



DEPARTMENT OF THE SENATE
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REPORT ON DERIVATIVES

GOVERNMENT RESPONSE TO THE REPORT BY THE PARLIAMENTARY JOINT COMMITTEE ON CORPORATIONS AND SECURITIES

Background to the Report

1. The Parliamentary Joint Committee on Corporations and Securities is established under Part 14 of the *Australian Securities Commission Act 1989*. Its duties are set out in section 243 of the Act. They include the duty to inquire into, and report to both Houses of Parliament on, activities of the Australian Securities Commission or the operation of any national scheme law and to report on matters that appear in each annual report prepared by a body established under the Australian Securities Commission Act and to which the Parliament's attention should be directed.

2. In November 1994 members of the Committee visited the Sydney Futures Exchange (SFE). After the visit the Committee decided, pursuant to its power to inquire into the operation of national companies and securities scheme laws, to consider issues relating to the regulation of derivatives markets.

3. In March, 1995 the Committee held public hearings with the SFE, the Australian Stock Exchange (ASX), the Australian Securities Commission (ASC) and the Companies and Securities Advisory Committee on the subject of the regulation of derivatives.

4. The collapse of Barings Bank in February 1995 gave additional focus to the Committee's hearings.

5. The Committee's "Report on Derivatives" was tabled in Parliament on 20 November 1995.

6. In the Report the Committee was mindful of the fact that the Companies and Securities Advisory Committee is currently conducting an in-depth review of the regulation of derivatives both on and off exchange and that aspects of derivatives regulation are currently being or have recently been considered by other bodies in Australia and overseas. It noted in particular:

- two leading reports issued after the Barings collapse (the report of the Board of Banking Supervision of the Bank of England and the Price Waterhouse report commissioned by the Singapore Ministry of Finance);
- the Windsor Declaration on measures to strengthen global supervision of future markets;
- cooperative initiatives of the Futures Industry Association (US) to coordinate an international review of safeguards and control mechanisms in the futures industry;

- the recommendations of the Futures Industry Association Global Task Force on Financial Integrity;
- the review of procedures being undertaken by the SFE in light of the Barings collapse;
- the release of exposure draft ED 65 on financial instruments; and
- the report of the House of Representatives Banking, Finance and Public Administration Committee on the role of the Reserve Bank in the supervision of derivatives trading by banks.

Recommendation

7. The Committee also made the following recommendation:

The Committee recommends that the ASC include in its Annual Reports a synopsis of the types and volumes of derivatives being traded in Australia and recent regulatory developments.

Government Response

8. The Government supports the Committee's recommendation. It appreciates that the Committee sees a need for a Government authority to report on this issue, given the concerns expressed in the Committee's report.

9. The publication of a synopsis of the types and volumes of derivatives being traded, together with details of regulatory developments, could provide an overview of the operations of derivatives markets for the benefit of members of Parliament, regulators, market participants and other persons who have a need for information in this area. The ASC has itself drawn attention to the importance of having available comprehensive and up to date information on the operation of derivatives markets in general.

10. At the same time, it must be appreciated that the Corporations Law currently confers only a limited jurisdiction over derivatives on the ASC. The ASC regulates derivatives only if they fall within the current definition of "securities" or "futures contract" in the Corporations Law. The great majority of products traded on over the counter ('OTC') markets, namely interest rate and foreign currency contracts, are specifically excluded from the Corporations Law and regulation by the ASC. Under current law the ASC could not require bodies which deal in products not subject to the Corporations Law to provide information about the trading of such products. If information about only those derivatives currently classified as "securities" or "futures contracts" and regulated by the ASC were to be included in the ASC's Annual Report, it may present a misleading picture of the Australian derivatives market. As the

Committee notes, a comprehensive review of the regulation of derivatives in Australia, including the extent of the ASC's jurisdiction over derivatives trading, is currently being undertaken by the Companies and Securities Advisory Committee.

11. The Government also notes that information about the types and volumes of derivatives being traded in Australia is currently compiled and published by a number of bodies including industry associations such as the Australian Financial Markets Association (AFMA) and self regulatory organisations such as the SFE and the ASX. The latter trade derivative products on their exchanges and publish data on such trading on a regular basis.

12. AFMA has conducted an annual statistical survey of derivatives markets since 1993. Its 1995 Report provides comprehensive data on all sections of Australian wholesale financial markets and includes data on exchange traded markets.

13. The Reserve Bank also publishes details of the types and volumes of derivatives being traded in Australia. It has for some years published information about banks' involvement in derivatives markets. Data on the total off-balance sheet business of all banks are presented quarterly in the Reserve Bank *Bulletin*. It proposes to extend its data collections in association with the proposed introduction of a capital charge to cover banks' exposure to market risk. In 1995 the Reserve Bank conducted a survey of foreign exchange and derivatives markets in Australia (covering both bank and non-bank institutions) as part of a global survey co-ordinated by the Bank of International Settlements. The results were published in December, 1995.

14. In addition, the Insurance and Superannuation Commission has instituted a new Quarterly Survey of Superannuation which will collect information on direct derivatives usage by the largest 1,100 superannuation funds (essentially those with assets in excess of \$10 million). The extent to which superannuation funds are indirectly exposed to derivatives will be highlighted from mid 1996 through ABS quarterly asset surveys of life insurance statutory funds and investment managers.

15. The Government does not wish to discourage the compilation and dissemination of such information by these bodies. They are well placed to collect and disseminate data for the financial sectors they represent. The statistical and survey data currently available allows considerable scope for understanding the types and volumes of derivatives transactions within Australia. Nor does the Government wish to duplicate the efforts of these bodies.

16. Nevertheless the Government considers that the policy objective underlying the Committee's recommendation can be met by the ASC reporting

on the extent of derivatives trading in Australia in its future Annual Reports, as well as on regulatory developments in relation to the trading of derivatives.