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Comment on the Draft Financial Sector Regulation Bill, 2013

1. Introduction

The Free Market Foundation (also referred to here as 'the Foundation' or 'the FMF') hereby submits its comments on the Draft Financial Regulation Bill, 2013.

The Foundation is an independent non-profit public benefit organisation founded in 1975 to promote and foster an open society, the rule of law, personal liberty, and economic and press freedom as fundamental components of its advocacy of human rights and democracy based on classical liberal principles. It is financed by membership subscriptions, donations and sponsorships.

Most of the work of the FMF is devoted to promoting economic freedom as the empirically best policy for bringing about economic growth, wealth creation, employment, poverty reduction and human welfare (including better healthcare, increased life expectancy, literacy and educational quality). As a think tank the FMF's fundamental approach to policy questions is consumer-based.

The foremost question the FMF asks in addressing any policy question, including the contents of this Bill is: Will the policy that emanates from this document be to the long-term benefit of consumers and especially those who are the poorest and most vulnerable? The world's experience leaves no room for informed debate to the effect consumer well-being tends to be maximised by an absence of barriers to entry and freedom to compete in the provision of goods and services. The regulatory regime should allow consumer sovereignty, especially freedom of choice between what freely competing providers, who are free to innovate, offer.

The Bill will therefore be assessed by us to ascertain whether it is likely to result in the most beneficial conditions for consumers, the general public and the economy as a whole. Will it minimise costs, increase access to and the range of financial services, and "make the financial sector safer and serve South Africa".

This submission goes further and asks: What really (as opposed to popular rhetoric) explains excess instability (as opposed to desirable fluctuations) and prevailing crises (as opposed to a supposedly single crisis) in foreign and South African financial markets? Is imposed rigidity at the expense of competition, market corrections and innovation desirable? How should genuine problems be addressed in ways that ensure sustainable benefits exceeding costs?

2. Regulatory excess that has descended on the world, of which this Bill forms part, is harming consumers, retarding economic growth and punishing firms that were not responsible for the so-called "financial crisis" (actually two distinctive crises)

2.1 Governments, free markets and the financial crisis (Articles A and B)

The articles below were written to explain the causes of the distinctive financial crises in the United States and Europe respectively. As we show below, contrary to inexplicably popular, tenacious and flawed mythology:

1. There is and has been no “global” financial crisis or “meltdown”. All but a handful of countries maintained positive growth rates consistent with pre- and post-crisis norms at all relevant times, and most African counties enjoyed accelerated growth rates.
2. Not only was there no “global” crisis, or a single “crisis”, but there were two distinctive crises, neither of which has been ended by extreme government intervention, and has more probably been perpetuated and exacerbated by it.
3. The two major localised crises were and are (a) the subprime mortgage derivative crisis emanating from the USA and affecting primarily large-scale investors in government-created, government-promoted and government-backed derivatives, and (b) the Southern European sovereign debt crisis, which is not only caused by but which specifically is a manifestation of excessive government spending. In other words, both crises, rather than being caused by delinquent banks or market failure, coincided extreme government intervention and were, in all material respects, manifestations of government failure, not market failure. Nothing emanating from markets was a sufficient or necessary condition for either crisis, and government interventions in both cases were both sufficient and necessary conditions.

Sources of disinformation started blaming “capitalism”, insufficient regulation or deregulation for the financial crises as they occurred, motivated by the understandable impulse to shift blame. The debacle in the US, especially extreme subprime mortgage lending and derivatives, would not have occurred without (a) gigantic government sponsored enterprises (GSEs) such as Freddie Mac and Fannie Mae promoting inherently “toxic” lending on an unimaginable scale, and boasting about it, and (b) the central bank (Federal Reserve) debasing the US dollar, also on an unprecedented scale (euphemistically called “quantitative easing” or “QE”). QE monetary profligacy had been used as a mechanism to drive interest rates far below market rates, virtually to the vanishing point. Bizarrely, both anti-market toxic lending and QE continue five years later.

In short, the sources of the continuing crises are excessive anti-market intervention, spending and debt.

