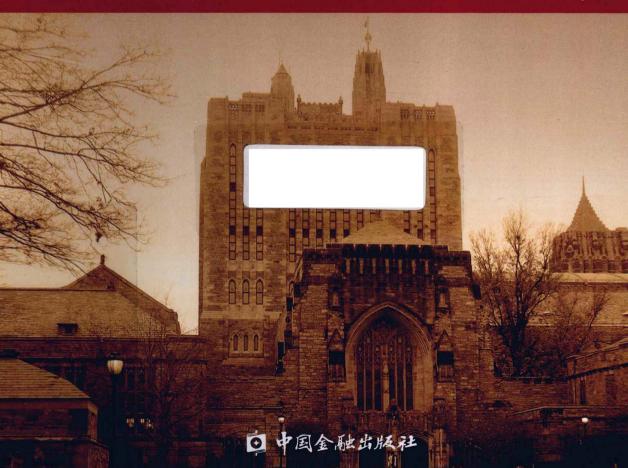
◎ 陈云贤 著

美国金融危机处置 与监管演变

——耶鲁大学学习考察报告

Evolutional Explorations in Ways of Monitoring and Handling Financial Crisis in America
——Studies in Yale University



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前言

秋天的耶鲁,红叶已显。阳光打在校园里黄褐色的哥特式建筑上,显得分外温馨。每天清晨,当我行走在校园的林荫道上,踩着红色的落叶,迎着微风去上课,心中便油生一种激情与使命感、责任感。

感谢中组部,让我们一行4人到美国耶鲁大学学习,用一个半月的时间,探讨研究美国金融危机后的金融监管问题。这是我第三次到美国学习了。2000—2001年,广东省委组织部送我到美国麻省大学学习一年,其间我还参加了美国哈佛商学院企业高级行政管理班 (AMP)三个月的学习;2003年初,中组部送我到美国哈佛大学肯尼迪政府学院学习政府高级行政管理(SEF)两个月。这次,在美国耶鲁大学学习,我把学习调研的题目集中在"美国发生金融危机的原因、处置方式及美国金融监管体系的演变与发展"上,并以此来鉴示中国金融风险防范与中国金融监管体系的提升与完善。其间,除了听取相关教授授课外,我还大量阅读相关材料,拜访相关专家。由于具备较好的英语阅读和交流能力,使我排除了学习中的各种障碍。

我侧重研究了: (1) 美国金融监管体系发展中的四个重要文件: 1993 年的《格拉斯—斯蒂格尔法案》; 1999 年的《格雷姆—里奇—比利雷法案》; 2008 年的财政部《现代金融监管构架改革蓝图》; 2010年的《多德—弗兰克华尔街改革与消费者保护法案》。(2) 美国金融系统性危机及其处置方式涉及的相关文献资料,如《巴塞尔协议Ⅲ》的核心文件及其对银行风险的监控,美国金融历史上几个重要事件的产生、形成与发展现状,美国金融监管体系的争议,美国金融危机的

反思以及美国金融下一步可能的发展状况。

其间,我还专门拜访了哈佛大学的 Prof. Ezra Vogel , 耶鲁大学的 Prof. Stephen Roach 、Prof. Gary Garton、Prof. Jonathan Macey 和华盛顿 D. C. 制定 2010 年《多德—弗兰克华尔街改革与消费者保护法案》的最主要参议院法律事务负责人 Mr. Senator Chris Dodd 以及相关高层人士,共12人。

我深入探讨了: (1) 20 世纪 80 年代美国银行出现大量不良资产,为什么却没有引起美国金融的系统性危机? (2) 1989 年 J. P. Morgan 开始混业经营以及 1999 年美国颁布 GLB 法案,是对还是错? (3) 此次金融危机是各类金融衍生产品过度发展引起的问题,还是金融监管不严的问题,还是制度设计的缺陷? (4) 比较美国 1933 年的《格拉斯—斯蒂格尔法案》; 1999 年的《格雷姆—里奇—比利雷法案》和 2010 年的《多德—弗兰克华尔街改革与消费者保护法案》,哪一个更应该属于美国金融监管体系的根本大法?《多德—弗兰克华尔街改革与消费者保护法案》能确保美国多长时间不再出现类似 1929—1933 年或者 2007—2008 年的系统性金融危机? (5) 一国金融发展,是竞争优先还是规则性优先?是金融利益至上还是金融稳定可持续发展至上?如果二者可以同时兼顾,模式应该如何? (6) 美国在近百年内,还会再次出现类似于 1929—1933 年、2007—2008 年那样的系统性金融危机吗?

