THE RISE OF COLLATERAL BASED FINANCE FROM THE PERSPECTIVE OF AUSTRIAN BUSINESS CYCLE THEORY

A Legal-Historical Analysis of How Financial Sector Rehypothecation Transformed Securities Ownership and Generated Systemic Risk: An Austrian Business Cycle Theory Perspective

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Abstract: This study examines the legal history and systemic implications of the financial industry's practice of rehypothecating client securities—assets repeatedly pledged across derivative and credit markets—and addresses a critical gap in economic and regulatory literature by developing a theoretical framework to explain its macro-financial effects. Grounded in Austrian Business Cycle Theory (ABCT), the analysis situates rehypothecation as analogous to credit expansion in the theory's critique of fractional reserve banking—constituting a form of credit creation unanchored from real savings. Legal reforms such as the 1994 UCC Article 8 revision and it's harmonization into EU securities law from 2004-2014, redefined property rights to financial securities as contractual claims called 'securities entitlements', which formed the international legal framework that authorized a previously unlawful industry practice. By linking these legal and structural transformations to the Austrian conception of cyclical instability, the paper demonstrates that asset bubbles fueled by widespread collateral reuse amplify systemic vulnerability—during market downturns, falling asset values trigger margin calls that rapidly exhaust the

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pledged collateral for initial margin, forcing widespread asset liquidations and funding shortfalls; this cascade effect, as outlined in official documentation, can drive a self-reinforcing death spiral of fire sales, liquidity stress, and counterparty defaults that propagate instability throughout the financial system parallelling the credit cycle of ABCT.

Keywords: Securities Entitlement; Property Rights; Collateral Reuse; Rehypothecation; Central Securities Depositories; Depository Trust & Clearing Corporation (DTCC); Austrian Business Cycle Theory (ABCT); Systemic Risk.

JEL Classification: K11; G01; E32.

Resumen: Este estudio examina la historia jurídica y las implicaciones sistémicas de la práctica del sector financiero de rehipotecar los valores de los clientes —activos pignorados repetidamente en los mercados de derivados y de crédito— y aborda una laguna importante en la literatura económica y regulatoria mediante el desarrollo de un marco teórico para explicar sus efectos macrofinancieros. Basado en la teoría austriaca del ciclo económico, el análisis sitúa la rehipotecación como análoga a la expansión crediticia dentro de la crítica de la teoría austriaca del ciclo económico a la banca de reserva fraccionaria, lo que constituye una expansión crediticia desvinculada del ahorro real. Las reformas legales, como la revisión del artículo 8 del Código Comercial Uniforme (UCC) de 1994 y su armonización con la legislación de la UE en materia de valores entre 2004 y 2014, redefinieron los derechos de propiedad sobre los valores financieros como derechos contractuales denominados «derechos sobre valores», lo que constituyó el marco jurídico internacional que autorizó una práctica industrial anteriormente ilegal. Al vincular estas transformaciones legales y estructurales con la concepción austriaca de la inestabilidad cíclica, el documento demuestra que las burbujas de activos alimentadas por la reutilización generalizada de garantías amplifican la vulnerabilidad sistémica: durante las caídas del mercado, la caída del valor de los activos desencadena ajustes de márgenes que agotan rápidamente las garantías pignoradas para el margen inicial, lo que obliga a liquidaciones generalizadas de activos y a déficits de financiación. este efecto en cascada, tal y como se describe en la documentación oficial, puede provocar una espiral de muerte que se refuerza a sí misma, con ventas urgentes, tensiones de liquidez e impagos de las contrapartes, que propagan la inestabilidad por todo el sistema financiero, en paralelo al ciclo crediticio de la teoría austriaca del ciclo económico.

Palabras clave: Derechos sobre valores (Securities Entitlement); Derechos de propiedad; Reutilización de colateral; Rehipotecación; Depositarios centrales

de valores; Depository Trust & Clearing Corporation (DTCC); Teoría Austríaca del Ciclo Económico (ABCT); Riesgo sistémico.

Clasificación JEL: K11; G01; E32.

1. **Introduction**

Over the past half century, the financial services industry has undergone a structural evolution from its traditional role in fractional-reserve banking, where deposits were intermediated to fund production and business investment in the real economy, to a collateral-driven system of speculative finance, in which layers of rehypothecated financial assets now circulate through global markets at proportions that dwarf the underlying base of real world capital. (International Capital Market Association, 2025)

The transformation of modern finance into a collateral-based system, in which client securities are continuously reused to sustain derivative and interbank leverage, is the outcome of a half-century industry lobbying effort that fundamentally undermined the legal treatment of property rights to financial securities. From the consolidation of clearing systems in the 1960s to the global harmonization of depository regulations in the early 21st century, a layered legal architecture that progressively redefined securities ownership and collateral rights was enacted that favored liquidity creation over property integrity.

Viewed through the lens of Austrian Business Cycle Theory (ABCT), these legislative enactments amount to the formal institutionalization of what can be described as asset expansion— a process analogous to credit expansion, as understood by Mises and Hayek. In the classical Austrian framework, business cycles are driven by the creation of fiduciary credit unbacked by real savings, which distorts the structure of production. In the present financial order, the same pattern emerges through the multiplicative reuse of existing securities as collateral, whereby the creation of financial assets expands independent of real assets, goods or services.

The growth of the collateral-based financial system resulted in a rehypothecated expansion of financial assets that heightens systemic

risk of a significant market correction. Within the framework of repo contracts and interconnected collateral chains, episodes of market decline that precipitate collateral calls reveal an insufficiency of underlying assets relative to the claims of secured creditors. Applying the Austrian business cycle theory to these dynamics suggests that the unprecedented asset growth observed in recent decades, lacking adequate collateral backing, is likely to culminate in a corresponding contraction. An open question remains as to whether persistent asset expansion can be sustained indefinitely through the intervention of central banks and active financial regulation, or whether inherent constraints will eventually assert themselves.

The transition to a collateral based financial system produced an expansion of financial assets through rehypothecation that accelerates market velocity and efficiency at the expense of producing inherent systemic risk.

This paper documents the key legislative and regulatory milestones that have shaped the legal treatment of collateral reuse, conforming securities law to allow previously unlawful industry practices that undermined investor's property rights. Beginning with the "paperwork crisis" of 1968, which prompted the creation of the central securities depositories such as the Depository Trust Company (DTC) in the United States and Euroclear in Belgium (SEC Historical Society, 2018). The introduction of the indirect holding system transformed discrete certificates of ownership of securities into "dematerialized" pooled electronic entries that severed the direct legal connection between investors to their securities. In 1967, Belgium amended its constitution to authorize fungible pooled holdings of securities, facilitating European securities to be pooled and reused by Euroclear, founded in Belgium the following year in 1968 by JP Morgan of NY (European Commission, 2006). Euroclear serves as the primary European ICSD to this day.

