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CENTER
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HOW AND HOW MUCH SHOULD DEPOSITORS BE PROTECTED? THE JAPANESE CASE

THURSDAY, MARCH 23, 2000

The issue of depositor insurance has great immediacy and saliency in Japan today. After March 31, 2002 the government's unlimited guarantee of all deposits is scheduled to revert to 10 million yen (about \$95,000) per depositor in each bank. Three major concerns will accompany this transition. First, a number of weaker banks will fail as the bad loan problems are gradually resolved. Second, if deposit insurance is limited, then weak banks will be made even weaker by depositor withdrawals in favor of deposits in stronger banks, or other financial assets, and hence are even more likely to fail. Third, until March 31, 2002 government financial aid to assist the merger of weak financial institutions can be greater than the amount of formal deposit insurance coverage. ■ On March 23, 2000, the Center on Japanese Economy and Business and the Mitsui USA Foundation, co-sponsored a symposium to discuss whether Japan should develop and maintain market discipline on banks to reduce moral hazard, or to provide additional deposit insurance coverage, or other forms of guarantees for depositors and even banks. The symposium featured Professor Mitsuhiro Fukao of Keio University and Curtis Milhaupt, Fuyo Professor of Law and Director of the Center for Japanese Legal Studies at Columbia Law School. Frederick Mishkin, Alfred Lerner Professor of Banking and Financial Institutions, Columbia University, and David Weinstein, Carl S. Shoup Professor of the Japanese Economy served as commentators. The symposium was moderated by Professor Hugh Patrick. Excerpts of their presentations are presented below along with highlights of the intrapanel discussion.

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CURTIS MILHAUPT

Currently pending before the Diet is legislation that would re-institute the cap on deposit insurance in Japan and create permanent legal mechanisms to resolve insolvent banks. The legislation is a culmination of many complex and interrelated events with a long history. I think this legislation needs to be understood in historical context and placed within the larger debate about bank safety nets that is ongoing in Japan and other parts of the world.

Context is crucially important on several different levels. First, in reading Japanese editorials on the "payoff problem," I was struck by how often commentators suggested that limiting deposit insurance would have a destabilizing impact on the Japanese financial system, without any reference to the fact that Japan had limited deposit insurance from 1971 to 1996. The historical record is important to the current policy debate. Second, Japan can and should learn from its own experience with deposit insurance. Reflecting on what has transpired provides some grounds for optimism and some areas of concern in connection with the new legislative proposals. Third, Japan's experience with deposit insurance is instructive on the larger debate about bank safety nets and deposit insurance. I would like to begin with this third point.

As you know, there is a long

standing theoretical and policy debate about deposit insurance in the U.S. For a time, deposit insurance was thought to be one of the most successful of the New Deal programs. That evaluation changed dramatically after the banking and Savings and Loan crises of the 1980s. Now, deposit insurance is associated with moral hazard and regulatory forbearance. Ironically, deposit insurance actually *increases* the risk of bank failure once a bank has fallen into financial difficulty, because its shareholders and managers have incentives to gamble on high-risk projects. If the project succeeds, the shareholders are rewarded and the managers keep their jobs. If the project fails, the bank becomes the taxpayers' problem. Not surprisingly, the policy conclusions from the U.S. debate are that government sponsored deposit insurance should be eliminated and privatized. It is important to note that many of the policy recommendations are based only on the U.S. experi-

ence with deposit insurance. Japan offers some additional insights into this debate.

Japan's experience with the governance of bank distress can be divided into three periods for purposes of analysis. First, an implicit safety net was in effect for most of the postwar period, until about 1991. (From 1971 to 1996, there was an explicit deposit insurance system in place, but it was entirely symbolic and did not play a role in the resolution of bank distress.) The real insurance came implicitly from the Ministry of Finance. This informal safety net was supported by the entire institutional, regulatory, and political regime in Japan. The Deposit Insurance Corporation was very poorly funded and staffed; it could not have resolved a failing bank even if it had been designed to do so. The role contemplated for the Deposit Insurance Corporation was extremely limited—simply paying off depositors of failed banks. The Ministry of Finance's



Curtis Milhaupt

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reputation was very important in this informal safety net. The political dominance of the LDP during this period provided assurances that the informal “no failure” norm in the banking industry would not be violated.

