spread of the risk will occur. However, excess regulation will easily be overlooked by the market; the risks of excess regulation may not produce significant short-term adverse consequences, but will cost stagnated development of the industry; furthermore, facing with the high demand of global strengthening of the regulation of the industry, the industry regulation may go from one extreme to another with relatively weak domestic rating industry;

(3) Current international situation shows a trend of combination of international standards with individual country's direct supervision, i.e., each country complies with IOSCO CRA Code and designs corresponding regulatory policies and rules, which fit both its own country situation and international credit rating standards. Such policies and rules are regulated by each sovereign state or region. China will also be integrated into such regulatory trend, participate actively in the formulation of the rules of the game, take into account China's situation at the institutional level, and promote the development of domestic rating industry;

(4) With the complex financing products brought by the financial innovation and the existence of a vacuum layer of regulation of innovative products, the error rate of rating judgment may be increased. Now the influence of ratings on the market is greater than before, a down grading of a rating may have a dramatic impact on the market, it may even be commented as "waves" and "adding insult to injury" by the media to further deteriorate the market expectation. Therefore, if the rating failure is indeed caused by human factors such as to swap relaxed standards for income, we believe that CRAs need to bear corresponding liability. However, given the inherent risk within the rating business itself and the complexity in defining the liability boundary, we believe that there is a need to be rigorous, careful, scientific and moderate in seeking the legal liability of CRAs, particularly at the initial stage of the industry development;

(5) To the criticism of the compensation model, we believe that it should be dealt with historically and objectively. Currently, main compensation models are the issuer-pay model, subscriber-pay model and government or public utility-pay model. There are advantages and disadvantages in all of above three models in terms of the rating quality obtained by market participants. At present, most of the CRAs adopt the issuer-pay model, although three international CRAs adopted the subscriber-pay model at the start in the history while Egan-Jones, one of the U.S. NRSROs, still adopts the subscriber-pay model till now. There is no single model which can fully meet the market demand and avoid all shortcomings. The issuer-pay model is one of chosen results from years of historical evolution. It may not be the best one in theory, but it fits the most in practice. In addition, the needs of different investors vary widely. It is an objective and a pragmatic attitude to allow multiple choices of the market and test the vitality of different compensation models through the practice, rather than make a mandatory change in the rating charge; and

(6) As to the specific measures of rating regulation, we believe that the focuses should be on managing conflicts of interest and information disclosure to improve the independence and transparency of CRAs by such measures. As for the rating models, rating assumptions, specific rating methodologies, etc., we believe that it is not suitable to have some mandatory rules so that CRAs can be encouraged to improve rating skills through innovation. Likewise, it should be moderate in the information disclosure on CRAs rating methodologies.

THE IOSCO THREE PILLARS OF REGULATION AND THEIR INSPIRATION TO CHINA CREDIT RATING REGULATION

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Executive Summary

1. Based on the three pillars of regulation, i.e., independence, quality and integrity of the rating process, and transparency, from the Code of Conduct Fundamentals for Credit Rating Agencies (IOSCO CRA Code) by the Technical Committee of the International Organization of Securities Commission (IOSCO), this article discusses the implementation of the IOSCO three pillars of regulation in the United States (U.S.), the European Union (EU), India and the Association of the Credit Rating Agencies in Asia (ACRAA), analyzes the actual situation of China, believes that China should respect the market mechanism, while strengthen the external regulation of the credit rating industry; focus on intellectual property protection, while attach importance to transparency; and unify the regulation and reduce regulatory cost, while improve the quality and integrity of the rating process.

Key words: independence, conflicts of interest, quality and integrity of the rating process, and transparency

2. The problems of the credit rating exposed in the financial crisis triggered by the subprime crisis in the U.S. make G20 accept the IOSCO Statement of Principles Regarding the Activities of Credit Rating Agencies (IOSCO CRA Principles) as a framework for the international regulation of the credit rating.

I. The IOSCO Three Pillars of Regulation

3. In 2003,the IOSCO issued the IOSCO CRA Principles. After further discussion on that basis, the IOSCO released in 2004 the IOSCO CRA Code, requiring that credit rating agencies (CRAs) adopt voluntarily the following four aspects of basic IOSCO CRA Code on compliance or explanation basis: (1) Quality and integrity of the rating process; (2) Independence and the avoidance of conflicts of interest; (3) Responsibilities to the investing public and issuers, including transparency and timeliness of ratings disclosure and the treatment of confidential information; and (4) Disclosure of the code of conducts. After the outbreak of the financial crisis, in response to CRAs' role in the

structured finance ratings, the IOSCO revised the IOSCO CRA Code in May 2008 to enhance the IOSCO CRA Code.

4. The reason that the IOSCO CRA Principles can be recognized by the international community is that there is a series of unique technical advantages in the IOSCO CRA Principles: First, the IOSCO CRA Principles have established a more unified operational framework. The IOSCO CRA Principles are valuable guides to government regulation, non-government regulation, industry standards, and internal policies and procedures of CRAs. Second, the IOSCO CRA Principles respect for the specific differences in individual legal and market circumstances with relatively strong flexibility. Relevant regulatory agencies and CRAs can establish appropriate management policies depending on their specific environment. Third, the IOSCO CRA Principles focus on the professional conduct without unified reinforcement in the regulation of the rating methodologies. It is beneficial to the improvement of the rating technology and protection of the innovation dynamics.

5. The IOSCO CRA Principles are primarily comprised of the following three pillars, i.e., independence and conflicts of interest, transparency and timeliness of ratings disclosure, and quality and integrity of the rating process, reflected from the spiritual essence of core contents of the IOSCO CRA Principles and revised contents of the IOSCO CRA Code in 2008 revision.

A. Independence and Conflicts of Interest

6. Independence and conflicts of interest are important parts of the IOSCO CRA Principles, arguably the cornerstone of the IOSCO CRA Principles. The IOSCO CRA Principles require that CRAs should be independent and free from political or economic pressures and from conflicts of interest arising due to the CRAs business relationship with the issuer, or investors or other market participants to affect a rating; CRAs and their analysts should maintain independence and objectivity in procedures and substances; and the determining factors of a rating should only be the risk related factors. In addition, the IOSCO CRA Principles specify the policy and procedures of rating, the integrity of rating process, the independence of CRAs analysts and employees, etc.. The IOSCO revised the IOSCO CRA Code in May 2008. A series of measures were added such as a credit rating agency (CRA) should prohibit its analysts from making proposals or recommendations regarding the design of structured finance products that a CRA rates, conduct formal and periodic reviews of compensation policies and differentiate ratings of structured finance products from traditional corporate bond ratings. The IOSCO published a Consultation Report on Regulatory Implementation of the IOSCO CRA Principles in May 2010. It emphasized that for independence and conflicts of interest, a CRA should avoid potential conflicts of interest in the CRA's ownership structure, business or financial activities, or the financial interests of the CRA employees. It placed the independence of ownership structure at the most important position.

