

三大评级巨头霸权形成过程中的法律因素及其清理路径

美国经验及其对中国的启示

摘 要:

2007
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关键词:

[中图分类号] D971.222.8 [文献标识码] A [文章编号] 2096-6180 (2020) 06-0017-20

Moody

Standard & Poor's

Fitch

2007

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一、评级机构霸权形成的法律因素

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Nationally Recognized Statistical Rating Organization NRSRO

NRSRO

1970

Penn Central

1

PBS News Hour

Thomas L. Friedman 1996 2 13

Jim Lehrer

Mustafa

Kavas, *Corporate Social Responsibility in Credit Rating Agencies: How to Manage Areas of Conflict and Conflicts of Interest in a Responsible Way*, 7 *TURKISH JOURNAL OF BUSINESS ETHICS*, 1–20 (2014) .

1970

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less than investment-grade

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SEC 2a-7 NRSRO SEC

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2 SEC 1934 15 c 3-1 Rules 15c3-1

3 A.M. Best Company, Inc. AMB DBRS DBRS, Inc.

DBRS - Egan-Jones Ratings Company AMBEJR Kroll Bond

Rating Agency, Inc. KBRA Morningstar Credit Ratings, LLC Morningstar

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registration statements

eligible security

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Formula for determination reserve requirement of brokers and dealers under

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17 CFR 270.2a-7(a)(11)

11 17 240 15 c 3 17 CFR 240.15c3-3(a)

SEC A Exhibit A 14 Item 14 7 Note G

12 17 242 300 k 3 300 1 3

17 CFR 242.300(k)(3) 17 CFR 242.300 (l)(3)

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1933

Forms

Prescribed under the Securities Act of 1933

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Form S-3 ¹⁶

SEC

F-2

Form F-2 ¹⁷

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Form F-3 ¹⁸

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Financial Crisis Inquiry Commission

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15 17 240 15 c 3

17 CFR 240.15c3

16 17 239 13

17 CFR 239.13

17 17 239 32

17 CFR 239.32

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17 239 33

17 CFR 239.33

19 Roger Lowenstein, *Triple-A Failure*, <https://www.nytimes.com/2008/04/27/magazine/27Credit-t.html> (last visited June 18, 2019).



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3f .7657 0 TD .0057c [<14a4>5.7<07a6>0<0d6a><07a3

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12 U.S.C.24a

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Failure to Maintain Public Rating or Meet Applicable Criteria

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additional equity capital

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三、2010年开始的美国金融监管规则清理行动之评述

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democratic deadlock

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11 2008 5 44 3

42 1993 8 2 2011 1
8 2014 10 2
2014 43 15 2

43 1 2008 1 2
2008 7 2 2014 9 26
3 2015 4 7 2015 817
4 2017 8 1 2017
1341 5 2015 8 1
2017 1340 6 2015 9 14
2015 2044 7 2018 12 5
2018 1806 8 2015 11 30
2015 3127 9 2015 11 30
2015 3127 2 10 2015 11 30
2015 3127 1
44 1 1997 12 16
1997 547 2 2004 12 30

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 2004 22 3 2005 4 20
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 2005 1 5 2005 5 23
 2005 2 6 2006 9 5
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 2008 1 9 2009 8 18
 2009 14 10 2010 9 16
 2010 10 11
 2011 80
 45 1 2001 4 26 2 2
 2003 8 29 15 3 2004 10 18
 25 4 2006 5 6
 30 5 2007 8 14 49 6
 2007 8 14 2007 112 7
 2008 10 17 2008 41 8 2011
 10 20 2011 29 9
 2014 11 19 2014 49 1 10
 2014 11 19 2014 49 2
 11 2015 1 15 113 12 2015 3 2
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 46 1 2004 6 17 2004
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 7 13 2007 58 4
 2009 8 18 2009 14 5
 2020 1 20 2020 4
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2020 5 6

2007

四、美国此次金融监管规则清理行动对中国的启示

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1998 9 11 30%

2007 8 49%

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2002 8



2006 9 21 49%

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51%

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The Legal Elements in Establishment of the Dominant Position of the “Big Three” in Credit Rating Business and the Approach Implications to China for Eliminating the Regulatory Reliance Thereof

SHENG Jianming

Abstract: First of all, this thesis concludes that the dominating position of the “Big Three” credit rating agencies (CRAs) such as Moody Investor Services, Standard & Poor. and etc., and their abuse of such power is a direct result of the legislating endorsement and regulatory reliance thereof. It is for this reason that the US Congress initiated an unprecedented action to review and modify numerous laws and rules in relation to the regulation of CRAs after the occurrence of the subprime mortgage crisis in 2007. The aim of such an action is to screen congressional legislation and regulatory rules in relation to credit rating agencies in a systematic manner for the purpose of eliminating the legislative endorsement to and regulatory support for the giant rating agencies such as Moody Investor Services, Standard & Poor’s and Fitch. The ultimate goal of such an action is to cut the privileges granted to those rating agencies and to reduce the degree of regulatory reliance on such agencies. The screening action covers more than five legislative acts and 20 regulatory documents issued by various US financial regulators, especially those rules and regulations enacted by the SEC. The author takes of the view that the effect of this rules-screening action’s effect on changing the fundamentals of the landscape of rating services may be very limited, given the fact due to the establishment of a financial ecosystem in which the heavy reliance on ratings has been habitual. The author suggest that Chinese financial regulators should not also learn the lesson from the US regulatory history, but also be vigilant to the excessive reliance on ratings provided by those giant rating agencies.

Keywords: US Legislation; Financial Regulation; Credit Rating; Rating Hegemony; Financial Rule Screening & Cleaning