THE PURSUIT OF FINANCIAL STABILITY POST THE GFC: IS TWIN PEAKS THE CURE FOR SOUTH AFRICA?

by:

THANDEKA FAKUDZE

(18291547)

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SUPERVISOR: PROFESSOR C VAN HEERDEN

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DECLARATION OF ORIGINALITY

Full names of student: Thandeka Fakudze

Student number: u18291547

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ACKNOWLEDGEMENTS

To the love of life, my mother Thandiwe Margaret Mkhatshwa. This is for you Mnguni. Thank you for your unwavering love and support. The sacrifices you have made in order to enable me to pursue this LLM Degree. All that I am I owe to you. I love you WaseGudu and thank you.

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SUMMARY

The global financial crisis of 2008 will undoubtedly go down as one of the worst historical events that the world has ever experienced. A crisis so catastrophic that it was responsible for bringing the global financial markets to its knees. It is for this reason that 10 years on, the international financial community is still hot on the pursuit of financial stability so as to ensure that the world never again experiences another financial crisis of that magnitude or at the very least, is able to better combat one should it arise: a quest that haunts it to this very day.

By far, one of the most significant lessons that the 2008 global financial crisis had to offer was that the international financial regulatory framework was severely wanting to the extent that it was unable to keep up with and further contain financial innovations and the growth that came with it. Consequently, a campaign to renovate the global financial regulatory framework ensued-a movement that South Africa is a fully participating member of. It is for this reason that South Africa has since adopted the Twin Peaks model of financial regulation through the recent enactment of the Financial Sector Regulation Act 9 of 2017 (FSRA).

Chapter one of the dissertation thus introduces the concept of financial stability by defining it and then proceeds to interrogate whether provision was made for it in the financial regulatory framework prior to the 2008 global financial crisis. Subsequently the causes of the crisis are investigated before concluding with a discussion on the emergence of financial stability as a core regulatory objective post the crisis.

In chapter two the South African Twin Peaks model of financial regulation is introduced and discussed. That is, the enactment of the Financial Sector Regulation Act, its objectives as well as the institutional architecture that it seeks to implement. Thereupon a discussion follows of the South African Reserve Bank's financial stability mandate as bestowed upon it by the FSRA as well as the roles of the Prudential Authority and the Financial Sector Conduct Authority with regards to achieving financial stability.

In chapter three, a comparative investigation is undertaken of Australia as the pioneer of the Twin Peaks model, having been the first to implement it in 1998. In this chapter

it is attempted to answer the pivotal question of whether the regulatory model is transferable or not.

Ultimately, in chapter four conclusions are reached regarding the underlying question of this discourse which is: post the 2008 global financial crisis, is the Twin Peaks model of financial regulation a cure for South Africa in its pursuit of financial stability?

TABLE OF CONTENTS

DECLARATION OF ORIGINALITY 1

ACKNOWLEDGEMENTS 2

SUMMARY 3

CHAPTER 1: BACKGROUND 8

1. INTRODUCTION 8

1.1. WHAT IS FINANCIAL STABILITY? 9

1.1.1 DID FINANCIAL STABILITY HAVE ANY PLACE IN FINANCIAL REGULATION PRIOR TO THE GLOBAL FINANCIAL CRISIS OF 2008? 11

1.1.2 WHAT WHERE THE CAUSES OF THE GLOBAL FINANCIAL CRISIS OF 2008? 13

1.1.3 THE EMERGENCE OF FINANCIAL STABILITY AS A REGULATORY OBJECTIVE POST THE GLOBAL FINANCIAL CRISIS OF 2008. 20

1.1.4 HOW CAN THE APPROACH TO FINANCIAL REGULATION HELP IN ACHIEVING FINANCIAL STABILITY? 22

1.2. RESEARCH PROBLEM 24

1.3. METHODOLOGY 25

1.4. CHAPTER LAYOUT 26

CHAPTER 2 28

THE SOUTH AFRICAN TWIN PEAKS MODEL OF FINANCIAL REGULATION 28

2.1. INTRODUCTION 28

2.1.1 The need for a holistic view of financial sector regulation: 28

2.1.2 The failure of “light-touch” regulation of the financial sector at the global level: 29

2.1.3 The importance of regulating market conduct to support prudential regulation: 29

2.1.4 The importance of swift regulatory action to prevent contagion: 29

2.2. MAIN OBJECTIVES OF THE TWIN PEAKS MODEL OF FINANCIAL REGULATION AS IMPLEMENTED IN SOUTH AFRICA 30

2.3. THE INSTITUTIONAL ARCHITECTURE 32

2.3.1 The Prudential Authority: 33

2.3.2 The Financial Sector Conduct Authority: 35

2.3.3 The South African Reserve Bank: 38

2.3.4 Financial Stability Oversight Committee: 38

2.3.5 Financial Sector Contingency Forum: 40

2.3.6 Financial Sector Inter-Ministerial Council: 40
2.3.7 The Financial System Council of Regulators: 41
2.4. SOUTH AFRICAN RESERVE BANK'S FINANCIAL STABILITY MANDATE AS BESTOWED UPON IT BY THE FSRA. 42
2.4.1. The SARB's role to protect and enhance financial stability: 43
2.4.2 The SARB's role to restore and maintain financial stability in the likely breakout of a systemic event: 47
2.5. THE ROLES OF THE PRUDENTIAL AUTHORITY AND THE FINANCIAL SECTOR CONDUCT AUTHORITY WITH REGARDS TO ACHIEVING FINANCIAL STABILITY. 49
2.5.1 THE FINANCIAL SECTOR CONDUCT AUTHORITY: 49
2.5.2 THE PRUDENTIAL AUTHORTY: 51
2.6. CONCLUSION 52
CHAPTER 3 53
AUSTRALIA'S TWIN PEAK MODEL OF FINANCIAL REGULATION 53
3. INTRODUCTION 53
3.1. THE INSTITUTIONAL ARCHITECTURE OF THE AUSTRALIAN TWIN PEAKS 54
3.1.1. The Australian Prudential Regulation Authority (APRA) 54
3.1.2. The Australian Securities and Investment Commission (ASIC) 55
3.1.3. The Reserve Bank of Australia (RBA) 56
3.2. INTER-AGENCY COORDINATION AND COLLABORATION 56
3.2.1 Informal Bilateral Arrangements 57
3.2.2 Council of Financial Regulators (CFR) process 57
3.3 CHALLENGES FACED BY THE AUSTRALIA WITH REGARD TO THE IMPLEMENTATION OF THEIR TWIN PEAKS MODEL 58
3.4. IS THE AUSTRALIAN REGULATORY MODEL TRANSFERRABLE? 59
3.5. CONCLUSION 60
CHAPTER 4 62
IS TWIN PEAKS THE CURE FOR SOUTH AFRICA? 62
4.1. FINAL REMARKS 62
4.2 IS TWIN PEAKS THE CURE FOR SOUTH AFRICA? 63
4.3 WHAT SOUTH AFRICA WILL NEED TO MAKE THE MODEL WORK: LESSONS LEARNT FROM THE PIONEERS AND RECOMMENDATIONS. 65

BIBLIOGRAPHY **67**

CHAPTER 1: BACKGROUND

1. INTRODUCTION

The Global Financial Crisis of 2008 has been documented as the worst crisis that the world has ever witnessed since the Great Depression of the 1930's.[1] It was a catastrophic event that was responsible for the collapse or nationalization of some of the world's biggest and most prominent financial institutions, and the near collapse of others who were only able to survive as a result of massive state support.[2] The outbreak of a financial crisis of this magnitude connotes that the regulatory action taken by authorities prior to the crisis was insufficient.[3] It is for this reason that there is a consensus that much of the responsibility of avoiding, or at the very least mitigating, a financial crisis like the one we have just experienced lies with regulatory authorities (both national and international), acting under appropriate and adequate laws and procedures.[4] As a result, considerable efforts are currently being deployed towards the overhauling of the financial architecture of many countries in an effort to address perceived fundamental weaknesses.[5] In this context, much attention has been paid to the four financial regulatory structures that are currently employed in the world, the most prominent of these being the "Twin Peaks" model of functional financial regulation by objective [6]

Due to its widespread recognition, the "Twin Peaks" model has received endorsement from various international financial regulatory authorities.[7] Regardless of this however, the question that begs to be answered, is whether the "Twin Peaks" model of financial regulation which has been successfully pioneered in Australia, and is being emulated

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[1] E. Helleiner "Understanding the 2007–2008 Global Financial Crisis: Lessons for Scholars of International Political Economy" (2011) The Annual Review of Political Science Department of Political Science, University of Waterloo, Waterloo, OntarioN2L3G1, Canada 67-89 68. Hereinafter referred to as ("Helleiner (2011)").

[2] Helleiner (2011) 68.

[3] J.W. Head "The Global Financial Crisis of 2008-2009 in Context-Reflections on International Legal and Institutional Failings, Fixes, and Fundamentals" (2010) 23 Pac. McGeorge Global Bus. & Dev. LJ 43-112 47. Hereinafter referred to as ("Head (2010)").

[4] Head (2010) 47.

[5] J De Jager "The South African reserve bank: blowing winds of change" (Part 2) (2013) Vol. 25 SA Mercantile Law Journal 492-512 495. Hereinafter referred to as ("De Jager (2013 2)").

[6] A.D Schmulow "The four methods of financial system regulation: An international comparative survey" (2015) Vol. 26 JBFLP 151-172 151. Hereinafter referred to as ("Schmulow (2015)").

[7] A Schmulow "doing it the australian way, 'twin peaks' and the pitfalls in between" (2016) http://clsbluesky.law.columbia.edu/2016/03/31/doing-it-the-australian-way-twin-peaks-and-the-pitfalls-in-between-2/ (accessed on the 31st January 2018) 1-4 3. Hereinafter referred to as ("Schmulow (2016)").

internationally, is transferable or not?[8] It is this question that this discourse will explore. Specifically it will address the question whether, post the Global Financial Crisis of 2008, the Twin Peaks model of financial regulation is a cure for South Africa in its pursuit of financial stability?

1.1. WHAT IS FINANCIAL STABILITY?

In the post-crisis era, despite there probably being truth to the notion that there is some level of vague shared understanding of "what kind of thing financial stability is about", a detailed consensus on the meaning of financial stability is however still lacking.[9] What is apparent is that although key members of the international community are invested in the achievement and maintenance of financial stability, Allen points out that there have been no attempts to categorically define financial stability.[10] What has emerged through research is that the concept of "financial stability" is one that cannot be categorically defined and as a result, experts in the field have posited various definitions. Interestingly, some have attempted to define it as what it is not, that is, an absence of financial instability, wherein the said instability would impair economic performance.[11]

It is submitted that a workable definition is tendered Houben, Kakes and Schinasi, who have defined financial stability as the status quo wherein any given financial system has the ability to "allocate resources efficiently between activities and across time, assess and manage financial risks and absorb shocks".[12] According to them, a stable financial system is therefore one that not only augments economic performance and the accumulation of wealth but is also able to prevent adverse disturbances from having an excessive disruptive impact on the system.[13] Financial stability can further be described as a scenario wherein key financial institutions as a whole are able

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[8] Schmulow (2016). .

[9] H.J Allen "What is "financial stability"? The need for some common language in international financial regulation" (2014) Vol. 45 Georgetown journal of international law 929-952 930. (Hereafter referred to as ("Allen (2014)").

[10] Allen (2014) 933-934.

[11] A Crockett "the theory and practice of financial stability" (1996) Vol. 144 De Economist 531-568 532. Hereinafter referred to ("Crockett (1996)").

[12] A Houben, J Kakes & G Schinasi "Toward a framework safeguarding financial stability" (2004) https://www.researchgate.net/profile/Jan_Kakes/publication/5124330_Toward_a_Framework_for_Safeguarding_Financial_Stability/links/0912f50bf89237ec61000000/Toward-a-Framework-for-Safeguarding-Financial-Stability.pdf?origin=publication_detail. (Accessed 04 March 2018) 1-47 11. Hereinafter ("Houben, Kakes and Schinasi (2004)").

[13] Houben, Kakes and Schinasi (2004) 11.

emulate durability, in that should the instance arise they would not only have sufficient resources to absorb losses but sufficient liquidity to run their operations and weather instability in a given period.[14]

Allen on the on other hand, in my opinion gives what seems to be a comprehensive definition of financial stability when she defines the term as “a state of affairs wherein firstly, financial institutions and markets are able to facilitate capital intermediation, risk management, and payment services in a way that enables sustainable economic growth; secondly, there is no disruption to the ability of the said financial institutions or markets to carry out such functions that might cause harm to persons (wherever they may be resident) who are not customers or counterparties of those financial institutions, nor participants in those financial markets; and thirdly, those financial institutions and markets are able to withstand economic shocks (such as the failure of other markets and institutions, or a chain of significant losses at financial institutions) so that there will be no disruption to the performance of the functions set forth in one above and further, no harm will be caused to the persons set forth in two above”.[15]

It should further be noted that there are a number of variables that, when brought together can be said to establish financial stability. These include the ability of a financial system, that is, market participants and authorities’ ability to avoid a financial crisis and/or manage systematic failure.[16] This ability is achieved when market participants manage risk privately and by authorities through supervision, market surveillance and systematic risk management.[17] Other variables that would cement financial stability in a particular jurisdiction are the public’s confidence in its financial system and a smooth running process of macroprudential monitoring.[18] Essentially,

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[14] South African Reserve Bank “Financial stability” available at www.resbank.co.za/financial%20stability/pages/financialstabilty-home.aspx. (Accessed on the 17th March 2018).

[15] Allen (2014) 932.

[16] South African Reserve Bank “Financial stability” available at www.resbank.co.za/financial%20stability/pages/financialstabilty-home.aspx. (Accessed on the 17th March 2018).

[17] South African Reserve Bank “Financial stability” available at www.resbank.co.za/financial%20stability/pages/financialstabilty-home.aspx. (Accessed on the 17th March 2018).

[18] South African Reserve Bank “Financial stability” available at www.resbank.co.za/financial%20stability/pages/financialstabilty-home.aspx. (Accessed on the 17th March 2018).

financial stability is thus a system (being one that encompasses “all financial intermediaries and markets, as well as market infrastructures and the regulatory system governing it”) that is capable of predicting, preventing and withstanding shocks any given market conditions, whether they be domestic or not.[19]

1.1.1 DID FINANCIAL STABILITY HAVE ANY PLACE IN FINANCIAL REGULATION PRIOR TO THE GLOBAL FINANCIAL CRISIS OF 2008?

It is common cause that before the 200 Global Financial Crisis occurred, central banks were the institutions that were charged with the responsibility of maintaining financial stability within their respective jurisdictions.[20] According to De Jager, central banks were tasked with the mandate of maintaining financial stability, all the while fostering financial development in a wider sense.[21] However, De Jager remarks that the 2008 Global Financial is a clear indication that central banks all over the world failed in their mandate to maintain financial stability. It is a further indication that central banks had failed to invest enough energy into the development of macropridential tools.[22] Furthermore, with regards to their duty as microprudential supervisors, it was evident that they had failed to develop and apply higher prudential standards for large and complex institutions whose failure could have a major disruptive effect on financial markets[23], as indeed happened during the Crisis. Consequently, De Jager states that “international market tendencies, such as the blurring of the distinction between banks and other financial institutions and the emergence of a number of new competitors that were not historically associated with traditional financial activities ensued”.[24] This all resulted in the need to re-evaluate the supervisory structures in a number of countries, more particularly in South Africa.[25]

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[19] T Padea-Schioppa “Central Banks and Financial Stability. Exploring a Land in Between, Policy Panel Introductory Paper presented at the second ECB Conference on the Transformation of the European Financial System (24-5 October 2002), at http://www.ecb.europa.eu/events/confrences/tps.pdf as cited by R.M Lastra *International financial and monetary Law* (2nd Ed. 2015) Oxford University Press 126-127. Hereinafter referred to as (Lastra (2015).
[20] De Jager (2013 2) 494.
[21] De Jager (2013 2) 494.
[22] De Jager (2013 2) 494.
[23] De Jager (2013 2) 494.
[24] J De Jager “The South African Reserve Bank: An Evaluation of the Origin, Evolution and Status of a Central Bank (Part 2)” (2006) Vol. 18 SA Mercantile Law Journal 274-290 280 hereinafter referred to as (“De Jager (2006 2)”).
[25] De Jager (2006 2) 280-281.

