

14 December 2017

Senator Jane Hume (Chair)
Economics Legislation Committee

Dear Senator Jane Hume and the Committee,

**Submission to the senate inquiry into the Financial Sector Legislation Amendment
(Crisis Resolution Powers and Other Measures) Bill 2017**

Enclosed please find a short submission, together with an attachment as a contribution to the inquiry.

From 2004-2010, I was a Principal Researcher at APRA (acting Head of Research for about one year). I was seconded for one year to the Australian Treasury as a Senior Advisor to the 2010 Super System Review.

As a matter of urgency, I need to ask: are you prepared to have your savings in bank deposits confiscated to save insolvent banks? What about the millions of voters you represent? How would they react if you allow this to happen to them?

The Bill before the Senate, “Financial Sector Legislation Amendment (Crisis Resolution Powers and Other Measures) Bill 2017”, gives the Government and APRA new discretionary powers to confiscate bank deposits, as explained in my submission. This Bill should be rejected.

I wish you all a Merry Christmas.

Yours sincerely,

Dr Wilson Sy
Investment Analytics Research

Protect Deposits Not the Fraudulent System

(Submission to the Senate Economics Legislation Committee)

Dr Wilson Sy
Investment Analytics Research

13 December 2017

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Deposit Guarantee

There is a widespread misconception (even e.g. [ASIC](#)) that bank deposits are currently guaranteed for at least up to \$250,000. The Financial Claims Scheme (FCS) through which APRA administers the guarantee has not yet been activated, as the FCS [website](#) clearly states:

The [FCS](#) can only come into effect if it is activated by the Australian Government when an institution [fails](#). Once activated, the [FCS](#) will be administered by the Australian Prudential Regulation Authority ([APRA](#)).

Emphasis has been added. That is, when a bank fails, i.e. becomes insolvent, the Australian Government or APRA then has the discretion to decide whether or not to activate the FCS. Hence, it should be emphasized that:

Bank deposits are not protected or guaranteed at all.

Financial System Stability

However, most Financial Sector legislation mentions the protection of depositors. For example, *the Banking Act 1959* has a whole Division 2 of Part II devoted to *Protection of depositors*, stating in Subdivision A 12(1):

It is the duty of APRA to exercise its powers and functions under this Division for the protection of the depositors of the several ADIs AND for the promotion of financial system stability in Australia.

Emphasis has been added. This may provide some comfort to ordinary people, but it is illusory because deposit protection is to be balanced against financial system stability, without the law clearly stating which has higher priority.

Stating priority is important because these objectives may be conflicting. The Bill proposes amendments to empower APRA to decide at its discretion and in secrecy under *Subdivision*

D—Secrecy and disclosure provisions relating to all directions. Section 11CH (p.24) states that “APRA may determine that a direction is covered by secrecy provision“:

*(2) APRA may determine, in writing, that the direction is covered under this subsection if APRA considers that the determination is necessary to protect the depositors of any ADI **OR** to promote financial system stability in Australia.*

Emphasis has been added. Note that “AND” has been replaced by “OR” in the statement of objectives, confirming the potential conflict of objectives. Therefore, it is important to recognize that

The Bill allows APRA discretionary powers to decide secretly whether to protect depositors or to promote financial system stability.

Threats to financial system stability are merely perceptions and not well defined judgements.

Regulatory Priority

It would be an optimism to hope that the regulators would choose to protect depositors. The [Reserve Bank](#) (2012) makes clear the priorities of our financial regulators:

*...section 10 of the Reserve Bank Act 1959 requiring the Bank to ‘ensure that the monetary and banking policy of the Bank is directed to the greatest advantage of the people of Australia’ and that its powers are ‘exercised in such a manner as, in the opinion of the Reserve Bank Board, will best contribute to: (a) the stability of the currency of Australia; (b) the maintenance of full employment in Australia; and (c) the economic prosperity and welfare of the people of Australia’. Given the serious damage to employment and economic prosperity that can occur in times of financial instability, **the Act has long been interpreted to imply a mandate to pursue financial stability.***

Emphasis has been added. Therefore, the evidence collected here strongly suggests that

The Bill is designed to confiscate bank deposits to “bail-in” insolvent banks to save the financial system.

Confiscating bank deposits has already occurred in Cyprus in 2013 as an experimental measure which could be used in other jurisdictions and under other circumstances to “save” the global financial system. This raises the question whether a system which needs saving by massive injections of capital in past bail-outs is a system which should be saved at all. The facts have shown that

Financial crises have been used as instruments of systemic plunder.

Structural Reform

The global financial crisis (GFC) proved beyond reasonable doubt that the global financial system is fraudulent and that regulators have not restrained the fraudulent practices of banks. Financial system stability was restored at an enormous cost, equivalent to more than 15 trillion dollars in bail-outs by the three major central banks alone. Some of the flaws in the global financial system exposed by the GFC have been [discussed](#) in the attachment enclosed with this submission.

In the ten years since the onset of the GFC, instead of a fundamental restructure of the system on a sounder basis, the Bank for International Settlement (BIS) has coordinated cosmetic regulatory reforms. More than hundreds of trillions of dollars of over-the-counter (OTC) derivatives are still not properly audited and regulated, providing ample opportunities for fraud. As a result, more financial crises are anticipated which necessitate more arbitrary powers to manage and resolve crises and hence the current misguided Bill has been introduced to save the system with more plunders. The Bill itself may introduce its own destabilizing risk, because

Once the Bill is understood as potential confiscation of bank deposits to “bail-in” insolvent banks, a loss of confidence could precipitate a financial system instability which the Bill is supposed to prevent.

The global financial system needs fundamental structural reform which many countries believe is the restoration of the Glass-Steagall legislation which had worked well for many decades until it was corruptly or mistakenly repealed at the turn of this century. Conglomerates which evidently failed to manage properly their complex businesses should be broken up by divesting units which have not been adequately managed.

Conclusion

The warped logic of the proposed legislation seems to be:

Financial system stability is good for the welfare of the people therefore we must ensure financial system stability even if it means sacrificing the welfare of the people.

Hence the Committee and the senators should consider the proposition that

The Bill before the Senate, “Financial Sector Legislation Amendment (Crisis Resolution Powers and Other Measures) Bill 2017” be rejected because in the interest of the people as a priority, bank deposits should be protected, not the fraudulent financial system.

Reference

Sy, Wilson N., “Implications of the Global Financial Crisis” (August 26, 2014). *Journal of the Economics and Business Educators NSW*, 2014, Issue 2, pp. 26-34.. Available at SSRN: <https://ssrn.com/abstract=2520661> or <http://dx.doi.org/10.2139/ssrn.2520661>