

Chapter 1

Introduction

Overview

This book examines the legal risks and regulation governing the markets for financial derivatives in the United Kingdom, the United States and Australia. Following some well-documented debacles involving financial derivatives, the book not only provides a timely account of these legal problems, but also provides a number of practical suggestions that may help practitioners in the field to deal with uncertainties in the law.

The jurisdictions of the United Kingdom and United States have been chosen because of their relative importance as leading global centres for the trading of financial derivatives. Australia has been chosen on the basis of its regional importance in the Asia–Pacific Rim, its influence in the design of new derivatives regulation in South-East Asia, and its similarity with the regulation of financial markets in the United Kingdom and the United States.

What is legal risk?

Legal risk can have different meanings for different people. Some have suggested that legal risk comprises the risk that a contract may not be legally enforceable. Others have suggested that the legal uncertainties with rules and regulation are also valid elements of legal risk. Although there may not be any universal accepted definition of what is meant by legal risk, this book proposes to use the following working definition: a failure in the legal framework, documentation or counterparty that results in the increased probability of risk and loss.

The above definition has the advantage of recognising that legal risk consists of macro and micro elements. Macro legal risk refers to the risk that the legal framework or regulatory environment may fail to protect market counterparties from enforcing their derivatives contract. Macro legal risks are generic in nature. They can have systemic ramifications because they represent risks that are not entity-specific and have the potential for wide application. Some notable examples of macro legal risk found to exist with financial derivatives include:

- the risk of loss because a derivatives contract cannot be legally enforced in a court of law because one of the counterparties lacks the legal capacity to contract;
- the risk that certain netting arrangements may be unenforceable in a bankruptcy or insolvency proceeding;
- the risk that a derivative may be characterised either as an illegal gaming, insurance contract or bucket shop arrangement, or as an unauthorised and illegal securities or futures transaction; and
- the risk that compound interest may not be awarded by a court in the absence of a legally binding agreement.

In contrast to macro risks, micro legal risks are not generic but instead entity-specific. They principally arise at the entity level because there is a failure by the entity itself, which has adversely affected their rights under the contract. Micro legal risk can be thought of as a subset of operational risk because it represents a failure at the operational level of the entity or individual in question. A good example of micro legal risk is the risk posed by customer litigation. Customers and end-users litigate when they believe that they have been misled or lied to by a dealer or broker. Dealers who have misled their clients or committed fraud have received little sympathy from the courts or market regulators, who have been keen to uphold market integrity and protect consumers from market abuse.

The consequences of legal risk

Legal risk, defined in this manner, poses a significant threat to overall efficiency in derivatives markets because it adversely affects the enforceability of contractual rights and obligations, generates uncertainty, and exposes market participants to costly and inappropriate disclosure. Legal risk may not only impeach the enforceability of a derivatives contract but has the potential to affect the recoverability of any monies or other property paid under a contract that is later found to be legally unenforceable. The issue is discussed in more detail in Chapter 7. Suffice to say that these consequences have been confirmed by two decisions in the United Kingdom, one by the House of Lords and the other by the Court of Appeal.

The legal risks defined and examined by the book

There are essentially three types of contract enforceability risk, five species of characterisation uncertainty and one main risk undermining netting enforceability arrangements that confront the markets for financial derivatives. The three ways in which a contract for financial derivatives can be affected by a null and void ruling are as follows.

- First, as discussed in Chapter 5, over-the-counter (OTC) derivatives that are speculative in nature may be characterised by a court as an unauthorised gaming and wagering arrangement. This exposes market issuers and counterparties to the risk that the derivative itself, or the contract, may be declared null and void because it represents an illegal gaming venture.
- Second, as discussed in Chapter 7, legal enforceability of a derivatives contract may also be affected by a counterparty that lacks, *prima facie*, the requisite capacity to enter into the agreement. The consequence of this action is that the contract will also be declared null and void by virtue of the legal doctrine of *ultra vires*.¹
- Third, as discussed in Chapter 9, a derivatives transaction may be declared null and void by a court if the broker/dealer has engaged in conduct that amounts to a misrepresentation, fraud or negligence, or the transaction is unsuitable to the client.²

Null and void contracts

Contract enforceability concerns arise when a derivatives contract is held to be legally unenforceable in a court of law because the contract has been declared null and void from the very beginning of the transaction. As discussed in Chapter 6, the consequences of nullity may be quite severe because it exposes counterparties to other risks under the laws of restitution.