In a significant legal milestone, the 1998 revision of Article 8 of the UCC, constituted the foundational statutory framework that legitimized the unrestricted use of client securities as collateral within financial markets. It substituted clear title to a security with a contractual claim against one's broker to a security, called a "securities entitlement". This granted the broker and financial intermediaries above them the authority to encumber client assets as collateral. The

1994 UCC Article 8 revision also subordinated investors' claims to those of secured creditors, should any financial intermediary in the system go insolvent. (Jacobowitz et al. 2024, 137)

During the 2000s, the European Union harmonized the 1994 UCC Article 8 revisions into continental securities law with the implementation of Central Securities Depository Regulation (CSDR). Together, these reforms created an integrated transatlantic framework in which all securities, regardless of domestic jurisdiction, could be mobilized as reusable collateral within global derivatives markets. These legal reforms facilitated the unprecedented growth of speculative synthetic asset creation that, according to Austrian Business Cycle Theory, precipitates the conditions for a corresponding correction stemming from their formation on a leveraged basis, underpinned by collateral inadequate to satisfy aggregate claims in the event of systemic insolvency

The objective of this study is to bridge the theoretical and policy gap between industry practices, regulatory reform, and economic theory. Existing economic, regulatory and industry literature address collateral risk primarily as a technical issue of counterparty exposure, overlooking its cyclical and structural dimensions. Through the analysis of rehypothecation within ABCT, this paper provides an integrated framework for understanding how changes to law and evolving financial practices jointly perpetuate unsound expansion of financial asset markets. Specifically, it argues that the proliferation of rehypothecated collateral chains fuel synthetic asset bubbles leveraged from an insufficient collateral base to meet margin calls when market prices decline and "death spirals" ensue. This correction process is a classic example of what Austrian School calls the "crack-up boom"—the phase in which monetary and credit expansion, in this case financial asset expansion, reaches their systemic limits, and markets begin to liquidate fictitious capital.

2. **Historical Development and Intensification of Client Asset Utilization in Collateral Practices**

The practice of employing client assets as collateral has antecedents in earlier decades but became systemic only during the early

1970s, with the establishment of central securities depositories (CSDs). These institutions provided the infrastructure necessary for large-scale collateral reuse and enabled a consolidated view of collateral flows across markets (Depository Trust & Clearing Corporation DTCC, 2020). From an Austrian business cycle perspective, this transformation marked an inflection point in the erosion of clear property rights, precipitating conditions that facilitated artificial credit expansion and intertemporal distortions—hallmarks of cyclical instability (Barnett & Block, 2008).

An institutional proposal to centralize securities holdings into central securities depositories originated in 1970 from the Banking and Securities Industry Committee (BASIC), which sought to address the so-called "paperwork crisis" on Wall Street of 1968 (Banking and Securities Industry Committee 1970). The committee advocated abandoning physical share certificates in favor of an electronic bookkeeping system, claiming greater efficiency and modernization (DTCC, 2020; TIOmarkets, 2024). Yet this "efficiency" came at the cost of severing direct ownership ties between clients and their securities. The centralized, pooled model rendered individual securities fungible and transferred legal title to intermediaries. Austrian theorists contend that such decoupling of ownership from control represents a distortion of property rights, a key mechanism by which malinvestment and moral hazard proliferate in financial systems (Barnett & Block, 2008; Mises, 1998).

The dematerialization of securities—converting tangible share certificates into electronic entries—was first implemented in the United States in response to the 1968 paperwork crisis and institutionalized through the founding of the Depository Trust Company (DTC) in 1973 (DTCC, 2020). This temporal gap, of 5 years between the 1968 and 1973, suggests that the "crisis" narrative may have overstated the practical urgency of reform, instead serving as a convenient justification for consolidating industry's control over securities for reuse as collateral. Within the Austrian critique, this phenomenon is framed as a case of "interventionist rationalization," where administrative reforms enhanced collateral intermediation while obscuring the heightened fragility of rehypothecated asset structures (Hayek, 1937).

In 1990, the DTC evolved into the Depository Trust & Clearing Corporation, with Cede & Company assuming legal ownership of

all immobilized securities. This institutional layering, often justified by appeals to systemic efficiency, blurred the distinction between custodianship and ownership. Within the Austrian theoretical framework, this arrangement constitutes a disruption of the natural link between saving and investment—a phenomenon that accelerates capital misallocation and credit-fueled instability (Barnett & Block, 2008; Schumpeter, 1939).

Comparatively, the Nordic countries offer a distinctive precedent in the digital modernization of securities that diverged from international trends toward abstraction of ownership. Beginning in the 1970s, Sweden, Denmark, and other Nordic jurisdictions introduced fully dematerialized book-entry systems that eliminated paper certificates while maintaining direct, client-level ownership within their central securities depositories (CSDs). In Denmark, this transition culminated with the establishment of VP Securities A/S in 1983, which operated under statutory provisions linking individual investors digitally to their securities accounts and prohibiting the commingling or reuse of client assets without explicit consent (International Monetary Fund [IMF], 2007). Similarly, the Swedish CSD, VPC AB, organized ownership at the level of the beneficial holder rather than through omnibus financial intermediaries, as confirmed in Euroclear's later disclosures and the Danish VP Self-Assessment under the CPMI-IOSCO Principles for Financial Market Infrastructures, which emphasized "completely paperless (dematerialized) central settlement…without affecting the direct relationship between investor and issuer" and the maintenance of "fully asset-segregated accounts" protected from rehypothecation (VP Securities, 2014, pp. 4-14).

This approach stands in contrast to the global policy environment shaped by the Group of Thirty (G30)—a nonprofit international consultative body composed of senior leaders in finance, central banking, and academia (Bank for International Settlements [BIS], 2005) founded in 1978 by Geoffrey Bell at the initiative of the Rockefeller Foundation, which also provided initial funding for the body. In its landmark 1989 report, Clearance and Settlement Systems in the World's Securities Markets, the G30 explicitly recommended the elimination of physical certificates and the universal adoption of book-entry (dematerialized) systems to promote

speed, safety, and global market integration. The report's first recommendation stated that markets should "eliminate the physical movement of certificates" and ensure "book-entry deliveries of securities" across all systems (Securities and Exchange Commission [SEC], 1989). Although advisory in nature, these recommendations were widely interpreted as a de facto global mandate for dematerialization, catalyzing regulatory change in most major jurisdictions (BIS, 2005; SEC, 2023).