What became evident post the Global Financial Crisis with regards to prudential supervision was that, although it was common cause that central banks needed to play a role in maintaining financial stability by assuming a macroprudential responsibility, the central banking community had not been in consensus as to what exactly was meant by financial stability and more importantly how to achieve it.[26] The reason for this was because, the mandate for financial stability had not been clearly defined[27]. For example prior to the enactment of the Financial Sector Regulation Act 9 of 2017, the South African Reserve Bank Act did not explicitly provide that financial stability was an objective of the SARB although it was an implied mandate that was de facto executed by the South African Reserve Bank (SARB) as a central bank.[28] In fact, the maintenance and promotion of financial stability as an express objective of the SARB did not come into existence until 2010, when the South African government started following a policy that reflected financial stability and macroprudential mandates.[29]

To make matters worse, De Jager comments that the overall framework of central banks did not always appear to be "fully conducive to achieving their objectives, thus, often leaving ill-defined the responsibilities and tools of central banks in their pursuit of financial stability".[30] The reason for this was because there was and still is "a material difficulty with the concept of financial stability, in that despite its extensive use, financial stability has no clear definition".[31] The inconvenient truth being that the concept of financial stability is vague and difficult to define, despite various attempts to do so.[32]

Although the world was clearly committed to the pursuance and maintenance of financial stability, it is thus evident that this objective was not adequately represented in financial regulation. The reason for this being the confusion that was caused by the lack of a detailed consensus on the meaning of financial stability, which made it difficult

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[26] De Jager (2013 2) 494.
[27] De Jager (2013 2) 494.
[28] C Van Heerden & G Van Niekerk "Twin Peaks in South Africa: a new role for the central bank" (2017) Vol. 11 Law and Financial Markets Review 636-656 637 hereinafter referred to as ("Van Heerden & Van Niekerk (2017)").
[29] Van Heerden & Van Niekerk (2017) 637-638.
[30] De Jager (2013 2) 494-495.
[31] De Jager (2013 2) 495.
[32] De Jager (2013 2) 499.

to accurately provide for it through regulation.[33] Due to the importance of financial stability as a policy goal, Allen cautions that it is pivotal that it be unequivocally defined so as to enable the formulation of good regulations in order to achieve it; a characteristic that had clearly been lacking prior to the Global Financial Crisis.[34] She accordingly states that "[A] good definition is a prerequisite for good policy".[35] As a result, there were various misconceptions about how to achieve financial stability through financial regulation. One example of these misconceptions was the "composition fallacy" which assumed that financial stability depended on the overall safety and soundness of all participating institutions.[36] The perception being that "if individual institutions were stable, then by implication so was the whole system",[37] which was as we now know a delusion.

1.1.2 WHAT WHERE THE CAUSES OF THE GLOBAL FINANCIAL CRISIS OF 2008?

The genesis of the 2008 Global Financial Crisis, has its origins in the United States of America's (United States) financial crisis of 2007.[38] This was a financial crisis that could not be contained by the United States and which eventually found its way into the global system. As stated by Verick and Islam, what started out as a "seemingly isolated turbulence in the sub-prime segment of the US housing market mutated into a full blown recession by the end of 2007".[39]

According to Lastra and Wood, the 2008 Global Financial Crisis can broadly be attributed to ten (10) factors.[40] Factors which according to them can be attributed to the fault of authorities being governments, regulators and central bankers; markets

[33] Allen (2014) 931.
[34] Allen (2014) 935.
[35] Allen (2014) 935.
[36] Lastra (2015) 129.
[37] Lastra (2015) 129
[38] Head (2010) 46.
[39] S. Verick & I. Islam "The Great Recession of 2008-2009: Causes, Consequences and Policy Responses" Discussion Paper No. 4934 May 2010 the Institute for the Study of Labor (IZA) http://ftp.iza.org/dp4934.pdf. 1-61 3. Hereinafter referred to as ("Verick & Islam (2010)").
[40] R.M L astra and G. Wood "The Crisis of 2007-09: Nature, Causes, and Reactions" in T. Cottier, J.H Jackson & R.M Lastra *International Law in Financial Regulation and Monetary Affairs* (2012) Oxford University Press. (Hereinafter referred to at Lastra & Wood (2012") 9-27 15. At page 15: "(a) Macro-economic imbalances; (b) lax monetary policy; (c) regulatory and supervisory failures; (d) too-big-to-fail (TBTF) doctrine and distorted incentives; (e) excessive securitization; (f) unregulated firms, lightly regulated firms and shadow banking system; (g) unregulated governance failures; (h) risk-management failures, excessive leverage, and excessive complexity; (i) the usual suspects: greed, euphoria, and others; and (j) faulty economic theories".

more specifically, financial products, managers, risk, greed, poor lending, leverage; and finally, economist through faulty economic theories.[41] Head on the other hand reports on what he calls "underlying causes and specific triggers of the crisis".[42] It would seem that the global financial crisis of 2008 was a result of the inappropriate United States monetary policy, the housing market (more specifically sub-prime mortgage market), the introduction of extremely sophisticated financial instruments that where rooted in the subprime mortgage market and the under-regulation of United States and International markets.[43]

1.1.2.1 Inappropriate United States Monetary Policies:

The problem is said to have started when the U.S government that is, the "National Bank of America – the Federal Reserve"[44] decided to lower policy interest rates to 1%, which resulted in easy financing, which in turn led to higher amounts of consumer debts.[45] Consequently, people who normally, could not afford to take out mortgage loans due to their financial standing, where suddenly able to acquire loans, sometimes without furnishing any proof of income or employment and thus a subprime market was created.[46] The subprime market witnessed a fast and steady growth which unfortunately did not last as more and more of these credit unworthy homeowners began to default on their subprime mortgages.[47] So the question then becomes: was the collapse of a single market (sub-prime market) so catastrophic so as to trigger a global crisis? The answer? No. The reason for this of course being that there was a belief that mortgages (both subprime and prime for that matter) were practically safe investments because a borrower who was facing distress could simply refinance or sell the property subject to the mortgage thus acquiring enough money to repay the mortgage.[48] This however was not the case as the problem of defaulting homeowners was then exacerbated by the fact that during the housing bubble, banks and financial

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[41] Lastra & Wood (2012) 15.
[42] Head (2010) 52-55.
[43] Head (2010) 52.
[44] R. Bartmann "Causes and effects of 2008 financial crisis" (2017) HFU Business School, Internationale Betriebswirtschaft https://opus.hs-furtwangen.de/files/1962/Bartmann+-+Causes+and+effects+of+2008+financial+crisis.pdf 1-12 3. Hereinafter referred to as ("Bartmann (2017)").
[45] Verick & Islam (2010) 15; Head (2010) 53.
[46] W Poole "Causes and Consequences of the Financial Crisis of 2007-2009" (2010) Vol. 33 Harvard Journal of Law & Public Policy 421-441 424. Hereinafter referred to as ("Poole (2010)").
[47] Head (2010) 52.
[48] Poole (2010) 426.

institutions not only partook in subprime mortgage lending but also dabbled in sophisticated financial instruments that where all rooted in the subprime mortgage market through one way or another.[49] The most serious of these being securitization.

1.1.2.2 Securitization in all its monstrosity:

Now this is where the real danger began. The reason for this being that, the concept of securitization witnessed the establishment of a secondary market that contained the most complex of financial products, the most dangerous of these being "mortgage-backed securities (MBS), collateralized debt obligations (CDO's) and credit default swaps (CDS's)".[50] Mortgage backed securities basically involved a process whereby packages of mortgages, which mainly comprised of subprime mortgages were pulled together and sold to financial and investment institutions on Wall Street, who then transformed them into specifically risk rated securities, who in turn sold them to investors both within the United States and outside the United States market at an international scale.[51] According to Head, the basis for this type of securitization was to enable banks and financing institutions to recover their money almost instantaneously instead of having to wait for the mortgage loan to mature and the debt to be repaid in full by the mortgage owners.[52] This process made it easy for banks to acquire more capital, which in turn made it easy for them to issue out more loans to subprime lenders and further pass on the risk of the mortgage from themselves to the people and entities that were purchasing the mortgage-backed securities.[53] Now, this might sound all well and good in theory, because the likelihood of people defaulting on their mortgages seemed to be non-existent due to low interest rates. However, this was not the case because this secondary market of new financial products was built on very shaky ground. This is because since the mortgage-backed securities where a product of sub-prime mortgages, this meant that they had inherently high default risk by their nature.[54]

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[49] Helleiner (2011) 69.
[50] Rebel mystic. (2013 November 23). Global financial meltdown-One of the best financial crisis documentary film. Retrieved from http://www.youtube.com/watch?v=VQzEWeGJLPO. Also see Head (2010) 53.
[51] Rebel mystic. (2013 November 23). Global financial meltdown-One of the best financial crisis documentary film. Retrieved from http://www.youtube.com/watch?v=VQzEWeGJLPO.
[52] Head (2010) 53.
[53] Head (2010) 53.
[54] Bartmann (2017) 6.

The biggest problem that emerged with regards to these new financial products was that these products were a fairly new creature and thus their full parameters were not understood by both financial institutions and the markets.[55] As a result, Levitin remarks that "innovation outran both the market and regulation".[56] Consequently, this left markets vulnerable and unduly exposed, without any regulatory framework to protect it. [57]

These new financial products of securitization did however not end with mortgage-backed securities but grew to include collateralized debt obligations (CDO's).[58] This meant that it was not just mortgage loans that were being bundled together and sold to Wall Street in order to be repackaged and sold to investors, but it soon became any form of loan issued by banks to normal people.[59] These loans included anything from student loans, to motor vehicle loans to business loans. Again, this might seem all well and good, harmless even, except for the fact that as this market grew in its entirety, the investment sector had to sustain the market by providing more and more mortgage-backed securities and collateralized debt obligations.[60] Thus, in order to satisfy this demand, financing firms soon engaged in reckless conduct in that, poor underwriting practices ensued, which in turn resulted in financing firms and investors not caring if loans they advanced could be repaid (the so-called moral hazard-phenomenon.[61] Furthermore, this demand led to financing institutions trapping borrowers into loans that they would not be able to repay. [62]

1.1.2.3 Credit Ratings Agencies and their role in the exacerbation of the crisis:

In order to be able sell off these toxic assets, another business practice soon emerged wherein investment institutions and rating agencies engaged in fraudulent practices

[55] A.J. Levitin "The crisis without a face: emerging narratives of the financial crisis" (2009) Vol. 63 University of Miami Law Review 999-1010 1002 http://repository.law.miami.edu/umlr/vol63/iss4/2. (Accessed on 05 May 2018) hereinafter referred to as ("Levitin (2009)").
[56] Levitin (2009) 1002.
[57] Levitin (2009) 1002-1003.
[58] Helleiner (2011) 70.
[59] Head (2010) 54.
[60].Rebel mystic. (2013 November 23). Global financial meltdown-One of the best financial crisis documentary film. Retrieved from http://www.youtube.com/watch?v=VQzEWeGJLPO.
[61] J M. Smith "Mortgage Foreclosures, Mortgage Morality, and Main Street: What's Really Happening?" (2011) Vol. 25 Journal of Civil Rights and Economic Development 525-564 542 http://scholarship.law.stjohns.edu/jcred/vol25/iss3/5. (Accessed on the 16 June 2018). Hereinafter referred to as ("Smith (2011)").
[62] J.M Smith (2010) 542.

with regards to assessing the securities.[63] In order to make the financial products more appealing to investors, rating agencies began falsely rating them. This meant that agencies continued to give out safe AAA rated investment status to the securities despite the fact that they were now toxic and highly risky.[64] According to Bartmann, investment banks paid rating agencies to falsely rate assets, who in turn made a lot of profit for their work.[65] Since rating agencies were paid by investment banks whose products they rate, it only followed that their profits were dependent on whether or not they were able to keep these banks happy.[66] For this reason, if an agency delivered an honest evaluation of the actual risk associated with the securities, while their competitors did not, then that agency's profits would take a serious hit.[67] This practice of false ratings therefore, became the norm as rating agencies would do anything to remain in business with the investment institutions because there was extreme competition between the rating agencies.[68]

Furthermore, the problem was exacerbated by the fact that rating agencies bore no liability if the ratings they issued out proved wrong because according to them, the ratings were just their personal opinion and thus could not be held liable if the ratings proved false.[69] As a result, Crotty comments that, the recent global financial boom and subsequent crash might not have occurred had perverse incentives not prompted credit rating agencies to give "absurdly high ratings to illiquid, non-transparent, structured financial products such as MBSs, CDOs and collateralized loan obligations".[70]

Due to the aforementioned, the situation that prevailed was that of a wide range of investors in the United States and in Europe who were heavily invested in these securities that were in their very nature toxic and heavily risky.[71] To make matters

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[63] Rebel mystic. (2013 November 23). Global financial meltdown-One of the best financial crisis documentary film. Retrieved from http://www.youtube.com/watch?v=VQzEWeGJLPO.
[64] Bartmann (2017) 6.
[65] Bartmann (2017) 6.
[66] J Crotty "Structural causes of the global financial crisis: a critical assessment of the 'new financial architecture" (2009) Vol. 33 Cambridge Journal of Economics 563–580 566. Hereinafter referred to as ("Crotty (2009)").
[67] Crotty (2009) 566.
[68] Bartmann (2017) 6.
[69] Bartmann (2017) 6-7.
[70] Crotty (2009) 566.
[71] Helleiner (2011) 69.

worse there was the issue of credit default swaps, which meant this heavily risk saturated market had insurance, which stipulated that in the event of default by subprime mortgagers, the insurance companies would absorb the risk and pay out the investors for any loss suffered as a result.[72] The biggest of these being the American International Group (AIG) which was the world's largest insurance company.[73] Due to this insurance, a vast majority of the world financial players became tangled in these mortgage-backed securities and collateralized debt obligations. Financial players included large banks, pension funds, hedge funds and individual investors, the largest of these being Lehman Brothers and Bears Stearns, just to name a few.[74]

1.1.2.4 Consequences of securitization on Financial Regulation:

Consequently, this new market of mortgage-backed securities, collateralized debt obligations and credit default swaps raised a serious concern, which was the under regulation of the market, which one could liken to the pouring of kerosene on an already burning fire. According to Helleiner, "securitization … increased the number and significance of financial actors who fell outside of traditional prudential regulations covering commercial banks".[75] This meant that insurance and investment companies fell outside the scope of the authorities' regulation and as such were left to their own devices. AIG is but one of the examples of this dilemma, as explained, because the financial difficulties that it faced "presented another dramatic example of the concentration of risk in lightly regulated firms within the new securitized world".[76] This is because AIG had "sold vast quantities of credit default swaps without setting aside enough capital or liquidity reserves".[77] This meant that in the event of a large scale default, AIG would not be able to compensate investors who had taken out credit default swaps and as such would have an international liquidity crisis, which is exactly what happened when subprime mortgagers began defaulting on their payments.

[72] R.M. Stulz "Credit Default Swaps and the Credit Crisis" (2010) Vol. 24 Journal of Economic Perspectives 72-92 76-78. Hereinafter referred to as ("Stulz (2010)").
[73] Bartmann (2017) 7.
[74] Rebel mystic. (2013 November 23). Global financial meltdown-One of the best financial crisis documentary film. Retrieved from http://www.youtube.com/watch?v=VQzEWeGJLPO.
[75] Helleiner (2011) 70.
[76] Helleiner (2011) 71.
[77] Helleiner (2011) 71.