The risks posed by the laws of restitution were demonstrated through the bitter swaps litigation that followed the House of Lords' null and void ruling in *Hazell v. Hammersmith and Fulham LBC*.³ In that case, the House of Lords held that interest rate swap contracts that had been entered into by Hammersmith and Fulham London Borough Council (LBC) were null and void, and legally unenforceable. The decision had widespread ramifications for other government and statutory authorities whose legal capacity to enter into financial transactions was questioned, and the validity of whose contracts was cast into doubt.

Similar 'lack of authority' claims have plagued derivative transactions in the United States. During the early 1990s, US courts were confronted with capacity and authority issues when losing counterparties claimed that they lacked the requisite authority to enter into derivatives transactions with their broker dealer. Counterparties that used the capacity issue to avoid payment obligations under their contract were not limited to individuals or private entities, but also included government entities, municipal counties and even entire states.⁴

Protecting payments and interest

As discussed in Chapter 8, the finding of legal nullity raises additional concerns involving the counterparty's right to claim compound interest and the right to claim payments made under a void contract. The uncertainty stems from recent decisions by UK courts, notably the House of Lords' decision in *Westdeutsche Landesbank Girozentrale v. Islington LBC*⁵ and the Court of Appeal's decision in *Guinness Mahon & Co Ltd v. Kensington and Chelsea Royal LBC*.⁶

In both cases the court allowed the contract to be unravelled. Payments that had been paid and received by counterparties were required to be paid back because the contract had been declared null and void. According to the *Guinness* decision all payments made under a completed but void contract, are to be paid back to the original party. Under the House of Lords' decision in *Westdeutsche*, only simple interest can be claimed for payments that are wrongfully withheld under a void contract.

Netting and bankruptcy

A legal risk related to contract enforceability concerns the issue of enforceability of netting arrangements in a bankruptcy or insolvency proceeding. The concern over netting arrangements was brought to the attention of counterparties and regulators with the House of Lords' decision in the United Kingdom in *British Eagle International Airlines Ltd v. Compagnie Nationale Air France* (1975) 1 WLR 758. The decision of the House of Lords was seen as authority in both the United Kingdom and Australia that any attempt by contracting parties to have a private system of set-off that attempts to vary the statutory system of insolvency is contrary to public policy and void. The decision was perceived to undermine the netting arrangements in derivatives agreements adopted by respective counterparties.

In the United States, similar difficulties were said to exist with netting enforceability of derivatives contracts under the US Bankruptcy Code.⁷ The problems appear to be related to uncertainties relating to the definitions of financial contracts that would be eligible for netting, including the counterparties that would be eligible for close-out netting, and the ability of counterparties to net across different types of derivatives contracts in the event of bankruptcy.

The US President's Working Committee has proposed legislation in the form of the *Financial Contract Netting Improvement Act 2001* H.R. 11 (US) and the *Financial Contracts*

Bankruptcy Reform Act 2001 H.R. 3211 (US), which are designed to make improvements to the netting arrangements of financial contracts, in particular contracts for financial derivatives in the event of bankruptcy.

In the United Kingdom, Parliament has recently enacted the *Insolvency Act 2000 c. 39 (UK)*, which provides for closer cooperation by UK courts with other jurisdictions and closely mirrors the United Nations Commission on International Trade Law (UNCITRAL), which approved a model law to assist and promote greater cooperation between nations in the marshalling of assets located in foreign jurisdictions and subject to insolvency proceedings in the host country.

