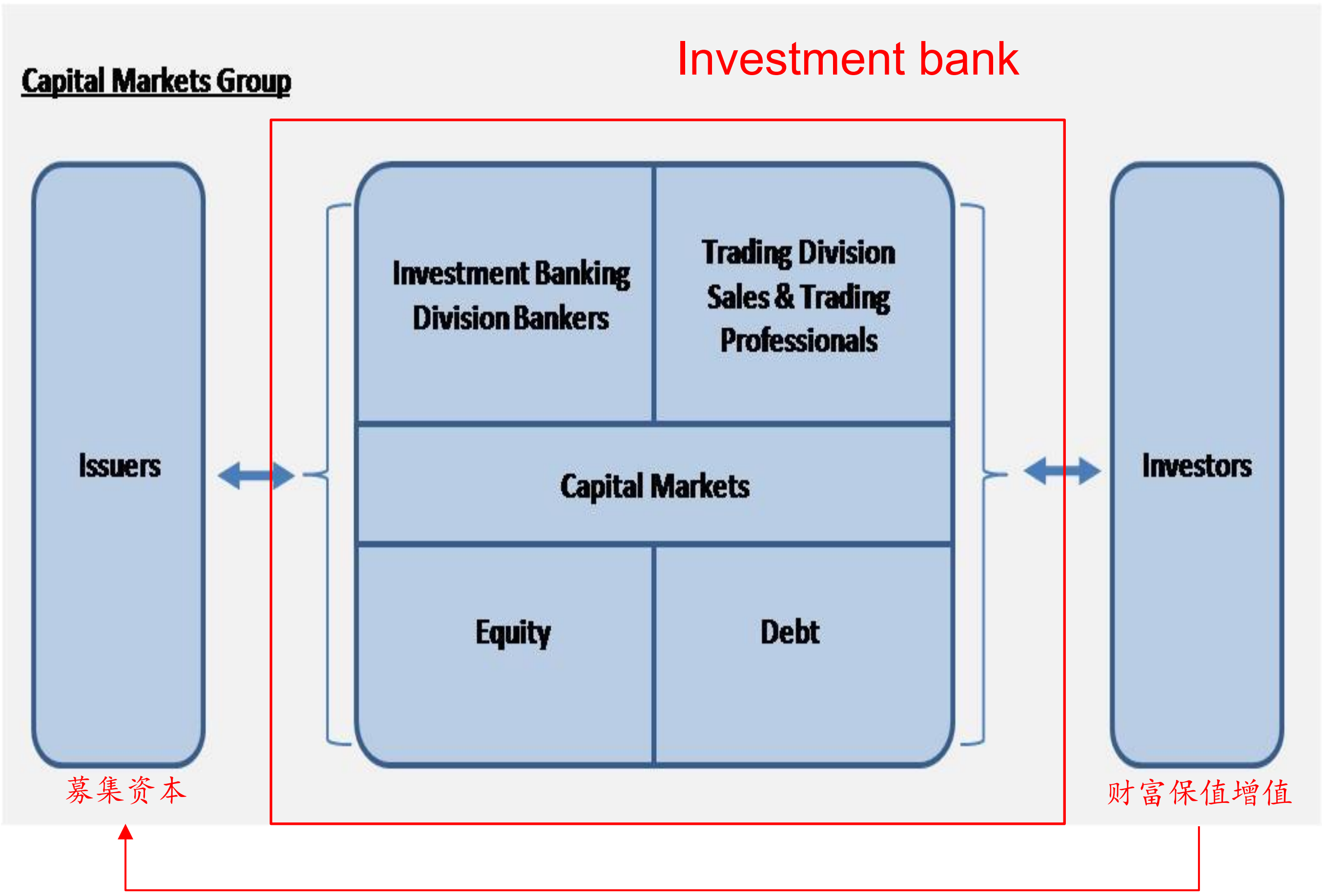
Securities Regulation Overview

章节要点

- 投行发展与监管实践：以美国为例
  - 重要的监管法规与监管内容
- 我国证券市场的监管实践
  - 监管体系
  - 证券法
  - 其他对资本市场产生较大影响的监管法规