Interestingly, the formal institutional structure actually motivated *informal* bank work-outs in two ways. First, unlike U.S. banking law, Japanese law did not have any special provisions for bank insolvency. The law contemplated that failing banks would simply go through the corporate bankruptcy process. This is unworkable, however, because banks trigger deposit runs as soon as they signal that they are distressed. Second, the Deposit Insurance Law did not contemplate that the deposit insurance corporation would play a role in providing financial assistance for mergers. The law was changed in 1986, but stated that financial assistance had to be limited to the hypothetical cost of paying off depositors. Thus, the Ministry of Finance actually had incentives to bypass the legal system and provide for informal workouts.

In the second stage of Japanese deposit insurance, approximately 1991–1998, the informal safety net broke down. The financial problems in the banking industry became too severe to be handled on an ad hoc and entirely informal basis. The Ministry of Finance was unable to find willing merger partners for failing banks, due in part to the fact that an outburst

of derivative litigation had made Japanese bank managers conscious of their legal liability to their shareholders. The reputation of the Ministry of Finance began to unravel due to a variety of scandals. Perhaps most importantly, market sentiment turned decidedly against the informal safety net in the form of the Japan premium, which was clearly a market premium for the unusual systemic risk brought about by the informal safety net.

The third stage, which began in approximately 1996, is a period of institutionalization of the safety net. Several important developments during this period indicate a shift toward more formal, law-based methods of resolving bank distress. First, a system of “prompt corrective action” was instituted in 1996. This system, which is based on U.S. law, is designed to eliminate politically palatable but economically disastrous regulatory forbearance. Regulators are now required to take increasingly stringent steps with respect to banks in financial distress, which is measured by objective criteria. For the first time there are legal constraints on the ability of Japanese regulators to remain passive in the face of serious problems in the banking industry.

Second, there have been major reforms of bank supervisory agencies in Japan. Much of the oversight authority of the Ministry of Finance has been transferred to other regulatory

agencies. Third, banking legislation enacted in 1998 (set to expire in 2001, prompting the current “payoff” debate) installed for the first time a legal regime for insolvent bank resolution. The final step in this process is the banking legislation currently pending before the Diet.

I would like to highlight two major features of this legislation. It reinstates the 10 million yen cap on deposit insurance, subject to a systemic risk exception similar to the exception that exists in U.S. law. I will say more about this exception in a minute. The legislation also contemplates a U.S.-style purchase and assumption method of dealing with failing banks. Under the *P&A* system, a failing bank is identified through regulatory inspections and a willing buyer is found for the “clean” assets of that bank. The buyer takes on the clean assets and all liabilities of the bank, leaving the “dirty” assets for the Deposit Insurance Corporation. This system minimizes outlays by the deposit insurance fund and provides for prompt resolution of the failing bank. In most cases, the regulators enter the bank on Friday afternoon, and it reopens under new management on Monday morning.

What do we learn from this brief review? First, explicit deposit insurance played no role in Japan’s financial crisis. All of the moral hazard and forbearance effects that contributed to Japan’s banking problems can be placed on the doorstep of the

informal safety net. I think it suggests that the alternative to deposit insurance is not market discipline of banks, which is the common assumption in the literature in the U.S. about deposit insurance. Rather, the real world alternatives are a bank safety net that is institutionalized and formalized in law, and a bank safety net that is operated informally at the discretion of bank regulators. Given that real world choice, I think a formal system is far preferable to an informal system.

Further, I think our focus should shift from deposit insurance per se to bank closure. It does not matter very much whether Japanese depositors are protected up to 5 million yen or 15 million yen. Small depositors lack the information and expertise to monitor bank management anyway, so protecting them in and of itself is not problematic. What matters is whether a government has credible bank closure policies in place. Market principles can operate in tandem with deposit insurance if bank shareholders, managers, and large depositors know that they will be penalized in the event the bank fails.

I think developments in Japan are very encouraging, but significant questions remain that can only be resolved with time. For example, can the purchase and assumption system function effectively in Japan? This system requires accurate and prompt disclosure of financial problems, primarily through bank inspections.