In Australia, new legislation in the form of the *Payment Systems and Netting Act 1998 (Cth)* has been enacted. The Act improved the integrity of the Real Time Gross System (RTGS) of payments: ss.6–9; the integrity and effectiveness of multilateral netting arrangements: ss.10–13; close-out netting contracts: ss.14–15 and market netting contracts: s.16. S.16 of the *Banking Act 1959 (Cth)* was also seen as providing limited protection for netting enforceability in the event of insolvency. Since there was no specific Australian decision or any statute dealing with this issue, the Australian Derivatives Panel of the Netting Sub-Committee sought to prepare a detailed proposal for legislative reform. The issue of netting enforceability and the related legal risks are discussed in more detail in Chapter 9.

Derivatives at risk

The enforceability of transactions, and uncertainty in rules and regulation, have been longstanding litigious issues with financial derivatives. Recent litigation in the United Kingdom, the United States and Australia has exposed the shortcomings of the legal framework, rules and regulation, which remain out of date. The laws in each of the three jurisdictions demonstrate the fundamental problems and challenges posed by innovative financial markets. The regulatory frameworks used in the United States and Australia show the difficulties of regulating financial derivatives in a consistent and efficient manner.

The legal system in all three jurisdictions also demonstrates the problems of laws and courts that fail to come to grips with financial innovation.

- OTC derivatives may be characterised as illegal gaming and wagering contracts under state gaming and wagering laws.
- OTC derivatives, such as credit derivatives, may be characterised as unlicensed and unauthorised insurance agreements. This may lead to potential criminal prosecution for the unlicensed dealer or provider of the OTC instrument.
- Exchange-traded financial derivatives, such as security derivatives, may be characterised as securities. This risk is particularly relevant for security derivatives.
- OTC derivatives, such as swap agreements, may be characterised as ‘futures contracts’ or ‘securities’. The concerns here are that OTC market participants may be criminally liable for conducting unauthorised futures or securities markets and, further, that the OTC agreements are illegal and unenforceable.
- Certain equity derivatives may be characterised and regulated as ‘securities’ under the new regulatory framework, and subjected to fundraising or prospectus disclosure in each of the three jurisdictions.

Review of regulation

In recent times, considerable attention has focused on derivatives, and the spectacular multi-billion-dollar losses suffered by public corporations, major investment houses, banks and even municipal counties. Despite these large losses, derivatives continue to be very popular. Their growth has been nothing short of phenomenal. The Bank for International Settlements (BIS) reported in 2003 that global aggregate turnover in financial derivatives contracts monitored by BIS had risen by 17 per cent to US\$694 trillion.⁸

The large losses experienced by multinational corporations dealing in derivatives and the unresolved issues associated with the stock market crash in 1987 focused regulatory attention on the role that derivatives played in each catastrophe.⁹ Regulators all over the world, including in Australia, were concerned about the potential for systemic failure when major corporations disclosed large losses. Certain regulators believed that they had been ‘left behind’ by the innovation in new derivative instruments. Some regulatory authorities believed that up-to-date regulation was required to ensure orderly and secure markets, and appropriate use of derivative products.¹⁰ Some of the more notable quotes are provided below.

- Bankers had better take a very, very hard look at off-balance-sheet activities. I hope this sounds like a warning, because it is. The growth and complexity of off-balance-sheet activities and the nature of credit, price and settlement risk they entail should give us all cause for concern (Gerald E. Corrigan, President, New York Federal Reserve).¹¹
- We are not alone around the world in having the issue about the extent to which the regulatory system ought to apply to this professional market. One of the difficulties, for example, is that the market is very mobile and if too severe a regulatory regime is imposed in any particular place, it might drive the operation offshore to a less regulated place. That is not an excuse not to regulate it appropriately (Alan Cameron, former Chairman, Australian Securities Investment Commission).¹²

It was within this context that many regulators worldwide undertook a review of their existing regulatory frameworks. The major objectives of the reviews were to identify problems that existed in regulation and to take corrective action to remedy any problems. The reviews involved open forums where market participants were encouraged to put forward written submissions on any aspect of the current regulatory framework, including the creation of new proposals.