B. Transparency and Timeliness of Ratings Disclosure

7. Transparency and timeliness of rating disclosure manifest in two principal aspects: responsibility to the public investors and issuers; and disclosure of CRA's own code of conduct. The IOSCO CRA Principles specify clearly for the treatment of confidential information to protect the safety of the information. The IOSCO CRA Principles enhanced the information disclosure for essential information disclosure, e.g., A CRA should publish its ratings decisions regarding the entities and securities it rates, information about the historical default rates of CRA rating categories, rating policies and procedures, and potential conflicts of interest. The purpose of enhanced transparency and timeliness of ratings disclosure were reflected in the revised IOSCO CRA Code in May 2008. The requirement of transparency and timeliness of ratings disclosure has become one of core IOSCO CRA Principles.

C. Quality and Integrity of the Rating Process

8. Quality and integrity of the rating process are also the indispensable contents of the IOSCO CRA Principles. They constitute the three pillars of the IOSCO CRA Principles together with the above two parts of contents. The IOSCO CRA Principles specify the rating process, monitoring and updating for the quality and integrity of the rating process, e.g., A CRA should use rating methodologies that are rigorous, systematic, and, where possible, result in ratings that can be subject to some form of objective validation based on historical experience; apply a given methodology in a consistent manner; ensure that adequate personnel and financial resources are allocated to its rating process, etc.. Many additional contents were added to the quality and integrity of the rating process in the revised IOSCO CRA Code in May 2008, in order to strength the quality and integrity of the rating process, and ensure the ongoing surveillance and timeliness of the ratings.

9. The IOSCO three pillars of regulation unfold fully the IOSCO's regulatory idea to the credit rating industry. In terms of the regulation of the credit rating industry in different countries and regions, they formed "the greatest common divisor" in seeking "the common ground" while maintaining individual differences. Therefore, they have won the widespread market approval (e.g., G20's recognition, etc.), and become global benchmark standards.

II. International Implementation of the IOSCO Three Pillars of Regulation

D. Implementation of the IOSCO Three Pillars of Regulation in the United States

10. On 29 September 2006, Bush, then President of the United States (U.S) signed the Credit Rating Agency Reform Act of 2006 (Act). The Act required the U.S. Securities and Exchange Commission (SEC) to design oversight rules for those CRAs seeking for the Nationally Recognized

Statistical Rating Organizations (NRSROs) including NRSROs registration, file management, financial reporting, daily oversight and so on. The Act was committed to improve the rating quality for the protection of investors and in the public interest by fostering accountability, transparency, and competition in the credit rating industry.

11. Although the Act gave a powerful impetus in the protection of investors' interest, the call to strengthen the oversight of CRAs grows to ever greater heights, along with the outbreak and deepening of the subprime crisis. Under that background, the SEC under pressure has made several amendments to the oversight of NRSROs.

12. The Act has legally established the SEC as main regulator of the credit rating industry. The amended rules by the SEC have the compulsorily binding force to NRSROs. Such are different from the nature of the IOSCO and the IOSCO CRA Principles. However, although some specific measures of the SEC's oversight of NRSROs are different from those of the IOSCO CRA Principles, the core contents of the SEC rules and proposals have followed the IOSCO three pillars of regulation in the IOSCO CRA Principles and deepened and refined them based on the IOSCO three pillars of regulation. For example: the requirement to design written rules and regulations and process flows to manage conflicts of interest; prohibition of the grant or maintenance of the ratings under certain situations, e.g., if a rated entity provides 10% or over 10% of net income of a CRA, and if a CRA recommends to an obligor on the obligor's or securities issuer's company legal structure, assets, liabilities or activities; the requirement of submission to the SEC of the annual financial reports, including the details of income and income ratios; setting up and maintenance of historical record of the ratings, including internal record on the basis of formation of the ratings and internal and external attendance record related to the rating activities; and the appropriate disclosure of the ratings history.

E. Implementation of the IOSCO Three Pillars of Regulation in the European Union

13. Before the subprime crisis, the Committee of European Securities Regulators (CESR)'s regulatory proposal was to establish a uniformed professional code with the cooperation of the IOSCO and the SEC. At the same time, the CESR would pay attention to CRAs' compliance with the IOSCO CRA Principles, while CRAs should meet the requirements of the supervisory authorities of their own states. The CESR believed that it was appropriate to make CRAs exercise self-regulation instead of taking the severe supervisory measures to CRAs.

14. The outbreak of the subprime crisis made the European Union (EU) strengthen the supervision of CRAs. In July 2008, the European Commission announced to regulate CRAs in the EU states. On 23 April 2009, the EU released the Regulation on Credit Rating Agencies which was entered into force on 7 December 2009.

15. The European Commission's key regulations on CRAs include:

(1) The use of the credit rating: The financial institutions in the EU can only use the ratings issued by those CRAs registered in the EU. All CRAs that would like their credit ratings to be used in the EU need to apply for registration from 7 June to 7 September 2010;

(2) Independence and avoidance of conflicts of interest: This rule includes a few requirements, such as a CRA should establish internal supervisory committee and permanent and effective compliance function, prohibit any bid or proposal in the design of the structured finance instruments, maintain independence in the rating methodology and establish relevant staff regulations. These measures reflect more on the quality and integrity of the rating process and maintenance of independence; and

(3) Information disclosure: This includes the disclosure of the rating assumption, structured finance rating symbol, existing and potential conflicts of interest, general rules on compensation and annual transparency report.

16. Overall, the EU agreed to regulate CRAs under the uniformed framework of the IOSCO CRA Principles with the emphasis on the self-regulation of CRAs before the crisis. The EU strengthened the supervision of CRAs and specified many specific and binding regulations with core elements around the IOSCO three pillars of regulation in the IOSCO CRA Principles after the crisis.

F. Implementation of the IOSCO Three Pillars of Regulation in India

17. There are unique characteristics on the regulation of the credit rating industry in emerging market countries, aside from the U.S. and the EU.. We select India as an example since India is relatively of more characteristics.

18. The main points of the regulation of the credit rating industry in India are as follows:

(1) Disclosure of activities of CRAs including their auxiliary agencies: The regulation of the Securities and Exchange Board of India (SEBI) stipulates that CRAs should distinguish their rating activities from other activities such as consultancy, research, software development, etc.;

(2) Conflicts of interest in the issuer-pay model: The SEBI has proposed that the issuer-pay model be continuously used as the SEBI believes that other compensation models are neither suitable nor feasible. However, under the issuer-pay model, CRAs should enhance the transparency of the public information disclosure, including disclosure of conflicts of interest and compensation arrangement;

(3) CRAs administrative regulations: The SEBI requires CRAs to establish their own internal code of conduct to manage their internal operation and as the basic standards of their employees. The terms include maintenance of professional competency and standards, completeness, confidentiality, objectivity, avoidance of conflicts of interest, disclosure of ownership and equity, etc.. In addition, the unique features of the terms involve the establishment and management of the rating committee, and the duties, procedures and guidelines of the rating committee members;

(4) Disclosure of CRAs' compliance with the IOSCO CRA Principles: The SEBI requires CRAs to disclose their own code of conduct in line with the IOSCO CRA Principles and describe their code in the implementation of the spirit of the IOSCO CRA Principles. If any provision of a CRA's code of conduct deviates from that of the IOSCO, the CRA should disclose it and explain the reason; and

(5) Prudent use of the ratings and reduction of the reliance on the ratings.