我还抓住机会,在美国华盛顿 D. C. 政府与企业 CEO 耶鲁论坛等进行演讲,不断向世人展示开放和发展中的中国和中国广东。

通过学习,我加深了解了美国金融发展的历史,美国金融危机产生的原因、过去、现在与未来。这对于中国金融业的发展极具借鉴作用。包括房利美(Fannie Mae)、房地美(Freddie Mac)的产生、形成与现状,美国信托公司(Resolution Trust Corporation)的产生、形成与消亡,以及1929—1933年经济大危机,20世纪80年代经济滞胀与银

行危机和 2007—2008 年金融系统性大危机的形成过程、处置方式、金融监管与下一步发展。

我把学习成果整理成三份中英文文稿: (1) 《规则下促竞争,稳定中求发展》; (2) 《中国应更加注重金融法制建设和组织完善构建市场化的金融风险承担和损失弥补机制》; (3) 《美国应对金融危机的处置方式、监管办法与下一步举措》。我希望这些思考、体会和纪实,能对我们把握美国金融危机产生的原因和美国监管体系的演变与发展,为中国金融发展与监管借鉴起到一定的作用。

我认为: (1) 我国应在今后一段时间继续坚持分业经营、分业管理的监管方向; (2) 应扩大、提升与完善中国人民银行作为中央银行的相关职能,并且发挥其积极作用; (3) 应在现有"一行三会"的框架下,迅速建立与完善相关辅助金融机构,以健全金融监管体系; (4) 应加强金融法制建设,构建市场化的金融风险承担和损失弥补机制; (5) 应积极推动亚洲货币基金组织的建立与发展。

学习归来,深感责任重大。要实现中华民族的伟大复兴,需要我们善于借鉴并吸收世界上一切优秀的文明成果,更需要每一个中华儿女脚踏实地,积极努力,不断进取。

学之没

2012年10月

Preface

Yale at New Heaven, Connecticut, was already being dyed red with the maple leaves upon our arrival, and the sunshine, which poured upon the yellowish – maroon Gothic architectures on the campus, gave off special feelings of warmth and coziness. A sense of passion, calling and responsibility surged in me when I walked in the gentle breeze on the campus road covered with maple leaves.

It was my third time to study in America, thanks to the Organization Department of CCCPC, for giving us four the opportunity of one – and – a – half – month stay in Yale University to conduct researches into America's supervision and monitoring in the post – crisis financial sector. I was sent, for the first time, by the Organization Department of Guangdong Provincial Committee of CPC to The University of Massachusetts for one – year study between 2000 and 2001. During that period I also participated in the three – month Advanced Management Program at Harvard Business School. In early 2003, for the second time, I was sent to Harvard Kennedy School for a two – month Senior Executive Fellows Program.

For my stay in Yale University, I decided that the theme of my studies in Yale University should be "the causes of financial crises in America and its ways of handling them as well as the evolution and the latest developments of America's supervision of the finance sector", with a view to providing insights for the enhancement of China's anticipatory precaution against financial risks and the improvement of China's financial supervision and monitoring. I attended lectures, read extensively and visited experts and

authorities in the relevant field. My good command of English, especially my strong reading ability and communicative competence, helped me quite a lot to remove obstacles lying ahead of me.

My research focused on: (1) The four important documents that were put forward in the development of America's financial regulatory structure, i. e. The Glass – Steagall Act (1993), The Gramm – Leach – Bliley Act (1999), The Blueprint For A Modernized Financial Regulatory Structure (2008) issued by The US Treasury, and The Dodd – Frank Wall Street Reform and Consumer Protection Act (2010). (2) Literature concerning America's financial crises and ways of handling them, e. g. the key documents in Basel III and its controlling and supervision of banking risks, the emergence, development and status quo of important events in the history of America's financial sector, the disputes concerning America's financial supervisory structure, reflections upon America's financial crises and the prediction about the future development of America's financial sector.