1.1.2.5 Final Remarks

So what exactly caused the global financial crisis? According to Helleiner, the major cause of the global financial crisis was the transformation of financial systems that gave way to new models of securitization.[78] These new models in turn intensified the severity of the global financial crisis because these different securities that where mainly built on the United States mortgage industry "not only magnified the financial impact of the bursting of the United States housing bubble but also spread it worldwide".[79] Approximately half of the mortgage-backed securities, and collateralized debt obligations created by Wall Street were sold to foreigners, especially European banks and hedge funds".[80] This meant that when the market finally gave way, there was a domino effect that resulted in collateral damage that echoed throughout the globe. The reason for this being that an extensive part of financial institutions in the United States and Europe had invested heavily in United States mortgage-related financial products and thus were heavily exposed.[81] The biggest of these being the American investment bank Lehman Brothers that also had a subsidiary in the United Kingdom, where it did the majority of its trading.[82] The fall of Lehman Brothers, which was the fourth largest bank in the United States, caused catastrophic damage to the world economy, ruining millions of Americans and foreign investors who had invested with Lehman.[83]

Another reason cited as a cause of the global financial crisis was the "overly lax regulation of financial markets particularly in the United States.[84] According to Verick and Islam, the core regulatory failures were the poor regulatory requirements on financial products such as collateral debt obligations, the appalling use of ratings and the way that credit rating agencies were regulated.[85] Regulators did not keep up with the growing importance of the shadow baking system and its interactions within the financial system.[86] Lastra and Wood share similar sentiments when they state that,

[78] Helleiner (2011) 71.
[79] Helleiner (2011) 71.
[80] Helleiner (2011) 71.
[81] Verick & Islam (2010) 19.
[82] Rebel mystic. (2013 November 23). Global financial meltdown-One of the best financial crisis documentary film. Retrieved from http://www.youtube.com/watch?v=VQzEWeGJLPO.
[83] Head (2010) 54-55.
[84] Head (2010) 53.
[85] Verick & Islam (2010) 19.
[86] Head (2010) 53.

"there were plenty of regulatory and supervisory failures … Rules regarding capital proved inadequate; accounting rules exacerbated problems; and the absence of rules on liquidity was unfortunate".[87] This is exactly why AIG's dire financial problems and its need to be bailed out came as a complete shock to all regulatory agencies in the United States because supervision had failed at the level of individual institutions.[88] Head on the other hand posits that the failure lies in the performance of national authorities and processes, the failure of regulatory regimes in the United States and all over the world, to protect their financial systems against carelessness that generated excessive systemic risk.[89]

Overall, what seems to be evident when it comes to deciphering the causes of the global financial crisis of 2008 is that there is no single culprit. What does exist however are "competing but yet complementary narratives of the crisis".[90] As so astutely pointed out by Levitin, there is no clear "protagonist and or antagonist" in that "there is no villain or hero to guide the narrative".[91]

1.1.3 THE EMERGENCE OF FINANCIAL STABILITY AS A REGULATORY OBJECTIVE POST THE GLOBAL FINANCIAL CRISIS OF 2008.

The Global Financial Crisis is evidence enough that the existing regulatory frameworks (that is the New Financial Architecture) had not only failed to uphold financial stability but was also responsible for the crisis itself.[92] The reason for this was as a result of the widely held belief that financial stability was solely dependent on the sound regulation of financial institution-that is, microprudential regulation.[93] As a result, it was presumed that the whole financial system could be protected and regulated by the monitoring of each individual firm.[94] This meant that if individual institutions were stable then surely, so was the whole system.[95]

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[87] Lastra and Wood (2012) 16.
[88] Rebel mystic. (2013 November 23). Global financial meltdown-One of the best financial crisis documentary film. Retrieved from http://www.youtube.com/watch?v=VQzEWeGJLPO.
[89] Head (2010) 92.
[90] Levitin (2009) 1007.
[91] Levitin (2009) 1008.
[92] Lastra & Wood (2012) 16.
[93] Lastra (2010) 129
[94] Lastra 2010) 129.
[95] Lastra (2010) 129.

The problem that arose as a result of this belief was that, the micro prudential regulatory standards that were supposed to indirectly safeguard the financial stability of the entire system where in themselves extremely flawed and left little to be desired. This is because they were heavily characterised by the lax regulation of financial markets, a state of affairs that was classified as the "New Financial Architecture".[96] Crotty defines this "New Financial Architecture" as the integration of modern day financial markets with the era's light government regulation".[97] It is a framework that is "based on the light regulation of commercial banks, even lighter regulation of investment banks and little, if any, of the shadow banking system".[98] Because of this financial architecture, banks were left virtually to their own devices as they were allowed to partake in unsavoury practices. Practices that included the fact that they were allowed to hold assets off balance sheets without being required to set aside any capital to support them, the fact that they were allowed by regulators to measure their own risks and further set their own capital requirement among other practices;[99] practices that all exacerbated the problem.

Due to lax regulations, the subprime market was established and became a breeding ground for securitization, the most toxic of them, as pointed out being mortgage-backed securities, collateralized debt obligations and credit default swaps, which was exacerbated by the emergence of major market participants that were unregulated.[100] As a result, regulators allowed the shadow banking system to get out of hand as well as the markets in derivatives and off-balance sheet financing,[101] which all played a major role in the global financial crisis. It therefore soon became clear that the regulatory approach of solely safeguarding individual institutions as a way of ensuring that the entire financial system was safe was inadequate and did not work.[102] The reason for this being that "banks and other highly geared financial institutions" tended

[96] Crotty (2009) 564.
[97] Crotty (2009) 564.
[98] Crotty (2009) 564.
[99] Crotty (2009) 570-572.
[100] Lastra & Wood (2012) 17.
[101] Head (2010) 53.
[102] V Ekpu "Microprudential vs. macroprudential approaches to regulation and supervision" (2016) https://www.researchgate.net/profile/Victor_Ekpu/publication/311935564_Microprudential_Vs_Macroprudential_Approaches_to_Financial_Regulation_and_Supervision/links/58639a3408ae329d62039d17.pdf (accessed 05 March 2018) 1-59 7. Hereinafter referred to as ("Ekpu (2016)").

to behave in a way that jointly undermined the financial system.[103] As a result, the stability of the global financial system cannot be secured solely by microprudential regulation and supervision. This is because as stated by De Jager, prudential supervisors failed to develop and apply more stringent prudential standards for large and complex institutions, whose failure could have major disruptive effects on financial markets.[104] Consequently, it became evident post the Global Financial Crisis that, in order to truly ensure financial stability and possibly avoid another global financial crisis, macro prudential regulation and supervision would have to take centre stage alongside microprudential regulation.[105]

Microprudential supervision has been defined as "the analysis of trends and imbalances in the financial system and the detection of systemic risks that these trends may pose to financial institutions and the economy".[106] The main focus being the safety and soundness of the financial and economic system in its entirety.[107] Therefore, financial stability has emerged as a regulatory objective through the core element of the international policy response to the crisis, which has been to strengthen the macroprudential orientation of financial regulation and supervision.[108]

1.1.4 HOW CAN THE APPROACH TO FINANCIAL REGULATION HELP IN ACHIEVING FINANCIAL STABILITY?

The pivotal question that seems to have arisen post the 2008 Global Financial Crisis is whether or not there should be a single mega-regulator that will be responsible for "all the facets of financial regulation and supervision or should this responsibility fall on different institutions, which may or may not include the central bank?".[109]

It is for this reason that, post the Global Financial Crisis and the catastrophic scale of regulatory failure, much focus has been turned towards the structure of financial supervision and more specifically, the four approaches to financial regulation that are

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[103] Ekpu (2016) 7.
[104] De Jager (2013) 494.
[105] A Crockett "Marrying the micro- and macro-prudential dimensions of financial stability" (2000) https://www.bis.org/review/rr000921b.pdf. (Accessed on the 18 June 2018) 1-11 1.
[106] Lastra (2015) 114.
[107] Lastra (2015) 114.
[108] P Clement "The term "macroprudential": origins and evolution" (2010) BIS Quarterly Review 59-67 59.
[109] Van Heerden & Van Niekerk (2017) 638.

currently employed in the world.[110] These four approaches are the institutional approach, functional approach, integrated approach and the Twin Peaks approach.[111]

According to Schmulow, the Traditional approach focuses on the form of legal entity under regulation and then accordingly assigns a particular regulator.[112] With regards to this approach, it is the firm's legal status, that is, whether the entity is a registered bank or perhaps insurance company that essentially determines which regulator will be responsible for overseeing its activities, both from a safety and soundness perspective as well a business conduct one.[113]

The Functional approach on the other hand pays no regard to the type of legal entity in question but rather focuses on the types of transactions or products under regulation.[114] This means that each business may have its own functional regulator.[115] More simply put, "if a single entity is engaged in multiple businesses that may include banking, insurance activities and securities, then each of those distinct lines of business would be overseen by a separate, "functional regulator"".[116] This functional regulator would therefore be responsible for both safety and soundness oversight of the entity and business conduct regulation.[117]

The integrated approach, however dictates that a single financial regulator be responsible for both safety and soundness and business conduct considerations. [118] What differentiates this approach from the others is that, when it comes to financial supervision, there is a single universal regulator that conducts both safety and

[110] Schmulow (2015) 151.
[111] Schmulow (2015) 152.
[112] Schmulow (2015) 152.
[113] G30 "The structure of financial supervision Approaches and Challenges in a Global Marketplace" (2008) http://www.legco.gov.hk/yr08-09/english/panels/fa/papers/fa0223cb1-837-3-e.pdf (accessed on 05 June 2018) 1-252 24. Hereinafter referred to as ("G30 "The structure of financial supervision Approaches and Challenges in a Global Marketplace")
[114] Schmulow (2015) 154.
[115] G30 "The structure of financial supervision Approaches and Challenges in a Global Marketplace" 24.
[116] G30 "The structure of financial supervision Approaches and Challenges in a Global Marketplace" 24.
[117] G30 "The structure of financial supervision Approaches and Challenges in a Global Marketplace" 24.
[118] Schmulow (2015) 155.

soundness oversight and conduct-of-business regulation for all the sectors of the financial services business.[119]

The Twin Peaks approach is yet another approach that is "based on the principle of regulation by objective and refers to a separation of regulatory functions between two regulators: one that performs the safety and soundness supervision function and the other that focuses on conduct-of-business regulation".[120] It is an approach that focuses on regulation by objective.[121]

The most important thing about the approach to financial regulation when it comes to achieving effective and efficient financial regulation is being able to clearly determine which regulator will be responsible for the promotion and maintenance of financial stability of the entire financial system of a particular jurisdiction. One that will not only be able to "monitor the financial system closely and pre-emptively so as to prevent disruption of financial stability"[122] but will be able to further manage any disruption to the financial stability of the system that may arise, all with the sole purpose of eventually restoring the financial stability of that system.[123]

The question then remains, which of the four models of financial regulation will be best suited to "oversee systemic macroprudential aspects" of the system by being able to "identify systemic risks in the financial system, monitor and analyse market and other financial and economic factors that may increase systemic risks and result in systemic crises".[124]

1.2. RESEARCH PROBLEM

In the wake of the 2008 Global Financial Crisis (GFC), the pursuit of financial stability has been a quest that continues to haunt the financial world as a whole. Not only did the Global Financial Crisis expose the cracks within the international financial system

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[119] G30 "The structure of financial supervision Approaches and Challenges in a Global Marketplace" 24.
[120] G30 "The structure of financial supervision Approaches and Challenges in a Global Marketplace" 24.
[121] Schmulow (2015) 165.
[122] Van Heerden & Van Niekerk (2017) 645.
[123] Van Heerden & Van Niekerk (2017) 645.
[124] Van Heerden & Van Niekerk (2017) 645.

but it also revealed that the system was in dire need of reform, more specifically in the context of the regulation of the system, so as to avoid another Global Financial Crisis and subsequent crash. In an attempt to arm itself against another potential crisis and the adverse effects that come with it, South Africa began the long process of revolutionizing its financial system: a task which ultimately resulted in the adoption of the "Twin Peaks" model of financial regulation. Consequently, the legal problem sought to be deliberated in this discourse is: whether or not the adoption of the Twin Peaks Model of regulation by South Africa through the enactment of the Financial Sector Regulation Act 9 of 2017 will better facilitate and promote the maintenance of financial stability in South Africa.

1.3. METHODOLOGY

The method that is going to be implemented by the researcher in this mini-dissertation is the desktop method of research. Thus the research will entail the reading and analysing of academic journal articles, books, legislation, websites, media statements, discussion documents and case law should the need arise.

This study will primarily employ two methods of research, being the historical approach and the critical approach. Historical in that, for this discourse to successfully determine whether or not the adoption of the Twin Peaks Model of regulation by South Africa through the enactment of the Financial Sector Regulation Act[125] will better facilitate and promote the maintenance of financial stability in South Africa, it will have to take a historical look at the concept of financial stability both before and post 2008 and the Global Financial Crisis that came with it. It will further look into the causes of the Global Financial Crisis of 2008 and the methods that where employed by South Africa to ensure its financial stability.

Ultimately, this discourse will then turn towards a more critical approach in order to answer the vital question posed in this dissertation of whether or not, the adoption of the twin peaks model of regulation through the enactment of the Financial Sector Regulation Act,[126] will better facilitate and promote the maintenance of financial stability in South Africa.

[125] Act 9 of 2017.
[126] Act 9 of 2017.

1.4. CHAPTER LAYOUT

Chapter 1: The pursuit of financial stability post the Global Financial Crisis (GFC).

This chapter serves as an introduction to the discourse and contains an overview of the status quo. Accordingly this chapter introduces the concept of financial stability, its definition and its nature prior and post the 2008 Global Financial Crisis. The chapter will further discuss the global financial crisis of 2008: its causes and the emergence of financial stability as a regulatory objective post the global financial crisis of 2008. Ultimately, it will then address the question 'how can the approach to financial regulation help in achieving financial stability?" and consequently provides an overview of the current four approaches to financial regulation.

Chapter 2: The establishment of the South African Twin Peaks model of financial regulation.

This chapter will introduce the South African Twin Peaks model of financial regulation as recently established by the Financial Sector Regulation Act 9 of 2017. It will discuss in detail the objectives of the Act and the full parameters of the Twin Peaks Model, that is, its institutional framework. A framework which is made up of the Prudential Authority and the Financial Conduct Sector Authority in collaboration with the South African Reserve Bank as well as South Africa's coordinating bodies which are comprised of: the Financial System Council of Regulators (FSCR); the Financial Stability Oversight Committee (FSOC), the Financial Sector Inter-Ministerial Council; and the Financial Sector Contingency Forum (FSCF).

Chapter 3: Australia's Twin Peak Model of Financial Regulation

This chapter will discuss the Australian Twin Peak model of financial regulation that is, its institutional structure as well as the challenges encountered within the model. It will then conclude by exploring the pivotal question of whether the Australian regulatory model is transferable or not.

Chapter 4: Is Twin Peaks the Cure for South Africa?

In this chapter, a conclusion will be reached regarding the underlying question of this discourse which is: post the 2008 Global Financial Crisis (GFC), is the Twin Peaks model of financial regulation a cure for South Africa in its pursuit of financial stability?

CHAPTER 2

THE SOUTH AFRICAN TWIN PEAKS MODEL OF FINANCIAL REGULATION

2.1. INTRODUCTION

The Global Financial Crisis of 2008 will undoubtedly go down as one of the worst historical events the financial world has ever experienced. A crisis so catastrophic that it was responsible for bringing the global financial markets to its knees. As a result, the international financial community emerged from this crisis having learnt a few key lessons. For South Africa at least, the global financial crisis has been most instructive in four main ways in that: it revealed the need for a holistic view of financial sector regulation; explicitly revealed the failures of "light touch" regulation of the financial sector at a global level; highlighted the importance of regulating market conduct in order to support prudential regulation and ultimately revealed the need for immediate regulatory action that would prevent contagion,[127] all which are briefly expounded upon below.

2.1.1 The need for a holistic view of financial sector regulation:

It is trite by now, that the eruption of the global financial served as something of a rude awakening to those responsible for the regulation of the financial world when it shattered the "composition fallacy", which had assumed that financial stability was entirely dependent on the overall safety and soundness of all its participating institutions.[128] It therefore became clear that ensuring the stability of individual institutions did not by implication mean that the entire system was stable. As a result, the renovation of the financial regulatory framework has since seen authorities and regulators begin to move towards a macroprudential approach of financial supervision as opposed to a purely microprudential one.[129]

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[127] Department of National Treasury "A safer financial sector to serve South Africa better" (2011) http://www.treasury.gov.za/twinpeaks/20131211%20-%20Item%202%20A%20safer%20financial%20sector%20to%20serve%20South%20Africa%20better.pdf (accessed 12 August 2018) 1-85 12-13. Hereinafter referred to as ("A safer financial sector to serve South Africa Better (2011)").