Accompanying rhetoric to the effect that no one saw it coming exposes conceptual flaws in the Bill. To the extent that it is true, it provides conclusive proof that regulatory power is no solution to real or imagined problems. That part of it which is true, and which is of critical importance regarding the Bill, is that *officialdom* and *pro-regulation* commentators never saw the crises coming. Anti-regulation advocates, on the other hand, warned against precisely those interventions which, according to them, would and did cause the crises.

This is reminiscent of the FMF warning that escalating financial market intervention in South Africa (FAIS, NCA etc) would be counter-productive. As predicted, by every objective criterion, things got worse: instead of “misselling” falling by half, it soared; “over-indebtedness” increased instead of declining; instead of “no more Masterbonds” as promised, we got larger and more devastating calamities such as Fidensure and Tannenbaum; instead of promised economic growth, we got stagnation as our liberalising African counterparts achieved the world’s highest regional growth rates.

Even more regulation of South Africa’s financial sector will serve no purpose other than to create another costly, bloated and counter-productive bureaucracy at a time when existing institutions and controls have failed by every objective criterion, when the government has promised financial discipline and when there have been repeated promises to cut counter-productive “red tape”.

South Africa’s political leaders should, at this time of our stagnating growth and world record unemployment exceeding the worst of the Great Depression, reign-in megalomaniacal officialdom.

2.2 Protest by Johan van Zyl, Chief Executive of Sanlam (Article C)

The puzzlement expressed by Mr van Zyl and reflected in the article (below) is clear. Why are South African financial institutions that have an excellent international reputation to be burdened with additional red tape when the regulations that already exist are so costly and burdensome? Excessive regulation, instead of making the institutions “safer” and enable them to “serve South Africa better” will entangle them in red tape, impose additional huge costs on them, and increase the possibilities of them failing. In other words, the warning given by Mr van Zyl is that “good intentions” of the regulators are likely to have anti-consumer consequences.

2.3 Debasement of the rand and dollar (Article D)

Debasement of currencies worldwide is the root cause of financial turbulence. Adopting reams of new legislation and appointing more regulators will not remove risk and improve the safety of investors; it will weaken the financial institutions by making them poorer and reduce their ability to deal with financial crises. South Africa must stop inflating the rand and find other ways to deal with the erosion of the dollar. The notion that stability can be achieved by a lock-step currency debasement process is a recipe for disaster. South Africa should rather decide to have a currency with a stable value and find innovative ways to deal with the resultant “strong” currency label it will earn e.g. abolish exchange controls and the legal tender laws. Firms will deal with currency issues directly by conducting business in the currencies used by their foreign customers.

3.1 Article A: Governments, free markets, and the financial crisis

by Eustace Davie

Politicians worldwide are running for cover as their machinations have led to the mother of all crises.

Australian Prime Minister, Kevin Rudd, is reported to have declared that the 'comprehensive failure of extreme capitalism' has required government to step in to stem the damage. He blames the meltdown on failures in lending standards, risk management and corporate governance by the world's major lending institutions.

No, Mr Rudd, you have it wrong. Dig a little deeper and you will find that the debacle resulted entirely from the interference of the US government in the functioning of markets. Either you have not studied the problem properly, or you are attempting to fool the citizens of Australia.

Walter E Williams, professor of economics at George Mason University in the US, in his article *A minority View: Lessons from the Bailout,* says the problem started with the enactment of the Community Reinvestment Act of 1977. This Act was then made more punitive during the Clinton presidency. Congress subsequently used the legislation to put pressure on banks to make high-risk loans to homebuyers and businesses that did not meet the banks' normal lending criteria. The encouragement offered by Congress was that the government-sponsored enterprises (GSEs) Freddie Mac and Fannie Mae would purchase the 'subprime' loans and rid them of the non-market risks they would incur in the process.

In order to take on huge quantities of these high-risk loans to low-income Americans who did not qualify for loans in the ordinary course of banking business, Freddie Mac and Fannie Mae 'securitised' the loans, which meant packaging a large number of them and selling the toxic packages on into the financial markets. Although the GSEs, which started life as government owned enterprises, were ostensibly privatised, owned by shareholders and traded on the New York Stock Exchange, they were not viewed as totally private.