United Kingdom

Regulators in the United Kingdom and United States undertook such reviews, and found similar problems in their respective regulatory and legal frameworks. In the United Kingdom a number of committees were convened and reports commissioned, including the *Bank of England Report* (1993),¹³ the *Bank of England Report on the Collapse of Barings*¹⁴ and the *Legal Risk Review Committee Report on Legal Risk* in UK derivatives markets.¹⁵

United States

In the United States a number of committees and reports were also commissioned to investigate the regulation of derivatives markets, including legal risk concerns confronting markets

in the United States. See, for example:

- *US Government Accounting Office Report on Derivatives* (1994);¹⁶
- *Commodity and Futures Trading Commission (CFTC) Report on Derivative Markets* (1995);¹⁷
- Office of the Comptroller of the Currency (OCC) guidance on derivatives and other bank activities¹⁸ and supplementary Bulletin;¹⁹
- President's Working Group on Financial Markets on derivatives markets,²⁰ netting and hedge funds²¹ and retail swaps;²² and
- US House of Representatives Committee on Banking and Financial Services.

There was also extensive testimony before the US House of Representatives Committee on Banking and Financial Services, as well as other committees, by Federal Reserve Board Governor Alan Greenspan, Republican James Leach, the Chairperson of the CFTC, Brooksley Born, and other prominent individuals and entities.

An important private initiative in the United States was the creation of the Derivatives Policy Group (DPG). The DPG was formed by six major Wall Street firms in August 1994. The DPG is a voluntary framework providing self-regulation for its members. The DPG's role is to examine and respond to a number of public policy issues raised by the OTC derivatives activities of unregulated affiliates of SEC-registered broker-dealers and CFTC-registered futures commission merchants. It achieves these objectives by adopting an active and analytical framework designed to investigate and evaluate management controls, enhance reporting, evaluate risk in relation to capital, and provide guidelines for counterparty relationships.

Australia

In Australia, the Companies and Securities Advisory Committee (CASAC) was one such committee established by Parliament with the authority to review the existing regulatory framework and put forward recommendations for reform. In developing proposals for regulatory reform CASAC worked in conjunction with the Australian Securities and Investments Commission (ASIC). The problems identified in Australian regulation by the ASIC in its report on the Australian OTC derivatives market²³ included legal uncertainty arising from the definition of terms, which included the generic terms 'futures contract' and 'futures market'; the problem of regulatory arbitrage arising from the inconsistent regulatory treatment of certain derivative products; uncertainty over the impact of gaming and wagering legislation on OTC markets; uncertainty over licensing provisions of the *Corporations Act*; ineffective regulatory oversight and gaps within the existing framework; and overlap between different regulatory jurisdictions.

A thorough review of the Australian regulatory framework for financial markets and services was also undertaken. The review was commissioned by the Commonwealth Parliament to investigate and make recommendations for reform to the current regulatory framework regulating Australian financial markets. A number of recommendations made by the review called for reform to the derivatives industry. These reports were tabled in Parliament in 1997 and included the *Financial System Inquiry Final Report* (March 1997),²⁴ the *Corporate Law Economic Reform Program (CLERP) Proposals for Reform: Paper No.6* (1997)²⁵ and the *Financial Products, Services Providers and Markets – An Integrated Framework Consultation Paper*.²⁶

International

Like their American, British and Australian counterparts, international regulators have also expressed concern and have conducted urgent reviews of existing international regulatory frameworks. A number of influential reports have been published and include the *Bank of International Settlements (BIS) Recent Developments in International Interbank Relations* (October 1992),²⁷ the *Group of Thirty (G30) Global Derivatives Study Group, Derivatives: Practices and Principles*, (July 1993),²⁸ the *BIS Public Disclosure of Market and Credit Risk by Financial Intermediaries* (September 1994),²⁹ the *Basle Committee Report on Risk Management Guidelines for Derivatives* (July 1994),³⁰ the *BIS Survey of Foreign Exchange and Derivative Markets Activity* (May 1996)³¹ and the *BIS Framework for Supervisory Information about Derivatives and Trading Activities* (September 1998).³²