G. Implementation of the IOSCO Three Pillars of Regulation in the Association of Credit Rating Agencies in Asia

19. The Association of Credit Rating Agencies in Asia (ACRAA) was organized in September 2001 at the Asian Development Bank (ADB). As of October 2010, there are 28 members from 15 countries and regions, representing the first class credit rating. Since the founding of the ACRAA, the ACRAA has promoted the development of Asia credit rating industry, including exchange of skills and ideas, establishment of the rating standards and standardized system, self-discipline of the rating industry and communication with relevant regulatory authorities.

20. In December 2008, the ADB released a Handbook on International Best Practices in Credit Rating (Handbook) in the ACRAA efforts. The Handbook divided CRAs' practice into two categories: essential best practices and desirable best practices and designed a three-phase implementation strategy of the best practices in CRAs. Under the essential best practices, the Handbook specified clearly pre-rating requirements, rating definitions and recognition of default, policies and processes for ratings, confidentiality requirements, independence and avoidance of conflicts of interest, private ratings, unsolicited ratings, process audit, etc.. The Handbook also specified the disclosure requirements on rating definitions and recognition of default, policies and processes for ratings, private ratings, unsolicited ratings, process audit, etc.. Generally speaking, the IOSCO three pillars of regulation are well reflected in the Handbook. In addition, the Handbook required explicitly that CRAs adopt officially the IOSCO CRA Code. The ACRAA will monitor CRAs implementation of it.

21. In June 2010, ACRAA sent a questionnaire to members on the implementation of the Handbook. The questionnaire covered each and every item of the two categories of both essential best practices and desirable best practices, e.g., policies to manage conflicts of interest, policies on

trading and investment declaration, and formulation of other policies to ensure independence and avoidance of conflicts of interest. In addition, other than the Handbook, the questionnaire made a separate listing for the IOSCO CRA Code to survey CRAs' Adherence to the IOSCO CRA Code.

III. Inspiration from the IOSCO Three Pillars of Regulation to China Credit Rating Regulation

22. Along with the development of China credit rating industry, China has strengthened the rating regulation and established relevant rules and regulations in recent years. To standardize the regulation on the three aspects of credit rating, i.e., subject of credit rating, business of credit rating and business regulation of credit rating market, the People's Bank of China (PBC) established the Credit Information System Bureau in November 2003, issued the Guiding Opinion of the People's Bank of China for the Management of Credit Rating in March 2006 and the Specification for Credit Rating in the Credit Market and Inter-bank Market in November 2006.

23. In addition to the PBC, the China Securities Regulatory Commission (CSRC), the National Development and Reform Commission of China (NDRC) and the China Insurance Regulatory Commission (CIRC) have issued regulatory rules, regulations and notices in their respective jurisdictions. In August 2007, the CSRC issued the Interim Measures for the Administration of the Credit Rating Business Regarding the Securities Market to standardize the credit rating for corporate bond, convertible bond, asset-backed securities, etc. from the system level. Although the NDRC has not issued any specific rules and regulations, the NDRC has designated qualified CRAs to rate enterprise bond through business qualification recognition. The CIRC has issued the Provisional Measures for the Administration of Bond Investments of Insurance Institutional Investors as a main rating regulatory document, and designated qualified CRAs in notice form.

24. Aside from the above regulatory authorities, the industry self-regulatory organizations such as the National Association of Financial Market Institutional Investors and the Securities Association of China have issued self-regulatory documents such as the Rules on Intermediary Service for Debt Finance Instruments of Non-financial Enterprises in Inter-bank Market and the Self-regulatory Pact of Securities Credit Rating Industry, respectively, under the regulatory framework established by the above regulatory authorities.

25. With the development of China bond market and expansion of credit rating industry, particularly with the influence of strengthened regulation on the rating industry by global regulatory authorities in global financial crisis triggered by the subprime crisis, China is on the way to standardize and strengthen the regulation on the rating industry. In such process, the IOSCO regulatory concepts and specific regulatory measures will provide China with a lot of references and inspirations.

H. Strengthening of an Independent System Formation Based on Market Mechanism of CRAs

26. The IOSCO believes that CRAs play an important role in most modern capital markets and that to design a set of systematic guiding principles on CRAs' business operation will be very useful to regulatory authorities, CRAs and users of the ratings. The IOSCO CRA Principles consider CRAs' operations and regulatory models in different environment and respect the role of market mechanism. From the perspective of the regulatory focus of the measures on the IOSCO three pillars of regulation, the establishment of self-regulatory system of CRAs in market mechanism should be emphasized, as the external regulation is to resolve the problem of conflicts of interest and insufficient transparency which can hardly be prevented by CRAs themselves, so that the independence and integrity of the rating process can be improved. In China's current market environment, the government tangible hand is relatively strong, e.g., to use administrative power to shut down substandard enterprises to solve the problem of energy saving and emission reduction, to use administrative power to regulate the real estate market, etc.. In the credit rating field, there is a trend that the hand of government regulation is directly to specific rating activities. Although the administrative means are efficient in meeting the requirement of the short-term objectives, the market signal distortion and inefficient resource allocation in the long-term caused by them should not be ignored. Combined the IOSCO CRA Principles with China's actual situation, it is believed that there is a need to further clarify the boundary of government and market in the rating field; to let the market handles market-oriented business; to pay well attention to the market effect in CRAs' constraint and elimination; to establish CRAs' self-regulatory system;and to strengthen external regulation and promote CRAs' independent system formation based on these.

27.

Topic One: Major Elements of Conflicts of Interest and Establishment of an Independent System

(1) Independence is a fundamental principle in conflicts of interest prevention, conflicts of interest in turn weakens independence. Conflicts of interest exist in four major elements of CRAs' business activities: governance structure (determined by equity structure), market competition, compensation model, and rating process.

(2) The governance structure (determined by equity structure) and market independence are the primary elements of conflicts of interest in CRAs' independence. General regulation requires a CRA to adopt an avoidance system and not to rate an issuer's bond, if there exists equity relationship between the CRA or CRA's senior managerial staff and the issuer, or if CRA's senior managerial staff or immediate family members were employed or are employed by the issuer. It is precisely because of this, a CRA's equity structure is primarily composed of individuals, education and scientific research institutes and funds, but few or hardly composed of government, financial institutions or business enterprises. In the bond market, the government, the financial institutions or the business enterprises are all main issuers of bonds. It is

extremely easy to cause the conflicts of interest between the main issuers and CRAs. Therefore, CRAs' equity structure composed by individuals, education and scientific research institutes and funds, together with the governance structure, is more effective in keeping CRAs' independence and also more capable in promoting CRAs with their own reputation as the cornerstone of the development to avoid the short-term profit purposes.

(3) Marketing is an important means of CRAs to expand market scale and earn revenue. It is easy to establish a close relationship between marketing staff members of CRAs and main issuers of bonds, thus, there exists conflicts of interest. It may weaken CRAs' independence. Therefore, CRAs have established both an internal firewall system and a fixed income system for the rating analysts to prevent conflicts of interest. That is, the marketing staff members shall neither participate in rating activities, nor join the rating committee to rate any issues; their income is correlated to CRAs' neither operating revenue nor profit level, as a comparatively fixed income system is adopted for them.