A 2004 paper on the US postal services commented that, 'Real-world experience with Government Sponsored Enterprises (GSEs) like Fannie Mae and Freddie Mac demonstrates that lenders would still believe a federal credit guarantee exists, albeit an implicit one.' Fannie Mae still says on its website, 'Fannie Mae is a government-sponsored enterprise (GSE) chartered by Congress with a mission to provide liquidity and stability to the US housing and mortgage markets.' Does that sound like the statement of a private company?

Professor Williams suggests that as politics will probably not allow for the clean-out that should occur by bankruptcies and liquidations, the next best option is Congressional hearings to determine responsibility for the crisis caused by the GSEs and the prosecution of those found responsible for unlawful actions and fraud. He points out that the 'Enron and WorldCom debacle is a drop in the bucket compared to the financial mess that Congress has created through Fannie Mae and Freddie Mac in the name of "affordable" housing' but there is total silence about Congressional hearings regarding this massive scandal that is having worldwide repercussions.

No, Mr Rudd, the current financial mess is the result of comprehensive government failure resulting from reckless intervention in financial markets by the American Congress. Despite protests that Congress was allowing investors to believe that Fannie Mae and Freddie Mac were supported by an implicit federal credit guarantee, nothing was done to disabuse the investing public of that notion. The so-called 'greedy' bankers and investors made the fatal error of trusting the politicians that created and protected the ‘hole in the dyke’ that has led to the bursting of the dam wall, resulting in a flood that looks set to drown the world’s financial systems.

Unfortunately, even if the world’s politicians manage to stem the current tide by using their ability to create debt at the expense of future taxpayers, another hole in another dyke goes unmentioned: the accumulation of paper money ‘backed by nothing’ created by government-controlled central banks. The subprime debacle might be the immediate cause for concern, but it is merely a symptom of a greater and more fundamental problem: government monopolisation of money and the reckless abuse of that monopoly.

Printing excessive quantities of money has become standard practice along with manipulation of interest rates in attempts to retard the resultant price increases or avoid recessions, creating regular booms and busts. The subprime debt is merely the tip of the iceberg. The real problem is unsound money, a problem that is, in the long run, being made worse and not better by the great gobs of it being created out of thin air in attempts to stabilise the current situation.

Money is supposed to be a medium of exchange and a store of value, not a political football to be kicked about by politicians in their efforts to get elected or stay elected. Its function is so difficult to understand that when government-appointed central bankers rob savers by debasing the currency, the victims do not know what is happening to them. However, as the subprime event has shown, breaking economic laws is dangerous, and the perverse situation created by abusing the monopoly to print money will, if escaped this time, come back to bite us all even harder next time around.

Governments are responsible and yet they are attempting to shirk accountability for the world financial crisis. In doing so, they and sundry supporters are trying to pin the blame on ‘capitalism’ or ‘free markets’ instead of on their own interventions, many of which, as in the case of the subprime loans are based on socialist ideas. The statements they are making are plain wrong to the extent of being ludicrous. Citizens of all countries should strenuously resist the probable attempts by governments to increase their grip on financial markets through legislation and bureaucratic regulations to ‘protect’ the people from the supposed ‘failures’ of private markets. In doing so, they should insist on close scrutiny of the consequences of the current socialistic control over money and financial markets.

In time, governments will have to relinquish their money monopolies in order to allow fully accountable private banks to provide citizens of the world with competitive private currencies – money that does not constantly lose purchasing power and cause persistent crises.

3.2 Article B: Free Market Triumph Over Subprime Folly

By Leon Louw

What good fortune for those in power that people do not think.
Adolph Hitler

The world is in grip of bizarre madness in which liberty-haters are like crazed vultures screeching with glee in a feeding frenzy at the carcass of free market capitalism. Subjects in countries that are more interventionistic (as ranked by recognised indices) have endured decades of misery as freer markets out-performed less-free markets by all objectively measured criteria. That a minority of rich countries have a minor "crisis", that entails no more than a few months of contraction, is their long-awaited window of opportunity to replace reality that works with fantasy that fails.

Even if excessive freedom and inadequate control explains the crisis, it is no reason for the world's winners to replace or compromise the system that enriches them with systems that impoverish and oppress the bulk of humanity?