[128] R.M Lastra *International financial and monetary Law* (2nd Ed. 2015) Oxford University Press 129. Hereinafter referred to as (Lastra (2015). This was fully expounded on in chapter 1.1.1 above.

[129] A safer financial sector to serve South Africa Better (2011) 12.

2.1.2 The failure of "light-touch" regulation of the financial sector at the global level:

What became evident post the Global Financial Crisis was that, the performance of national authorities and processes had been extremely appalling in that, regulatory regimes both in the United States and all over the world had failed to protect their financial systems against carelessness that had generated excessive systemic risk.[130] As a result, the idea that the financial sector could sufficiently regulate itself soon lost all credibility.[131] Consequently, it has since become very clear that, even if individual institutions are able to improve on their management practices, regulators must still proactively monitor changes in systemic risks.[132]

2.1.3 The importance of regulating market conduct to support prudential regulation:

By far, one of the most significant lessons that the 2008 Global Financial Crisis had to offer was that it was market misconduct and consumer abuse that not only created the subprime mortgage disaster but further proceeded to cultivate it to such an extent that, it eventually morphed into a worldwide financial crisis.[133] It therefore became blatantly clear that in order for a financial system to be truly stable, the market conduct regulatory objective had to be elevated to equal standing as that of the prudential regulatory objective.[134] This is because, post the global financial crisis, a notion soon arose which suggested that, protecting consumers from conduct malpractices could very well possibly have a positive effect on financial stability.[135]

2.1.4 The importance of swift regulatory action to prevent contagion:

According to Verick and Islam, the Global Financial Crisis was created by what started out as a "seemingly isolated turbulence in the subprime segment of the United States market, which eventually mutated into a full blown recession by the end of 2007".[136]

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[130] J.W. Head "The Global Financial Crisis of 2008-2009 in Context-Reflections on International Legal and Institutional Failings, Fixes, and Fundamentals" (2010) 23 Pac. McGeorge Global Bus. & Dev. LJ 43-112 92. Hereinafter referred to as ("Head (2010)").

[131] A safer financial sector to serve South Africa Better (2011) 13.

[132] A safer financial sector to serve South Africa Better (2011) 13.

[133] A Schmulow "Twin Peaks: A Theoretical Analysis" (2015) CIFR Paper No. WP064/2015 https://ssrn.com/abstract=2625331 or http://dx.doi.org/10.2139/ssrn.2625331 (assessed 21 March 2018) 1-41 7-8. Hereinafter referred to as ("Schmulow (2015)").

[134] Schmolow (2015) 8.

[135] Schmulow (2015) 9.

[136] S. Verick & I. Islam "The Great Recession of 2008-2009: Causes, Consequences and Policy Responses" Discussion Paper No. 4934 May 2010 the Institute for the Study of Labor (IZA)

As a result, “a prudential crisis (liquidity crisis) that was being experienced by a few institutions, soon expanded into a liquidity crisis that spread across global markets in 2008 and 2009.”[137] This in turn mutated into a “sovereign crisis in European economies that were fiscally weak by 2010, which eventually trickled into political crises in countries” which caused these economies to suffer from grave unemployment.[138] Consequently, the pivotal lesson that emerged was that regulatory action had to be immediately taken in order to prevent the spread of contagion.[139]

It is therefore with all these lessons in mind that South Africa post the Global Financial Crisis embarked on a campaign to renovate its financial regulatory framework, all in an effort to ensure that it is better prepared to combat financial crisis, should it arise. This has led to the implementation of the Twin Peak model of financial regulation in South Africa. The end game being, to end up with regulatory framework that is better equipped to supervise its sophisticated financial sector and further pay more attention to systemic risks.

It is on this foundation that this chapter thus introduces and further discusses the South African Twin Peaks model of financial regulation. That is, the enactment of the Financial Sector Regulation Act 9 of 2017 (FSRA), its objectives as well as the institutional architecture that it seeks to implement. Thereupon a discussion of the South African Reserve Bank’s (SARB’s) financial stability mandate as bestowed upon it by the FSRA will ensue, before concluding with the roles of the Prudential Authority and the Financial Sector Conduct Authority with regards to achieving financial stability.

2.2. MAIN OBJECTIVES OF THE TWIN PEAKS MODEL OF FINANCIAL REGULATION AS IMPLEMENTED IN SOUTH AFRICA

Prior to the enactment of the FSRA, the regulatory framework in South Africa although considered effective was described as fragmented, a state of affairs that arose as a result of the silo approach to financial regulation which resulted in regulatory

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http://ftp.iza.org/dp4934.pdf (accessed 25 Match 2018) 1-61 3. Hereinafter referred to as (“Verick & Islam (2010)”).

[137] A safer financial sector to serve South Africa Better (2011) 13.

[138] A safer financial sector to serve South Africa Better (2011) 13.

[139] A safer financial sector to serve South Africa Better (2011) 13.

arbitrage.[140] This was because, the silo regulatory model in regulating the various industries, created different standards and requirements that applied to the said industries.[141] As a result, the country is said to have experienced difficulties in providing appropriate results for consumers as the latter typically did not have the knowledge or the power to evaluate whether or not they were being treated fairly.[142] Consequently, the need to devise a plan to counter the arbitrary nature of the silo model and further protect financial consumers soon emerged.

It is with this in mind that, during the deliberation phase on whether to migrate towards the twin peaks model of financial regulation, two broad objectives were identified in favour of the move.[143] Firstly being, to strengthen the country's approach to market conduct regulation, all in an effort to improve consumer confidence in financial services thus enhancing the financial sectors sustainability as well as "economic growth, development and employment."[144] The second objective being, to create a more stable, resilient financial system through the adoption of a strengthened regulatory focus on financial stability that is set to assist in the prevention of financial crises and more importantly easily resolve those that do occur, at a lower expense to the taxpayer.[145]

As a result, the main objectives behind the enactment of the FSRA is to achieve a stable system that works in the interest of its financial customers and further supports balanced and economic growth within the country, by establishing in partnership with the other financial sector laws already in existence, a regulatory and supervisory framework that is set to promote *inter alia* financial stability, safety and soundness of financial institutions, the fair treatment and protection of financial customers, the

[140] A Godwin, T Howse & I Ramsay "Twin Peaks: South Africa's financial sector regulatory framework" (2017) Vol. 134 South African Law Journal 665-714 669. (Hereinafter referred to as ("Godwin, Howse & Ramsey (2017)").
[141] Godwin, Howse & Ramsey (2017) 669.
[142] Godwin, Howse & Ramsey (2017) 669.
[143] Department of National Treasury "Roadmap implementing a twin peaks model of financial regulation in South Africa" (2013) http://www.treasury.gov.za/twinpeaks/20131211%20-%20Item%203%20Roadmap.pdf (accessed 12 August 2018) 1-77 28. Hereinafter referred to as the ("Roadmap implementing a twin peaks model of financial regulation in South Africa (2013)").
[144] Roadmap implementing a twin peaks model of financial regulation in South Africa (2013) 28.
[145] Roadmap implementing a twin peaks model of financial regulation in South Africa (2013) 28.

financial integrity of the financial system, the prevention of financial crimes as well as financial inclusion and confidence in the financial system.[146]

2.3. THE INSTITUTIONAL ARCHITECTURE

The signing of the Financial Sector Regulation Act 9 of 2017 (FSRA), in August 2017, into law signified the adoption of the Twin Peaks model of financial regulation into South Africa. This historic event ushered in a new institutional financial architecture which is set to take place in stages. The most pivotal of these stages being the establishment of the two independent peak regulators that was scheduled for the April 2018.[147] As a result, the adoption of the twin peaks model of financial regulation has since witnessed the establishment of the Prudential Authority which is charged with the mandate of ensuring the safety and soundness of the financial system (prudential regulation) and the Financial Sector Conduct Authority (Conduct Authority), charged with the mandate of preventing market misconduct and the abuse of consumers.[148]

Although regarded as a "Twin Peaks" model, the South African version of the model differs slightly in that it contains an "expanded" characteristic as alluded to by Van Heerden and Van Nierkerk.[149] According to them, the South African "expanded" twin peak model of financial regulation is not only made up of the Prudential Authority and the Conduct Authority but also the South African Reserve Bank (SARB) which serves as somewhat of an "extra (apex) peak" charged with an express and comprehensive financial stability mandate.[150]

In addition, the FSRA will see the establishment of four coordinating bodies which are set to foster coordination between the two peaks and the SARB. These four bodies being the Financial Stability Oversight Committee (Oversight Committee), the Financial Sector Contingency Forum (Contingency Forum), the Financial Sector Inter-

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[146] S7 (1) of the Financial Services Regulation Act 9 of 2017.
[147] Department of National Treasury "Media statement the launch of twin peaks" (2018) http://www.treasury.gov.za/twinpeaks/MEDIA%20STATEMENT%20-%20THE%20LAUNCH%20OF%20TWIN%20PEAKS%201.pdf (accessed on 26 August) 1-2 1. Hereinafter referred to as ("Media statement the launch of the twin peaks (2018)").
[148] A Schmulow "Financial Regulatory Governance in South Africa: The Move towards Twin Peaks" (2017) Vol. 25 Afr. J. Int'l & Comp. L. 393-417 393. Hereinafter referred to as ("Schmulow (2017)").
[149] C Van Heerden & G Van Niekerk "Twin Peaks: The role of the South African central bank in promoting and maintaining financial stability" (2017) Vol. 80 THRHR 636-656 642. Hereinafter referred to as ("Van Heerden & Van Niekerk (2017)").
[150] Van Heerden & Van Niekerk (2017) 642.

Ministerial Council (Inter-Ministerial Council) and the Financial System Council of Regulators (Council of Regulators);[151] all of which are discussed below in more detail.

2.3.1 The Prudential Authority:

Prior to the adoption of the Twin Peaks model of financial regulation, the South African financial sector was mainly regulated in a two folded manner so to speak in that; the SARB through its Bank Supervision Department was responsible for the prudential supervision of banks, while the Financial Services Board was responsible for the prudential and market supervision of all non-bank financial institutions.[152] However, this arrangement has since been done away with as a result of the enactment of the FSRA. Consequently, the adoption of the Twin Peaks model of financial regulation has witnessed the establishment of the Prudential Authority in accordance with section 32 of the FSRA.

The Prudential Authority having been established in April 2018,[153] assumes the role of prudential regulator in that it has been tasked with microprudential supervision of the financial system.[154] What this means is that, the Prudential Authority will hereby take over the mandate of the Bank Supervision Department and the Financial Services Board with regards to the prudential supervision of banks as well as non-bank financial institutions.[155] As a result, the Bank Supervision Department and the Financial Services Board, who were responsible for the prudential supervision of banks and the prudential and market conduct supervision of non-bank institutions respectively, will cease to exist.[156] The adoption of the South African Twin Peaks has thus resulted in the creation of a conglomerate regulator that is responsible for the prudential regulation and supervision of banks, insurers and other financial institutions.[157]

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[151] Godwin, Howse & Ramsey (2017) 689.
[152] Godwin, Howse & Ramsey (2017) 668.
[153] Department of National Treasury "Media statement the launch of twin peaks" (2018) http://www.treasury.gov.za/twinpeaks/MEDIA%20STATEMENT%20-%20THE%20LAUNCH%20OF%20TWIN%20PEAKS%201.pdf (accessed on 26 August) 1-2 1.
[154] A Godwin "Australia's Trek towards Twin Peaks – Comparisons with South Africa" (2017) Law and Financial Markets Review Vol. 11 183–193 184. Hereinafter referred to as ("Godwin (2017")).
[155] Department of National Treasury "Financial Sector Regulation Bill-Impact Study of the Twin Peaks Reforms (2016) http://www.treasury.gov.za/twinpeaks/Impact%20Study%20on%20Twin%20Peaks%20Reforms.pdf (accessed on the 12 August 2018) 1-35 21-22. Hereinafter referred to as ("Financial Sector Regulation Bill-Impact Study of the Twin Peaks Reforms (2016)").
[156] Godwin (2017) 184.
[157] Roadmap implementing a twin peaks model of financial regulation in South Africa (2013) 43.

The Prudential Authority was established for the main purpose of promoting and enhancing the safety and soundness of financial institutions that provide financial products and securities services to the public as well as protecting the very same public from risks that the said institutions may fail to meet their obligations.[158] In addition to this, the Prudential Authority is further required to promote and enhance the safety and soundness of market infrastructures as well as assist the SARB in the maintaining of financial stability.[159] What this means is that, the Prudential Authority is responsible for ensuring that individual financial institutions are safe and sound and more importantly, that they are able to fulfil the promises that they make to their financial customers which include "depositors, insurance policy holders, retirement fund members and investors" at all times.[160]

The most interesting thing about the South African Twin Peaks model with regards to the prudential regulator has to be, the country's decision to house the Prudential Authority within the SARB, in that although it is a separate juristic person, it is nevertheless a juristic person that operates within the administration of the SARB.[161] This has sparked a debate on what exactly does it mean to house the prudential regulator within the SARB and what exactly are the implications of such an act.[162] According to Godwin and Schmulow, it would seem that on a balance scale, the benefits of having "a stand-alone regulator that is independent from the National Central Bank" far outweigh the benefits of housing it within the National Central Bank.[163] Benefits which include the fact that it guards against conflict of interest and operational independence, which may arise [164] Godwin and Schmulow explain that such conflict may arise where monetary authorities may wish to increase rates while,

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[158] S 33 (a) & (c) of the Financial Services Regulation Act No. 9 of 2017.
[159] S 33 (b) & (d) of the Financial Services Regulation Act No. 9 of 2017.
[160] Department of National Treasury "Twin peaks in South Africa: Response and explanatory document-Accompanying the second draft bill of the Financial Sector Regulation Bill" (2014) http://www.treasury.gov.za/public%20comments/FSR2014/2014%2012%2012%20Response%20document.pdf (accessed on 27 February 2018) 1-46 7. Hereinafter referred to as the ("Twin peaks in South Africa: Response and explanatory document" (2014)").
[161] Godwin (2017) 184.
[162] A. Godwin & A. Schmulow "Financial sector regulation bill in South Africa, second draft: lessons from Australia" (2015) Vol. 132 South African Law Journal 756-768 758-761. Hereinafter referred to as ("Godwin & Schumulow (2015)").
[163] Godwin & Schumulow (2015) 759.
[164] Godwin & Schmulow (2015) 759.

regulatory authorities on the other hand may be against that due to their fear that such high rates may have adverse effects on capital adequacy and the solvency of the banking system among other things.[165] Furthermore, they indicate that there is also evidence that an independent stand-alone regulator from a strictly regulatory perspective "comports more closely with the Basel Committee Principles on Banking Supervision in accordance with principle 2."[166]

On the other hand, the benefits of housing the prudential regulator within a national central bank are said to be that: the ability to achieve cooperation with respect to resources and expertise is strengthened; difficulties that may pop up with regards to information sharing in a situation where the prudential regulator and the central bank are not housed together are done away with.[167] More importantly, this is beneficial especially in countries that are not known for their independent regulatory agencies but however possess a fiercely independent central bank, housing the prudential authority within the latter may ensure that it operates independently from the government.[168] Godwin and Schmulow comment that this is probably why the Prudential Authority is housed within the SARB.[169] Despite this, they do note that, it is pivotal to ensure that the Prudential Authority in carrying out its mandate is able to achieve an appropriate level of operational independence in practice and that the dangers of conflicts of interest and competing priorities be managed.[170]

2.3.2 The Financial Sector Conduct Authority:

Prior to the adoption of the twin peaks model of financial regulation and the subsequent enactment of the FSRA, aspects of the financial sector conduct market were regulated by the Financial Services Board and the National Credit Regulator.[171]

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[165] Godwin & Schmulow (2015) 759 in citing C. Goodhart & D. Schoenmaker "Institutional separation between supervisory and monetary agencies" (1992) Vol. 51 Giornale degli economisti e annali di economia 361.
[166] Godwin & Schmulow (2015) 760.
[167] Godwin & Schmulow (2015) 760.
[168] Godwin & Schmulow (2015) 760.
[169] Godwin & Schmulow (2015) 760.
[170] Godwin & Schmulow (2015) 760-761.
[171] Department of National Treasury "Treating customers fairly in the financial sector: a draft market conduct policy framework for South Africa" (2015) http://www.treasury.gov.za/public%20comments/FSR2014/Treating%20Customers%20Fairly%20in%20the%20Financial%20Sector%20Draft%20MCP%20Framework%20Amended%20Jan2015%20WithAp6.pdf (accessed on the 12 August 2018) 1-15 2. Hereinafter referred to as ("Treating customers fairly in the financial sector: a draft market conduct policy framework for South Africa (2015)").

