THE SENATE

BILLS

Financial System Legislation Amendment (Resilience and Collateral Protection) Bill 2016

Second Reading

SPEECH

Wednesday, 4 May 2016

BY AUTHORITY OF THE SENATE
Senator CANAVAN (Queensland—Minister for Northern Australia) (10:25): Once again, thanks to Senator Dastyari for his contribution and his support for the Financial System Legislation Amendment (Resilience and Collateral Protection) Bill 2016. It reminds us all and the public that, for the vast majority of legislation that goes through this place, we work together. This is an important piece of legislation. It has been in train since the global financial crisis in 2007 and 2008, and there has been a concerted international effort since then to reform international financial markets, including over-the-counter derivatives markets.

The Financial System Legislation Amendment (Resilience and Collateral Protection) Bill 2016 builds on progress already made in Australia and overseas to better regulate derivatives markets and facilitate the effective participation of Australian financial institutions in those markets. Specifically, it supports an international move to impose margin requirements for non-centrally-cleared derivatives. Margining is the process of exchanging collateral to protect against counterparty credit risk in financial contracts. It is intended to reduce the potential for contagion and spillover effects by ensuring that there is sufficient collateral available to offset losses associated when a counterparty to a derivatives arrangement defaults. In domestic and international over-the-counter derivatives markets, margin requirements are the next substantial wave of regulatory reform. Several other G20 nations either have already adopted final margin rules or are currently undergoing consultation to confirm them ahead of international margin requirements which come into effect in September of this year.

This bill amends the Payment Systems and Netting Act 1998 to enable entities subject to Australian law to give and enforce rights in respect of margin provided by way of security in connection with certain financial market transactions. It creates a facilitative regime that will enable financial institutions to comply with international margining requirements and any corresponding prudential standards set by the Australian Prudential Regulation Authority. This will ensure that institutions can continue to trade effectively and efficiently in domestic and international markets.

This bill also clarifies an inconsistency in Australian financial markets law. The bill does this by clarifying the way in which certain rights, known as close-out rights or as early termination rights, may be exercised by counterparties against Australian regulated financial institutions when those institutions become subject to resolution measures such as statutory management or judicial management. The clarification is made in a manner which is broadly consistent with international developments as set out in the Financial Stability Board's Key Attributes of Resolution Regimes for Financial Institutions and the International Swaps and Derivatives Association Inc.'s ISDA 2015 Universal Resolution Stay Protocol.

Finally, this bill will enhance financial system stability by providing legal certainty for the operation of approved real-time gross settlement systems, approved netting arrangements and netting markets—more specifically, market netting contracts—in all market conditions. These markets, systems and arrangements are fundamentally important to the stability of the Australian financial system. It is essential that the operation of these markets, systems and arrangements is protected even in difficult market conditions. The proposed amendments will ensure that participants in and the operators of these markets, systems and arrangements have cooperation in their operation.

The bill is a result of consultation with the Council of Financial Regulators, industry bodies, market participants and their advisers. All submissions received during the consultation process supported the bill's intent. With that, I commend the bill to the Senate.

Question agreed to.

Bill read a second time.