The Nordic implementation, however, demonstrates that dematerialization did not inherently necessitate the legal abstraction of ownership. Unlike systems emerging under the influence of the G30 framework that often centralized securities under omnibus custodial structures, the Nordic CSDs preserved the investor's direct proprietary relationship with underlying securities. This model shows that technological modernization of financial infrastructure can occur without dismantling the legal clarity of individual property rights—a refutation of the deterministic claim that digitization inevitably transforms ownership into mere bookkeeping entitlements.

Rise of the Postwar Eurodollar Market

Parallel to these institutional developments, another pivotal transformation was unfolding within global finance: the rapid expansion of the Eurodollar market, driven by postwar inflows of U.S. currency into Europe through the Marshall Plan. European banks began extending loans in U.S. dollars—initially from actual dollar balances but increasingly through uncovered exposures. As these unregulated credit operations expanded, the Eurodollar market effectively created dollar-denominated credit outside the jurisdiction of U.S. monetary authorities. In Austrian terms, this development constituted an international manifestation of artificial credit expansion, fostering substantial maturity mismatches and the mispricing of capital. (Einzig 1965)

By the 1980s, the DTCC shifted from strictly serving as a central securities depository to also providing collateral management services, enabling member banks to pledge client securities in derivative markets. This shift institutionalized systemic rehypothecation

—wherein the same assets were pledged multiple times across counterparties—culminating in a shadow banking architecture predicated upon recursive claims (Singh and Aitken 2010, 7). The Austrian critique identifies this as the quintessential form of credit, or in this case asset expansion via rehypothecation, a process that generates cyclical overinvestment and subsequent crises when the underlying property foundations prove inadequate to sustain leverage (Barnett & Block, 2008; Hayek, 1937).

In it's sustained advocacy for global financial integration and the continued expansion of financialization, the Group of 30 furthered these objectives through the publication of its 2003 study titled Global Clearing and Settlement: A Plan of Action." It stated:

> "The Group of Thirty commissioned this study of global securities clearing and settlement arrangements out of concern that unevenly developed national clearing and settlement infrastructure and inconsistent business practices across markets could be a source of significant systemic risk, and certainly of inefficiency." (Group of Thirty, 2003)

This historical trajectory of collateralization thus reflects not merely an operational modernization of securities markets but a deeper institutional drift toward collectivized property regimes under the guise of liquidity efficiency. From the standpoint of Austrian Business Cycle Theory, this represents a defining feature of the contemporary financial system's inherent instability: through the erosion of absolute property titles and the substitution of debt claims for real ownership, capital structures become increasingly dependent on perpetual credit expansion—rendering cyclical corrections both inevitable and severe (Mises, 1998; Barnett & Block, 2008).

3. **The Illusion of Segregation in Dematerialized Securities Holdings**

Despite assurances that client assets are maintained in "segregated accounts," dematerialized securities remain subject to rehypothecation and reuse as collateral within the broader financial system.

This phenomenon underscores a structural contradiction between the legal framing of ownership and the operational realities of modern securities custody and collateral management.

Illustrative evidence arises from the EU Clearing and Settlement, Legal Certainty Group Questionnaire submitted to the Federal Reserve Bank of New York (2006), which sought clarification on the implications of incorporating the 1994 revision of Article 8 of the Uniform Commercial Code (UCC) into European securities law. In its formal legal response, the Federal Reserve explained that holders of security entitlements do not possess rights to specific securities within a pooled account. Rather, each entitlement holder retains only a pro rata share of the collective financial asset held by the intermediary, irrespective of whether such positions are designated as "segregated." This interpretation reveals a fundamental departure from traditional conceptions of individual ownership, exposing how the adaptation of the UCC framework into EU law effectively institutionalized a dematerialized, co-mingled entitlement structure that erodes the meaning of true segregation in modern securities systems.

To quote the Federal Reserve lawyers answer in the questionaire:

> "The security entitlement holder does not have rights attaching to particular securities in the pool, he has a *pro rata* share of the interests in the financial asset held by its securities intermediary to the amount needed to satisfy the aggregate claims of the entitlement holders in that issue. This is true even if investor positions are "segregated."" (European Commission 2005)

From the perspective of Austrian Business Cycle Theory, this practice exemplifies how financial intermediation expands the effective supply of securities beyond real savings, an expansion that distorts price signals and misallocates capital. Through the repeated leveraging of client securities in collateral chains, intermediaries multiply the apparent availability of credit, fostering the illusion of deeper liquidity and stability within the financial system. In reality, this layered use of the same underlying assets constitutes a form of procyclical collateral-driven asset expansion via collateral chains, similar to the unsustainable credit expansions

described by Mises and Hayek 100 years ago. When confidence in counterparties declines, the entire edifice of interconnected claims becomes vulnerable to contraction—revealing that much of the perceived liquidity was artificially induced rather than grounded in genuine capital formation. Whereas classical Austrian Business Cycle Theory (ABCT) focused on the misallocations arising from bank-led credit expansion untethered from real savings, the contemporary operations of the financial system extends this logic into the domain of asset-based expansion through rehypothecation. In this modern manifestation, the repeated reuse of securities as collateral amplifies financial claims without a commensurate increase in underlying capital, creating layers of synthetic liquidity analogous to credit-induced malinvestment. When confidence in counterparties falters, the unwinding of these collateral chains exposes structural imbalances between nominal asset claims and their real economic foundation, echos the Austrian insight that unsustainable expansions—whether of credit or collateral—inevitably culminate in systemic correction.

In this context, the push for "legal certainty" in the treatment of rehypothecated collateral can be interpreted as a retrospective institutional attempt to legitimize what would otherwise be viewed as a breach of fiduciary integrity. Rather than resolving the underlying disequilibrium, such reforms risk institutionalizing the very mechanisms that propagate intertemporal distortions, thereby sowing the seeds for future systemic corrections consistent with Austrian cycle dynamics.

4. Institutionalizing Collateral Expansion: The 1994 Article 8 Transformation and Its Implications from the Austrian Business Cycle Perspective

The 1994 revision of Article 8 of the Uniform Commercial Code (UCC) marked a decisive legal and institutional shift in the relationship between investors, intermediaries, and the financial system. Emerging after decades of lobbying by the financial services industry, the revision effectively legalized the rehypothecation and reuse of client securities as collateral (Facciolo 2000,

624, Rogers 1996, 1431). Originally enacted to harmonize commercial transactions across U.S. states, the UCC's modernization of Article 8 transformed the legal infrastructure of securities ownership to align with evolving market practices. Adoption occurred at the state level between 1994 and 2000, embedding this paradigm into the foundation of U.S. financial law (Facciolo 2000, 617).