Mitsuhiro Fukao and Frederick Mishkin

Japan has yet to prove that it has a viable bank inspection system. Second, in order to encourage bidding on a failing bank's assets, potential buyers need confidence that what they purchase are in fact *good* assets. That confidence is provided through a realistic loan classification and bank examination system. Again, Japan has yet to prove that this system exists. A second area of concern is the system risk exception. The legislation provides that in a "crisis situation," a special committee headed by the Prime Minister can provide unlimited deposit insurance protection, special capital contributions and other benefits to a failing bank. The problem is that "crisis situation" is defined very broadly, leaving ample room for ill advised or politically motivated bank rescues.

MITSUHIRO FUKAO

There are three problems in the current deposit insurance system. First, there is no permanent bankruptcy code for banks. The Financial Revitalization Law

passed in 1998 will expire in March 2001. Second, depositors must wait several weeks to withdraw money from failed institutions. The reason is because a depositor identification system is lacking. In Japan, there are no social security numbers so it is difficult to check whether a person has deposited more than 10 million yen in aggregate. Third, the deposit insurance system does not cover interests.

The Financial System Council has made five recommendations in their report to reform the deposit insurance program. First, the coverage of the system should be expanded to include interest accrued from deposits, local government deposits, and a portion of bank debentures. The postal savings system, operated by the government, guarantees both the principal up to 10 million yen per person and its interest. Second, liquid deposits will be fully protected for a limited time. This comes as a result of pressure from small firms and small financial institutions. Third are

new permanent bankruptcy procedures for banks. Fourth are preparations for a depositor identification system in the event of bank failures, and fifth, the introduction of variable insurance premiums in the future.

I think there are several problems in the Council's report. I felt that there was strong stage management by the Ministry of Finance and the presence of vocal observers, who are not actual Council members, was excessive. Although the report recommended the protection of all liquid deposits, I do not think that there was strong support for it among the proper members of the Council. A proposal for a new Deposit Insurance Law followed the Council's report. The new law effectively postpones the application of a minimum cost principle from April 2001 to April 2003. The law actually states a one-year postponement of the application of a minimum cost principle, but I think it is two years because a full guarantee of liquid deposits will continue until March 2003.

There is also a systemic risk exception that will be decided by a new Financial Risk Management Committee. They will probably develop a system similar to the one in the U.S. The Committee will be comprised of the Prime Minister, the Chief Cabinet Secretary, the Minister on Financial System, the Minister of the Treasury, the Head of the Finance Agency, and the Governor of the Bank of Japan.

What are the remaining problems in the Japanese deposit insurance system? First, Japan needs a variable deposit insurance premium to avoid moral hazard problems. Second, it is necessary to eliminate insolvent financial institutions, such as weak regional banks, credit unions, and agricultural cooperatives. Third, is the removal of the full protection of liquid deposits. The full protection of liquid deposit is not a good idea because it may destabilize fragile banks by inducing anxious depositors to shift from their time deposit to liquid deposit. Fourth, how does one control the Postal Saving System? The Postal Saving System is fully guaranteed by the government up to 10 million yen, they pay no local business or corporate tax, and remain outside the deposit insurance system. Fifth, there are many dormant accounts at banks with no maintenance charges, only Citibank charges. Sixth, stronger internal and external auditing is very important. Currently, major Japanese banks pay about 0.3–0.5 million dollars per year for external auditing. This is less than one-tenth of the amount of U.S. banks. Large U.S. banks pay about 5–25 million dollars per year.

FREDERICK MISHKIN

It is very important to be aware of both the legal and cultural aspects of the deposit insurance

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— FUKAO*

systems we implement. Certain things that we might advocate in the U.S. context might be inappropriate in the context of another country with a very different way of doing things. As I have advocated elsewhere, in the U.S. having more ambiguity as to whether depositors will be paid off might limit moral hazard. However, in the Japanese context, it might very well do the opposite because it likely would result in a blanket guarantee which would create serious a serious moral hazard problem.

We also need to recognize that deposit insurance is not the same thing as a safety net. A strong safety net is not contingent upon whether a deposit insurance system has been implemented or not. There are many countries which did not have explicit deposit insurance and yet it was clear to the banks and the public that if a serious crisis did emerge, everyone would be bailed out. This often results in banks taking great risks. For example, the deposit insurance system in Scandinavia was almost nonexistent and yet everyone knew that there would be a full bailout if a problem occurred, with the result that banks took huge risks when financial liberalization occurred.