Anti-market fundamentalists dance like wild savages around an ideological totem at the prospect of less liberty. They thirst insatiably for nationalisation, regulation, tax-funded 'bailouts' and debt moratoria.

South African is bombarded with silly babble about supposedly being protected by our National Credit Act (NCA) and exchange control. The NCA, far from saving us from anything, was (a) implemented long after the subprime bubble arose. Furthermore, most countries on earth, without an NCA, had no crisis. All the NCA achieved was the creation a giant self-serving bureaucracy that plunged us into a *supra*prime crisis with more credit market distortion in our supposed non-crisis than America has in its crisis. By raising the cost, risk and difficulty of granting credit, the NCA has the effect of denying credit to people who need it, and promoting unsecured credit amongst people who don't. As for exchange control, while providing trivial, if any, isolation, from foreign crises, it inhibits economic growth by curtailing access to global capital and cross-border investment.

Why do seemingly knowledgeable people blame free market capitalism when everyone knows that it was and remains a core aspect of USA government policy to promote, securitise and sell subprime mortgages? Why is the market's triumph over such interventionism seen by so many as 'market failure'? That the market triumphed is clear from the universally known fact that officialdom issue repeated assurances that the bubble would not burst, and that they had all controls they needed to ensure that there would be no crash. They set themselves resolutely against "the market" which had been trying for years to precipitate a long overdue correction. They were determined to drive property prices ever higher and induce global investors, especially foreign governments, to buy trillions of dollars of subprime derivatives.

If the US government perpetuates anti-market policies and institutions, such as Freddie and Fannie, and imposes ill-conceived 'solutions', such as quantitative easing and bailouts, it will exacerbate and extend the crisis just as the *New Deal* perpetuated the *Great Depression* for a decade. On the other hand, crises (many of which were substantial) which were not followed by intensified interventionism, ended so abruptly thanks spontaneous market corrections that they scarcely remembered.

The American crisis has three main elements, the first being the dark socialist underbelly of American capitalism, namely that both Republican and Democrat administrations boasted about the extent to which they fuelled subprime credit, each trying to outdo the other. Their efforts reached a crescendo during the 1980s. That both parties proudly espoused what became known as the subprime bubble explains why both call symptoms of their policies (toxic credit, the housing bubble, rising defaults, collapsing equities) 'causes', and why neither calls for ending the Ponzi scheme they created.

In free or nearly free markets banks finance credit-worthy people according to sophisticated credit 'scoring systems', but the US government wanted lenders to finance credit-unworthy ('subprime') people, so it:

- Created massive 'GSEs' (government sponsored enterprises).
- Prohibited 'red-lining' and mandated 'community reinvestment'.
- Flooded the market with 'easy' (low interest) money'.
- Applied political 'pressure'.

Seventeen GSEs were created from 1932 to 1988 to promote various forms of subprime credit. Principal culprits, *Fannie Mae* and *Freddie Mac*, squandered billions extracted from taxpayers by reimbursing banks in full for subprime mortgage loans, thus rendering reckless credit, which banks would never have extended in free markets, risk free. To 'gear' more money, they 'securitized' mortgages they bought and sold them as "derivatives" to institutional investors worldwide. Since investors would never normally buy manifestly toxic loans, the government induced them into doing so by way of government backing> Government backing was 'explicit' until 1996 and 'implicit' (which was, paradoxically, explicit!) thereafter.

This form of extreme anti-market interference was causally both necessary and sufficient for all aspects of the crisis, starting with the build-up of the bubble, and followed by its collapse when the government could no longer, as with all Ponzi schemes, maintain the pretence of "implicit government backing". Additional interventions, such as mandatory community reinvestment and 'predatory lending', compounded, but did not cause, the problem.

We had our own subprime crisis when our *Land Bank* provided unsustainable 'soft loans' to farmers which resulted ultimately in a similar land price bubble. When the unsustainable policy of "soft loans" was reached its inevitable end, it left large-scale damage-by-debt in its wake.

Our *Financial Sector Charter* is ominously similar to USA policy. It requires banks to provide tens of billions of Rands worth of government-backed subprime mortgages. Mercifully, government backing did not materialise and we were spared America's fate.