From an Austrian Business Cycle Theory (ABCT) perspective, this transformation can be interpreted as a juridical codification of financial expansion unanchored from real savings. Classical ABCT emphasizes how the artificial expansion of credit—beyond the pool of voluntary savings—distorts intertemporal price signals and induces malinvestment. In analogous fashion, the 1994 Article 8 framework institutionalized an asset-based expansion, enabling the repeated pledging of securities as collateral in derivative and repo markets. By transforming ownership claims into contingent contractual entitlements, the law allowed multiple layers of claims on the same underlying asset—thereby amplifying the apparent supply of financial capital without corresponding real accumulation (Facciolo 2000, 624).

This paper emphasizes two pivotal legal modifications introduced by the 1994 revision that eroded traditional property rights. The first change was the introduction of the concept of a "securities entitlement." Direct legal title to a security was replaced by a contractual claim to a security against the investor's broker, not against higher-tier intermediaries. As legal scholar Francis J. Facciolo of St. John's University explained: Revised Article 8 creates a new type of property interest that "is not a claim to a specific identifiable thing; rather it is a package of rights and interests that a person has against the person's securities intermediary and the property held by the intermediary" (Facciolo 2000, 624).

A "Securities Entitlement Holder" therefore possesses the economic benefits of ownership of a security—such as voting and dividend rights—but not legal title to the underlying security. Legal ownership resides with the financial intermediary or, in most cases, the Central Securities Depository, such as the Depository Trust & Clearing Corporation (DTCC) in the United States or Euroclear in Belgium (Facciolo 2000, 624). This legal construction grants

intermediaries the capacity to encumber client assets in their own transactions, generating layered exposures throughout the financial system.

From an ABCT viewpoint, this process reflects a structural evolution of modern financial intermediation, whereby real capital is no longer the constraint. Instead, legal innovation substitutes for liquidity creation, expanding leverage through contractual abstraction. The result mirrors the credit cycle dynamic described by Mises: systemic leverage expands under the illusion of capital sufficiency, only to yield to market instability and widespread market liquidation once confidence wanes.

The second crucial dimension of the 1994 revision of Article 8 concerns the redefinition of property rights within the hierarchy of bankruptcy proceedings. Under the revised framework, the holder of a securities entitlement does not possess a direct property claim to identifiable assets but instead maintains only a contractual claim—positioned last in line behind secured creditors in the event of insolvency (Facciolo 2000, 617). Consequently, in a systemic derivatives market collapse, entitlement holders would retain only weak and effectively residual legal standing to reclaim their assets (Facciolo 2000, 623-24). The statute further codifies that an entitlement holder's property interest in a financial asset is pro rata, held collectively by the securities intermediary without reference to the chronological order of acquisition—meaning that priority is entirely detached from when a client purchased or held their securities, contrary to established property rights law.

Viewed through the lens of Austrian Business Cycle Theory, this legal architecture represents a fundamental violation of the principle of private property—the cornerstone of a functioning market order as articulated by Menger and Mises. By subordinating ownership rights to contractual status and rendering them temporally indeterminate, the law undermines the causal relationship between individual action, temporal ownership, and the coordination of capital (Facciolo 2000, 617, 623-24). In an Austrian framework, the integrity of property rights is inseparable from the market's capacity to allocate resources rationally through price signals. When property claims become collectivized and fungible—as in the pro rata entitlement regime—the

link between ownership and responsibility is severed, eroding the informational foundation upon which entrepreneurial calculation depends.

This legal transformation thus mirrors, in institutional form, the same distortive forces that Austrian theorists identify in credit expansion: the artificial blurring of real ownership and liability creates a structure of claims untethered from concrete property and time preferences. As a result, the market system's spontaneous order is replaced by a legally sanctioned hierarchy of entitlement, wherein genuine proprietorship is displaced by abstract, derivative claims (Facciolo 2000, 625). Such a degradation of property rights not only redistributes risk from financial intermediaries to investors but also undermines the very institutional preconditions of a self-regulating market economy (Facciolo 2000, 625).

Francis Facciolo notes:

> "Revised Article 8 actually includes major changes that should be of concern to all individual investors in America's securities markets. Without significant amendments to certain sections of Revised Article 8, individual investors will be profoundly disadvantaged" (Facciolo 2000, 625).

A deeper insight into the nature of this transformation emerges in the statutory text itself. Section 8-504 of the UCC provides that:

> "(a) A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset" (U.C.C. § 8-504(a)).

and further adds:

> "(b) Except to the extent otherwise agreed by its entitlement holder" (U.C.C. § 8-504(b)).

In plain legal terms, these provisions require intermediaries—such as brokers or central depositories—to maintain sufficient

securities to back the contractual claims of clients and to refrain from encumbering those assets without explicit consent. At first glance, these clauses appear protective of investor property rights. However, subsection (d) introduces a critical exception that negates the intended safeguard:

> "(d) This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements" (U.C.C. § 8-504(d)).

This clause effectively exempts central clearing authorities—such as the DTCC and its owned clearing counterparties—from the duty to segregate or maintain unencumbered assets when those assets are pledged in collateral chains of derivative contracts. The implication is stark: while the statute outwardly affirms investor ownership, it's exemptions institutionalize the very practices that subordinate those rights to the liquidity needs of financial intermediaries.

Viewed through an Austrian theoretical lens, the 1994 revision of Article 8 formalized a key mechanism of what may be termed collateral-based inflation or asset expansion. By transforming securities into endlessly rehypothecated collateral, the financial sector created instruments capable of expanding nominal balance sheets without parallel increases in productive capital. As Hayek observed in his critique of monetary distortion, when legal and financial innovations obscure the relationship between real savings and investment, the apparent prosperity of expansion conceals its own seeds of contraction. Rehypothecated collateral chains by definition do not have enough underlying collateral to meet every derivatives contract when markets downturn and collateral calls become widespread. The euphoria of the boom clouds investor perception; every trade seems possible, but once the market turns, the codification of rehypothecation rights under Article 8 thus represents not merely a legal reform but the juridical embodiment of a credit-driven cycle—one where financial claims multiply until the system reaches the boundaries of confidence and convertibility.