(4) The compensation model is generally regarded by the market to be a main element of existing conflicts of interest, i.e., the issuer-pay model is prone to conflicts of interest. In fact, whichever compensation model is adopted, including the subscriber-pay model and government-pay model, will cause conflicts of interest. The subscriber-pay model easily makes CRAs become investors' "black mouth", which coordinates with investors in buying or selling the bonds; and the government-pay model also similarly produces conflicts of interest, because the government itself is the issuer of the bonds. The government-pay model also tends to produce rent-seeking behavior of corruption. In order to avoid conflicts of interest caused by the issuer-pay model, CRAs in China usually collect the fees prior to the ratings, thus, to avoid the disturbance to the ratings by such model.

(5) Conflicts of interest in the ratings reflect mainly the relationship between the rating analysts and the issuer, e.g., the relationship between the rating analysts and the shareholders of the issuer, the employment of rating analysts themselves or their immediate family members by the issuers or the rent-seeking activities of issuers to the rating analysts. Therefore, CRAs have established the avoidance system and professional ethics, i.e., the rating analysts shall avoid the bond rating, if there exists related interest between the rating analysts and the issuer; the rating analysts shall neither accept the gifts from the issuers, nor participate in dinning and entertainment activities over certain amount and so on.

I. Emphasis on the Coordination between Transparency and Intellectual Property Protection

28. In China, because of the late start of domestic rating industry, there is a big difference in rating products, rating methodologies and rating symbols used by different CRAs. This has brought to market with a certain amount of confusion, particularly to individual investors whose distinguishing capability is relatively limited. In order to regulate the industry development, the relevant regulatory departments have made specific regulations on different products in key rating points, rating methodologies, rating factors, rating symbols and rating report composition, together with the core content of each part. Such regulations have reflected current situation of China and the feature of the rating industry development, but in the long run they can hardly effectively promote the

industry development. The rating methodologies include rating concept, rating factors, rating models, model assumptions and other aspects in broad terms. CRAs' rating technology to a large extent has reflected in the rating methodologies. Different CRAs have the freedom to choose different rating methodologies, and to test and improve them through a longer period of practice. In addition, a credit rating expresses an opinion of how likely an issuer is to repay a particular debt or financial obligation. Freedom of expression will enhance the reference value of the credit rating to investors. Therefore, there should not have a mandatory regulation on the rating methodologies and rating opinion expression, because it would restrict competition, weaken the power of various CRAs to upgrade their rating technology through their own efforts. We believed that the regulation over the rating methodology should be relatively weakened; that the external regulation is to ensure the fairness and independence of the rating process, prevent the damage to the fairness and independence due to conflicts of interest which CRAs themselves can hardly prevent, and prevent improper external interventions to the expression of rating opinion; and that information disclosure of the rating methodologies should be moderate, as it is beneficial to the protection of intellectual property.

29.

Topic Two: Disclosure Content and Intellectual Property Protection

(1) Transparency requires CRAs to publicly disclose corresponding content. At the same time, excessive disclosure will affect CRAs' intellectual property and cause the contradiction between transparency and intellectual property protection. For example, since it is still in its early development period, with poor awareness of intellectual property protection, the full disclosure of a rating report has become a practice in China's credit rating industry. This practice is neither integrated with the international practice, nor protected CRAs' intellectual property. It also can hardly effectively keep relevant information confidential for the rated issuers. Internationally, a disclosed rating report is generally a rating conclusion report, rather than a detailed analysis report. On the other hand, China's such full report disclosure method has compressed CRAs' income generation space, i.e., CRAs is unable to obtain any income by the sale of such full report. It thus replaces the way to promote the development of the rating industry based on the rating quality with the way to have conflicts of interest based on market competition. It is unfavorable to the development of the rating industry.

(2) In order to protect CRAs' intellectual property and promote CRAs' healthy development, there should be an appropriate degree in disclosure content. Normally, CRAs should disclose the rating procedures, rating factors, rating system and its meaning, rating results (including credit rating, the basic concept and the basic data), statistics and analysis of the ratings; but should not disclose the parameters of the rating indicator system, internal basic model and its calculating process, working papers and detailed analysis process of the rating report and the full report. This also requires the regulatory authorities to standardize through corresponding rules and regulations.

J. Improvement of the Quality Control System of the Rating Process

30. The rating quality control of the IOSCO three pillars of regulation covers the entire rating

process. Further, the independence, avoidance of conflicts of interest and enhancement of information disclosure are also manifested in each rating process. For example: establish a firewall system, avoid conflicts of interest in the business engagement cycle; CRAs and their analysts shall comply with the relevant provisions in the rating business, maintain independence and objectivity in procedure and substance, and timely and full disclosure of potential conflicts of interest. Such can be seen that the IOSCO's regulation of the rating industry is to infiltrate the spiritual essence of the three pillars of regulation to each business cycle of the rating, and to achieve the purpose of strengthening the regulation through supervision over standardization and transparency of the business process. Therefore, the IOSCO CRA Principles make no mandatory constraint in methodologies. In this connection, the SEC, the EU and other countries have reached consensus, e.g., the SEC does not emphasize any intervention and regulation over CRAs methodologies in its regulation of NRSROs, under a substantially strengthened regulatory background.

31.

Topic Three: The Process Control and Ancillary System of the Rating Quality

(1) The rating is an analytical activity of rating analysts based on CRAs own research system with rated issuer or issue as the object. In order to ensure the rating quality, just for the rating process, CRAs have set up many measures such as the field investigation and a three-level review system. Based on the PBC regulation, the rating analysts strictly implement the time requirement of field investigation and study, and report writing. They shall not complete such activities in less than the stipulated time; In order to get the best credible credit rating as possible as they can, the research and development department, as an independent system, has developed a forecast model based on the relationship between published ratings and the corresponding variables as a reference to final determination of the ratings for the rated issuers and issues. In the rating process, CRAs have established a compliance department to review and supervise the compliance in each rating cycle, in accordance with the CSRC's requirement.

(2) For the quality assurance of the rating, it is related not only directly to the rules and regulations of the rating activities, but also to CRAs' research and development system, a basic quality assurance of the rating, including from macro credit risk and industry credit risk to characteristics of essential rating factors of a rated issuer or issue, rating indicator system, parameter design of indicator weight, and dynamic adjustment of the rating indicator weight in the changing condition of macro credit risk and industry credit risk. Such research and development system and its corresponding indicator selection, and indicator weight design and its dynamic adjustment system and rules have constituted a foundational safeguard system of the quality assurance of the rating.

(3) CRAs have established a quality verification mechanism based on the spread analysis in order to verify the rating quality under the condition of no default due to the short development period of China bond market. In accordance with the statistics of the Shanghai Brilliance Credit Rating and Investors Service Co., Ltd., there exists a distinct corresponding relationship between the credit rating of an issuer and the interest spread. It indicates that credit rating plays a role in reflection of the degree of the credit risk objectively, which is of an important role in prevention and reduction of credit risk and financial risk.

