

THE ROAD TOWARDS SOUND
REGULATION
A POST-CRISIS PERSPECTIVE

监管之路

危机后的思考


王华庆 著

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前言

银行的诞生是人类经济社会发展历程中的一个伟大进步。银行作为中介机构,将社会中一方手中闲置的资金贷给需要资金的另一方,使资源得到更优化、更有效的配置,为经济的持续发展发挥出金融不可替代的支撑和调节作用。

银行资金主要来源于社会公众存款,具有不可抗拒的偿付责任。对银行而言,从其诞生之初,贷款资金的安全性就是首要问题。一旦贷款无法及时转化为足够清偿存款支付的资金,银行将失去中介信用,并极易在挤兑情绪的冲击下走向倒闭。更为重要的是,银行业是一种特殊的行业,机构间存在风险传染的关联性,一家银行的倒闭也可能会使更多银行在公众恐慌情绪的扩散下像多米诺骨牌一样倒下。因此,银行风险不同于其他行业,其所产生的负面外溢效应是极大的。

为什么会产生这种市场行为的极端负外部性呢?有两个方面的原因:一是市场信息的不对称;二是公众对银行的信心。

从贷款过程看,商业银行贷款给客户,需要通过尽职调查了解贷款客户的信用风险信息,信息掌握得是否全面、正确,对贷款的安全性起到决定作用。这是一个信息不对称的问题。从存款过程看,存款者也处于与银行信息不对称的一端。存款者为维护自己存款的安全,就需要充分准确地了解银行的经营和财务状况以及风险水平,这取决于银行是否能够正

确地、足够地披露信息。在大多数情况下,如果银行不能收回其发放的贷款,不能按时兑付存款,存款者并不能在短时间内充分全面地掌握银行真正的风险信息和偿付能力。信息不对称问题实际上进一步恶化,唯一理性的选择是先于其他存款人提出自己的那部分存款,每个个体存款人的这种“争先”行为,就形成了用脚投票——挤兑,从而会加剧肇事银行的倒闭。信息不对称导致的恐慌不会局限于一家问题银行,而是会形成情绪化的传染,转化为公众对整体银行业信心的降低,即公众信心问题。这就会严重威胁其他经营良好银行的安全,更严重的会导致金融业的系统性风险。

为了将因银行经营产生重大问题而出现的挤兑风险降到最低程度,英国曾要求银行家承担对存款人偿还债务的“无限责任”,如果银行倒闭,银行家需将自己的财产和个人收入纳入存款债务兑付,直到全部偿清为止,其社会地位也会一落千丈。无独有偶,为应对美国 19 世纪银行业的创建高潮及其风险,美国告诫银行所有者对其在银行的股份承担双倍赔偿责任,即银行倒闭,银行家须以双倍于自己股份的出资来赔偿存款者。英美的做法是要求银行家有效尽责地管理银行,而不是为了短期利润而承担过大的风险。

然而,当大工业社会的发展使得公司制进一步健全后,这种对银行家原始而明确的告诫和处罚逐渐消失。而疏于公司治理等问题却没有像人们乐观估计的那样得到有效遏制,并最终爆发了主要由华尔街引发的 20 世纪 30 年代的“大危机”。

危机的爆发促使以美国为首的各国政府实行严厉的金融监管。可以说,世界上真正的金融监管就是从大危机后开始的。二战结束,全球又建立了美元和黄金挂钩的货币制度,这

个制度下的国与国之间的货币兑换价格——汇率相对是固定的，这大大降低了商业银行经营的市场风险。因此可以说，大危机后美国建立的严厉的监管制度和二战后国际新的货币体系（布雷顿森林体系），使得战后银行业保持了近三十年的稳定发展的状态。