The key point is that one must understand that a safety net will almost surely be in place regardless of whether one has deposit insurance or not. With respect to Japan, the real problem was that there was a blanket deposit insurance guarantee

with little concern about limits. Some claim that if deposit insurance is eliminated banks can engage in many different activities and the market will provide the appropriate discipline to keep banks from taking excessive risks. I disagree. I do not know of any country in the world that will not bailout its banking system if it gets into trouble, even where there is no deposit insurance.

A second important issue is whether bank institutions that do not have enough net worth should be closed down? With low net worth, banks know they have nothing to lose by taking risks. What we have seen is that the safety net means that people realize that their deposits are protected and negative net institutions will take huge risks which eventually hit the tax payers very heavily because they can still get deposits. The real issue is that there must be credible bank closure policies.

With respect to the purchase and assumption system, I am concerned that it might be problematic. Before the FDICIA Act in 1991, all closures of banks were done with a purchase and assumption methodology. This meant that all depositors were bailed out 100 percent, creating a severe moral hazard problem. The change in law in FDICIA enacted a lease cost resolution method which sometimes used purchase and assumption but often used liquidation which imposed costs on large uninsured depositors and

creditors. The key point is that bank closure should impose costs on large depositors and creditors when the taxpayer suffers losses.

I think the systemic risk exception is a very good feature of the U.S. prompt corrective action legislation which came into being with the FDICIA Act of 1991. I think the issue here relates to an active debate in monetary economics called the Rules versus Discretion debate. Rules can prevent people from engaging in time-inconsistent behavior in which policymakers pursue short-run policies that will lead to problems in the long run. This is a very serious issue for financial supervision. Regulators have a tendency to sweep things under the rug because they hope things will blow up only after they have moved to another job or instead hope that they will get lucky and the system will recover.

However, rules suffer from the problem that one can not always figure out all of the contingencies. As a result, there are cases where just applying the rules in a rigid fashion will get one in trouble. Thus, many policy-makers think we should have a lot of discretion. The problem is that discretion leads to time-inconsistent behavior. How does one deal with this? The answer is to set up a set of rules which should be violated only in highly unusual circumstances, but if they are violated it must be very transparent. This was the idea of the systemic risk

exception in the U.S. context.

Will the systemic risk exception work as well in Japan as it has in the U.S.? In the U.S. there is tremendous scrutiny if one goes public which will in fact impose the proper constraint that only under very unusual circumstances will the systemic risk exception be implemented. This type of transparency may not operate as well in Japan. This is why I feel culture really matters when dealing with these kinds of issues.

Theoretically, the problem with depositor insurance is not that it exists, but that premiums are not suitably adjusted for risk. If one could appropriately assess how much risk a banking institution was taking and could appropriately charge for it, then the incentive for them to engage in moral hazard would be eliminated. Indeed, we do not find there as a serious moral hazard problem with private insurance arrangements because there is premiums are appropriately adjusted for risk. Unfortunately, designing appropriate risk-based premiums for deposit insurance is very hard to achieve.

DAVID WEINSTEIN

One of the things that have led to the current financial crisis was the question of how the Japanese government was going to liberalize its financial market. The dilemma was whether the government would follow a rapid liberalization policy or a

gradual policy. In the end, Japan adopted a gradual approach, and one of the major problems of that approach was a host of perverse incentives in the Japanese financial system. For example, as bond markets liberalized good clients left their main banks leaving the main banks with the worst firms. The main banks then started to move in to other sectors and there was a general unraveling of the financial system. One answer as to why the Japanese government chose this method is that it was afraid of the repercussions of rapidly liberalizing Japan's financial markets. How does the financial system liberalize and how does one deal with the problems? I do not think there are very good answers to these questions.

There are three lessons to learn from Japan's experience. First, the prewar financial system did not have nearly the same level of regulation or insurance of financial institutions. Second, wild fluctuations in Japanese finance did not exist prior to World War II. From my perspective, it is interesting how well the system did without insurance or guarantees from the government. Third, one should not be too afraid of systems with less insurance.