K. Promotion of the Unified Regulation and Reduction of the Regulatory Costs

32. The IOSCO CRA Principles have provided a regulatory framework in a different environment which is beneficial to make greater regulatory effectiveness under the “greatest common divisor” among different regulatory authorities in the different judicial environment. As to the regulatory authority, the IOSCO CRA Principles have not mentioned explicitly, as this is not a universal problem, although it is a prominent problem in China. The U.S., EU and other countries have the explicit regulatory authority for the unified administration of CRAs in market entry, business qualification, regulation and continuous monitor of rating business. In China, the Credit Information System Bureau of the PBC excises the regulatory power over CRAs, however, other administration authorities regulate individual rating products. For example, the CSRC regulates the corporate bond rating, while the NDRC regulates the enterprise bond rating. Undeniably, there are some particularity in coexistence of the exchange-traded market and the over-the-counter market in China and specificity in regulation by different authorities. However, in the long-term, the drawbacks of the differing regulatory authorities are obvious. The weakness reflected is the confusion in the market. At present, different regulatory authorities in China have resulted in some separate legal entities under the same CRAs umbrella in order to rate products in different market. For market investors, they can hardly distinguish clearly the difference between the two, market scope, competitive advantage, etc.; even for an identical CRA, it bears excessively the costs of file and information disclosure due to the multi-regulatory authorities. For regulatory purposes, we agree to pay for the short-term costs for standardizing development of the industry, as the regulatory effects shall reflect more in the long-term healthy and orderly development of the regulated industry. However, close attention shall be paid when the demands of different interests among the different regulatory authorities differ, when there is a serious regulatory overlap, and when there is a high regulatory cost but with little long-term regulatory effect.

THE DEVELOPMENT HISTORY, PROBLEMS AND RECOMMENDATIONS OF THE CREDIT RATING INDUSTRY IN CHINA

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1. The credit rating industry in China has made some accomplishments after 20 years of development. It has made a significant contribution to the development of bond market and credit market in China and the training of professionals in credit risk control. However, the development of the credit rating industry is both influenced by the industry itself, but also affected seriously by the external environment. The credit rating industry in China experienced both rapid development under the favorable external environment and difficult period under the deteriorated external environment in the past development process. There have emerged a lot of new problems in the external environment of the credit rating industry in China since global financial crisis, coupled by some unsettled historical problems. Therefore, the credit rating industry needs urgently concerted efforts of regulatory authorities, industry associations, credit rating agencies (CRAs) and all other concerned parties to optimize the external environment of the industry and promote the healthy development of the credit rating.

I. The Development History of the Credit Rating Industry in China

A. The Birth of the Credit Rating Industry in China

2. The development of the credit rating industry in China is closely related to the development of the bond market in China. In 1987, the State Council of China issued the Interim Regulations on Administration of Enterprise Bonds, thus, the enterprise bond market started to develop since then. In order to regulate the market, the People's Bank of China (PBC) and the National Economic System Restructuring Commission of China proposed to develop CRAs. CRAs were established in all over China, of which, the primary ones were established within the PBC system. In 1988, the first external credit rating agency (CRA) independent from the financial system was established. In 1992, the State Council issued the Notice of the State Council on Further Strengthening Macro Administration of the Securities Market, and made the credit rating an important element in the approval of the bond issuance, thus, the status of CRAs in the bond issuance is specified. Subsequently, a number of external CRAs were established.

3. In December 1997, to further regulate the rating industry, the PBC issued the Notice on Qualification of Enterprises Bond Credit Rating by the China Chengxin Securities Credit Rating

Co., Ltd. and Other Rating Agencies in PBC No. 547/1997, and recognized initially the credit rating qualification of 9 CRAs including the Shanghai Far East Credit Rating Co., Ltd. (Fareast), Shanghai Brilliance Credit Rating and Investors Service Co., Ltd. (Shanghai Brilliance) and China Chengxin Credit Management Co., Ltd. (China Chengxin Credit). It marked that the credit rating industry in China embarked on a development path of recognition system; it marked that CRAs established within the PBC system withdrew from the rating industry; and it marked that the development of the rating industry of China took a development road of independence and regularization. It has laid a solid institutional foundation for the development of the rating industry in China.

4. In 1997, based on the Administrative Measures on the Loan Certificate (in November 1995) and General Loan Regulations (in June 1996), the PBC launched a pilot program for borrowing enterprise rating in Shanghai and Shenzhen one after another. Such not only promoted strongly the progress of CRAs in management, standards and technology, but also expanded the business market of the rating. It has laid a solid market foundation for the development of the credit rating in China. Therefore, in view of the birth and development of CRAs, the PBC has played a vital role in the system establishment and rating business promotion.

B. The Rapid Development of the Inter-bank Bond Market Promoted the Growth of the Rating Industry in China

5. In 2005, the PBC issued Administrative Rules on Short-term Financing Bonds and launched the rating business on the short-term financing bonds. Such actions promoted greatly the development of the rating business and gradually expanded and strengthened the team, technology, market influence of the rating industry. The PBC also continued to promote and regulate the development of the rating industry in both market innovation and regulatory innovation.

6. In the market innovation, the PBC launched not only short-term financing bonds, but also medium-term notes, collective notes of small and medium enterprises (SMEs). Such innovation drove forward the development of the bond market in China, gradually changed China's financing pattern dominated primarily by the bank credit, resolved the plight of SMEs financing, improved the issuer structure and maturity structure of bond financing, enriched the credit rating business varieties and expanded the credit rating business scale.

7. In the regulatory innovation, the PBC established the Credit Information System Bureau in November 2003 to regulate the rating industry, promote the development of credit rating market and the standardization of the rating business. In 2005, the PBC expanded the pilot program for borrowing enterprise rating by independent CRAs, the third party, to 8 provinces and cities including Chongqin, Nanjing, Changsha, Wuhan, Chengdu and Tianjin. It further extended to many other provinces and cities later. It expanded the region of the rating and business scale of

borrowing enterprises rating. In March 2006, the PBC issued the Guiding Opinions of the People's Bank of China for the Management of Credit Rating in PBC No. 95/2006 and in November 2006, the Specification for Credit Rating in the Credit Market and Inter-bank Market. Such strengthened the standardization of and guidance to the rating industry.

8. In addition, the PBC established the National Association of Financial Market Institutional Investors (NAFMII) in 2007 as a self-regulatory organization of the inter-bank market participants including CRAs. Since its establishment, the NAFMII issued the Rules on the Registration of Debt Financing Instruments of Non-financial Enterprises in the Inter-bank Bond Market and Guidelines on Medium-term Notes Business of Non-financial Enterprises in the Inter-bank Bond Market and other self-regulatory rules and guidelines. In October 2010, NAFMII established the Credit Rating Expert Board. While advancing effectively the development of the inter-bank bond market, the NAFMII also advanced the regulation and development of CRAs.