但是，20 世纪 70 年代初布雷顿森林体系突如其来的崩溃、美元大幅的贬值，使得原本相对固定的汇率演变成浮动汇率，银行业风险急剧上升。为对冲风险，美国首先推出了货币（外汇）期货，各种金融创新顺势而为，这就使得大危机时期美国确立的监管制度——商业银行和投资银行分设并分业经营的原则遭受冲击和规避，终于在 90 年代末期被新的立法彻底打破。伴随着极其复杂的金融衍生产品的不断出现、超大型金融集团的陆续诞生，同时交织着次级贷款的发展和膨胀，各种类型的金融机构（准金融机构）在次级贷款证券化的音乐中翩翩起舞，“没有不散的筵席”的警训在狂欢的氛围中似乎已无人理会。许多商业银行（金融机构）在极高的风险水平下运作，市场失灵出现明显的征兆。

那么弥补市场失灵，特别是防范市场失灵走向市场崩溃的工具是什么呢？应该是政府的作用，即加强金融业的审慎监管和金融消费者利益的保护。而新古典经济学开出的药方是，市场可以通过自律，行为人可以信息披露来解决市场失灵问题，从而达到市场的和谐。华尔街的监管者更多地是受到这一思想的影响，奉行“市场原教旨主义”——放弃监管，由市场自行调节。这样，金融机构的董事会面临着并不平衡的抉择。一个选择是：极大的风险偏好（监管者默认的高杠杆率）可以获得更高的短期收益，可以使公司在市场上获得更好的追捧，从而使股价更高，期权收入更多，资本红利更多。

这种激励机制是“拜金”的华尔街难以抗拒的。那么选择的另一面呢？如果出现风险，甚至机构倒闭呢？对有限资本的股东来说，显而易见，其仅承担有限责任，系统性风险的“买单”的主体责任不在股东在政府。而对大型金融机构来说，政府无法承受其倒闭后对整个经济社会产生的系统性影响，因为“太大不能倒”。

如果说造成“外部不经济”的人在市场失灵条件下不为此承担成本是一种制度的严重缺陷，那么日渐形成的“太大不能倒”的问题就是这种制度恶性作用的催化剂——道德风险的升级。

这样，在金融流水线上作业的不同种类的金融机构、类金融机构互相合作，却既没有“监工头”，也没有“摄像头”。政府对华尔街的监管是局限的、割裂的、滞后的和形式化的，甚至在许多创新领域沦为一种摆设。风险的膨胀和失控是一种必然的结果。华尔街的金融衍生品不断被创造出来，由于美元全球货币的地位，这种金融衍生品很快扩散到全球金融体系，特别是欧盟等发达经济体的金融体系中。如本书所述：表面繁荣的经济金融体系背后，金融机构的内生风险正在持续积累，金融体系的脆弱性在不断恶化，最终在雷曼兄弟倒闭的“黑天鹅”引领下，以极端的、金融危机的破坏性方式对金融市场失灵进行弥补和校正。这一过程是痛苦而惨烈的，代价也是高昂的。可以看出，金融市场高度发展、金融产品高度复杂、金融机构固有的“锦上添花”的特点与政府极其软弱的监管的严重失衡共同构成了这场危机的动因。这场危机不仅是“市场失灵”的结果，也是由“政府缺位”或称“政府失灵”造成的。政府没有很好地承担起市场经济监管者的责任，放弃了对金融消费者的保护。正如美国金融危机调查委员会发布的

报告所称：“此次金融危机不属于金融和商业周期的一部分，而是一种根本性的破坏——一场金融剧变，一场对整个国家和家庭造成严重破坏的浩劫。此次危机本是可以避免的，是人类的作为和不作为促使其爆发。”“监管机构之所以没有履行好职责，在很大程度上源于其观念上的误区。它们不仅认为市场具有自我调节能力，而且认为金融机构能够有效地进行自我监管，以致造成那些流通着数万亿美元风险资金的重要领域得不到有效监管。金融监管的缺失，已到了影响国家金融稳定的程度。”

这使我想到了——一本著名的教科书——《经济学》。2009年初，金融危机爆发后不满半年，该书的作者之一、诺贝尔经济学奖获得者保罗·萨缪尔森(Paul A. Samuelson)在《经济学》(第19版)的《前言》中告诫道，“将严厉冷酷的市场运作规律与公正热心的政府监管机制巧妙地糅合成一体”是现代经济的价值。在中国经济的发展中，特别是市场在资源配置中起决定性作用的过程中，“看得见的手”，即政府又该如何更好地发挥作用呢？这正是本书写作的初衷和将要重点阐述的问题。

Preface

The creation of banks marks a great leap forward in the social-economic development of the mankind. As intermediary agencies, banks optimize the allocation of resources and make it more efficient by collecting idle money in the society and lending it out to those who need it. In this way, banks fulfill the irreplaceable duties of the financial sector in supporting sustained economic development and making necessary adjustments.