With respect to the costs for deposit insurance, one question is whether the costs of deposit insurance are as high as some suggest, or are they less and, what is the optimal way to control these costs? Some of the costs are 20–30 percent of GNP.

However, this is not a true economic cost. The issue of distribution versus real economic cost is one issue. The actual amounts of money that are being shifted around in the bailouts are far smaller than the amounts of redistribution that typically occur from trade policy interventions. These are very visible transfers and have clear effects on the government budget.

What is the dead weight loss associated with this crisis? I think it can be estimated by what the excess construction was as a result of the moral hazard and a measure of the price differential of what those assets are worth today compared to before the crisis. My guess is that it would be a pretty small number, but a much larger number if one looks at the dead weight loss of the financial disintermediation that has occurred as a result of this crisis.

The real cost of a financial crisis is not the money being spent by the government, but the costs associated with financial disintermediation. How should one design a rescue package for financial institutions? I think one primary objective of a policy to bail out financial institutions is that it be politically implemented quickly. Speed is a very important factor. The real cost of the current crisis may in fact be the immense time it took for the Japanese government to act. It is crucial to design policies that are likely to politically generate fast resolutions even if those resolutions are not effi-

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— WEINSTEIN

cient in terms of dead weight loss triangles.

I am a harsh critic of the Postal Savings System. If one believes that financial disintermediation is a major problem in Japanese financial markets today, the one thing that is striking in postal savings is the enormous increase in lending by government financial institutions. There is a lot of money flowing into the system and a large amount of lending coming out of the system which may in fact be alleviating some of the disintermediation that is occurring in the private sector. I do not think that this is a good long-run strategy, but it is a partial solution to some of the problems in the market.

INTRAPANEL DISCUSSION

PATRICK: It seems to me that there are two ways to protect depositors. One is to have a safety net and the other is to

have a strong banking system so a safety net is unnecessary. This was implied when the Japanese said they needed to get rid of the weak banks. Indeed, that was the purpose of the prompt corrective action approach, which was designed to provide objective criteria. For example, when the net worth of a bank falls below two percent, then the bank must replenish its capital or face being closed down. In principle, the approach exists, but it has not yet been applied in practice. This leads to a very important political reality as Professor Fukao mentioned.

There are a number of small, very weak institutions that are small in terms of their share of total deposits, but very strong in terms of their geographic distribution and political power. A formal guidance approach without actually tackling the problem is an appeal that pits those who would like to liberalize and strengthen the economy against those who are trying to protect

their own vested interests. The vested interests of the politicians in the smaller areas is to protect the smaller institutions. Consequently, there is a terrible political and policy dilemma, which is why it is important to have transparency in Japan.

FUKAO: In order to have 100 percent coverage through prompt corrective action banks need four percent capital. The reason is that Japanese banks do not own enough profit margins. Low profitability is a core problem and banks have not implemented an internal control mechanism to create enough of a profit margin to cover potential future losses from bad loans. Second, compared to the regulated banking system the postal savings system is better. The private sector has not proven to be competitive against the postal savings system. With respect to transparency for systemic exception, I hope it works. The new policy board of the Bank of Japan has been issuing fairly detailed minutes. If the government intervenes it will be obvious from the outside. In that sense Japan is moving toward a more transparent system, particularly in the decision making process.

MISHKIN: I also agree that the real key costs in Japan are not the transfers of money, but the fact that the financial crisis stopped the financial system from doing its job which is getting funds to people who have productive investment opportu-

nities. Japan has had a GDP gap on the order of 30 percent of GDP because of this. Part of the issue is that a quick resolution is needed. In the U.S. we put a large amount of assets into the resolutions trust corporation and there was a lot of criticism when they were selling off the assets quickly because many people ended up with good bargains. However, the answer is that those assets are much better off being put in new hands and put into productive use rather than just deteriorating.

I think one mistake made in Japan is that no one has been punished during the bailouts. The public needs to know that people are not getting away with fraud. One of the characteristics of the Japanese system for the last decade is that everyone was being bailed out, including the depositors, large creditors and even the stockholders. This is actually characteristic of many other countries where bailouts occur. In the U.S. there has been an attempt to punish people who engaged in fraudulent type activity.