GSE money funding of subprime housing created an inevitable 'bubble', which brings us to the second main element. In a futile attempt to provide limitless funding and prevent the inevitable housing price crisis, *Fannie* and *Freddie* raised trillions of dollars by 'securitizing' the mortgages they'd bought and selling ''collateralized debt (MBSs, CDSs etc) with 'implicit government backing' to investors worldwide into their 'secondary mortgage market' where derivatives were 'geared' by virtue of their 'implicit' security to many times their underlying nominal value.

The third element explains why the crisis appears to be more severe than it is fundamentally. The prestigious Brookings Institute observes that the crisis may be smaller than imagined and a process rather than an event because large-scale losses are 'speculative'. The default rate rose from 2% in 2005 to about 10% of subprime mortgages, which is below 1% of all mortgages *by value*. Actual losses occur only if, when and to the extent mortgaged houses sell under foreclosure for less than outstanding balances.

Another variable in the 'perfect storm' of compounded government folly is that international accounting standards (from which GSEs are exempt!) require assets where values are uncertain to be reflected as minimal or zero. That the market is precluded from valuing toxic mortgages realistically explains extreme uncertainty with stock market indices lurching up and down like yo-yos, and why *Fannie* and *Freddie* could deceive markets into thinking it was too soon to panic by overvalued their assets. Private managers would be jailed for what politicians and GSE managers have done.

That subprime mortgages were never as disastrous as accounting rules suggest, is clear from the fact that the subprime foreclosure rates reached crisis proportions only in a minority of USA states, and losses suffered by mortgage investors remained less than was being lost on regular mortgages. In other words, nefarious as government intervention was, the much-maligned market endured relatively modest losses. Mandatory accounting standards that prohibited market-rated valuations (based on underlying real value) created an illusion of insolvency where there was none.

The lesson for South Africa is that, far from increasing anti-market intervention in the hands of people who clearly do not understand markets and are therefore in no position to regulate them, our over-regulated markets should be liberalised.

3.3 Article C: Protest by Johan van Zyl, Chief Executive of one of South Africa's leading financial institutions

report by Gillian Jones, Business Day, 5 September 2013

SOUTH African financial institutions are being unfairly targeted by regulators given their excellent ranking as among the most competitive in the world, Sanlam group CEO Johan van Zyl said on Thursday.

"We (financial institutions) are number one, two and three in the world, yet this is where most of the regulation is focused," he said in an interview in Johannesburg following the release of Sanlam's interim results.

South Africa fell one place on the World Economic Forum's latest global competitiveness index, dragged down by poor rankings on education, health and labour issues.

The survey, released on Wednesday, showed South Africa in first place on the regulation of securities exchanges and in second place on the availability of financial services.

The country was ranked second out of 148 nations for the availability of financing through local equity markets.

Mr van Zyl said no financial institutions in South Africa had collapsed during the 2008 financial crisis.

Despite this, there is a raft of regulatory changes on the agenda.

These include retirement reform and the Treating Customers Fairly policy introduced by the Financial Services Board. Also on the cards are a new solvency assessment and management regime for short- and long-term insurers and new commissions models.

"Each of these by itself can change the industry," he said. "If you look at the UK, it's taken 10 years to implement any one of them. Yet we would like to do all four of them simultaneously within two years. It's crazy."

Mr van Zyl said regulators had good intentions but were not considering the unintended consequences.

"We should really think much harder about the three or four things that will make a difference rather than the 200 or 300 others," he said.

He suggested the focus should rather be on tackling education and labour market fragility.

On the World Economic Forum index, South Africa was ranked bottom of the list on labour market efficiency, with the index placing the country 148th, in last place, in labour-employer relations, 144th in flexibility of wage determination and 147th in hiring and firing practices.

The country was placed 132nd out of 144 on primary education.

Santam had operated in a "tough" environment hit by floods, crop failures, droughts and an underperforming motor book hit by the weak rand.

3.4 Article D: Debasement of the rand and dollar

by Eustace Davie

South Africans suffer severely from the continual debasement of the rand. Savings have been eroded, economic calculation disrupted, and South Africans have become poorer than they otherwise would have been. Particularly cruel, is the surreptitious theft of pensioner savings.