汇集投资者财富，满足实业发展的资本需求

早期投资银行发展（1890-1929）

- Issuer：
  - 美国国家建设对资本的需求
  - 工业革命后大型项目建设对资本的需求：铁路
- 有限监管
  - 没有要求商业银行和投资银行分业经营
  - 吸收存款成为投行承销的资金来源
- 1926年—1929年股票发行额：6亿美元激增到44亿美元
- 催生：1929年10月28日，“黑色星期一”
- 之后：颁布了7部法案加强对金融部门的监管
  - 其中4部彻底改变了投行的经营环境

Act

- Securities Act of 1933
- Glass-Steagall（格拉斯-斯蒂格尔） Act (1933)
- Securities Exchange Act of 1934
- Investment Company Act of 1940

Securities Act of 1933

- Two main objectives:
  - （信息披露）require that investors receive **financial** and **other significant information** concerning securities being offered for public sale;
  - （禁止诈骗）**prohibit deceit**, **misrepresentations** and other **fraud** in the sale of securities.
- In general, securities sold in the U.S. must be **registered** with the **Securities and Exchange Commission** (SEC) (unless qualified for certain exemptions) and must provide a minimum required amount of **information regarding the security.**

Securities Act of 1933

- After a registration statement is filed with the SEC, an **investment prospectus**（招股说明书）must be provided to investors.
- Issuers and underwriters are both **strictly liable for** any material misstatement or omission in the registration statement and prospectus. **(Due Diligence Defense)**
- “严格责任”—— 认真审查（尽职调查）

List of Required Information

Information Required in the Registration Statement and Prospectus

- Summary information, risk factors, and ratio of earnings to fixed charges
- Use of proceeds
- Dilution
- Selling security holders (if any)
- Plan of distribution
- Description of securities to be registered
- Interests of named experts and counsel
- Information with respect to the registrant
- Description of business
- Audited financial information
- Description of property
- Legal proceedings
- Market price of and dividends on the registrant's common equity and related stockholder matters
- Management's discussion and analysis of financial condition and results of operations
- Changes in and disagreements with accountants on accounting and financial disclosure
- Quantitative and qualitative disclosures about market risk
- Directors and executive officers
- Executive compensation
- Corporate governance
- Security ownership of certain beneficial owners and management
- Transactions with related persons, promoters, and certain control persons
- Material changes
- Disclosure of SEC's position on indemnification for securities act liabilities

Due Diligence Defense

- The Act acknowledges that imposing "strict liability" can be a difficult requirement, and introduces the **due diligence defense**（尽职调查抗辩）as a means for banks to potentially avoid repurchasing loss-making securities.
- Banks must meet a **burden of proof**（举证责任）to show that they conducted a **reasonable investigation** using their access and leverage and believed there were **no material misstatements or omissions**（没有重大虚假陈述或遗漏）.

尽职调查

- 财务尽调
  - 审查企业的财务报表、税务记录、资产负债等
- 法务尽调
  - 检查企业的法律合规性、诉讼风险、知识产权等
- 商务尽调
  - 了解企业的商业模式、市场竞争、行业前景等
- 形成尽职调查报告

（已被招股说明书涵盖）

另类尽调：浑水

- **浑水研究**
  - 一家业务涉及尽职调查的私人投资公司，由卡森·卜洛克创建，主要针对中概股发布质疑调查报告。
- **辉山乳业**
  - 位于沈阳，中国知名乳制品企业，主要从事乳制品生产销售，早年市场表现良好、业绩稳步增长。
  - 2013年9月27日于港交所主板上市。
  - 2016年12月16日，浑水发表报告，指辉山乳业涉伪造财务报表。
  - 2017年3月24日，辉山乳业资金链危机爆发，股价突然暴跌近九成。
  - 2019年12月，辉山乳业从香港退市。
  - 2020年11月，广东越秀集团接手辉山乳业资产。
- **瑞幸**
  - 2020年1月，美国浑水研究宣布收到一份长达89页的做空报告。
  - 2020年4月2日，瑞幸咖啡披露有关伪造交易的信息的调查进展。调查显示伪造交易价值大约22亿元人民币。

招股说明书催生出的公司

- “中国最牛打印店”：荣大科技
  - “没在荣大通宵过就没干过投行”
  - 2021年7月12日申报上市
  - 之后因业务调整撤销上市材料
- 证券监管催生了大量的合规需求，而合规需求本身就是一个庞大的产业链。

Glass-Steagall Act (1933)

- This Act separated **commercial** and **investment** banks and limited the underwriting capabilities of commercial banks.