4.2. *Harmonization of the 1994 UCC Article 8 Revision into European Union Securities Law (2004-2014)*

In Europe, the gradual establishment of the indirect holding system can be traced to 1967, when a Belgian Royal Decree laid the legal foundation for the establishment of Euroclear, the International Central Securities Depository (ICSD) of Europe in 1968. This legal innovation marked the early institutionalization of pooled, dematerialized securities holding. By 2004, the European Union initiated a systematic effort to replicate the 1994 revision of Article 8 of the Uniform Commercial Code (UCC) from the United States through the formation of the Legal Certainty Group. A questionnaire issued by the Legal Certainty Group to the European Commission on July 26, 2006, explicitly affirmed:

> "The core legislation relating to fungible securities holdings is Belgian Royal Decree no. 62—which is a law and not merely a regulation—of 10 November 1967 as coordinated by Royal Decree of 27 January 2004 …," and further, "Royal Decree 62 governs the terms on which a settlement institution (the Belgian central bank, the central securities depositaries (CIK and Euroclear bank …)) may hold financial instruments on a fungible basis …" (European Commission 2006, 2).

Between 2004 and 2014, the EU pursued an ambitious legal harmonization process to align its securities law with the American model embodied in the revised UCC Article 8. Because several EU member constitutions enshrine the inviolability of private property, this process required a decade of intricate legal engineering to reconcile the traditional concept of property ownership with the financial system's preference for pooled, fungible, and rehypothecatable securities. As outlined in 2005 by the European Commission's Internal Markets and Services Directorate-General, "The setting up of a group of legal experts was a specific exercise intended to address problems of legal uncertainty identified in the context of considering the way forward for clearing and settlement in the European Union" (European Commission 2005).

The Legal Certainty Group, therefore, was not established to clarify property rights in favor of investors but rather to secure "legal certainty" for financial intermediaries—particularly the largest banks—by codifying their ability to use client assets as collateral. This name, as such, conceals an asymmetrical protection of interests that privileges systemic financial actors while diluting the direct rights of the underlying owners of financial securities, whether individual or institutional.

This is illustrated by the September 22, 2004 memorandum issued by Diego Devos, Deputy General Counsel of Euroclear titled "Preparatory Information Regarding European Legal Harmonisation," in which he described the intended scope of this transformation: "This note describes Euroclear's recommendations with regard to the legal barriers that should be addressed as priority items by the Legal Working Group that the Commission intends to set up as a follow-up of its Communication on Clearing and Settlement in the European Union dated April 28, 2004" (Devos 2004, 1). Devos continued, "In particular, we identify issues that complicate and prevent the full implementation of major initiatives that the market is undertaking on platform consolidation and harmonisation" (Devos 2004, 1). Most revealingly, the memorandum recommended as a top priority: "Removal or modification of requirements that do not recognize the multi-layer holding structure that is the norm in cross-border activity, including: recognition in the EU of the pooled holding of registered assets through a nominee structure (and the different nature of legal and beneficial ownership) in order to keep registered securities on a fungible basis at local level and protection of the rights of the nominee; elimination or modification of requirements that directly or effectively require the maintenance of individual records or accounts per beneficial owner" (Devos 2004, 17).

The purpose of this reform was to enable securities across all EU jurisdictions to be held at Euroclear and thereby be freely employed as collateral by the largest financial institutions, without compensating the beneficial owners. By 2014, this agenda was fulfilled through the implementation of Central Securities Depository Regulations (CSDRs), which formalized the integration of national CSDs with the ICSD in Belgium. Under this system, when a French investor, for instance, purchases a security, their national CSD records the

transaction, which then links directly to Euroclear; the legal title is transferred to the central depository, enabling its use as collateral in institutional transactions. (European Central Bank 2014, 9)

This structure mirrors that of the U.S. system, where customer holdings exist merely as ledger entries under brokers or custodians, while the Depository Trust & Clearing Corporation (DTCC) in New York retains legal title. By concentrating ownership at the top of financial hierarchies, these systems convert individualized property rights into abstract claims within a multi-tiered architecture favoring financial market liquidity over securities ownership integrity.

From the viewpoint of Austrian Business Cycle Theory (ABCT), this development institutionalizes the same dynamic criticized by Mises and Hayek—namely, the detachment of financial claims from real capital and the erosion of the informational function of property ownership. As Mises argued, the security of private property is the indispensable precondition for rational calculation and efficient allocation. By transforming securities into fungible collateral unanchored to identifiable ownership, the EU replicated the same form of financial malinvestment that ABCT associates with artificial credit expansion. The apparent increase in liquidity and market stability conceals a deeper structural fragility—one wherein the multiplication of claims on identical assets magnifies systemic risk (Mises 1949, 678).

The institutional rationale for this framework was explicitly acknowledged by the European Commission's Directorate-General for Internal Market and Services in 2012, which stated: "As a result of the demand for collateral, securities are increasingly regarded by market participants as a funding tool. These trends reinforce the market trends to treat securities like money, with significant implications for ownership" (European Commission 2012, 4).

5. **Rehypothecation and the Austrian Theory of Artificial Capital Expansion**

During the expansionary phase of the economic cycle, a pervasive sense of optimism emerges in which numerous projects appear viable, and speculative enthusiasm becomes self-reinforcing. As

Ludwig von Mises explained in *The Theory of Money and Credit* (1912) and later in *Human Action* (1949), such booms are driven by the artificial expansion of fiduciary media—credit created ex nihilo by banks rather than by genuine savings. This expansion distorts the natural rate of interest, leading entrepreneurs to misinterpret monetary signals as indicators of real capital availability. In reality, the stock of saved capital remains insufficient to sustain the multitude of new investments. What results is not genuine growth but a period of malinvestment—an unsustainable pattern of production built on illusionary liquidity.

An analogous dynamic operates within contemporary financial systems through the practice of rehypothecation. When client securities are repeatedly pledged as collateral across chains of derivative contracts, the appearance of abundant liquidity parallels the Misesian concept of fiduciary inflation. Each successive use of the same asset creates a layer of synthetic capital, fostering what Carl Menger would recognize as a departure from true market-based valuation—where ownership and value are grounded in subjective, real exchange rather than abstract, derivative claims. In the ascending phase of the cycle, as with the credit boom analyzed by Mises, this collateral expansion gives rise to euphoria: derivative positions appear profitable, risk seems dispersed, and market institutions project a false sense of stability.

However, as Friedrich Hayek emphasized in *Prices and Production* (1931), the boom inevitably contains within it the seeds of its own correction. When asset prices decline and secured creditors call collateral simultaneously, the underlying scarcity of real assets becomes evident. The system, weighed down by multiple claims on the same collateral, experiences cascading margin calls, forced liquidations, and fire sales—analogous to the "cluster of errors" Hayek identified as characteristic of the bust phase. Prices collapse not because of exogenous shocks but because prior misallocations of credit and risk must be reconciled with economic reality.