The Financial Services Board was responsible for the market conduct supervision of all non-bank financial institutions which included *inter alia* insurance companies and pension funds, while the National Creditor Regulator on the other hand was responsible for the supervision of all retail credit providers.[172] The scope of the National Credit Regulator spanned not only over institutions that provided financial products and services as their main business, but also clothing and furniture retailers as well as banks and other financial institutions.[173]

Once again, this state of affairs (that is the regulatory framework) although considered to be effective, not only led to gaps in regulatory application but also allowed for regulatory arbitrage, all because the framework was fragmented.[174] This was because the silo approach towards the regulation of the financial system, with its numerous laws for specific types of industries meant that different standards applied to financial products and services in different ways regardless of them being similar in nature.[175] As a result, financial institutions which performed a range of different financial activities were subject to multiple laws that all had different requirements.[176] This however created a number of problems when it came to the regulation of market conduct such as that customers lacked the knowledge or the power to decipher whether or not they were being treated fairly and more importantly the means to take on the industry in the event that they are being treated unfairly.[177] These problems were exacerbated by conflicted remuneration and incentive structures, which coupled with information irregularities inevitably led to poor customer outcomes.[178]

It was with this in mind that the process to overhaul the approach to market conduct was embarked on through the ultimate establishment of a single regulator that would serve as a "one stop shop" so speak, which would be responsible for the protection of consumers and more importantly the deterrence of market misconduct.[179] That is, the Financial Services Conduct Authority (Conduct Authority) as established by section 56

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[172] Twin peaks in South Africa: Response and explanatory document (2014) 9.
[173] Twin peaks in South Africa: Response and explanatory document (2014) 9.
[174] Twin peaks in South Africa: Response and explanatory document (2014) 9-10.
[175] Twin peaks in South Africa: Response and explanatory document (2014) 10.
[176] Twin peaks in South Africa: Response and explanatory document (2014) 10.
[177] Twin peaks in South Africa: Response and explanatory document (2014) 7.
[178] Twin peaks in South Africa: Response and explanatory document (2014) 7.
[179] A Schumulow "Retail Market Conduct Reforms in South Africa Under Twin Peaks" (2017) Vol. 11 Law and Financial Markets Review 163–173 163. Hereinafter referred to as ("Schumulow (2017 11)").

of the FSRA. Therefore, the Financial Sector Conduct Authority having been revamped from the Financial Services Board, is responsible for "regulating and supervising the market conduct of banks, insurers, financial intermediaries, retirement funds and administrators, investment institutions and financial markets".[180]

The Conduct Authority is required to enhance and support the efficiency and integrity of financial markets and to protect financial customers through promoting that they be treated fairly by financial institutions and by providing them with financial education programs; all in an effort to promote financial literacy thus elevating them to a position wherein they are able to make sound financial decisions.[181] In addition, the Conduct Authority is also required to assist the SARB in maintaining financial stability.[182]

The interesting thing about the South African Twin Peak model with regards to market conduct regulation is that the National Credit Regulator is not assimilated into the conduct authority and remains a standalone regulator within the Twin Peaks model and will "continue to play an active part in the twin peaks model by regulating consumer credit and supervising retail credit providers".[183] As a result, the South African legislation thus "recognises the National Credit Regulator alongside the Conduct Authority and the Prudential Authority" and makes provision for it in the regulatory coordination framework.[184]

According to Schmulow, it is not uncommon to find a "separation between the protection of consumers of credit and those of other financial products and services", as is also the same in Australia.[185] However, he remarks that the existence of two separate market conduct regulators that specialise in banking and credit aspects of market conduct respectively, is bound to create challenges that will need to be managed through the effective coordination and consultation of the two regulators.[186]

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180 Roadmap implementing a twin peaks model of financial regulation in South Africa (2013) 47.
181 S 57 (a) & (b) of the Financial Services Regulation Act 9 of 2017.
182 S 57 (c) of the Financial Services Regulation Act 9 of 2017.
183 Godwin (2017) 184.
184 Godwin (2017) 184.
185 Schumulow (2017 11) 166.
186 Godwin (2017) 184.

As a result, coordination between the Conduct Authority and the National Credit Regulator is pivotal to the success of the twin peaks system.[187]

2.3.3 The South African Reserve Bank:

The SARB, initially tasked with the mandate of protecting the value of the South African currency in the "interest of a balanced and sustainable economic growth",[188] also in the pre-twin peaks era had an implied de facto responsibility for maintaining financial stability, while also fostering financial development in a wider sense.[189] This mandate (the maintenance and promotion of financial stability) although carried out by SARB, was not explicitly bestowed upon it as provision for it was not made in its enabling Act but was part of the traditional functions it fulfilled as a central bank.[190] As a result, the overall framework of the SARB was not exactly fully conducive to achieving this mandate which was problematic because the framework did not explicitly define the responsibilities and more importantly the tools to be utilized by the SARB in their maintenance of financial stability.[191] However, this problem has since been corrected by the enactment of the FSRA which has explicitly bestowed upon the SARB, the responsibility of protecting and enhancing financial stability thus conferring upon it the status of prime guardian.[192] As a result, the SARB is now explicitly responsible for maintaining financial stability which entails the monitoring of risks and managing systemic events and risks that might impede on the stability of the financial system, [193] thus making it responsible for the macroprudential supervision of the South African financial system.[194]

2.3.4 Financial Stability Oversight Committee:

Created as one of the four coordinating bodies that make up one of the regulatory co-ordinating mechanisms that are vital in ensuring the success of the twin peaks model of financial regulation,[195] the Financial Stability Oversight Committee (Oversight Committee) has been established by section 20 of the FSRA. The Oversight

[187] Twin peaks in South Africa: Response and explanatory document (2014) 30.
[188] S3 of the South African Reserve Bank Act 90 of 1989.
[189] J. De Jager (2013 2) 494.
[190] Van Heerden & Van Niekerk (2017) 637.
[191] De Jager (2013 2) 494-495.
[192] Van Heerden & Van Niekerk (2017) 642.
[193] S11-31 of the Financial Sector Regulation Act 9 of 2017.
[194] Godwin (2017) 184.
[195] Godwin, Howse & Ramsey (2017) 688-689.

Committee is charged with the mandate of supporting the SARB in its performance of its financial stability mandate as well as facilitating cooperation and collaboration between the financial sector regulators with regards to matters relating to financial stability and coordinating any action taken by the said financial sector regulators that might touch on or affect financial stability.[196]

The Oversight Committee is comprised of the Governor, Deputy Governor responsible for financial stability matters, the Chief Executive Officer of the Prudential Authority, the Commissioner of the Conduct Authority, the Chief Executive Officer of the National Credit Regulator, the Director-General of Treasury, the Director of the Financial Intelligence Centre and as well as a maximum of any three additional persons appointed by the Governor.[197] The rationale behind the all-inclusive nature of the membership pool was the recognition that each regulator of the financial sector at one level or another has some sort of perspective on financial stability and more importantly possesses vital expertise to match those views.[198] Therefore, it became clear that if these perspectives and expertise were brought together then that would reduce risks to financial stability and further increase the effectiveness of any action taken to promote, protect and maintain it.[199] The reason for this being that, although charged with the mandate of promoting and maintaining financial stability, the SARB "is not and can never be the sole custodian of financial stability."[200] However it plays an important role in a system that includes the "government, other regulators and self-regulatory agencies."[201] As a result, the Oversight Committee provides a platform from which to coordinate this collective venture.[202]

Consequently, the Oversight Committee will serve as a forum where information as well as views will be exchanged regarding activities that touch on financial stability; to advise the governor on the designation of systemically important financial institutions; to also advice the Minister of Finance and the SARB on steps to be taken to promote, protect or maintain or manage or prevent risks to financial stability and further advice

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[196] Van Heerden & Van Niekerk (2017) 651.
[197] S20 of the Financial Sector Regulation Act 9 of 2017.
[198] Roadmap implementing a twin peaks model of financial regulation in South Africa (2013) 37.
[199] Roadmap implementing a twin peaks model of financial regulation in South Africa (2013) 37.
[200] Roadmap implementing a twin peaks model of financial regulation in South Africa (2013) 37.
[201] Roadmap implementing a twin peaks model of financial regulation in South Africa (2013) 37.
[202] Roadmap implementing a twin peaks model of financial regulation in South Africa (2013) 37.

on matters relating to crisis management and prevention; to make recommendations to other organs of state regarding financial stability and any other function bestowed upon it in terms of applicable legislation.[203]

2.3.5 Financial Sector Contingency Forum:

Established by the Governor of the SARB in accordance with section 25 of the FSRA, the Financial Sector Contingency Forum (Contingency Forum) is tasked with the responsibility of identifying potential risk that systemic events can occur and coordinating appropriate plans, mechanisms and structures that may be implemented to mitigate those risks.[204]

Consequently, the Contingency Forum thus serves as a windmill of sorts that is responsible for the actual detection of risks that could impede or actually threaten the financial stability of the system and upon such detection, further devise plans on how to address and contain or mitigate the said risks.[205]

2.3.6 Financial Sector Inter-Ministerial Council:

Established in terms of section 83 of the FSRA,[206] the Financial Sector Inter-Ministerial Council (Inter-Ministerial Council) is responsible for the facilitation of cooperation and collaboration between the Cabinet members that are responsible for the administration of legislation relevant to the regulation and supervision of the financial sector by providing a platform, for the discussion and consideration of matters of common interest.[207] The Inter-Ministerial Council is comprised of the Minister of Finance, Cabinet members responsible for consumer protection and consumer credit matters, the Cabinet member responsible for health and the Cabinet member responsible for economic development.[208]

Since the power of the Conduct Authority will be fortified by a long existing consumer credit protection regime enforced by a dedicated National Credit Regulator which was

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[203] Van Heerden & Van Niekerk (2017) 651-652.
[204] Godwin, Howse & Ramsey (2017) 891.
[205] Van Heerden & Van Niekerk (2017) 652.
[206] Financial Sector Regulation Act 9 of 2017.
[207] Godwin, Howse & Ramsey (2017) 692.
[208] S 83(3) of the Financial Services Regulation Act 9 of 2017.

established in terms of the National Credit Act, [209] and complimented by the National Credit Tribunal,[210] one may be tempted to conclude that the Inter-Ministerial Council has been established in order to ensure the smooth merging, cooperation and functionality of the Conduct Authority and the National Credit Regulator. This is because, section 85 of the FSRA entitles the Cabinet members responsible for consumer protection and consumer credit matters to request the Inter-Ministerial Council to deliberate on whether a provision in a financial sector law or in a proposed financial sector law, regulation or regulatory instrument provides for or would provide for a standard of protection that is equivalent to, or higher than, the protection provided for in terms of the National Credit Act or the Consumer Protection Act.[211] Should the Inter-Ministerial Council conclude that the provision under review does not provide for the aforementioned standard of protection for financial customers, then they are to make the necessary recommendations that the provision be amended or that other lawful and appropriate steps be taken to ensure that the protection is equivalent.[212]

In addition, the Inter-Ministerial Council is also required to commission an independent evaluation of the establishment of co-operative and collaborative mechanisms between the financial sector regulators, the SARB, the Financial Intelligence Centre, the Council for Medical Schemes and the Competition Commission every two (2) years.[213]

2.3.7 The Financial System Council of Regulators:

Established in terms of section 79 of the FSRA, the Financial Sector Council of Regulators (Council of Regulators) is responsible for facilitating the cooperation and collaboration and where appropriate, consistency of action, between the institutions represented on the Council of Regulators by providing a flatform for the senior representatives of the said institutions to discuss, and inform themselves about matters of common interest.[214] The Council of Regulators is comprised of the Director-

[209] Act 34 of 2005.
[210] Schmulow "Retail Market Conduct Reforms in South Africa Under Twin Peaks" (2017) Law and Financial Markets Review Vol. 11, No. 4, 163–173 166. Available at Hereinafter referred to as ("Schumulow (2017 4)).
[211] S 85 (1) of the Financial Section Regulation Act 9 of 2017.
[212] S 85 (2) (b) of the Financial Sector Regulation Act 9 of 2017.
[213] S 86 of the Financial Sector Regulation Act 9 of 2017.
[214] Godwin, Howse & Ramsey (2017) 692-693.

General of the National Treasury, the Director-General of Trade and Industry, the General-Director of the Department of Health, the Chief Executive Officer of the Prudential Authority, the Commissioner of the Conduct Authority, the Chief Executive Officer of the Nation Credit Regulator, the Registrar of Medical Schemes, the Director of the Financial Intelligence Centre, the Commissioner of the National Consumer Commission, the Deputy Governor responsible for financial stability matters as well as the head, however described, of any organ of state or other organisation that the Minister of Finance may determine.[215]

According to Godwin, Howse and Ramsey, the important thing worth noting about the Council of Regulators is the extensive government representation that is reflected in the membership pool.[216] According to them, South Africa's Council of Regulators has the most extensive governmental representatives than any of the other twin peak jurisdictions such as New Zealand, the Netherlands, Belgium and Australia.[217]

Another aspect to consider is that the Council of Regulators is required as one of its mandates, to establish working groups or rather subcommittees that are set to deal with the various matters which include *inter alia*, enforcement and financial crime, financial stability and resolution, policy and legislation, standard setting, financial sector outcomes and financial inclusion.[218] The Conduct Authority is required to provide administrative support as well as other relevant resources to the Council of Regulators and its working groups and subcommittees; a characteristic that according to Godwin, Howse and Ramsey distinguishes South Africa's Twin Peak model from those of other Twin Peak countries, where administrative support is provided by their respective Reserve Banks.[219]

2.4. SOUTH AFRICAN RESERVE BANK'S FINANCIAL STABILITY MANDATE AS BESTOWED UPON IT BY THE FSRA.

It is submitted that the most significant characteristic about the new South African Twin Peaks model of financial regulation is its "extra (apex) peak",[220] that is the SARB-a

[215] Section 79 (3) of the Financial Sector Regulation Act 9 of 2017.
[216] Godwin, Howse & Ramsey (2017) 693.
[217] Godwin, Howse & Ramsey (2017) 693.
[218] S 82 (1) of the Financial Sector Regulation Act 9 of 2017.
[219] Godwin, Howse & Ramsey (2017) 693.
[220] Van Heerden & Van Niekerk 2017) 642.

peak that has been vested with a clearly defined financial stability mandate. Accordingly, this clearly defined financial stability mandate as bestowed upon it by the FSRA "entails the oversight of systemic macroprudential aspects of the financial system by establishing a framework for macroprudential supervision".[221] The financial stability mandate of the SARB will require it to identify systemic risks in the financial system; monitor and analyse market and other financial and economic factors that may not only give rise to systemic risks but also ultimately result in systemic crises; formulate and further implement appropriate policies as well as assessing the effects and impact of the said policies on the financial system and ultimately, deal with systemically important financial institutions all in an effort to reduce the likelihood of taxpayers' funds being used to bail out financial institutions.[222] For purposes of its financial stability mandate, the SARB has two main goals which are to protect and enhance financial stability; and to restore and maintain financial stability in the likelihood of a breakout of a systemic event.[223]

2.4.1. The SARB's role to protect and enhance financial stability:

When it comes to the protection and enhancement of financial stability, the SARB must execute this mandate through the monitoring of risks,[224] designating appropriate financial corporations as systemically important financial institutions[225] and conducting financial stability reviews,[226] all of which are discussed below in detail.