Banks' funding mainly comes from public savings, of which banks have undeniable liabilities to pay back. Therefore the security of the money lent out has always been the primary concern of banks since their very first creation. Once a bank can't turn its loans into sufficient money to pay back depositors in a timely manner, it loses its credibility as an intermediary and is very likely to encounter a bank run before going bankrupt. More importantly, banking is such a special industry that the risks are contagious — the collapse of one bank may trigger domino effects among many other banks as public panic swells. That's why risks in the banking sector are very special — they have huge spill-over effects.

So what are the root causes of this extreme and negative externality? Two factors are at play here: market asymmetry and public trust in banks.

On the lending side, commercial banks gather credit risk information about its lending customers through customer due diligence. Completeness and accuracy of the information are essential to the security of the loans. There is a problem of information asymmetry here. On the deposit side, there is also asymmetric information between banks and depositors. To ensure the safety of their deposits, depositors need to fully and accurately understand the operations, financial situation and risk levels of banks, depending to a great extent on the banks' ability to accurately and fully disclose information. In most cases, if a bank can't get back its loans or meet its commitments on deposits, the depositors are not able to get a full picture of the banks' true risks and solvency status immediately. The problem of information asymmetry actually worsens to the point where the only rational choice for a depositor is to withdraw his/her deposit ahead of others. This rational behavior of individual depositors vying with each other to "get ahead" will eventually turn into a vote with their feet — "bank run" which expedites the collapse of the troubled bank. However the panic caused by informational asymmetry is not confined to one single ailing bank. Since emotions are contagious, the panic will culminate in the general public's waning confidence in the whole banking

industry. Losing public confidence will seriously threaten the safety of those good banks or even trigger systematic risks in the financial industry.

To minimize the risks of bank run caused by serious problems in banking operations, the British government once required that bankers be subject to “unlimited liabilities” for paying back depositors. This meant that if a bank went bankrupt, the bankers must use their personal possessions and income to pay back depositors until all debts were cleaned up, after which the bankers’ social status would plummet. It is by no coincidence that in the face of the rise of banking risk in the 19th century, the US government required bank owners compensate depositors once their banks closed down with an up-ceiling amount of double his/her original capital contribution to the bank. Both British and American practices aimed at obliging the bankers with diligent and effective management of their banks and preventing them from pursuing short-run profit by taking excessive risks.

However, such primitive yet clear redlines and penalties gradually faded out with the development of the massive industrial society and the modern corporate mechanisms. But it turned out that problems such as poor corporate governance were not effectively solved as people had optimistically expected. Instead these problems ultimately led to the explosion of “the Great Depression” of the 1930s with its origins in the Wall Street.

The crisis forced governments in the US and elsewhere to adopt stringent financial regulations. It is safe to say that real financial regulations began in the wake of the Great Depression. After WWII, the global monetary system was based on US dollar's pegging to gold. In this system, the exchange rates of currencies around the world were relatively stable, greatly reducing market risks of commercial banks. Thus stringent regulatory regimes established by the US post the "Great Depression" coupled with the new international monetary system after WWII (the Bretton Woods System) ensured stable development of the banking industry for almost three decades after WWII.

Nevertheless, with the sudden collapse of the Bretton Woods System and dramatic appreciation of the US dollar in the early 1970s, the relatively stable fixed exchange rates gave way to floating rates and risks faced by banks skyrocketed. To hedge against risks, the US first came up with monetary (foreign exchange) futures followed by various other financial innovations. The regulatory principle established during the Great Depression — separation of commercial banks and investment banks — were impacted, evaded and, eventually, completely abandoned by the new legislations in the late 1990s. With the mushrooming of extremely complicated financial derivatives, creation of gargantuan financial conglomerates one after another and the development and expansion of subprime debts, all types of financial institutions (and quasi

financial institutions) strutted their stuff in this feast. Nobody was paying any attention to the good old warning that “even the best party must have an end”. Many commercial banks (financial institutions) were operating under extremely high risks and signs of market failure were already eminent.