分业经营：商业银行不得从事证券承销业务（政府债券除外），投资银行不得吸收存款。

分业经营好还是混业经营好？各有什么优缺点？

- The **Federal Deposit Insurance Corporation** (FDIC) was founded by this Act to insure bank deposits.
- 人事隔离：**Officials** of firms associated with security investments were restricted from serving as directors or officers of commercial banks.

分业经营 vs 混业经营：优缺点对比

维度	分业经营（Separated）	混业经营（Universal）
风险隔离	优：存款/支付体系与证券风险之间有防火墙，传染受限	劣：风险跨业务线传导，易演化为系统性风险
利益冲突	优：角色单一，冲突空间小	劣：承销/贷款/自营/资管多重身份，冲突内生
范围经济与协同	劣：无法共享客户、信息与渠道，失去综合化协同	优：一站式服务、关系型银行、信息复用，范围经济显著
收入与风险分散	劣：收入结构单一，易受单一行业周期冲击	优：多业务线对冲，平滑盈利波动
客户便利与竞争力	劣：客户需多机构对接，成本高；国际竞争中弱于全能银行	优：满足大型/跨境客户综合需求，竞争力强
安全网与道德风险	优：政府安全网仅覆盖传统银行业务，补贴不外溢	劣：安全网补贴蔓延到高风险业务，加剧道德风险
监管	优：权责清晰、相对简单	劣：机构复杂（大而不能倒＋复杂而难管），监管难度高
金融权力集中	优：抑制过度集中	劣：易形成金融寡头与市场支配力

Glass-Steagall Act

Separation of Commercial Banks and Investment Banks (1933–1999)

	Commercial Banks	Investment Banks
Accept deposits in checking and savings accounts, many of which are FDIC-insured	Yes	No
May borrow money from Federal Reserve system against appropriate collateral	Yes	No
Subject to significant regulation and oversight from FDIC and Federal Reserve	Yes	No
Invest in and trade US government bonds	Yes	Yes
Underwrite bond offerings for municipal and state governments	Yes	Yes
Underwrite stock and bond offerings for companies	No	Yes
Trade and/or invest in stocks and non-government bonds	No	Yes
Most activities subject to regulation by SEC	No	Yes

Securities Exchange Act of 1934

- 1933年的证券法管的是“发行市场”（一级市场），而1934年监管的是“交易市场”（二级市场）。
- This Act deals primarily with the **supervision of new security offerings, ongoing reporting requirements** for these offerings and the conduct of exchanges.
- Companies with >$10 million in assets and >500 owners must **file annual and other periodic reports**.
- Proxy solicitations and **the acquisition of >5% ownership** stakes in registered companies are subject to filing requirements.
- This Act created the **SEC.**
- **Insider trading** is prohibited by this Act.

SEC的第一任主席

- 约瑟夫·肯尼迪
  - 美国总统约翰·肯尼迪的父亲。
  - 罗斯福选他的理由很有意思："要抓贼，就得找一个懂贼的人。"因为肯尼迪本人就是华尔街的老手，深谙其中的各种门道。

Investment Company Act of 1940

- This act regulates conflicts of interest between **investment companies**（如共同基金）and **investment banks.**
- It **restricts the number of investment bankers** permitted to serve as directors of investment companies as well as **prohibit certain business transactions**. 限制投行人员在基金公司任职
- The Act requires investment companies to **publicly disclose information** about their own financial health and investment policies. 信息披露
- The Act **does not** include provisions for the **SEC** to make specific judgments about or even supervise an investment company's actual investment decisions.

美国证券监管的发展

- 二战之后主要监管法案内容变化较少
- 监管内容发生重要变化的法案
  - Gramm-Leach-Bliley Act（格雷姆-里奇-比利雷）(1999)
  - Global Research Settlement (2003)
  - Dodd-Frank Wall Street Reform and Consumer Protection Act （多德-弗兰克）(2010)
    - 1934年以来对美国金融业影响最为广泛的监管变革法案
    - 背景：2008年金融危机后对金融监管的反思

Gramm-Leach-Bliley Act (1999)

- This Act **overturned the mandatory separation** of commercial and investment banks, as originally required by the Glass-Steagall Act. 从分业经营回归到混业经营。
- Following passage of this Act, large **commercial banks** significantly expanded their investment banking business.
- JP Morgan, Citigroup and Bank of America created the **largest investment banking franchises** among US commercial banks.