This intrinsic fragility—rooted in the systematic violation of true property-based capital formation—illustrates the profound vulnerability of modern financial systems. By allowing securities to be treated as endlessly reusable collateral irregardless of the property rights of the underlying investors in financial securities,

contemporary finance institutionalizes what the Austrian School long warned against: the substitution of nominal claims for genuine capital. The resulting "death spirals" and indiscriminate liquidation of collateral, as outlined by BIS reports, reflect not episodic market errors but the predictable culmination of a structure built on the denial of Mengerian property principles, Misesian capital constraints, and Hayekian knowledge coordination. In this sense, the risk of catastrophic investor loss is not a peripheral defect—it is endogenous to the very architecture of modern leveraged finance. (Bank for International Settlements 2023, 34)

5.1. *The Use of Client Securities as Collateral: A Modern Reflection of Fractional Reserve Banking*

The systemic practice of financial institutions using client securities as collateral—initiated in the 1970s—closely parallels the historical operations of fractional reserve banking. In both systems, financial intermediaries extend the use of client-owned assets beyond their original boundaries, multiplying claims upon the same underlying resources. Whereas fractional reserve banking permitted the lending of depositors' funds while maintaining nominal ownership, the modern rehypothecation of client securities extends this mechanism into capital markets, with intermediaries pledging clients' assets to support their own speculative derivatives positions. From an Austrian Business Cycle Theory (ABCT) perspective, this constitutes an institutionalized misallocation of property and risk. As with fiduciary media expansion, the illusion of surplus capital fosters systemic malinvestment and cyclical instability, as financial actors, responding to artificially inflated asset liquidity, embark on ventures not rooted in genuine savings or ownership.

5.2. *Legal Dimensions: The Erosion of Property Rights through Regulatory Capture*

The appropriation of client assets for collateral purposes without explicit consent represents not merely a procedural irregularity but

a fundamental violation of private property—a principle central to both the rule of law and the Austrian conception of market coordination. Clients are often misled into believing their securities are securely held, when in reality, they serve as encumbered instruments within complex derivative chains. Although the legal framework of "securities entitlements" under statutes such as the UCC Revision of Article 8 or EU harmonized regulations formally authorizes this practice, its essence remains one of dispossession. The transformation of direct ownership into contingent contractual rights is an outgrowth of what Mises termed "legalistic interventionism," where regulatory systems are captured and reshaped to serve concentrated financial interests rather than market integrity. This process of regulatory capture reconfigures legal norms to institutionalize property violations, disguised as efficiency-enhancing financial innovation, thereby subordinating individual ownership to the liquidity priorities of the financial elite. (Mises 1949, 258-263)

5.3. *Economic Consequences: Synthetic Capital Formation and Cyclical Instability*

Economically, the rehypothecation of client securities replicates the distortions characteristic of fractional reserve banking: dual—and often multiple—claims to a single asset expand the effective supply of financial capital, inflating asset prices and distorting investment signals. As the Austrian School underscores, whereby artificial assets expansions unsettle the relationship between savings, investment, and time preference, inducing unsustainable asset bubbles that culminate in systemic contraction. The simultaneous assumption of ownership by both clients and intermediaries over the same securities mirrors the duplication of money balances in the banking system, generating what Hayek described as a "false sense of capital abundance."

Rehypothecation thus functions as a mechanism of synthetic capital creation, inflating derivative valuations detached from tangible underlying assets. Even when these derivatives settle in fiat currency rather than physical commodities—as in the case of gold futures settled in U.S. dollars—the derivative pricing feeds back

into the spot market, distorting real price discovery. The resulting regime of recursive valuation reinforces systemic fragility: when market confidence recedes, collateral chains unwind violently, initiating liquidation cascades and widespread investor losses. Within the Austrian framework, this process exemplifies the bust phase of the artificially extended boom—where the illusion of wealth created through regulatory and credit manipulation collapses under the weight of violated property foundations. (Bank for International Settlements 2023, 34)

Ultimately, the use of client securities as collateral reveals not an incidental market flaw but a structurally embedded distortion within modern finance—one that fuses the legal expropriation of property with cyclical monetary excess. As Menger and Mises emphasized, sustainable economic coordination rests on clearly defined and inviolable property rights; their subversion in the service of liquidity expansion transforms financial capitalism into an unstable apparatus of perpetual crisis.

6. **The Global Automation of Collateral Utilization**

The most concerning development in the evolution of modern financial infrastructure is that the utilization of securities as collateral has become ubiquitously integrated across the major developed financial centers of the world, operating as a continuous and systemic feature of global markets. Once a specialized practice among major institutions, the use of securities as collateral has evolved into a continuous, systemic feature of global markets. Within this architecture, nearly all securities—across asset classes and jurisdictions—are now mobilized as collateral through interconnected networks linking the International Central Securities Depositories (ICSDs), primarily the Depository Trust & Clearing Corporation (DTCC) and Euroclear. These linkages operate via global collateral management platforms designed to optimize the deployment of assets in real time, effectively transforming all financial securities globally into a unified pool of available collateral. (Bank for International Settlements, 2014)

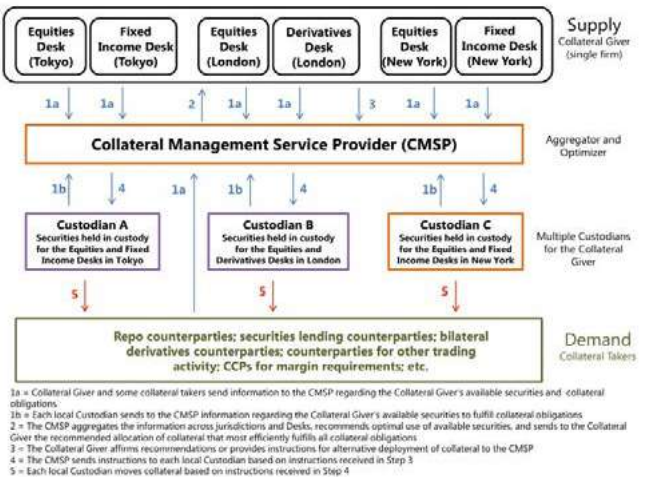
Evidence of this pervasive structure is provided by the Bank for International Settlements (BIS) in its 2014 report, "Developments in Collateral Management Services," which documents the consolidation of global custodial infrastructures: "First, many of the largest custodians have implemented, or have plans to implement, a custodial platform that is global in nature. This will be a single system or set of connected systems that allows a customer a single view of all its available collateral held by the custodian, regardless of location" (Bank for International Settlements 2014, 8). The BIS further explains: "The desired end goal of all these efforts is to get as close as possible to a single view of all available securities, regardless of where they are held, in real time. This aggregation of supply information is a necessary prerequisite for the efficient deployment of available securities to meet collateral obligations" (Bank for International Settlements 2014, 9).