2.4.1.1 Monitoring of risks by the SARB:

The SARB as stipulated by section 12 of the FSRA, is required to monitor and keep under review the strengths and weaknesses of the financial system. It is also required to monitor and keep under review any risks that may pose a threat to the financial system, the nature of the said risks as well as its extent.[227] According to Van Heerden and Van Niekerk, this mandate is a continuous duty that covers both systemic as well as non-systemic risks, that requires the SARB to conduct an in depth inspection of the operations of the participating financial institutions that exist within the financial

[221] Van Heerden & Van Niekerk (2017) 643.
[222] Van Heerden & Van Niekerk (2017) 643.
[223] S 11 (1) of the Financial Sector Regulation Act 9 of 2017.
[224] S 12 of the Financial Sector Regulation Act 9 of 2017.
[225] S 29 of the Financial Sector Regulation Act 9 of 2017.
[226] S 13 of the Financial Sector Regulation Act 9 of 2017.
[227] S 12 (1) (ii) of the Financial Sector Regulation Act 9 of 2017.

system.[228] Since the nature of the risks that the SARB is supposed to be on the lookout for is not explicitly defined, it would seem that, the SARB should not only focus on risks of high magnitude “such as the risks that a systemic event may occur” but it should also focus more greatly on “smaller apparently non-systemic risks that may build up and eventually weaken or erode the stability of the financial system.”[229] Upon fully ascertaining the risks to financial stability, the SARB is then required to take steps to mitigate those risks.[230]

In addition, the SARB is further required to guard against non-compliance of international standards on market infrastructure and to alert the relevant bodies on their findings in the case of non-compliance.[231] This is because South Africa as a member of the G20 is required to “observe standards and guidelines issued by bodies such as the Basel Committee on Banking Supervision, the Financial Stability Board and the International Monetary Fund”.[232] Interestingly, the need for these international standards arose due to a problem that developed with regards to the financial system and individual countries that make up the international playing field which was that: despite the financial sector being globally integrated, it was regulated at a national level.[233] Due to this, a need for minimum international standards soon became apparent so as to foster greater coordination among the different national regulators.[234]

2.4.1.2 Designating appropriate financial corporations as systemically important financial institutions:

Because of the growing importance of the shadow banking system and its interactions within the financial system, major players within the system grew tremendously in size and interconnectedness to the extent that they were soon coined as too-big-to-fail institutions.[235] This then resulted in the creation of moral hazard entailing that, the said too-big-to-fail institutions believing that their “size and interconnectedness granted them a privileged position… should they ever encounter financial distress”, started

[228] Van Heerden & Van Niekerk (2017) 646.
[229] Van Heerden & Van Niekerk (2017) 546.
[230] S 12 (b) of the Financial Sector Regulation Act 9 of 2017.
[231] S 12 (c) of the Financial Sector Regulation Act 9 of 2017.
[232] Van Heerden & Van Niekerk (2017) 647.
[233] Roadmap implementing a twin peaks model of financial regulation in South Africa (2013) 2.
[234] Roadmap implementing a twin peaks model of financial regulation in South Africa (2013) 2.
[235] Head (2010) 53 & Van Heerden and Van Niekerk (2017) 652.

taking excessive risks.[236] This was because they believed that "governments would not allow them to fail and go into liquidation" if they suddenly experienced financial distress, but rather would be forced to bail them out, due to the fact that, they had the potential to bring down an entire system in the likelihood of their failure.[237] It however became evident post the 2008 Global Financial Crisis that large and interconnected financial institutions had to be monitored closely for the detection of systemic risks and against the said institutions growing to the magnitude where they became too-big-to-fail.[238] This is a sentiment that was shared by South Africa which has resulted in the establishment of explicit law meant to monitor these institutions.

Consequently, section 29 of the FSRA creates a procedure that allows the SARB to easily detect institutions that could pose a threat to the financial stability of the system so as to subject them to higher prudential regulation[239]. As a result, the SARB, through the Governor, has the power to designate appropriate financial corporations as systemically important financial institutions (SIFI). In executing this mandate, section 29 (3) of the Act provides specific factors that the Governor needs to take into account before declaring an institution to be a SIFI. These factors include *inter alia*: the size of the financial institution; its complexity and its business affairs; its interconnectedness with other financial institutions within and outside the Republic and "whether there are readily available substitutes for the financial products…services, or market infrastructure that the financial institution provides".[240]

Upon taking the aforementioned factors into consideration, the Governor is required to consult with the Oversight Committee by notifying them of the proposed designation and also furnishing them with a statement of reasons justifying the said designation, wherein thereafter, the Oversight Committee is expected to deliberate on the matter before reverting back to the Governor.[241] If it so happens that the Governor after consulting with the Oversight Committee is still of the view that the financial institution under consideration should still be declared as a SIFI, then the Governor is required

[236] Van Heerden & Van Niekerk (2017) 652.
[237] Van Heerden & Van Niekerk (2017) 652.
[238] Van Heerden & Van Niekerk (2017) 653.
[239] Van Heerden & Van Niekerk (2017) 653.
[240] S 29 (3) of the Financial Services Regulation Act 9 of 2017.
[241] S 29 (2) (a) of the Financial Services Regulation Act 9 of 2017.

to invite the said institution to make submissions as to why the said designation should not go through.[242]

An important aspect of the mandate to designate financial institutions as SIFI's seems to be the fact that, in the occurrence of a systemic event, the Governor has the leeway to act carte blanche in that the Governor is not required to explicitly follow the procedure set out in subsection (2) and (3) when designating a SIFI.[243] In such instances, the relevant institution can within thirty (30) days after being notified of the said designation make submissions on the designation, which the Governor must take into account before confirming or revoking the designation under question through the notification of same to the institution under review.[244]

2.4.1.3 Conducting financial stability reviews:

The SARB is required in accordance with section 13 of the FSRA to access the stability of the system every six (6) months.[245] This assessment, the findings of which are to be published in a Financial Stability Review Report, must contain the findings of the assessment of the period under review; must project if any risks are bound to arise in the next twelve months; provide an overview of the steps taken by it and the financial sector regulators to identify and manage risks, weaknesses or disruptions in the financial system during the period under review and in the next twelve (12) months; and finally, provide an overview of the recommendations made by it and the Oversight Committee during the period under review and the progress made in implementing those recommendations.[246]

The, SARB is required to publish this Financial Stability Review Report, however, if there is a possibility that the publication of the information within this report will result in the possibility of a systemic event occurring, publication of the information within the report is to be deferred until the risk of a systemic event either subsides or has been addressed.[247] The rationale behind this according to Van Heerden and Van Niekerk

[242] S 29 (2) (b) of the Financial Services Regulation Act 9 of 2017.
[243] S 29 (4) of the Financial Services Regulation Act 9 of 2017.
[244] S 29 (4) (b) (c) of the Financial Services Regulation Act 9 of 2017.
[245] S 13 (1) of the Financial Services Regulation Act 9 of 2017.
[246] S 13 (2) of the Financial Services Regulation Act 9 of 2017.
[247] Section 13 (4) (b) & (3) of the Financial Services Regulation Act 9 of 2017.

being, the prevention of a systemic event being triggered or exacerbated by the report itself through the publishing of sensitive information that may for instance trigger a bank run that would have the power of creating a severe liquidity crisis within the financial market.[248]

2.4.2 The SARB's role to restore and maintain financial stability in the likely breakout of a systemic event:

The FSRA defines a systemic event as:

"an event or circumstance, including one that occurs or arises outside the Republic, that may reasonably be expected to have a substantial adverse effect on the financial system or on economic activity in the Republic, including an event or circumstance that leads to a loss of confidence that operators of, or participants in, payment systems, settlement systems or financial markets, or financial institutions, are able to continue to provide financial products or financial services, or services provided by a market infrastructure"[249]

It is a well-known fact that occurrence of systemic events is detrimental to an economy in that, it has the potential to trigger the collapse of a whole financial system.[250] For this reason, the burden to protect the country from the occurrence of such events fall within the ambit to the SARB's financial stability mandate as systemic events erode on the financial stability of a financial system. Consequently, when it comes to systemic events, the SARB has the power to: determine a systemic event;[251] take steps to mitigate and manage the said the event;[252] and approve and oversee the winding up procedures of SIFIs.[253]

2.4.2.1 The determination of systemic events:

The SARB through its Governor is empowered in terms of section 14 (1) of the FSRA, upon consulting with the Minister of Finance to determine if a specific event or circumstance, or a combination of the two qualifies as a systemic event. Furthermore,

[248] Van Heerden & Van Niekerk (2017) 647.
[249] S 2 of the Financial Sector Regulation Act 9 of 2017.
[250] Van Heerden & Van Niekerk (2017) 648.
[251] Section 14 of the Financial Sector Regulation Act 9 of 2017.
[252] Section 15 & 30 of the Financial Sector Regulation Act 9 of 2017.
[253] Section 31 of the Financial Sector Regulation Act 9 of 2017.

the Governor has the power to "predict" if certain circumstances will lead to a systemic event even before those circumstances fully materialize.[254]

Once the Governor has identified the systemic event, he is then required to notify the Minister of Finance and keep the determination under review.[255] When it comes to assigning any event or circumstance the status of 'systemic event', the Governor may revoke or amend the said status at a later stage, which he can however, only do upon explicit consultation with the Minister of Finance.[256] Thus, the Governor is not permitted to exercise this mandate in isolation, that is, independently from the Minister of finance.

2.4.2.2 Take steps to mitigate and manage the said the event:

The SARB is required to take all steps necessary to prevent systemic events from happening.[257] In the event that the SARB is unable to do this and the systemic event nevertheless occurs or is imminent, it is then called upon to manage the systemic event together with its effects and to also mitigate immediately, the adverse effects that the event may have on financial stability.[258] When executing this mandate, the SARB is required to do so in a manner that minimises adverse effects on financial stability and economic activity; accordingly protects financial customers; and limits the cost that the Republic may incur as a result of any steps taken by it.[259] Interestingly, Van Heerden and Van Niekerk remark that the SARB "does not have carte blanche to deal with systemic events but has to conduct some sort of cost-benefit" analysis so as to make sure that every step taken is financially justified.[260]

Furthermore, the SARB is not allowed to take any steps that will bind the National Revenue Fund to any expenditure; have a material impact on the cost of borrowing of the said fund; or, create a future financial commitment or contingent liability for the fund, without the express approval of the Minister of Finance.[261] It is for this reason

[254] S 14(3) of the Financial Sector Regulation Act 9 of 2017.
[255] S 14(5) (a) & (b) of the Financial Sector Regulation Act 9 of 2017.
[256] S 14(5) (c) of the Financial Sector Regulation Act 9 of 2017.
[257] Section 15 (1) (a) of the Financial Sector Regulation Act 9 of 2017.
[258] Section 15 (b) of the Financial Sector Regulation Act 9 of 2017.
[259] Section 15 (3) of the Financial Sector Regulation Act 9 of 2017.
[260] Van Heerden & Van Niekerk (2017) 649.
[261] Van Heerden & Van Niekerk (2017) 649 & section 16 (2) of the Financial Sector Regulation Act 9 of 2017.

that the SARB must keep the Minister of Finance fully appraised of the systemic event and any steps taken or proposed by it to manage the event as well as its adverse effects.[262]

Furthermore, in an effort to mitigate the risk of a systemic event caused by a SIFI, the SARB upon consultation with the Prudential Authority, has the authority to issue out directives to the Prudential Authority instructing it to impose against the said SIFI, "stricter prudential measures" through prudential standards or regulator's directives.[263]

2.4.2.3 Approve and oversee the winding up procedures of SIFI's:

In the event that a SIFI encounters financial distress, the SARB is required to either rescue the SIFI or allow it fail and move on to an orderly resolution.[264] As a result, the liquidation procedure or rather process with regards to SIFIs cannot be taken or implemented without the express approval of the SARB.[265]

2.5. THE ROLES OF THE PRUDENTIAL AUTHORITY AND THE FINANCIAL SECTOR CONDUCT AUTHORITY WITH REGARDS TO ACHIEVING FINANCIAL STABILITY.

2.5.1 THE FINANCIAL SECTOR CONDUCT AUTHORITY:

One of the things that became clear post the 2008 global financial crisis was that in order for a financial system to be truly stable, the market conduct objective had to be elevated to equal standing as that of the prudential regulatory objective.[266] This is because post the financial crisis, a notion soon arose which suggested that, protecting consumers from conduct malpractices could possibly have a positive effect on financial stability.[267] The reason for this being that, malpractices, although at face value only detrimental to consumers can ultimately result in systemic risks.[268] This was clearly demonstrated by the global financial crisis when market conduct and consumer abuse not only created the subprime disaster but further cultivated it to such an extent

[262] Van Heerden & Van Niekerk (2017) 649 & Section 16 (1) of the Financial Sector Regulation Act 9 of 2017.
[263] Van Heerden & Van Niekerk (2017) 654 & Section 30 (1) of the Financial Sector Regulation Act 9 of 2017. Kindly note that the prudential standards and regulator's directives are discussed below in section
[264] Van Heerden & Van Niekerk (2017) 654
[265] Van Heerden & Van Niekerk (2017) 654-654 & S 30 of the Financial Sector Regulation Act 9 of 2017.
[266] Schmulow (2015) 8.
[267] Schmulow (2015) 9.
[268] Schmulow (2015) 9.

that it eventually morphed into a worldwide financial crisis.[269] Having been made aware of this, South Africa through section 57 (c) of the FSRA saw it fit to bestow upon the FSCA as one of its objectives, the duty to assist the SARB in the maintaining of financial stability-a point so astutely noted by Godwin, Howse and Ramsey[270].

It is for the abovementioned reason the SARB and the Conduct Authority are required to cooperate and collaborate with each other towards the common goal of maintaining, protecting and enhancing financial stability.[271] In complying with this mandate, the Conduct Authority is therefore required to provide any assistance and information requested by the SARB and the Oversight Committee, which the latter two may require in order to maintain or restore financial stability.[272] In addition to this, the Conduct Authority is further required to immediately notify the SARB of any circumstance that poses or threatens to pose a risk to financial stability as soon as it becomes aware of that circumstance.[273] The Conduct Authority is also required to gather information on the institutions that may touch on financial stability, either directly from them or a third party.[274]

Should it so happen that the SARB in accordance with section 14 determines that a certain event or circumstance or even a combination of both variables qualifies as a systemic event, the Conduct Authority in that circumstance is required by section 17 of the FSRA to firstly: provide the SARB with any information in its possession which may prove relevant and necessary in assisting the latter in managing the systemic event and its effects.[275] Furthermore, during this period, the Conduct Authority is required to consult with the SARB before exercising any of its duties that may compromise the steps and progress made by the latter in managing the said systemic event as well as its effects.[276]

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[269] Schmulow (2015) 7-8.
[270] Godwin, Howse & Ramsey (2017) 679.
[271] Van Heerden & Van Niekerk (2017) 650. Also see S 26 (1) (a) of the Financial Services Regulation Act No. 9 of 2017.
Van Heerden & Van Niekerk (2017) 650. Also see S 26 (1) of the Financial Services Regulation Act No. 9 of 2017.
[273] Van Heerden & Van Niekerk (2017) 650. Also see S 26 (1) (c) of the Financial Services Regulation Act No. 9 of 2017.
[274] Van Heerden & Van Niekerk (2017) 650. Also see S 26 (1) (d) of the Financial Services Regulation Act No. 9 of 2017.
[275] Van Heerden & Van Niekerk (2017) 650.
[276] Van Heerden & Van Niekerk (2017) 650.

When it comes to the Conduct Authority's duty to furnish the SARB with information relevant to determining a systemic event, it should be noted that: the SARB, in accordance with section 18 of FSRA has the prerogative to issue out directives to the Conduct Authority ordering it to furnish the SARB with information that may be in its possession; or information which may easily be acquired by it.[277]

Overall, the Conduct Authority has an important supportive role that it has to play when it comes to the maintenance of financial stability, which requires it to consider any potential consequence on this objective when carrying out its market conduct regulatory and supervisory role.[278] Should it so happen that these two objectives clash, that is, the financial stability objective and that of market conduct supervision, the Conduct Authority is therefore required to "transparently and proactively engage" all the relevant stakeholders in an effort to "manage short and medium trade-offs without compromising the delivery of the long term objectives.[279]

2.5.2 THE PRUDENTIAL AUTHORTY:

In addition to playing the exact same roles as those played by the Conduct Authority with regards to financial stability as discussed above, the Prudential Authority is further required to assist the SARB with its mandate as it relates to systemically important financial institutions.[280] Upon the declaring of a financial institution as a SIFI by the SARB, the SARB is then required to take steps to mitigate the risks that the said institutions might pose to the financial stability of the system in so far as its ability to contribute to systemic risks.[281] These steps include subjecting the said SIFI to "heightened prudential regulation",[282] which is where the Prudential Authority comes in.