When the rand was introduced on 14 February 1961, R2 equalled £1 and R0.714 equalled US$1. Today, we exchange about R16.50 for £1 and R10.30 for US$1. This means that since 1961, the rand has lost 93% and 87.9% respectively of its purchasing power by comparison with the dollar and pound.

On 29 November 2001, Reserve Bank Governor, Tito Mboweni, pointed out that prices in SA were approximately 70 times higher than in 1921 while, over the same period, prices in the United States had only increased tenfold.

In January 1966, the US monetary base was $60.5bn. The figures for January by decade thereafter were: 1970 $76.4bn, 1980 $156.2bn, 1990 $292.1bn, 2000 605.1bn, 2010 $1,994.9bn and then for October 2013 $3,628.1bn. The monetary base multiplied 59.97 times in 47.75 years. The purchasing power of the dollar has declined from $1 in 1913 (when the Federal Reserve was established) to $0.042 in 1913 dollars today.

In January 1966, the SA monetary base was R512 million. The figures for January by decade thereafter were: 1970 R753 million, 1980 R2.1bn, 1990 R10.9bn, 2000 R25.0bn, and 2010 R123.4bn and for September 2013 R176.4bn. The monetary base multiplied 344.5 times in 47.66 years. This means that SA has debased the rand more rapidly than the US has debased the dollar, which helps to explain the severe decline in the exchange value of the rand against the dollar over the period.

The increase in SA's monetary base since January 2010 at R53.033bn (less than 4 years) is almost the same as the total monetary base in July 2003, which was R53.072bn, a mere 10 years ago. Notes and coins in circulation at 31 January 2010, amounted to R72.547bn and in September 2013, R105.604bn, an increase of a massive R33.06bn (45.6%). By any standards, the base money supply has been increased excessively and cannot do otherwise than cause price inflation. As Milton Friedman famously said, "Inflation is always and everywhere a monetary phenomenon".

Many economists tend to warn against deflation but one of the best decades in US economic history was marked by deflation. During the period 1879 - 1889, the first years after the return by the US to the gold standard following the Civil War, there was a remarkable phenomenon. Prices declined by 4.2% and wages rose by 23% over the decade. In the absence of inflation, savings and capital formation rose, productivity increased and the economy flourished. If instead of inflation, SA enjoyed a period of deflation with prices steadily decreasing and wages steadily rising, standards of living would definitely improve.

The SA Reserve Bank can stop general price increases (PPI and CPI) by ceasing the inflation of the rand. There will be some repercussions for businesses that thrive on currency inflation but they will benefit by sound money in the longer term. To deal with the effects of a stronger rand, government can abolish exchange controls and the legal tender laws. Firms will deal with currency issues directly by conducting business in the currencies used by their foreign customers.

With no currency inflation to perpetuate continual price increases, the poor will be able to cope easier; pensioners will again be able to live their lives according to a reliable means, and all other South Africans will be able to plan much better for the future, and that includes government.

4. Specifics in the Bill

For reasons given above, we address the bill conceptually, rather than in its *minutiae*. It is a long Bill, and it is unlikely that many submissions will address every substantive aspect. We are concerned about many details: their constitutionality, their conflict with sound jurisprudence even where constitutional, and potentially negative impacts. We resist the temptation to elaborate, because addressing detail creates a misleading impression that the measure as a whole is conceptually sound. We attach, by way of illustration, a Portfolio Committee submission by the Law Review Project; it exposes flaws in just two sections of the Bill under consideration. A detailed analysis of the entire Bill would require more text than in the Bill itself.

Needless to say, we are familiar with the default assumption that proposed measures are cast in stone, and that the best anyone can achieve is fine-tuning trivia. We believe that to imply that the Bill is conceptually sound would be a disservice to our country. Furthermore, we are a democracy in which proposals should never be thought of as inevitable. Even when adopted, they are subject to revision or repeal, which should be considered for existing and conspicuously failed measures, especially FAIS.