In addition, the BIS notes that "ICSDs enable their participants to obtain aggregate views of the entirety of the latter's securities holdings held with the ICSD, including securities held by ICSD participants via link arrangements.… Diagram 5 illustrates the services available at ICSDs, whereby a customer (collateral giver) is a participant in the ICSD and holds its securities in the ICSD, including via link arrangements between the ICSD and local CSDs" (Bank for International Settlements 2014, 10). The automation of these systems extends beyond passive aggregation to active allocation: "Both the collateral giver and the collateral takers provide information to the ICSD as CMSP (Collateral Management Service Provider) regarding collateral obligations. With this information, the ICSD runs its optimization process and may automatically generate collateral allocation instructions for the collateral givers/takers based on the results" (Bank for International Settlements 2014, 10).

The following diagram from the 2014 BIS Committee on Payments and Market Infrastructures report titled Developments in Collateral Management Services outlines the global flows of client collateral from suppliers to takers via Collateral Management Service Providers (ICSDs), thereby rendering all securities globally available for collateral reuse by the financial system.

Diagram 4

Multiple jurisdictions, multiple custodians and custody-agnostic collateral management service provider



(Diagram 4 in Committee on Payments and Market Infrastructures, Developments in Collateral Management Services, 2014, 16)

From an Austrian Business Cycle Theory (ABCT) perspective, this transformation signifies the culmination of a process whereby financial innovation substitutes technological efficiency for real capital discipline. As Mises emphasized, artificial expansions of fiduciary media create illusory liquidity that fosters malinvestment and cyclical instability. In parallel, the global integration of collateral networks expands balance sheet capacity without corresponding increases in real savings, embedding a structural fragility into the world's financial architecture. The use of client-held securities as endlessly reusable collateral eliminates the temporal and moral boundaries essential to property ownership, replacing legally grounded claims with algorithmically optimized fungibility.

This erosion of distinct property rights—what Menger and Hayek would regard as the foundation of market order—transforms securities into fluid abstractions, their ownership subordinated to the liquidity needs of the system. Regulatory regimes,

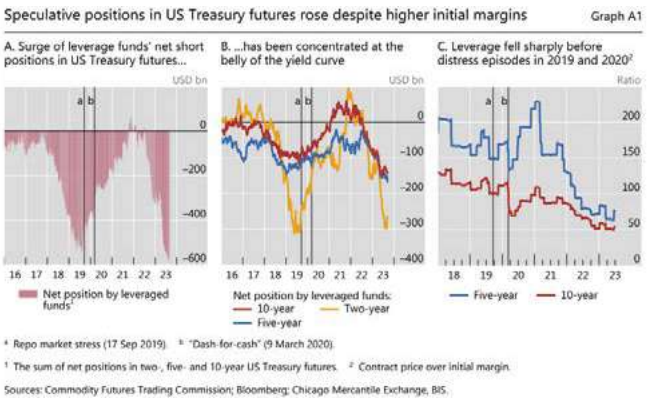
under the guise of efficiency, have facilitated this process through a combination of permissive reinterpretation and systemic capture, legitimatizing the subordination of property to leverage. Consequently, the interconnection of ICSDs represents not merely technological advancement but the institutionalization of what the Austrian tradition would identify as a globalized form of fiduciary media—an inherently unstable hierarchy of claims built upon diminished property foundations.

It follows that financial institutions endowed with the unrestricted use of client assets are likely to engage in greater risk-taking than they would under true property constraints. The Austrian critique thus acquires renewed relevance: as the distance between ownership and responsibility widens, the capacity of the market to self-correct through real capital signals weakens, ensuring that when correction eventually comes, it will do so with systemic severity.

7. The Rehypothecation of Client Securities and the Expansion of the Global Derivatives Bubble

The legalization of the rehypothecation of client securities as collateral—established through the 1994 revision of Article 8 of the Uniform Commercial Code and implemented across U.S. jurisdictions by 2000—precipitated a dramatic expansion of the global derivatives market. As documented by the Bank for International Settlements (BIS), the notional value of outstanding over-the-counter (OTC) derivatives contracts soared from approximately USD 111 trillion at the end of 2001 to nearly USD 700 trillion by late 2007, representing more than a sixfold increase in size and illustrating the extraordinary scale of speculative leverage amassed during this period (Bank for International Settlements 2002; Bank for International Settlements 2008). Contemporary estimates now place the total notional volume of derivatives between USD 1 quadrillion and USD 2 quadrillion (Bank for International Settlements 2008). This remarkable growth represents not merely increased market sophistication but a profound structural shift in global finance, wherein collateralized leverage has supplanted traditional savings as the principal engine of credit creation.

To illustrate the levels of leverage within the financial system, the September 2023 quarterly report of the Bank of International Settlements references leverage levels of speculative positions of US treasuries. The chart shows that from January 2018 through to the fall of 2021, speculative position of 5 year US treasury bonds exceeded 150 times leverage.



(Graph A1 in Bank for International Settlements 2023, 4)

Considering such heightened levels of leverage within the financial system, significant market declines in asset prices could trigger a significant wave of defaults within the derivatives sector. The resultant collateral calls could rapidly exhaust the worldwide supply of available underlying collateral. The aggregate securities held at the Depository Trust & Clearing Corporation (DTCC) and Euroclear—approximately USD 99 trillion (2025) and €40.7 trillion (2024), respectively—would likely be depleted swiftly (Depository Trust & Clearing Corporation 2025; Euroclear 2024). Failures within this interconnected regime thus threaten a cascading financial gridlock, as securities upon which derivative contracts are based become subject to overlapping and potentially conflicting claims, referred to in bankruptcy proceedings as a collateral contest of claims to the same underlying collateral base. By rendering virtually all marketable securities re-available for reuse, the financial

system has in effect constructed a fragile collateral base within a hyper-leveraged and opaque derivatives ecosystem.

From the vantage of Austrian Business Cycle Theory (ABCT), these developments exemplify the phenomenon of advanced credit overextension, whereby financial innovation in the form of derivative leverage substitutes for genuine capital accumulation. Both Ludwig von Mises and Friedrich Hayek warned that speculative expansions decoupled from real savings and resting upon fiduciary media ultimately produce, in Hayek's terms, a "cluster of errors" throughout the production structure (Mises 1949; Hayek 1931). The practice of using client assets as collateral extends this logic into contemporary financial engineering, wherein proprietary rights are diluted to sustain the continual enlargement assets based upon contingent collateral claims. The Austrian approach contends that such liquidity-fueled expansions distort relative price signals, obscure intertemporal inconsistencies, and erode the informational efficiency of markets. When contraction inevitably ensues, the resulting collapse constitutes not merely the liquidation of mispriced assets, but a juridical and institutional crisis regarding the residual claimants beneath the layers of leverage.