Once the SARB has declared an institution to be of systemic importance, the SARB will engage the Prudential Authority in consultation over the said declaration, and then

[277] Van Heerden & Van Niekerk (2017) 650-651.
[278] Roadmap implementing a twin peaks model of financial regulation in South Africa (2013) 53.
[279] Roadmap implementing a twin peaks model of financial regulation in South Africa (2013) 53.
[280] Chapter 2, part 6 of the Financial Sector Regulatory Act 9 of 2017.
[281] Van Heerden & Van Niekerk (2017) 652-655
[282] Van Heerden & Van Niekerk (2017) 653.

proceed to direct the latter to impose, either through prudential standards or regulators directives, requirements applicable to one or more SIFIs with regards to issues such as *inter alia* solvency measures and capital requirements that may include requirements in relation counter cyclical capital buffers and liquidity.[283] It is important to note that these additional prudential standards or regulator's directives serve as a penalty against the SIFI so to speak, a way that may be employed by the SARB to guard against a systemic risk occurring in account of the SIFI. It also serves as a safety net by improving the SIFI's ability to absorb losses.[284] Furthermore, the Prudential Authority should notify both the SARB and the Conduct Authority of any steps taken by it to enforce the prudential standard made or the regulator's directive issued and the effects of those steps.[285]

2.6. CONCLUSION

The adoption of the Twin Peaks model of financial regulation and the subsequent enactment of the FSRA has introduced a new institutional architecture in South Africa. This has resulted in the establishment of the twin peak regulators, responsible for the prudential and market conduct regulation and supervision; which are the Prudential Authority and the Financial Services Conduct Authority. The Prudential Authority has acquired the mandate for prudential regulation from the Bank Supervision Department and partly from the Financial Stability Board, both which consequently no longer exist. The market conduct regulator on the other hand came into being as a result of the transformation of the market conduct regulatory sector of the Financial Services Board into the Financial Sector Conduct Authority. When it comes to market conduct supervision, the National Credit Regulator will not cease to exist but will continue to play the vital part of regulating consumer credit and supervising retail credit providers. In addition, the SARB has since acquired a new comprehensive financial stability mandate, thus expressly making it the macroprudential regulator of the financial system.

[283] S30 of the Financial Services Regulation Act No. 9 of 2017. Also see Van Heerden & Van Niekerk (2017) 654.
[284] Van Heerden & Van Niekerk (2017) 654.
[285] S30 (3) of the Financial Sector Regulation Act 9 of 2017.

CHAPTER 3
AUSTRALIA'S TWIN PEAK MODEL OF FINANCIAL REGULATION

3. INTRODUCTION

Of all the countries that fell victim to the Global Financial Crisis (GFC), it is well documented that Australia was the least affected.[286] This was primarily due to the fact that it had the most resilient financial system and institutional framework in comparison to any other country in the world.[287] This is a fact that has been attributed to the country's Twin Peak model of financial regulation,[288] which was adopted subsequent to the recommendation of the Wallis Inquiry of 1996,[289] that the Australian financial system "should be organized on a twin peak basis with two principal authorities".[290] Consequently, the Australian financial regulatory framework is mainly comprised of the Australian Prudential Regulation Authority (APRA) which is charged with the mandate of prudential regulation, while the Australian Securities and Investment Commission (ASIC) is charged with the mandate of regulating companies, market conduct and consumer protection.[291] In addition to these two regulators, the Australian model contains what has been referred to as the "third unofficial pillar", which is the

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[286] A Godwin & I Ramsey "Twin Peaks –the legal and regulatory anatomy of Australia's system of financial regulation" (2015), SSRN: https://ssrn.com/abstract=2657355 or http://dx.doi.org/10.2139/ssrn.2657355 1-46 2 CIFR Paper No.074/2015; U of Melbourne Legal Studies Paper No. 725. Hereinafter referred to as ("Godwin &Ramsey (2015)").

[287] A Godwin, S Kourabas & I Ramsey "Twin peaks and financial regulation: the challenges of increasing regulatory overlap and expanding responsibilities" (2016) https://poseidon01.ssrn.com/delivery.php?ID=047093101091070107065116091097087067010037073076067052094083125127028026113087014126099054038127042010098068090113099007071089098048031000085087002109014064103076051016084126084029089089072075005086025120096000081019007100069110067003072125009103004&EXT=pdf (accessed 16 September 2018)1-26 9. Hereinafter referred to as ("Godwin, Kourabas & Ramsey (2016)").

[288] A Schmulow "doing it the Australian way, 'twin peaks' and the pitfalls in between" (2016) http://clsbluesky.law.columbia.edu/2016/03/31/doing-it-the-australian-way-twin-peaks-and-the-pitfalls-in-between-2/e (accessed 31 January 2018) 1-4 1. Hereinafter referred to ("Schmulow (2016)").

[289] A Godwin "Australia's Trek towards Twin Peaks – Comparisons with South Africa" (2017) Law and Financial Markets Review Vol. 11 183–193 183. Hereinafter referred to as ("Godwin (2017")).

[290] G30 "The structure of financial supervision Approaches and Challenges in a Global Marketplace" (2008) http://www.legco.gov.hk/yr08-09/english/panels/fa/papers/fa0223cb1-837-3-e.pdf (accessed 05 June 2018) 1-252 188. Hereinafter referred to as ("G30 "The structure of financial supervision Approaches and Challenges in a Global Marketplace")

[291] A Godwin, T Howse & I Ramsey "A jurisdictional comparison of the twin peaks model of financial regulation" (2016) Vol. 18 Journal of Banking Regulation 103-131 106. Hereinafter referred to as ("Godwin, Howse & Ramsey (2016)").

central bank namely the Reserve Bank of Australia (RBA)[292] that is responsible for the overall financial stability of the financial system.[293]

Due to the success that the Twin Peaks model has had in Australia during the GFC this regulatory model has generated extensive popularity, so much so that, the model is being exported and further implemented by various other countries around the world.[294] As a result, it therefore becomes necessary to explore the model as specifically implemented in Australia given that Australia has pioneered the model, having been the first jurisdiction to implement it twenty years ago.[295] Consequently, this chapter discusses the Australian Twin Peaks model of financial regulation, that is, its institutional structure and as well as the challenges encountered within the model. It will then conclude by exploring the pivotal question of whether the Australian regulatory model is transferable or not.

3.1. THE INSTITUTIONAL ARCHITECTURE OF THE AUSTRALIAN TWIN PEAKS

3.1.1. The Australian Prudential Regulation Authority (APRA)

Established on the recommendation of the Financial System Inquiry Report of 1996 (Wallis Inquiry) that "a single prudential regulator be established to carry out prudential regulation in the financial system",[296] the APRA was established in 1998, in terms of the Australian Prudential Regulation Authority Act of 1998 (APRA Act),[297] as entity entirely independent entity from the RBA.[298] The APRA serves as the domestic prudential regulator of "deposit-taking institutions, insurance companies and superannuation funds".[299] Accordingly, the APRA possesses "licensing powers, supervision and monitoring powers as well the power to act in circumstances of

[292] Godwin, Kourabas & Ramsey (2016) 8.
[293] A Schmulow "The four methods of financial system regulation: An international comparative survey" (2015) Vol. 26 JBFLP 151-172 169. Hereinafter referred to as ("Schmulow (2015)").
[294] A Schmulow "The four methods of financial system regulation: An international comparative survey" (2015) Vol. 26 JBFLP 151-172 151. Hereinafter referred to as ("Schmulow (2015)").
[295] Schmulow (2016) 1.
[296] Godwin &Ramsey (2015) 4.
[297] Australian Prudential Regulation Authority Act 50 of 1998.
[298] Godwin, Howse & Ramsey (2016) 110.
[299] J Cooper "The integration of financial regulatory authorities –the Australian experience" (2006) https://asic.gov.au/media/1339352/integration-financial-regulatory-authorities.pdf (accessed 02 September 2018) 1-14 5. Hereinafter referred to as ("Cooper (2006)").

financial difficulties in order to protect depositors, policy holders and superannuation fund members".[300]

What is important to note about the APRA is that, when the question arose of where to place the prudential regulator, that is, whether or not it should be an entity independent from the RBA or be a subsidiary of the RBA or exist within the RBA, it was decided that it should be an entity independent from the RBA, but that, it should work jointly with the RBA.[301] This is known as the "non-monopolistic arrangement".[302] Towards this end, it was agreed upon that a competent system would have to be established so as to facilitate and ensure adequate coordination and cooperation between the two agencies.[303]

3.1.2. The Australian Securities and Investment Commission (ASIC)

Established as a result of the Wallis Inquiry recommendation that "a single agency be established for the regulation of companies, market conduct and consumer protection",[304] the ASIC was established in 2001, in terms of the Australian Securities and Investments Commission Act[305] as an independent entity. The ASIC is charged with the mandate of ensuring that the "capital and financial services markets are fair and transparent" and that customers are always well informed about the financial products that they wish to acquire.[306] In order to achieve this mandate, the ASIC possesses a wide array of powers which include *inter alia* instituting investigations into situations where they suspect that legislation might have been breached and banning people who have been found guilty of contravening any law related to their mandate, from managing corporations or participating in financial services.[307]

What is vital to note when it comes to the ASIC is its regulatory approach that has been defined as being risk-based.[308] Accordingly, the ASIC in executing its regulatory

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[300] Cooper (2006) 5.
[301] Godwin, Howse & Ramsey (2016) 110.
[302] A Schmulow "Twin Peaks: A Theoretical Analysis" (2015) CIFR Paper No. WP064/2015 https://ssrn.com/abstract=2625331 or http://dx.doi.org/10.2139/ssrn.2625331 (assessed 21 March 2018) 1-41 19. Hereinafter referred to as ("Schmulow (2015)").
[303] Godwin, Howse & Ramsey (2016) 110.
[304] Godwin (2017) 184.
[305] Australian Securities and Investments Commission Act 51 of 2001.
[306] Cooper (2006) 6.
[307] Cooper (2006) 7.
[308] Cooper (2006) 8.

mandate is only interested in areas that it considers to be of the greatest risk; areas such as, "misconduct and non-compliance that may affect consumers' decisions, threaten the reputation of the Australian markets or undermine its international reputation as a safe, well regulated place to do business".[309]

3.1.3. The Reserve Bank of Australia (RBA)

In addition to being charged with the mandate of ensuring the safety and reliability of the payments system and monetary policy, the RBA is also charged with the general mandate of promoting the financial stability of the Australian financial system.[310] This is despite the fact that the RBA is not responsible for the prudential regulation of financial institutions.[311] When it comes to its overall financial stability mandate, the RBA "implements financial stability standards for central counterparties and securities settlement facilities", which aim to ensure that clearing and settlement facilities easily recognise and adequately control the risks associated with their operations.[312]

3.2. INTER-AGENCY COORDINATION AND COLLABORATION

Godwin, Howse and Ramsay point out that the one thing that cannot be over-emphasised when it comes to the potential success of the Twin Peak model, is the need for inter-agency coordination.[313] This is because it has become trite that regulatory frameworks that have more than one main regulator (in this case two) require a powerful coordination mechanism in order to make sure that issues that need regulatory oversight do not fall through the cracks.[314] This is due to one of the inherent disadvantages of the Twin Peaks model being the risk that cooperation and coordination between the regulatory agencies will not be sufficient.[315] It is for this reason that special effort should be made in order to guard against this. In combating this potential risk, Australia follows a largely informal arrangement,[316] mainly: "informal

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[309] Cooper (2006) 8.
[310] G30 "The structure of financial supervision Approaches and Challenges in a Global Marketplace 191.
[311] G30 "The structure of financial supervision Approaches and Challenges in a Global Marketplace 189.
[312] G30 "The structure of financial supervision Approaches and Challenges in a Global Marketplace 191.
[313] Godwin, Howse & Ramsey (2016) 116.
[314] Godwin, Kourabas & Ramsey (2016) 12.
[315] Godwin, Howse & Ramsey (2016) 106.
[316] Godwin, Howse & Ramsey (2016) 117.

bilateral arrangements and the informal Council of Financial Regulators (CFR) process" in order to ensure coordination among the Australian regulators.[317]

3.2.1 Informal Bilateral Arrangements

In Australia these bilateral arrangements take the form of Memoranda of Understanding (MOUs), which are said to contain a fully detailed "map" setting out how the regulators are to work with each other especially in areas pertaining to information exchange, coordination and dispute resolution.[318] The aim of the MOU is to "ensure cooperation, promote transparency and help prevent unnecessary duplication of effort and identify risks developing in the financial system".[319] Notably the MOUs in Australia are not legally binding[320] and thus aspirational in nature.[321] This means that there are no expectations that the parties subject to the MOUs will be held to what is contained in the MOUs.[322] If anything, the MOUs are merely used for signalling purposes in order to indicate how the regulators intend to achieve effective coordination.[323] The reason for this being that despite reference being made in the APRA Act towards coordination,[324] there is no reference whatsoever about the nature of the coordination and how it should be achieved.[325]

3.2.2 Council of Financial Regulators (CFR) process

The CFR is the body charged with the mandate of overseeing the process of coordination amongst the Australian financial sector regulators and it serves as a "high forum for cooperation and collaboration among its members,[326] which are inclusive of the APRA, ASIC, the RBA and the Treasury.[327] The functions of the CFR include information sharing, identifying important issues and ensuring that responses are coordinated.[328] The most important thing to note about the CFR is that its whole

[317] Godwin, Kourabas & Ramsey (2016) 12.
[318] Godwin, Howse & Ramsey (2016) 118.
[319] Godwin, Howse & Ramsey (2016) 119.
[320] A Godwin & A Schmulow "The financial sector regulation bill in South Africa, second draft: Lessons from Australia" (2015) Vol. 132(4) South African Law Journal 756-768 664. Hereinafter referred to as (Godwin & Schumulow (2015 4)").
[321] Godwin, Howse & Ramsey (2016) 117.
[322] Godwin, Howse & Ramsey (2016) 119.
[323] Godwin, Howse & Ramsey (2016) 119.
[324] See Section 10 (a) of the Australian Prudential Regulation Act 50 of 1998.
[325] Godwin & Schumulow (2015 4) 762.
[326] Godwin & Schumulow (2015 4) 762.
[327] Godwin, Howse & Ramsey (2016) 120.
[328] Godwin, Howse & Ramsey (2016) 120.

existence follows a soft law approach in that there is no provision for it whatsoever in statute.[329] For that reason, the CFR is an informal coordinating body that has no regulatory functions.[330]

3.3 CHALLENGES FACED BY THE AUSTRALIA WITH REGARD TO THE IMPLEMENTATION OF THEIR TWIN PEAKS MODEL

Despite raving reviews of the Australian Twin Peaks model by the international community, when compared with other countries, Australia has experienced some challenges with the model on the home front.[331] This has been most vividly illustrated by the collapse of Australia's second largest insurance company HIH in 2001[332] and the collapse of the superannuation authority Trio Capital in 2010.[333] The collapse of these two entities was most instructive in that it revealed that the Australian regulators were grappling with two challenges with regards to the execution of their regulatory function.[334] The first challenge was that of providing effective coordination mechanisms as required by the Twin Peaks.[335] The second challenge emanated from, the fact that despite the Twin Peaks being established in order to assist regulators in clearly demarcating their regulatory objectives, increased integration of the financial system led to an overlap between the functions and expected roles of the regulators, thus blurring the clearly demarcated line that separated the two peak regulators.[336]

Godwin, Kourabas and Ramsey attribute these challenges to the fact that Australia when it comes to the issue of coordination still prefers "informal bilateral and multilateral coordination mechanisms over formal, statute-based mechanisms".[337] They note that where coordination has been cited as the problem and cause of the collapse of a financial institution, regulators in response have simply enhanced the MOUs and established informal information-sharing measures all in an attempt to make each regulator more aware of their counterpart's role in the system.[338] It is their

[329] Godwin & Schumulow (2015 4) 762.
[330] Godwin, Kourabas & Ramsey (2016) 9.
[331] Godwin, Kourabas & Ramsey (2016) 11.
[332] Schmulow (2015) 17.
[333] Godwin, Kourabas & Ramsey (2016) 14.
[334] Godwin, Kourabas & Ramsey (2016) 11.
[335] Godwin, Kourabas & Ramsey (2016) 11.
[336] Godwin, Kourabas & Ramsey (2016) 11.
[337] Godwin, Kourabas & Ramsey (2016) 25.
[338] Godwin, Kourabas & Ramsey (2016) 25.

opinion that, the likelihood of regulators continuing to face difficulties in a multi-agency regulatory structure, such as the Twin Peak Model, where the performance of one regulatory agency is often dependent on that of the other, is extremely high.[339]

3.4. IS THE AUSTRALIAN REGULATORY MODEL TRANSFERRABLE?

Despite Australia having emerged as a policy exemplar post the GFC with regards to their Twin Peak model of financial regulation and other countries adopting the said model as a result, the question that emerges and begs to be answered is: whether the particular model (Twin Peak) is transferable or not.[340] According to Schmulow, there is an exclusive list of factors that were present in Australia prior and during the time that the GFC erupted that contributed to Twin Peak's success in Australia; factors which may not necessarily be present in other countries.[341] These factors being firstly, the fact that the relationship between the three peaks (APRA, ASIC and the RBA) has always been categorised as being cooperative in nature and not torn by "turf wars".[342] This is a particularly important factor due to the fact that the Twin Peaks model thrives on inter-agency cooperation and collaboration.[343] Secondly, Schmulow attributes the success of the Twin Peaks model in Australia to the fact that the functions of the three peaks have not been subjected to any political interference and also to the fact that civil servants in Australia are generally highly skilled and largely incorrupt.[344] Furthermore, the success of the Twin Peaks model in Australia has been attributed to the fact that the model operates in an environment whereby the professional legal fraternity is adjudicated over by a fiercely independent judiciary, uncorrupted, and existing within a state based upon the rule of law.[345]

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339 Godwin, Kourabas & Ramsey (2016) 25.