I think part of the lesson moving forward is to keep the political process in mind. Japan needs to bite the bullet, re-capitalize their banking sector and get the political support to do it. This means going after some people and making a cultural change. The inherent strengths of Japan's economy are extraordinary, but it needs to be tapped.



David Weinstein

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「預金保険制度による預金者保護はどこまですべきなのか？日本の教訓」

2000年3月23日
於 コロンビア大学

日本経済経営研究所は、米国三井物産財団との共催で、「預金保険制度による預金者保護はどこまですべきなのか？日本の教訓」をテーマにシンポジウムを行った。パネリストとして、深尾光洋教授（慶応大学商学部）、カーティス・ミルハウプ教授（コロンビア大学ロースクール）、フレデリック・ミシュキン教授（コロンビア大学ビジネススクール）、デビッド・ウェンステイン教授（コロンビア大学経済学部）が参加、シンポジウムの進行をヒュー・パトリック教授（コロンビア大学ビジネススクール）が務めた。以下で討議内容及び各パネリストの発言を簡単に紹介する。

中心となった論点は、1) 預金保険制度自体とより広義なシステムを意味するセイフティー・ネットは区別して考える必要があること、2) 純資産が不十分になった銀行をいかに清算するか、3) 日本における今回の金融システム危機の経済コストをどう考えるべきか、4) 銀行はいかにガバナンスされるべきなのか、などである。

ミルハウプ教授：これまでの預金保険制度及びセイフティー・ネットに関する議論は米国での経験のみに基づいたものであり、その意味で今回の日本のケースはその議論に新しい材料を提供するはずだ。日本で特徴的だったインフォーマルなセイフティー・ネット・システムは1991年から98年にかけて機能不全に陥ったと言っている。それへの対応として、96年には預金保険法が改正され、また早期是正措置が導入された。更に98年には金融再生法と早期健全化法が成立し、フォーマルな法的整備が進められた。その内容に関しては、1) P&A が果たして日本で機能するの かどうか。これを可能にするためには、スピーディーで精確な銀行検査及び銀行の保有資産の精査が不可欠であるが、現在のところそのための十分なシステムが構築されているとは言えない、2) システム・リスクの認定の乱用により政治的な銀行救済がなされる可能性がある、の2点を問題点として指摘しておきたい。

深尾教授：金融制度調査会が提案している預金保険制度の改革案には様々な問題がある。流動性預金を全額保護の対象とした点、などだ。預金保険は各行の健全性のレベルに基づいた可変保険料率にすべきであり、更に、収益性が低くなった銀行を清算するための具体的な手順が必要とされている。もとより、日本の銀行の最大の問題点はその収益性の低さにある。そして、不良債権を抱え込んだ後も、その処理を可能にするだけのマージンの拡大を図れなかった。

ミシュキン教授：預金保険制度のあり方は各国の法的、文化的環境によって異なってきて当然である。注意すべきは、預金保険制度とセイフティー・ネットを混同しないことだ。金融システムが危機に瀕した場合、たとえ預金保険制度がない国においても、金融システムは守らざるを得ない。と考えるならば、ポイントは、純資産が十分な水準でなくなった銀行をいかにスムーズに清算するか、という点になってくる。純資産の水準が低くなってしまった銀行は過大なリスクをとろうとするだけで、その後の国民の税負担を増やすだけだ。システム・リスクが認定された場合の例外条項は米国ではうまく機能しているが、日本ではうまくいかないのではないかと。システム・リスクの認定に当たり日本では米国ほど徹底的な精査が実行されるとは思えない。今回の日本の金融危機への対応でまずかったのは、銀行の救済に伴って法的に責任の所在をはっきりさせなかった点だ。詐欺行為は罰せられるという当然の認識がもっと浸透する必要がある。

ウェンステイン教授：まず、今回のことで、金融システムの自由化はどのように進めるべきなのかを問い直す必要がある。現在のところ、はっきりした答えは出ていない。また、今回の金融危機に伴った経済コストをしっかりと吟味しておくべきだ。中でも注目すべきなのは、実物経済が必要としている流動性が十分に供給されず、その結果生じたコストは予想以上に大きかった、ということだ。政府の政策スピードの遅さがそのコストを増大させた。今回の危機に際しては短期的に財政投融資が流動性の供給を補完した面は否めない。

以上

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