While regulatory bodies such as the European Union's Single Resolution Board (SRB) have acknowledged the magnitude of these risks, policy prescriptions remain circumscribed. The SRB's 2022 report, Solvent Wind-Down of Trading Books: Guidance for Banks, states that "All G-SIBs globally systemically important banks are expected to work on SWD solvent wind-down planning as a RPC Resolution Planning Cycle 2022 priority" (Single Resolution Board 2022, 4). Although this directive signals recognition of the necessity for structural reform, the entrenched interests of global financial institutions—whose profitability is deeply tied to the recurrent use of client collateral—render substantive restructuring both politically and institutionally challenging.

From a scholarly perspective, the Austrian analytical tradition accurately identifies the fundamental source of financial instability in the unanchored expansion of credit instruments divorced from real savings and property rights. Yet, it is incumbent upon contemporary scholarship to extend this critique and recognize the unique complexity of modern collateral management systems,

in which risk propagation is embedded within a web of global custodial and clearing intermediaries. The present crisis of financial capitalism is thus not merely cyclical, but systemic—rooted in a legal and operational infrastructure that conflates liquidity with ownership, and thereby transmutes property rights into revolving instruments of leverage.

8. **Legal Remedies for the Restoration of Property Rights in Financial Securities**

The erosion of property rights in financial securities within the United States originated from the 1994 revision of Article 8 of the Uniform Commercial Code (UCC), enacted at the state level between 1994 and 2000. This legal restructuring, which converted direct ownership claims into securities entitlements, effectively subordinated investor property rights to those of financial intermediaries and their secured creditors. The restitution of these rights must therefore occur through state-level legal reform, reinstating the principles of direct ownership and priority that governed securities law prior to the revision (Rogers 1996, 1432; Financial Markets Law Committee 2023, Facciolo 2000, 620)).

As Professor James S. Rogers of Boston College Law School —reporter to the 1994 UCC Article 8 Drafting Committee— observed, "one could probably have counted on one hand —with a few fingers unused—the number of people among those appointed to the Article 8 Drafting Committee, or among the full membership of the sponsoring organizations that would ultimately have to approve the work of the Drafting Committee, who had any familiarity with either old 1978 version Article 8 or the modern securities holding system" (Rogers 1996, 1431-32; Financial Markets Law Committee 2023, 8). This frank admission confirms that the reconfiguration of securities law was executed largely without informed legislative or public scrutiny, illustrating how technocratic legal reforms can profoundly affect economic rights. From an Austrian perspective, such opacity exemplifies regulatory capture, whereby market participants reshape legal frameworks to further credit and collateral expansion beyond the limits of real savings.

In response, legislators in several U.S. states have introduced amendments to Article 8 that would restore clear property rights in securities and reestablish entitlement holders' priority status above secured creditors (Heartland Institute 2024). These initiatives seek to re-ground the securities market in its classical property law foundations, reasserting both informational discipline and moral constraint as prerequisites for capital market order. For Austrian theorists, such legal correction restores the intertemporal coordination necessary for market stability; without real ownership, as Mises emphasized, the price system cannot align investment with underlying resource constraints.

The situation in the European Union (EU) remains more complex due to the supranational regulatory context. The controlling legal architecture is Regulation No. 909/2014 of the European Parliament and Council, concerning securities settlement and central securities depositories (CSDRs). These rules supersede national laws, requiring domestic courts to implement EU standards even in cases of conflict. Thus, genuine property right restoration would require member states to assert sovereignty over financial law and potentially opt out of the CSDR regime.

Although such an assertion may seem politically remote in today's centralized policy environment, economic crises can rapidly alter the calculus. Austrian economics argues that systemic distortions founded in artificial legal constructs and financial engineering inevitably spawn crises severe enough to provoke legal reform—potentially catalyzing a fundamental reconsideration of property rights. Thus, the restoration of property rights in financial securities is not just a remedy for technical legal error but a necessary precondition for the re-stabilization of financial capitalism itself (Rogers 1996, 1540).

9. **Conclusion**

The global integration of securities into a continuously re-pledged collateral base has produced a structural fragility that extends far beyond the conventional concerns of market volatility (Schumpeter 1939; Garrison 2001; White 2012). The covert and near-universal use

of client securities as collateral not only exposes individual and institutional investors to potential expropriation but also contravenes the foundational legal doctrine of private property that has underpinned commercial society since antiquity (Selgin 1988; Hülsmann 2008; White 2012). From a macroeconomic perspective, this institutional practice has inflated a vast derivatives bubble whose magnitude now exceeds global output many times over, embedding systemic leverage throughout the financial architecture (Schumpeter 1939; Garrison 2001).

From the standpoint of Austrian Business Cycle Theory (ABCT), this process exemplifies the dynamics of artificial credit expansion described by Mises (1949) and Hayek (1931): by transforming ownership claims into fluid, overlapping entitlements, the financial system expands fiduciary liquidity unhindered by the constraints of real savings (Mises 1912; Mises 1949; Hayek 1931). The resulting intertemporal distortions foster widespread malinvestment and speculative excess, while the inevitable contraction—once confidence erodes or collateral valuations decline—threatens to initiate a systemic correction of unprecedented scale (Hayek 1931; Mises 1949; Garrison 2001). The same logic that governs credit booms in monetary cycles applies here to a securitized world of synthetic collateral chains: the absence of anchored property rights transforms the productive structure into what Austrian theorists would recognize as a process of redistribution of capital through regulatory capture disguised as financial innovation (Garrison 2001; Hülsmann 2008; White 2012).

To restore long-term stability, the legal construct of the "securities entitlement" must be reconsidered (White 2012; Hülsmann 2008). Meaningful reform requires the reinstitution of direct ownership and the prohibition of undisclosed collateral reuse (Mises 1949; Selgin 1988). The reestablishment of clear property rights—where assets cannot serve as instruments of leverage without explicit, contractual consent—would reintroduce the scarcity discipline necessary for sustainable capital formation (Mises 1949; Garrison 2001; White 2012). If pursued pre-emptively, such reforms could unwind the current pyramid of synthetic claims in an orderly manner, mitigating the need for the kind of catastrophic liquidation that Austrian theory predicts when distortions are allowed to accumulate unchecked (Hayek 1931; Mises 1949; Hülsmann 2008). Absent such

action, the next contraction may not merely be cyclical but systemic—a structural reckoning rooted in the erosion of the very legal foundations of ownership upon which market economies depend (Hülsmann 2008; White 2012).

Conflict of interest

The author declares that he has no conflict of interest.

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