340 A Schmulow "Financial regulation: Is Australia's 'twin peaks' model a successful export?" (2016) https://www.lowyinstitute.org/the-interpreter/financial-regulation-australias-twin-peaks-model-successful-export (accessed 08 September 2018).

341 A Schmulow "Financial regulation: Is Australia's 'twin peaks' model a successful export?" (2016) https://www.lowyinstitute.org/the-interpreter/financial-regulation-australias-twin-peaks-model-successful-export (accessed 08 September 2018).

342 Schmulow (2016) 3.

343 A Schmulow "Financial regulation: Is Australia's 'twin peaks' model a successful export?" (2016) https://www.lowyinstitute.org/the-interpreter/financial-regulation-australias-twin-peaks-model-successful-export (accessed 08 September 2018).

344 Schmulow (2016) 3.

345 A Schmulow "Financial regulation: Is Australia's 'twin peaks' model a successful export?" (2016) https://www.lowyinstitute.org/the-interpreter/financial-regulation-australias-twin-peaks-model-successful-export (accessed 08 September 2018).

But most important of these contributing factors has to be the fact that when the GFC erupted, Australian banks had been preoccupied with their own local markets and thus were not exposed internationally, to the deadly toxic derivatives of the United States housing market.[346] This particular point was proved by the Netherlands who despite being the second longest 'practitioner' of the Twin Peaks model (having adopted it in 2002), was severely hit by the GFC due to the fact that its banking sector was heavily invested in foreign markets, which ultimately led to its downfall.[347] This was despite the fact that it had all the other characteristics or rather factors that had been cited as a contributing factors to the success of the Twin Peaks model in Australia.[348]

Overall, Schmulow argues that if a jurisdiction seeking to adopt the Twin Peaks model does not have all the aforementioned attributes or if although present, they are severely wanting, then chances are that the Twin Peaks model might not be the best fit for that country.[349] It is for this reason that he concludes, there might indeed be something to the Twin Peaks model but by no means is it an all exclusive remedy to combat financial crises.[350] If anything, it is simply "one arrow in an increasingly technical and disparate quiver".[351]

3.5. CONCLUSION

Of the four financial regulatory models, the Twin Peaks model post the GFC has emerged as the most effective model to address the flaws in unregulated or even poorly regulated markets that experienced the worst effects of the GFC.[352] This was due to the fact that Australia, who pioneered the model fared better than any other country during the GFC- insofar as its regulatory regime was concerned.[353] As a result,

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346 Schmulow (2016) 3.

347 A Schmulow "Financial regulation: Is Australia's 'twin peaks' model a successful export?" (2016) https://www.lowyinstitute.org/the-interpreter/financial-regulation-australias-twin-peaks-model-successful-export (accessed 08 September 2018

348 Schmulow (2016) 3-4.

349 A Schmulow "Financial regulation: Is Australia's 'twin peaks' model a successful export?" (2016) https://www.lowyinstitute.org/the-interpreter/financial-regulation-australias-twin-peaks-model-successful-export (accessed 08 September 2018

350 A Schmulow "Financial regulation: Is Australia's 'twin peaks' model a successful export?" (2016) https://www.lowyinstitute.org/the-interpreter/financial-regulation-australias-twin-peaks-model-successful-export (accessed 08 September 2018

351 A Schmulow "Financial regulation: Is Australia's 'twin peaks' model a successful export?" (2016) https://www.lowyinstitut e.org/the-interpreter/financial-regulation-australias-twin-peaks-model-successful-export (accessed 08 September 2018).

352 Schmulow (2015) 2.

353 Schmulow (2015) 3.

the model as specifically implemented in Australia has gained so much popularity that a number of countries have since adopted the model, while others contemplate doing the same. Accordingly, this chapter has explored the Australian Twin Peaks model as well as the challenges encountered within the Australian model and ultimately attempted to decipher whether or not the model is transferable or not. What has emerged is that, the success of the model in Australia cannot wholeheartedly be attributed to the model per se but can also be attributed to specific factors that made it conducive for the model to thrive in Australia; factors that may or may not exist anywhere else in the world. In conclusion, it is this discourse's submission that the Twin Peaks model of financial regulation is indeed transferrable subject to the presence of the extraneous factors alluded to above.

CHAPTER 4

IS TWIN PEAKS THE CURE FOR SOUTH AFRICA?

4.1. FINAL REMARKS

As already iterated throughout the course of this dissertation, the Twin Peak model of financial regulation is a system that calls for regulation to be facilitated with end goals in mind, these being financial stability and market conduct integrity and consumer protection. It is for this reason that the model dictates that the regulation of a financial system be partitioned between two main regulators, one tasked with the prudential regulation of financial institutions and the other with market conduct regulation and consumer protection. Experts in the subject matter have advanced arguments relating to the benefits of the model that have contributed to it being hailed as the best of the four existing regulatory models. These advantages namely being that: the Twin Peaks model has been praised as the model best equipped to keep up with financial innovations, the ever increasing complexities of financial markets and the growing of financial institutions both in size and interconnectedness.[354] It is thus well suited to address the regulation of financial conglomerates.

Furthermore, the model is praised for significantly decreasing the danger of one regulatory objective dominating the regulatory landscape.[355] The reason for this being that the Twin Peaks model by its very nature, dictates that the two regulatory functions namely financial system stability (which includes prudential regulation) and market conduct and consumer protection function and, more importantly, the agencies responsible for either function be independent of each other and equal to each other.[356]

In addition, the model is said to be the most advantageous because the dividing of financial regulation between two distinct agencies allows for regulators to have

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[354] A Godwin, T Howse & I Ramsey "A jurisdictional comparison of the twin peaks model of financial regulation" (2016) Vol. 18 Journal of Banking Regulation 103-131 105. Hereinafter referred to as ("Godwin, Howse & Ramsey (2016)").

[355] Godwin, Howse & Ramsey (2016) 105.

[356] A Schmulow "Twin Peaks: A Theoretical Analysis" (2015) CIFR Paper No. WP064/2015 https://ssrn.com/abstract=2625331 or http://dx.doi.org/10.2139/ssrn.2625331 (assessed 21 March 2018) 1-41 6-9. Hereinafter referred to as ("Schmulow (2015)").

specifically dedicated objectives and clear mandates,[357] which can in turn result in regulators being more effective.[358] As a result, the model is said to do away with a conflict of interest that is inherent in the unified model of financial regulation,[359] which is inevitably bound to arise in the latter due to the fact that the model "combines both stability and business conduct considerations in one mega-regulator".[360]

Despite being deemed the best regulatory model, the Twin Peaks model does have certain disadvantages and thus, justice would not be done if they were not mentioned. The most significant of these to emerge has been the constant danger that cooperation and coordination between the regulators may be wanting,[361] a problem that Australia constantly, is confronted with in the application of their model. Another disadvantage to consider is the susceptibility of the model to regulatory overlap, which if not properly managed is bound to be burdensome on the institutions subject to the regulation, and which may lead to deplorable coordination and information sharing.[362] Furthermore, subject to the location of the prudential regulator, there might be a conflict of interest that may arise between monetary policy and financial stability considerations in the event that the prudential regulator is housed within a central bank.[363]

4.2 IS TWIN PEAKS THE CURE FOR SOUTH AFRICA?

In the wake of the Global Financial Crisis (GFC), South Africa (SA) like many other countries embarked on an assessment of its financial sector in an attempt to ascertain the effects that it may have suffered as a result of the GFC.[364] What soon became apparent was that SA to a large extent did not fall victim to the GFC and as such was

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[357] Godwin, Howse & Ramsey (2016) 105.
[358] Scmulow (2015) 4.
[359] Godwin, Howse & Ramsey (2016) 105.
[360] A Schmulow "The four methods of financial system regulation: An international comparative survey" (2015) Vol. 26 JBFLP 151-172 169. Hereinafter referred to as ("Schmulow 26 (2015)").
[361] Godwin, Howse & Ramsey (2016) 106.
[362] Godwin, Howse & Ramsey (2016) 106.
[363] See Godwin, Howse & Ramsey (2016) 106; A. Godwin & A. Schmulow "Financial sector regulation bill in South Africa, second draft: lessons from Australia" (2015) Vol. 132 South African Law Journal 756-768 758-761. Hereinafter referred to as ("Godwin & Schumulow (2015)").
[364] See Department of National Treasury "A safer financial sector to serve South Africa better" (2011) http://www.treasury.gov.za/twinpeaks/20131211%20-%20Item%202%20A%20safer%20financial%20sector%20to%20serve%20South%20Africa%20better.pdf (accessed 12 August 2018) 1-85 12-13. Hereinafter referred to as ("A safer financial sector to serve South Africa Better (2011)").

declared to have successfully weathered the GFC.[365] Credit for this was awarded to various practices that SA had stayed clear of; practices that had eventually led to the downfall of countless other economies, the most important of these being *inter alia* the fact that SA prior to the eruption of the GFC had not followed the global trend of light touch regulation that had swept up the world,[366] which as seen in Chapter One was cited as one of the causes of the GFC. As a result, SA is said to have had a sound financial regulatory framework which served the country well when the moment of truth arrived.

Furthermore, the observance of appropriate and conservative risk management practices by South African Banks was also cited as an insulator of the GFC.[367] The most important of these being the fact that domestic banks had little participation in the market of securitisation and derivatives, if at all.[368] As a result, SA was hardly exposed to the monstrosities of securitisation which as discussed in Chapter One was responsible for perpetuating the GFC.

The most important of these however, has got to be the fact that the country's financial sector was not heavily invested in foreign markets, which meant that the country had limited exposure to foreign assets.[369] It is for this reason that when the camel's back (in this instance being the United States housing market) collapsed, SA as a result of limited interaction with that market, was left unscathed.

Consequently, having had an opportunity to interrogate the GFC and its effects in relation to South Africa, the question that begs to be answered is if South Africa did not fall victim to the GFC and was left relatively left unscathed, then what exactly was the driving force behind what seems to be its drastic decision to overhaul its financial regulatory framework and adopt the Twin Peaks model of financial regulation? - whether such a decision, which is under way was warranted or not? The argument being, why fix that which is not broken?

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[365] A safer financial sector to serve South Africa Better (2011) 13. Also see J De Jager "The South African reserve bank: blowing winds of change" (Part 2) (2013) Vol. 25 SA Mercantile Law Journal 492-512 498. Hereinafter referred to as ("De Jager (2013 2)").
[366] A safer financial sector to serve South Africa Better (2011) 13.
[367] A safer financial sector to serve South Africa Better (2011) 14.
[368] A safer financial sector to serve South Africa Better (2011) 14
[369] A safer financial sector to serve South Africa Better (2011) 14

4.3 WHAT SOUTH AFRICA WILL NEED TO MAKE THE MODEL WORK: LESSONS LEARNT FROM THE PIONEERS AND RECOMMENDATIONS.

If there is one thing that this discourse cannot argue with it is the fact that of the four models of financial regulation that are currently employed in the world (that is, the Institutional or Silo model, the Functional model, the Integrated model and the Twin Peaks model), the Twin Peaks model has emerged not only as the best model of the four but as the model best equipped to foster financial stability. The reason for this widely spread popularity being of course due to the success that the model witnessed in Australia, where it was pioneered, which is the country that has been using the model the longest, having first implemented in 1996. Consequently, as already iterated in Chapter Three, Australia's institutional framework and financial system, although not immune from the effects of the GFC is said to have performed the best compared to countless other financial systems the world over. A fact which has inter alia been attributed to the Twin Peaks Model. It is thus for this reason that the model is being elevated to the point where it is considered to be the most effective model. A model that is best equipped to address flaws that might be present in markets that are considered to be thinly regulated or not regulated at all, markets where the most problematic issues arose as a result during the GFC era.[370]

However, what soon became apparent as this discourse delved deeper into the subject matter was that the success of the Twin Peaks model and the subsequently fame that it acquired post the GFC cannot be exclusively attributed to the model in itself but should also be attributed to the other factors that are extraneous of the model. It is these factors have been equally responsible for the success enjoyed by the Twin Peaks in Australia. Factors which as discussed in Chapter Three are pivotal to the success of any country that currently utilises the model or plans to do so: such factors ranging from the fact that the functions of the peak regulators should not be subjected to any political interference and that the personnel within each peak should be highly skilled and highly incorrupt. Furthermore, for the model to thrive it needs to operate in an environment where the professional legal fraternity is adjudicated over by a fiercely independent judiciary, one that not only is uncorrupted, but also exists within a state

[370] Scmulow (2015) 2.

based upon the rule of law. In addition, most important of all, the model requires the highest possible level of inter-agency cooperation and collaboration if it is to have any chance at success. It therefore follows that, South African in implementing the Twin Peaks model of financial regulation, will have to be highly vigilant in ensuring that these factors are always present at the highest level.

The reasons for this being, of course as we conclude is that, the whole basis of the Twin Peaks model of financial regulation is not necessarily to prevent a financial crisis altogether as it has been noted that one of its downfalls is that it is highly susceptible to financial crisis due to its inability to prevent the collapse of individual financial firms.[371] Rather, the function of a Twin Peaks model is to facilitate or rather allow for the early detection of warnings signs that a financial crisis may occur as a result of the failing of a particular financial firm.[372] Furthermore, although arguments can be made, and strongly at that, that the Twin Peaks model is the optimal model for financial system regulation, it is not a model that guarantees everlasting firm solvency, nor does it claim to be able to prevent the collapse of individual firms.[373] This is because as noted by Schmulow, the Twin Peaks model "does not have the answer if the collapse of one bank should lead to a widespread depositor panic and widespread financial firm distress", which points to the fact that the likelihood of the model being overwhelmed by a crisis are extremely high as was the case with the Netherlands. If anything, the regulatory function of the model allows for the early detection of warning signs that a financial system might be in trouble.[374]

Overall, we conclude by reiterating what we deem to be the wise words of Schmulow when he states that although "Twin Peaks does have much to commend it, it is by no means a panacea to financial crises and contagion. It is merely one arrow in an increasingly technical and disparate quiver".[375]

[371] Schmulow (2015) 16-18.
[372] Schmulow (2015) 16-18.
[373] Schmulow (2015) 16.
[374] Schmulow (2015) 18.
[375] A Schmulow "Financial regulation: Is Australia's 'twin peaks' model a successful export?" (2016) https://www.lowyinstitute.org/the-interpreter/financial-regulation-australias-twin-peaks-model-successful-export (accessed 08 September 2018).

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