The Group of Thirty (G30) concluded that financial derivatives do not increase systemic risk.³³ In fact there was strong evidence to suggest that derivative markets – when operating efficiently – may reduce the probability of systemic or contagion risk because derivatives markets facilitate the efficient transfer of risk away from the risk-averse to the risk-taker. This, in turn, leads to an optimal and efficient allocation of financial risk within the economy. However, the G30 further concluded that a major impediment to the efficient operation of derivatives markets is the emergence of legal risk.³⁴ According to the G30, legal risk poses a serious threat to market sentiment and market confidence because it adversely affects operational efficiency.

New derivatives regulation

The comprehensive reviews conducted in the United Kingdom, the United States and Australia culminated in a raft of new legislation and proposed laws, designed to implement both incremental reform and entire new regulatory frameworks for financial markets.

United Kingdom

In the United Kingdom, Parliament has recently enacted the *Financial Services and Markets Act 2000* (UK). The Act makes wholesale changes to the way financial markets are regulated in the United Kingdom. In particular, as discussed in Chapter 10, the Act creates a single regulatory authority, the Financial Services Authority (FSA), that is responsible for the regulation of all financial markets. The Act harmonises regulatory control and supervision in the FSA, and replaces former regulatory bodies responsible for regulation.

United States

In the United States, recent legislation has been passed by Congress and enacted as law in the form of the *Commodity Futures Modernization Act 2000*³⁵ and the *Gramm–Leach–Bliley Act 1999*.³⁶ Both Acts make fundamental changes to the way financial markets, in particular derivative markets, are regulated in the United States. The emphasis now is on functional regulation of financial markets, where regulation is tailored to the markets and products functions rather than on the basis of the instruments' place of trade. In addition to new derivatives regulation, a number of other Acts dealing with netting in financial contracts have been

before Congress and include the *Financial Contracts Bankruptcy Act 2001*³⁷ and the *Financial Contract Netting Improvement Act 2001*.³⁸ The new regulation and proposed laws are dealt with in detail in Chapter 9 and Chapter 10 respectively.

Australia

In Australia the *Financial Services Reform Act 2001 (Cth) (FSRA)* was introduced and passed as law. The Act implements a new regime for the regulation of financial markets, one that is premised upon functional policy and functional terminology. The Act adopts a broad and generic meaning of ‘financial product’, which extends uniform regulation to all financial products including securities, derivatives, superannuation, insurance, foreign currency and non-cash payments.

The FSRA makes important inroads into the problems of legal risk and the regulation of financial derivatives. The Act introduces a new generic definition of ‘derivative’ that emphasises the inherent functional characteristics of all financial derivatives. This removes the potential for gaps in regulatory coverage and reduces the incentive for regulatory arbitrage, because all markets are regulated. Removing internal divisions between the different types of derivatives also alleviates some of the current characterisation concerns, since all derivatives are now caught and regulated by the new generic definition. Furthermore, the Act introduces useful reforms by removing the legal risk posed by gaming and wagering laws.

Legal risk and legal uncertainty persist

Despite the recent improvements made in all three jurisdictions, it will be shown here that considerable uncertainty and legal risk remain. In particular, this book details the key areas that continue to pose considerable challenges and important ramifications for market practitioners dealing in financial derivatives. Some areas included are listed below.