9. While the PBC advanced the bond rating and borrowing enterprise rating, the China Securities Regulatory Commission (CSRC) issued the Pilot Measures on Corporate Bond Issuance and Interim Measures for the Administration of the Credit Rating Business Regarding the Securities Market. The CSRC designated 5 CRAs with the qualification of corporate bond rating, i.e., the Shanghai Brilliance, China Chengxin Credit, China Lianhe Credit Rating Co., Ltd. (previous the Tianjin Zhongcheng Credit Rating Co., Ltd.), Dagong Global Credit Rating Co., Ltd. and Pengyuan Credit Rating Co., Ltd.. In 2010, the CSRC established the Credit Rating Expert Board. The National Development and Reform Commission (NDRC) issued the Notice Concerning the Promotion of Enterprise Bond Market Development and Streamlining of the Bond Issuance Approval Procedures in 2008, streamlined the approval procedures of enterprise bond issuance and promoted effectively the development of the enterprise bond market.

10. While the PBC, CSRC and NDRC have jointly promoted the development of the rating industry, China rating industry has made its due contribution to the development of China bond market and China finance sector including market cooperation, staff training and staff supply. The PBC has laid the system and business foundations, nurtured and promoted the development of China rating industry. Simultaneously, CRAs with a comprehensive system and basic force have effectively coordinated the rating of debt instruments and promoted vigorously the development and risk management of the bond market and credit market in China. The rating industry as a practical industry, along with the development of the rating business, has trained a batch of professional talents. It has not only ensured the development of the rating industry, but also supplied professional talents to insurance companies, securities companies, leasing companies and other financial institutions for their subsequently emerged internal credit rating.

II. Major Issues Faced by the Rating Industry in China

C. Theory Confusion in the Rating Industry Development

11. The theory confusion in the rating industry development primarily reflected in the confusion of the basic theory research on the status, function, role and nature of credit rating, including fabricating pricing power theory to obtain government support, overestimating the status, function and role of the rating, and attributing CRAs to national public power with public products theory or economic police theory. As a matter of fact, as part of basic financial infrastructures, credit rating's basic function is to alleviate information asymmetry among all market participants and its role is to provide reliable rating service to investors, thus, to promote the development of bond market and effective allocation of financial resources. A CRA, as a profit organization, belongs to the private sector and offers private products and services. CRAs, as providers of credit information and rating reports, neither participate in nor are competent at pricing financial instruments. What CRAs express is an opinion of the creditworthiness of a rated object, not investment advice. CRAs' future development and power of discourse rely on the reliable information, credible rating quality, and essential government support.

D. Insufficient Social Cognition on Credit Rating

12. There is a close relationship between insufficient social cognition on credit rating and confusion of basic credit rating theory. Such theoretical confusion has caused misunderstandings of some scholars and media, and resulted in the confusion of social cognition including the financial crisis producer theory, conspiracy theory and control theory. In fact, CRAs are neither providers nor investors of financial instruments, thus, CRAs cannot produce risks and crises. The three major CRAs in the United States (U.S.) merely pointed out the credit risks of derivative instruments before or during the financial crisis. However, their enormous influence aroused the social sympathy and increased the market resonance. CRAs are able to neither arbitrarily or randomly adjust the ratings themselves to intervene in financial market stability, nor apply conspiracy means to reach a certain purpose. As for the joint ventures and technical cooperation between China's CRAs and international CRAs, they are in line with national industrial policy conditions. They are not only legitimate, but also not formed control situation by the international CRAs over the domestic ratings. Regardless of the actual problems of three major CRAs in the U.S. in the financial crisis and the phased development of the domestic rating industry, to disseminate one-sided information with the producer theory of the financial crisis, conspiracy theory and control theory is both a non-rational attack to the three major CRAs and an emotional blow to the domestic CRAs with joint ventures or technical cooperation with them.

E. Prominent Problem in Multi-regulation of Credit Rating

13. The bond market segmentation, i.e., the NDRC administrates enterprise bonds, the PBC

administrates short-term financing bonds and medium-term notes in the inter-bank bond market and the CSRC administrates corporate bonds in the stock exchange market, is coexisting with the multi-regulation in China. The bond market segmentation in China stems from the administration system in China, which will be difficult to form a single market in the short-term. However, it will confuse the credit rating market, if the market is segmented because of the bond market segmentation. Such confusion has been demonstrated that a CRA needs to split into different companies corresponding to different bond markets and that there are differences in the rating definition among the different rating products in the same CRA. On the one hand such confusion has dispersed government's regulatory strength, resulting in a rise in regulatory costs of both regulatory authorities and regulated entities. On the other hand it has confused the market, resulting in a regulatory arbitrage of issuers under different regulatory standards as well as contradictions and conflicts among different rating products of CRAs.

F. Overlapping or Crossing Establishment of the Associations of the Rating Industry

14. At present, the multi-regulation of the rating industry has made the overlapping or crossing establishment of the rating associations or quasi rating associations led by different regulatory authorities. It is beneficial to neither formation of unified regulatory standards of the rating market, nor the long-term coordinated development of CRAs. It may even cause certain contradictions. The lack of a unified self-regulatory system of the industry is an important cause in an unclear understanding of the theory and a lack of social cognition of the rating industry. It is also an important cause in a non-rational competition among CRAs, particularly in the rating field without established industry compensation standards, such as the rating market for collective notes of SMEs. Some CRAs have kept the prices down, disturbed the market order and impaired CRAs' image, in order to expand their market share.

G. Excess Government Intervention to the Rating Industry

15. Excess government intervention to the rating industry is primarily reflected in an equity investment of the government agencies or state-owned financial institutions to a CRA and a trend of designing uniformed standards for the rating methodologies led by the regulatory authorities. The government agencies themselves are the regulatory agencies, the state-owned financial institutions are the bond investors, and the subordinates or related enterprises of the state-owned financial institutions may be the issuers. Their investment to CRAs makes it difficult to maintain the independence of the rating and easy to cause conflicts of interest. It is not beneficial to alleviate information asymmetry, while it is easy to cause some confusion in the market competition order. In other countries, the regulation of CRAs by regulatory authorities focuses primarily on CRAs' independence with its corresponding conflicts of interest, the quality and integrity of the rating process, and transparency. In China, however, the regulation of CRAs by regulatory authorities

trends to intervene in rating methodologies and tries to design uniformed standards for the rating methodologies. It will inevitably weaken the technology progress and competition capability of CRAs in China, and easily homogenize the rating methodologies of CRAs.

H. Low Status of the Rating Industry in the Market

16.The low status of market position of the rating industry reflected in low compensation which has caused the operating difficulty of CRAs and a high turnover ratio of rating analysts. In bond financing, CRAs' rating charge accounts for around 0.42% only, the lowest charge among all intermediary agencies for bond issues. Compared with international CRAs, take an example of US$1 billion bond issue, the fee charged by China's CRAs is only 10% of that charged by international CRAs. Moreover, there has been no price adjustment in bond rating for many years, although there is a big rise in various other costs including staff salary, transportation and working capital. It has thus resulted in a bare maintenance of CRAs' normal operation. At the same time, the low status of the industry makes a high turnover ratio of rating analysts. In recent years, the average turnover ratio of CRAs is 20% to 30%. The majority has flowed to financial institutions. The Analysts' outflow is bound to adversely affect the healthy development of CRAs.