I paid special visits to Professor Ezra Vogel of Harvard University, Professor Stephen Roach, Professor Gary Garton, Professor Jonathan Macey of Yale University, Mr. Senator Chris Dodd, who was the chief legal counselor from Washington D. C. in formulating *the* 2010 *Dodd – Frank Act*, and other high – ranking authorities in relevant areas.

The issues that attracted my serious attention included:

- (1) Why did not huge amounts of non performing assets in America's banking sector in the 1980s give rise to the systematic crisis in America's financial sector?
- (2) Is it right or wrong for J. P. Morgan to start blended banking services in 1989 and for the American government to promulgate *The Gramm Leach Bliley Act of* 1999 (*GLB Act*)?
- (3) Is the current financial crisis the result of excessive development of various kinds of financial derivatives, or the result of relaxed financial regulation, or the result of defects in policy making?

- (4) Which act can be reckoned as the fundamental law governing America's financial regulatory structure, *The Glass Steagall Act* (1993), *The Gramm Leach Bliley Act* (1999), or *The Dodd Frank Act*? How long can *The Dodd Frank Act* keep America exempt from such systematic crises as the 1929—1933 economic depression and the 2007—2008 economic recession?
- (5) In the course of financial development, should priority be given to competition or to regulations, to financial benefits or to financial sustainability? What pattern should be followed if both are to be given equal importance?
- (6) Is it likely that financial crises like the 1929—1933 economic depression and the 2007—2008 economic recession take place again in the coming 100 years?

I also took advantage of such platforms as the Yale Forum to deliver lectures to the US government authorities from the Washington D. C. and CEO from various businesses to demonstrate an opening and developing China and Guangdong to the outside world.

My studies in Yale University have given me a more profound understanding of the history of America's financial development, the causes of America's financial crises, their past, present and future trends, including the emergence, development and current situation of Fannie Mae and Freddie Mac, the origin, rise and fall of the Resolution Trust Corporation, the 1929—1933 Great Economic Depression, the economic stagflation and banking crisis in the 1980s, the formation, treatment and financial controlling and supervision, and their future trends. All those will shed extremely illuminating light upon and provide insightful ideas regarding the development of China's financial sector.

I summarized my research findings into three papers, written in both Chinese and English: (1) "规则下促竞争,稳定中求发展" / Competition Fostered under Regulations and Development sought through Stability. (2)

"中国应更加注重金融法制建设和组织完善构建市场化的金融风险承担和损失弥补机制" / More Importance Should be Attached to China's Financial Legislature and Establishment of Financial Risk Sharing and Compensation through Market Mechanisms. (3) "美国应对金融危机的处置方式、监管办法与下一步举措" / The American Approaches to Financial Crises, Regulatory Measures and Future Steps to be Taken. It is hoped that they will be of some value in our understanding the causes of America's financial crises and the development of America's regulatory structure and in developing and supervising China's financial sector.

It is my understanding that China should follow the existing regulatory path to continue with divided operations and management, and that measures should be taken to broaden, heighten and improve the functional performance of The People's Bank of China as the central bank, and that the financial regulatory structure should be completed under the current framework of "one bank and three commissions", coupled with more supplementary financial institutions, and that more importance should be attached to China's financial legislature and establishment of financial risk sharing and compensation through market mechanisms, and that active measures should be taken to promote the setup and development of Asia Monetary Fund.

Back in China now, I feel a stronger sense of responsibility. The revitalization of the Chinese nation requires that we should learn from world civilizations, work hard and make steady progress.