- Risks posed by gaming and wagering legislation to market practitioners and market issuers of financial derivatives, dealt with in detail in Chapter 5.
- The potential overlap between insurance legislation and certain financial derivatives instruments such as credit derivatives, discussed in Chapter 6.
- Considerable legal risk remains with market practitioners who deal with trusts, pension funds, local and statutory authorities, and non-bank financial institutions and intermediaries. The main concern here lies with the potential for contracts to be declared null and void, and thus rendered legally unenforceable, because one of the parties may lack the legal capacity or authority to enter into such transactions. The concerns and risks are examined in Chapter 7.
- Doubts remain over the ability of market counterparties to claim compound interest and achieve full restitution for the losses that they have suffered. This is because the House of Lords, in its landmark ruling in *Westdeutsche v. Islington LBC*, denied the German merchant bank the ability to claim compound interest from the local authority, which had wrongfully withheld monies under an interest rate swap agreement. The right to claim compound interest and other restitutionary rights are examined in Chapter 8.
- Customers and end-users of financial derivatives have challenged market practitioners in extensive litigation. Claims are made that the transaction has been marred by fraud or misrepresentations on the part of the dealer. Sometimes the litigation is due to opportunistic

attempts by a losing counterparty to circumvent payment obligations. However, there are also times when such claims do have merit. How does one avoid such legal traps? The issue is explored in Chapter 9.

- Uncertainty in the enforceability of netting arrangements continues to pose problems in the event of a cross-border insolvency. The main problem here lies with the difficulty of enforcing netting arrangements where the transaction and payments involve more than one jurisdiction. Moreover, the problem cannot be easily solved through the use of contractual provisions because foreign laws may intervene to dictate the outcome. This is especially the case where assets are located in the foreign jurisdiction. The enforceability of netting arrangements and what can be done are explored in Chapter 10.
- Regulation continues to generate considerable uncertainty in all three jurisdictions. Uncertainty in the way security derivatives are characterised and regulated persist. This is especially the case in the United States, where regulation is divided between securities and derivatives markets. The characterisation issue is also a problem in the United Kingdom and Australia because of different disclosure obligations to market issuers of securities and financial derivatives instruments. The problems that are generated by regulation are examined in Chapter 11.

What can be done?

Throughout this book practical suggestions are provided to practitioners with the aim of managing and minimising their exposure to legal risk. It is important to remember that legal risk and legal uncertainty are facts of life. It is not possible absolutely to avoid exposure to legal liability or legal risk. This is especially the case in dynamic and innovative financial markets, where regulation and the law have lagged behind market practices and market reality.

With these issues in mind, it is a key objective of this book that market practitioners are armed with relevant tools to identify, understand, manage and resolve the legal risks and legal uncertainties that confront participants when contracting for financial derivatives. The book also examines alternative methods of resolving disputes with contentious derivatives. This often involves balancing the needs of interested parties and reaching compromises with competing claims. The book does not profess to provide the solution for legal risk, but it does aim to promote practical strategies and critical thinking to help practitioners to identify, manage and minimise their exposures to the legal uncertainties that they may experience when dealing with financial derivatives.

¹ This issue is discussed in more detail in Chapter 4.

² See in the United States, where the Bankers Trust litigation has raised these issues, *Proctor & Gamble Co. v. Bankers Trust Co.* 925 F. Supp. 1270, DC S Ohio, 27 October 1994), *Gibson Greetings v. Bankers Trust Co.* (No 1–94–620, SD Ohio, 12 September 1994). See also *Société Nationale d'Exploitation Industrielle des Tabacs et Allumettes v. Salomon Bros. Int'l Ltd.*, 928 F.Supp. 398 (S.D.N.Y. 1996) and in the United Kingdom: *Bankers Trust Int'l PLC v. PT Dharmala Sakti Sejahtera* (unreported Q.B. (Com., Ct.) 1 December 1995).

³ [1992] 2 AC 1.

⁴ *West Virginia v. Morgan Stanley. State v. Morgan Stanley & Co.*, 459 S.E. 2d 906 (S.Va. 1995).

⁵ [1996] AC 669 (HL).

⁶ [1998] 3 WLR 829.

⁷ In 1991 Congress enacted the *Federal Deposit Insurance Corporation Improvement Act*, which included provisions governing the treatment of netting contracts between financial institutions.

⁸ *Bank of International Settlements Quarterly Review* (2003), March, p. 31.