I. Few Rating Products and Small Rating Market

17. The Survival and development of the rating industry in China primarily relies on the bond market. The size of the bond market in China is still quite small compared with developed countries. It determines a smaller size of the rating market in China. Internationally, the rating includes not only bond issues and issuers rating, but also counterparty rating for banks, insurance companies, fund companies, securities companies, etc., while China is still lack of institutional arrangement for counterparty rating which contributes to the smaller size of the rating market in China. The variety of the rating products in China is also fewer, mainly with the short-term financing bond and other debt instruments. The rating in China is to rate a bond, then further rate the issuer, based on bond issue as the prerequisite. However, the rating abroad is other way around to rate an issuer first, then the bond, if any. China's such model based mainly on the bond rating allows easily not only an issuer to optimize the bond credit quality of an issue and ignore the credit quality of the issuer, but also an issuer to focus on the short-term behavior and ignore the long-term one.

J. The Tendency of Bond Coupon Rate Determined by the Credit Rating

18. A credit rating assigned by a CRA abroad reflects a corresponding relationship between the rating and the default rate. However, due to lack of the default rate in China, a credit rating assigned by a CRA in China can only reflect a mapping relationship between the rating and the credit spread with good hierarchical relationship. Investors can decide to invest with required level

of risk rate, with or without CRAs' ratings and rating reports. At present, since the interest rate in China is not fully market-oriented, it is reasonable to make a market inquiry in accordance with a credit rating, however, it needs to be clear that such inquiry mechanism should be taken as a reference factor, rather than a determining factor. It is easy to have a tendency to determine the coupon rate in accordance with the credit rating, if it is only guided by the credit rating without distinguishing other related information such as CRAs, issuer's industry and issue size.

III. A Number of Recommendations on Advancing Standardized Development of the Rating Industry in China

19. The above mentioned survival environment of the rating industry is caused by many factors such as understanding, institutional, market and policy issues. One cannot turn a blind eye to these issues, although it is impossible to resolve them in one action. A realistic and gradual approach should be taken to address these issues.

K. Define a Unified Regulatory Authority, Clarify the Regulatory Mentality and Advance the Legislation

20. From the regulatory perspective, a unified regulatory authority needs to be defined. Multi-regulation has increased not only the cost of government regulation including regulators, establishments of regulatory system and regulatory administration, but also the cost of CRAs to adapt to different regulatory systems including documents submission and regulatory communication. Therefore, from the rating industry perspective, there is a need to develop a unified regulation of the rating industry, i.e., the central government authorizes a specialized authority to designate and regulate CRAs.

21. From the regulatory mentality perspective, the regulation of the rating industry shall be strengthened based on clarified regulatory mentality to advance the healthy and rapid development of the rating industry. This is an essential guarantee to the healthy development of the rating industry. For the regulatory mentality, the starting point of the regulation should be based on the essence of the rating and emphasize key points of the regulation of the rating industry with reference to the International Organization of Securities Commission (IOSCO) to strengthen the independence of CRAs activities, improve the transparency of the rating process and rating methodologies and enhance information disclosure, so that the rating results can be more fair and more truly reflecting the credit quality of the rated object.

22. In fact, the core parts of the regulation of CRAs are to ensure CRAs' independence and the avoidance of conflicts of interest, enhance the information disclosure and improve the quality and integrity of the rating process, in either the IOSCO Statement of Principles Regarding the Activities

of Credit Rating Agencies (IOSCO CRA Principles) and the Code of Conduct Fundamentals for Credit Rating Agencies (IOSCO CRA Code) issued by the IOSCO after the financial crisis, or the requirements to CRAs of the Dodd-Frank Wall Street Reform and Consumer Protection Act newly enacted by the U.S. in July 2010. Take the IOSCO CRA Principles as an example: Independence and conflicts of interest management occupy important positions in the IOSCO CRA Principles. The IOSCO CRA Principles require that CRAs should free from potential conflicts of interest arising due to CRAs' business relationship with the issuer or investors or other market participants to affect a rating; transparency and information disclosure manifest in two principal aspects: responsibility to investors and issuers, and disclosure of CRA's own code of conduct; and the IOSCO CRA Principles specify the rating process, monitoring and updating for the quality and integrity of the rating process, e.g., A CRA should use rating methodologies that are rigorous, systematic, and, where possible, result in ratings that can be subject to some form of objective validation based on historical experience; apply a given methodology in a consistent manner; and ensure that adequate personnel and financial resources are allocated to its rating process.

23. In addition, China still needs to promote the legislation of regulations related to credit rating. The current regulations related to credit rating are scattered in the regulations such as the Securities Law of the People's Republic of China (Securities Law), Company Law of the People's Republic of China, Administrative Regulations on Enterprise Bonds, Interim Measures for the Administration of Insurance Companies' Investing in Enterprise Bonds, and Interim Measures for the Administration of the Credit Rating Business Regarding the Securities Market. These regulations have played a positive role in promoting the standardized development of the rating industry. However, there are some issues such as existence of some legal blind spots and lack of a common legal yardstick among regulations of all regulatory authorities. Internationally, the U.S. the European Union, Japan and other major economies, as well as Taiwan, Hong Kong and other regions have gradually revised relevant laws and regulations to better regulate CRAs after the financial crisis. Therefore, under the background of current rapid development of the credit rating in China, we recommend that either the Securities Law be amended or a law exclusive to the credit rating be launched as soon as possible to better regulate CRAs.

L. Establish a Unified Industry Self-regulatory Organization

24. Industry self-regulation is industry self-management. The self-regulation of the rating industry is an inevitable requirement to safeguard the core values of the industry, i.e., independence, objectivity, impartiality and accuracy, to promote the transparency of market information. There is no association of the rating industry in the U.S.. That is mainly to ensure full information transmission and to avoid oligopoly CRAs forming an interest group to deliver one voice externally.

25. However, the actual situation in China is different. The distribution characteristics of CRAs

in China is small and numerous. An individual CRA within the industry has a weak say. It is very difficult to fight for their say in the capital market. Therefore, at the initial development period of the rating industry, while implementing administrative regulations, the administration of the self-regulation of CRAs should be strengthened to centralize industry wisdom and accelerate industry development in order to integrate with international CRAs rapidly and have their voices heard in the international capital market. Meanwhile, the establishment of a unified industry self-regulatory organization is conducive for CRAs to form unified self-regulatory principles and industry code of conduct; and it is also conducive to timely make an appropriate institutional arrangement, whenever a new market emerges, to achieve a fair competition and harmonious development.

M. Make a Rating Institutional Arrangement, Avoid Misplaced Regulatory Authorities, Industry Associations and CRAs, and Ban Financial Institutions' Entry to the Rating Market and Equity Investment to CRAs

26. Based on the unified regulation and unified industry association, we recommend that the functions, status and codes of conduct of respective regulatory authority, industry association and CRAs be specified to: (i) Avoid the establishment of uniformed rating methodologies led by the regulatory authority at the platform of the industry association; (ii) Avoid the establishment of CRAs in disguised form by the regulatory authority at the platform of the industry association; (iii) Avoid individual "free rider" CRA, who does no technical innovation, using an excuse of uniformed rating methodologies; (iv) Be aware of individual CRA in disseminating distorted rating theory and concept for its own benefit; and (v) Adhere to CRAs' technical innovation and fair competition, and advance the development of China's rating industry.