十二次

October 2012

目 录 Contents

第一部分	学习体会 Research Findings 1
	规则下促竞争 稳定中求发展 3
	Competing under Regulation, Growing with Stability 8
	中国应更加注重金融法制建设和组织完善构建市场化的金融 风险承担和损失弥补机制 ····································
	China Government: Enhancing Financial Legislation System, Improving Regulatory Structure and Establishing Market - oriented Sharing Resolutions and Compensated Strategy for Financial Crisis and Damages
	美国应对金融危机的处置方式、监管办法与下一步举措 32
	The U.S. Federal Government Response to the Financial Crisis, Regulatory Approach, and Further Measures
第二部分	专题演讲 Monographic Speeches 93
	U. S. Financial Regulation and Its Implications to China——Vice Governor Mr. Chen Yunxian's speech at Guangdong University of Foreign Studies —————95
	美国的金融监管及其对中国的启示 112
第三部分	媒体专论 Media Publications 123
	构建市场化的金融风险处置机制 125

美国金融危机处置与监管演变

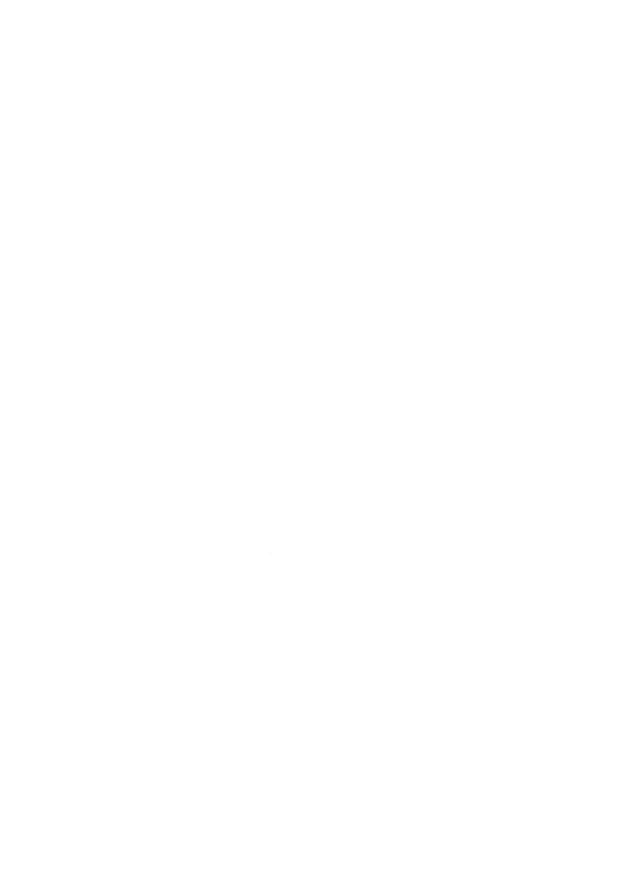
Evolutional Explorations in Ways of Monitoring and Handling Financial Crisis in America

参考文献	References 147
	把金融改革创新建立在金融稳定的磐石上 144
	对话广东省副省长陈云贤:金改创新先行一步 136
	有形与无形之手需有机结合——美国"疗危法"为我防范和应对危机提供参考 ····································
	有形与无形之手需有机结合——美国"疗危法"为我防范和
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第一部分 学习体会

Research Findings





规则下促竞争 稳定中求发展

本文对美国建国以来的金融系统及其监管框架的发展历程进行了梳理,尤其是对 20 世纪 80 年代以来美国监管制度的放松及其造成的后果进行了阐述,并对 2007—2008 年金融危机之后美国政府的应对措施进行了描述。本文也为中国金融监管体系未来的发展提出了建议。具体包括: (1) 继续坚持分业经营、分业管理的道路; (2) 扩大中国人民银行的职能,完善与提升其在"一行三会"监管体系中的核心作用; (3) 建立与完善相关辅助性金融监管机构; (4) 加强金融法制建设,构建市场化的金融风险承担和损失弥补机制; (5) 带头组建"亚洲货币基金组织"; 等等。



美国成立于1776年7月4日。

数十年后,即19世纪初,美国各州信用银行蓬勃发展。

- 1913年,美国成立中央银行——"美国联邦储备局"。
- 1929年,美国爆发金融危机并导致西方国家经济危机。
- 1933年,美国颁布《格拉斯一斯蒂格尔法案》,确定四大原则:
- (1) 实行商业银行与投资银行分业经营、分业管理;
- (2) 禁止银行直接从事证券和国债的承销与自营交易业务;
- (3) 禁止投资银行开展吸收存款业务:
- (4) 禁止美联储的附属机构及其关联银行开展证券业务。