Global Research Settlement (2003)

- Investment banks were required to comply with significant restrictions relating to interaction between the **Investment Banking Division** and **the equity research department** (part of the Trading Division)
    - No influence on research opinions or coverage
    - No payment of compensation or influence on promotion
    - Restriction on communications
- The practice of "spinning" hot IPOs is restricted.

投行把热门IPO的份额分配给某些客户（如企业高管），以换取这些客户将来的投行业务。

Dodd-Frank Wall Street Reform and Consumer Protection Act (2010)

- Dodd-Frank is the **most far-reaching regulatory** change to the financial services industry since 1934.
- Changes in financial oversight: creates **the Financial Stability Oversight Council** and the **Office of Financial Research** (both attached to the Treasury Department) to identify threats to financial stability, promote market discipline and respond to financial risk
- Consumer protection: creates **the Bureau of Consumer Financial Protection**
- Securitization: **Mandates retained risk of > 5% of each debt tranche** created for financial firms that engage in securitization and sale of securitized products
- OTC derivatives: **Commodities Futures Trading Commission now have the authority to regulate OTC derivatives**
- **Ending bailouts:** Improvements to Regulation of Proprietary Trading: incorporates the "Volker Rule" which **limits bank proprietary trading activity** (except with clients) and ownership of or investment in a hedge fund or private equity fund
- Regulation of Advisors to Hedge Funds and similar private fund investment advisers: increases reporting requirements and limits ability to exclude information reporting
- **Rating agencies** are now overseen by the Office of Credit Ratings within the SEC

Financial Crisis Regulatory Reform

- Following the financial crisis of 2007-2008, a number of global reforms were initiated that **impact investment banks,** including
  - **role of central banks**
  - **the supervision of banks**
  - **bank capital guidelines**
  - **consumer protection**
  - **global accounting standards**
  - **the "harmonization" of OTC derivatives regulation**.

Global Financial Reform

- Enhancing Risk Assessment and Measurement
  - Regulators are correcting faulty risk-measurement methods, including analysis of stressed asset valuations
  - Default and migration risk of counterparties in trading businesses will be better recognized
  - Derivative positions require longer margin periods and higher risk weights if not cleared with central counterparties

Global Financial Reform

- Strengthening the Capital Base
  - Regulators scrutinizing core equity to make sure it is fully available to creditors in case of default
  - More narrowly defining Tier 1 to be principally common shares and retained earnings
  - Hybrid capital instruments will no longer be eligible for Tier 1 status unless satisfy strict criteria
  - Tier 1 capital will be reduced by unrealized gains and losses, net deferred taxes, defined benefit deficits, minority interests and goodwill

Global Financial Reform

- Imposing a Maximum Leverage Ratio
  - The leverage ratio will relate Tier 1 capital to the gross balance sheet, including off-balance-sheet items
  - This will result in larger leverage ratios shown by investment banks
  - Leverage ratios will be reduced to maximum allowed levels through reduction in assets, including loans

Global Financial Reform

- Setting a Global Standard for Minimum Liquidity
  - Banks will be forced to hold sufficient liquidity to survive a short-term period (30 days) of stressed market conditions
  - Regulators will require a long-term net stable funding ratio that classifies and compares both assets and liabilities according to their expected terms and liquidity: short-term and non-stable funding will require large deductions when calculating the ratio

Global Financial Reform

- Accounting for Systemic Risks
  - Regulators will try to make sure the financial system is sound by focusing on risks posed by the largest institutions during market downturns
  - Dividends may be restricted in downturns, capital will be required to increase in positive markets and credit growth will be monitored
  - Accounting standards will apply forward-looking expected-loss approach to provisioning

Global Financial Reform

- In addition to the general initiatives that are common to most countries, certain regulatory regimes are also focusing on the following:
  - Realignment of bank business models, restricting size and activities of individual banks
  - Separation of deposit taking banks and investment banks
  - Forced divestitures of hedge fund and private equity investment businesses
  - Prohibition of proprietary trading activity