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- ⁹ Ibid, p. 21.
- ¹⁰ Banks, E. (1994), *Complex Derivatives*, Chicago, Probus Publishing Company, p. 21.
- ¹¹ Hansell, S., and K. Muehring (1992), 'Why derivatives rattle the regulator', *Institutional Investor*, p. 103 (September).
- ¹² Commonwealth of Australia (1995), *Joint Committee on Corporations and Securities*, Canberra, AGPS, 29 March, p. 152.
- ¹³ Bank of England (1993), *Derivatives: Report of an Internal Working Group*, London, Bank of England, April. (Hereafter called *Bank of England Report*.)
- ¹⁴ Bank of England (1995), *Report of the Board of Banking Supervision Inquiry into the Circumstances of the Collapse of Barings*, London, Bank of England, April.
- ¹⁵ Legal Risk Review Committee (1992), *Reducing Uncertainty: The Way Forward*, London, Legal Risk Review Committee.
- ¹⁶ General Accounting Office (1994), *Financial Derivatives: Actions Needed to Protect the Financial System*; report to congressional requestors, Washington, DC, United States General Accounting Office, October. (Hereafter called the *GAO Report*.)
- ¹⁷ Commodities and Futures Trading Commission (1995), *Report on OTC Derivative Markets*, Washington, DC: Commodity Futures Trading Commission, December. (Hereafter called the *CFTC Report*.)
- ¹⁸ Office of the Comptroller of the Currency (1993), *The Comptroller's Handbook for National Bank Examiners, Risk Management of Financial Derivatives OCC Banking Circular 277*, Washington, DC, Office of the Comptroller of the Currency.
- ¹⁹ Office of the Comptroller of the Currency (1999), *Bulletin 99-2*, Washington, DC, Office of the Comptroller of the Currency.
- ²⁰ Report of the President's Working Group on Financial Markets (1999), *Over-the-Counter Derivatives Markets and the Commodity Exchange Act*, Washington, DC, President's Working Group on Financial Markets, November.
- ²¹ Report of the President's Working Group on Financial Markets (1999), *Hedge Funds, Leverage, and the Lessons of Long-Term Capital Management*, Washington, DC, President's Working Group on Financial Markets, April.
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- ²³ ASIC Report, op cit (n.11), esp pp. 23-28.
- ²⁴ Financial System Inquiry (1997), *Financial System Inquiry Final Report*, Canberra, Australian Government Publishing Service, March. (Hereafter called the *Wallis Committee Report*.)
- ²⁵ Corporate Law Economic Reform Program (1997), *Financial Markets and Investment Products: Promoting Competition, Financial Innovation and Investment*, Canberra, Australian Government Publishing Service, November. (Hereafter called the *CLERP Report*.)
- ²⁶ Corporate Law Economic Reform Program (1999), *Financial Products, Service Providers and Markets—An Integrated Framework Implementing CLERP 6 Consultation Paper*, Canberra, Australian Government Publishing Service, February. (Hereafter called CLERP 6 Implementation Paper.)
- ²⁷ Bank for International Settlements (Currency Standing Committee) (1992), *Recent Developments In International Interbank Relations*, Basle, October. (Hereafter called the Promisel Report.)
- ²⁸ Group of 30 Global Derivatives Study Group (1993), *Practices and Principles*, Washington, DC, Group of 30, July. (Hereafter called the *G30 Report*.)
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- ³⁰ Basle Committee on Banking Supervision (1994), *Risk Management Guidelines for Derivatives*, Basle, Basle Committee on Banking Supervision, July. (Hereafter called the *Basle Guidelines*.)
- ³¹ Bank for International Settlements (1996), *Central Bank Survey of Foreign Exchange and Derivative Market Activities in May 1996*, Basle, Bank for International Settlement, Monetary and Economic Department.
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- ³³ See G30 report (n.49), pp. 51-52.
- ³⁴ Ibid, p. 61.
- ³⁵ PL 106-554 106th Cong. (2000); H.R. 4541 and S.2697.
- ³⁶ PL 106-102 Nov 12, 1999.
- ³⁷ H.R. 3211 107th Congress (2001).