Then what's the remedy for market failure and, more importantly, what can prevent market failure from deteriorating into market avalanche? The answer lies in the government's role, i. e. strengthening financial prudential regulation and interest protection of the financial consumers. Nevertheless, the prescription from neo-classic economists is market self-discipline. They believe that market failure can be solved and harmony achieved by information disclosure from market players. Regulators of the Wall Street, mostly influenced by this school of thoughts, uphold the “Market Fundamentalism”, i. e., abandoning regulation and letting the market make adjustments on its own. In this environment, the boards of financial institutions actually face unbalanced options. One option is to have very aggressive risk appetite (high leverage ratio with regulator's acquiescence) in the pursuit of higher short-term return. This would make the firm more popular in the market, push up its stock price and boost income from options and capital dividends — all of which are simply irresistible for the money-worshipping Wall Street. On the flip side, what would be the consequences of risk

events or even bankruptcies? Shareholders of limited liability firms obviously only need to shoulder limited responsibilities. It is the government not the shareholders who would ultimately pay the bill for systematic risks. Big financial institutions are “too big to fail” simply because the government couldn’t bear with the systematic impact on the whole economy were they really allowed to be closed down.

If it is a serious systemic defect that those who are responsible for the “external diseconomy” are not bearing its cost, then the problem of “too big to fail” — worsened moral hazard — is a catalyst that accelerates the viciousness of this systemic defect.

In such an environment, various financial institutions and quasi financial institutions worked hand in glove with one another but there were no “overseer” or “camera” to curb their behavior. As regulations over the Wall Street were limited, segregated, outdated, formalistic and, in many innovative fields, not much more than window dressing, the natural result would be for risks to inflate beyond control. Thanks to US dollar’s status as the international currency, when financial derivatives were created in the Wall Street, they quickly found their way into the global financial system, especially the financial systems of EU and other developed economies. As this book elaborates, beneath the surface of apparently exuberant economies and financial sectors, intrinsic risks of financial institutions were piling up and the financial system was

growing more and more fragile. Eventually, a “Black Swan” event — the collapse of Lehman Brothers — triggered the financial crisis which remedied and corrected market failures in a destructive, painful and costly manner. We can see that there are multiple culprits in this crisis: highly developed financial markets, highly complicated financial products, intrinsic inclination of financial institutions to “add more flowers to the already beautiful embroidery” and extremely feeble and unbalanced regulations by the government. The crisis was not only a result of market failure, but also caused by “absence” or “failure” of the government. The government failed its responsibility as supervisor of the market economy and failed its responsibility to protect financial consumers. As pointed out in the report from the Financial Crisis Inquiry Commission (FCIC), “the profound events of 2007 and 2008 were neither bumps in the road nor an accentuated dip in the financial and business cycles. This was a fundamental disruption — a financial upheaval, if you will — that wreaked havoc in communities and neighborhoods across this country.” “This financial crisis was avoidable. The crisis was the result of human action and inaction.” “The sentries were not at their posts, in no small part due to the widely accepted faith in the self correcting nature of the markets and the ability of financial institutions to effectively police themselves . . . This approach had opened up gaps in oversight of critical areas with trillions of dollars

at risk . . . Widespread failures in financial regulation and supervision proved devastating to the stability of the nation's financial markets.”

These words remind me of a renowned textbook — the *Economics*. In early 2009, less than six months after the financial crisis broke out, Paul A. Samuelson, one of the textbook authors and a Nobel Prize laureate in economics, proclaimed in the preface of the 19th edition of the *Economics* the value of the modern economy: “that combines the tough discipline of the market with fair-minded governmental oversight.” So how should the “visible hand” (i. e. the government) play a better role in China's economic development, especially in the context that markets are meant to play a decisive role in allocating resources? Indeed, to elaborate on this question is the original intention of this book.

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