27. Concurrently, we recommend that financial institutions' entry to the rating market and equity investment to CRAs be banned. Financial institutions are both counterparties and principal underwriters of financial products. They occupy a strong position in the relevant cycle of the rating. If they enter the rating market and make equity investment to CRAs, it can hardly maintain the independence of the rating and it is likely to cause confusion of the market.

N. Increase the Rating Compensation, Raise Status of the Rating Industry and Stabilize the Analyst Team

28. From CRAs' perspective, it becomes one of key factors in core competitiveness of CRAs to have an analyst team with high level of knowledge and competent professional skills. However, the current high mobility of the analysts has restrained the development of the rating industry. Therefore, the regulatory authorities can consider increasing the rating compensation and enhancing the support to the rating methodologies research to improve the income level of CRAs. Likewise, CRAs can afford to improve salary and benefits of the analysts, enhance the

attractiveness of the rating industry and promote better development of the rating industry.

29. Meanwhile, there is a need to prohibit the flow of analysts of the rating industry to financial institutions with relevant interests within a certain period of time to stabilize the rating team. Financial institutions usually are rated entities of CRAs as well as designers, underwriters or investors of rated products. The flow of analysts of CRAs to financial institutions will be prone to unavoidable conflicts of interest among analysts between CRAs and financial institutions. It is not conducive to fully alleviate information asymmetry. It may even prone to causing moral hazard of hidden information and activities.

O. Advance Bond Market Development and Promote Counterparty Rating and Investment Product Rating

30. The ratio of indirect financing in China is as high as 70%. It makes that the credit risk in China is primarily concentrated in the banking system. Advancing the bond market development is beneficial to: (i) Optimizing the financing structure in China, (ii) Reducing the impact on economic security by the credit risk of the banking system, (iii) Identifying credit risk of financial system, (iv) Reducing transaction costs and expenses of financial products, and (v) promoting the development of credit products.

31. To advance the bond market development should first: (i) Streamline the approval process and procedures of bond issue, (ii) Increase bond issues, (iii) Introduce financial innovation products, (iv) Enrich the types and structures of bonds, and (v) In particular, introduce bonds of different risk-return characteristics such as high-yield bonds.

32. To advance the bond market development should also expand the financing size of corporate bond. At present, China's bond market is mainly dominated by the inter-bank bond market, while the stock exchange bond market is slowly developed. There include issues of both structure of investors and types of underwriters. We recommend that the CSRC promote bond issue in the stock exchange market, optimize the financing structure of listed corporations, and enrich the structure of the credit rating products in the stock exchange market.

33. To promote the counterparty rating may guard against the financial market risk trigged by the credit risk of major financial institutions, while it help expand the rating market. China's securities market has included various types of enterprises and institutions. These companies and institutions are both demanders and suppliers of funds. Many of them are also traders of financial products. If the credit risk occurs in some companies or institutions with large size and influence among these traders, it may trigger a systemic risk of the financial market, e.g., the global financial crisis trigged by the Lehman bankruptcy. Therefore, the counterparty rating including rating for fund companies,

securities firms, banks, insurance companies, etc. is conducive to preventing from systemic risk as well as expanding the size of the rating market.

34. To promote the investment product rating may ensure investors' interest and guard against the risks of investment products. With the development of China's financial market, various types of investment products have been gradually developed. However, due to the lack of credit risk disclosure mechanism by an independent third party, investors can hardly understand and manage the risks while financial institutions have conflicts of interest in selling the investment products. Therefore, it is necessary to promote the investment product rating to guard against the risks of such products.

P. Strengthen Infrastructure of CRAs

35. The development of the rating industry relies essentially on the strengthening of its own rating quality and credibility. The strengthening of the credibility requires CRAs to improve their own corporate governance and ensure independence. The strengthening of the rating quality depends on CRAs' continuous improvement of their rating infrastructure.

a. Improve Corporate Governance, Maintain Independence

36. CRAs' reputation manifests as their credibility. It reflects the recognition from the rating users. The level of the credibility relates to the survival and development of the rating industry. The cultivation of the credibility of CRAs is a long process. There are many factors affecting the credibility, of which, the most important factor is the independence of CRAs.

37. Factors that affect the independence of CRAs exist in all aspects. From the top down view, it is particularly important to improve the governance structure of CRAs. We believe that from the perspective of independence influence correlation, equity investment to CRAs by enterprises related to rating industrial chain should be avoided or limited, particularly as the majority shareholders to control CRAs, as such equity investment will seriously affect the independence of CRAs. From an international perspective, in order to maintain independence, the major shareholders of CRAs are divided into two categories, one from publishers and other information dissemination enterprises such as the McGraw-Hill Companies, the parent company of Standard & Poor's, who is a global information services giant; the other from non-profit institutions such as universities, research institutes and foundations.

b. Develop Vigorously Database, Strengthen the Cornerstone of Credit Rating

38. Database is one of the most important infrastructures of the credit rating. It is reflected in not only the rating criteria establishment, but also the ratings verification and credibility formation. Due

to the short history period of China’s rating industry and senior unsecured bonds offered just in recent years, CRAs are generally embarrassed with the shortage of database and credit statistics. Database development requires high quality of CRAs’ software and hardware. It cannot be done in one day. It is the key point and difficult point of CRAs’ infrastructure establishment.

c. Enhance the Disclosure of Rating Methodologies and Rating Process

39. CRAs need to let the market test their rating methodologies and ratings. Summarized as the lessons learned in the rating system from the financial crisis by the international community, CRAs’ information disclosure includes the rating methodologies and the rating process. To improve the rating transparency is advantageous to CRAs in reducing the conflicts of interest in the rating process and better maintaining their position of independence, objectivity and impartiality.

Q. Adhere to Marketization, Localization and Internationalization as CRAs’ Development Direction

40. The development direction of China’s rating industry is to adhere to marketization, localization and internationalization.

41. The marketization of the rating industry means that China’s rating industry should adhere to organizational form of enterprise (or company), principle of market competition, basis of profit, and means of technology improvement to provide investors with reliable information and credible ratings, and promote the development of China's rating industry. Naturally, there will be some malfunction of the market in market-oriented operation. It requires government to make up the insufficiency of the market through appropriate and reasonable regulatory measures and control means and to promote the development of China's rating industry.

42. The localization of the rating industry means that China's rating market development should: (i) Be primarily dominated by local CRAs with local rating analysts, (ii) Research the development course of international CRAs, (iii) Learn CRAs’ management, rating skills and methodologies from them, (iv) Combine with China's national conditions and characteristics to promote the development of China's rating industry, (v) Adhere to the integration of localization and opening up, and (vi) Oppose conservativeness and complacency under localization.

43. The internationalization of the rating industry means that China's rating industry should gradually enter the international market, accompanied the process of Renminbi internalization; establish a positive interaction with international CRAs through limited equity cooperation, technical cooperation and project cooperation, etc., driven by government policies; establish the rating methodologies with both international standards and China’s characteristics; and provide services based in China for both domestic and foreign investors.

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