Lest there be doubt about the failure of FAIS, we point out that, unlike the present Bill, it was preceded – as all Bills should be – by concrete predictions of costs and benefits. When presenting parliamentary evidence, the Financial Services Board (FSB) disclosed 16,977 intermediaries (not counting staff) had been expelled from the industry and from serving consumers, especially low-income consumers most in need of financial services and job opportunities on the industry, since 2004. That, shamefully, is 40% more than the 11,083 who cling to their jobs and who serve mostly privileged consumers. Black brokers accurately predicted “carnage” in their 2001 parliamentary evidence against the introduction of FAIS.

The FSB’s cost-benefit analysis predicted R1,15 billion annual benefits including 20% more policy “persistency”. The “benefit to consumers will arise from reduced miss-selling and over-selling (by) more professional intermediaries”. The opposite happened. Incredibly, Parliament was told that it is "not appropriate" to ask whether predictions materialised “as various factors could contribute.” However, most "factors" have always existed and could hardly explain life insurance policy lapses in the first year of FAIS soaring 50% and nearly doubling over-all. Promised consumer gains became disastrous losses, to which must be added massive compliance and policing costs, and denial of the benefits of competition by most service providers having been expelled or “debarred”.

One of the features of the present Bill is “twin peaks” regulation which we respectfully submit is a seductive term crudely imported from the UK. It is devoid of substance because it is based fallacious assumptions about the nature and causes of real and imagined problems in financial markets, on one hand, and the arrogant assumption of regulators that they have or will miraculously acquire elusive omniscience; that they will by some miracle suddenly understand and predicts markets, and prevent the kinds of crises they have caused or never been able to prevent hitherto.

The twin peaks model envisages more of what has already failed dismally and unambiguously. The standard recourse of failed regulators is the proposition that that things would have been worse without them. By that logic no matter what damage over-regulation inflicts, it is always true that catastrophes could be more catastrophic. Governments can avoid damage inflicted on themselves and their countries by such sophistry if they:

4.1 Insist on aspirant regulators who propose extended regulation such as this Bill in general and twin peaks in particular producing quantified predictions of costs and benefits,

4,2 Repeal measures and dissolve bureaucracies where predicted outcomes do not materialise.

Had these two simple expedients been observed, cutting back on financial regulation would now be under consideration instead building new bureaucratic empires and smothering the economy beneath increased costs and controls.

“Twin peaks” could better be understood as twin troughs or twin pits. There is no reason whatsoever to believe that two overlapping regulators will be any less likely to fail than their predecessors. What the government should do instead is undertake a paradigm shift that reflects a more sophisticated understanding of how markets function, especially their propensity for spontaneous and expeditious self-correction. It should critically examine, and reform or repeal measures that frustrate market processes, and should discontinue measures that distort markets. Above all, it should stop fuelling the disastrous myth that regulators, given enough power, will miraculously acquire a god-like ability to predict the future, and to prescribe a one-size-fits-all straitjacket that suits all consumer needs, and allows for competition and innovation.

Policy-makers should not forget that our most disastrous debacles – Masterbond, Fidensure, Tannenbaum etc – were fully provided for under the common law of contract and fraud, leaving no need for additional regulation. The proof of the pudding is, so to speak, in the eating. Not only had the people and enterprises concerned been officially and deceptively certified “fit and proper” by the regulators who now want more power, but when the day of reckoning arrived, prosecutions occurred under old-fashioned common law rather than under statutes that were supposed to protect consumers. In order to protect regulators from such travesties, they have to granted immunity under the laws that presume them to be capable of regulatory miracles.

5. Conclusions

It is known with absolute certainty that regulations and regulators cannot and will not generate market stability, improve rates of return for consumers, or anticipate and avoid real or imagined crises. Despite presiding over the most heavily regulated sector of the economy, they have failed repeatedly *by their own admission*. They were incapable of predicting any of the crisis they say they could prevent if given ever-more power. Instead of delivering on their promises, they misleadingly, if not fraudulently, engender a false sense of security amongst consumers and investors leading them inevitably like innocent lambs to the slaughter into the next crisis. By asserting, as they do with every new wave of control, that they can and will protect consumers and stabilise markets, they lull all concerned, including the government, into perilous complacency.

In the circumstances, we urge the government to withdraw this Bill and go back to the proverbial drawing boards with a view to formulating market friendly reforms that will enable our financial sector to build on its reputation for being efficient, dynamic and innovative.