与此同时,成立了联邦储蓄保险公司(FDIC)等。

此后,美国金融相对稳定地发展了几十年。

20 世纪80 年代,美国金融领域发生了两件大事:

- (1)针对各类银行为追求利润和吸引存款而大量投资商场、房产和垃圾债券,以及风车农场和石油买卖而造成大量呆账坏账,并迫使美国政府花费1600亿美元处置的这一情况,美国议会颁布了1989年《金融机构改革、恢复和强制执行法》(FIRREA),并根据此法成立了信托公司(RTC),一揽子通过关闭、拍卖、兼并,尽可能快地处理银行造成的大量不良资产,从而稳定了金融秩序。1995年,在处理完金融危机后,此信托公司(RTC)转变为储蓄协会保险基金进行运作。应该说,这是自美国1929—1933年经济危机后在《格拉斯—斯蒂格尔法案》框架下成功地但又是最后一次地依据该法处置和化解了银行金融风险。
- (2) 20 世纪 80 年代,世界各国金融业的竞争促使了各国的金融业发展,尤其是日本和欧盟国家。在 80 年代公布的世界十大金融财团中,美国只有花旗银行居第七位,其余各大金融财团多数归属日本和欧盟。美国金融机构开始游说国会,要求混业经营扩大实力。1989 年, J. P. Morgan (摩根大通)获得国会特批,成为第一个也是第一次突破《格拉斯—斯蒂格尔法案》,限制金融混业经营发展的金融机构。

随后的 20 世纪 90 年代开始,美国银行界开始了金融衍生品的创新,各类金融控股公司(Financial Holdings Company)专项作为投资银行业务的公司,如 SPV(Special Purpose Vehicle)、SIV(Structural Investment Vehicle)等

大量涌现;证券业大量创新,如资产抵押证券化(Asset - Backed Securitization)、住房抵押贷款证券化(Mortgage - Backed Securitization),从而产生大量金融衍生品,如资产抵押证券(Asset - Backed Securities,ABS)以及住房抵押贷款证券化(Mortgage - Backed Securities,MBS);银行、证券业还有更进一步的衍生产品,如居民住房抵押证券(Residential Mortgage - Backed Securities,RMBS)、商业不动产抵押证券(Commercial Mortgage - Backed Securities,RMBS)、商业不动产抵押证券(Commercial Mortgage - Backed Securities,CMBS),等等;保险业也不落后,发明了各种金融产品,包括信贷违约掉期(Credit Default Swap,CDS)、债务担保证券(Collateralized Debt Obligation,CDO)等;同时私募基金(Private Equity,PE)、创投基金(Venture Capital,VC)、对冲基金(Hedge Fund,HF)等也不断涌现;国际跨国金融衍生品创新如美国信托凭证(American Depository Receipt,ADR)、货币共同基金(Money - Market Mutual Funds,MMMF)等也层出不穷。各类金融衍生产品真正使得资金的最终提供者与最终使用者隔离。

1999年,美国颁布《格雷姆—里奇—比利雷法案》,正式以法律形式将严格限制了金融业几十年、当然也争议了几十年的银行业与证券业分业经营、分业管理的规定,即《格拉斯—斯蒂格尔法案》予以废除,允许通过建立下属金融控股公司(Financial Holding Company,FHC),参与全方位的银行、证券承销与自营交易,以及保险业务。

从 2007 年开始,美国金融状况日益恶化,至 2008 年 9 月,美国金融系统几乎接近崩溃,许多大银行、保险、投资银行和政府扶助公司,不是倒闭就是需要大量的联邦资金支持其继续运作。房地产价格和金融资产价格暴跌导致房产市场严重受损,失业率大幅提升。其萧条程度和持续时间是 20 世纪 30 年代大萧条以来最严重的一次。这使得美国反思金融监管体系的空白之处以及这种金融风险是不是金融的系统性风险。这些空白之处不仅存在于各州的金融监管体系中,而且也存在于联邦各大金融监管体系——银行、证券、期货及保险业监管体系中。

在此次金融危机的背景下,美国议会于2010年7月29日颁布了《多德一弗兰克华尔街改革与消费者保护法案》。一方面,美国财政部、美联储以及联邦储蓄保险公司等整顿了房利美和房地美公司(Fannie Mae and