

Australia Dossier by John Seale

Showdown looms over derivatives

Will Australian authorities cover up the illegal derivatives market, or will the rule of law prevail?

As of March 1993, Australian banks' aggregate derivatives obligations stood at over Aus \$2 trillion, equivalent to six times Australia's current Gross Domestic Product. The total of derivatives traded has doubled in less than one year. The stage is set for a blowout in the banking and securities market of Australia.

Alarm bells are now ringing in the corridors of power over the nature of derivatives trading and the rapidity of its growth. It is now emerging that much over the counter (OTC) derivatives trading is illegal, and there are moves afoot to legalize what is a national scandal.

Under the gaming and wagering laws in various states, derivatives trading is only legal if it is in the form of a futures contract and is conducted through a recognized futures exchange. But derivatives that are not "futures contracts" and are not traded on a futures exchange, such as OTC derivatives in the form of "contracts for differences," "contracts in relation to indices," and others, run the risk of being a wagering contract, that is, a gambling contract, and hence illegal and unenforceable. A huge credit risk thus exists in the banking system which could bring every Australian bank and derivatives player into default, and makes a mockery of the rules laid down by the Reserve Bank (Australia's central bank).

About 80% of derivatives trading is over the counter trading and is not processed through a recognized futures exchange. At the very least there is widespread uncertainty in relation

to the legal status of particular transactions. According to the Draft Report of the Australian Securities Commission (ASC), the corporate watchdog in Australia, there is the possibility of criminal sanctions being applied for illegal gambling against the big players such as Westpac Bank, the Australian Wheat Board, Bankers Trust Australia, MacQuarie Bank, and some others. Advice provided by the huge corporate legal firm of Mallesons Stephen Jacques to their clients in April 1993, confirms that most derivatives trading in Australia is probably illegal.

The fact that a trillion-dollar "industry" in Australia is illegal has now stimulated moves to legitimize the current illegalities in the OTC derivatives market. Twelve of the largest players in the derivatives game have organized a two-day conference for November titled "Discover Profitable New Opportunities and Applications for Derivatives: A Practical User's Guide." The key participants in the market and the organizers of the conference include: Coca Cola Amatel, First Chicago Australia, Price Waterhouse, Westpac, SBC Dominguez Bank, and the Australian Wheat Board. Its clear intent is to gather wider acceptance for derivatives activity and to encourage others to participate and become complicit in the illegalities. It is a move to forestall attempts to enforce Corporations Law and the State Gaming Acts.

At this stage, the Australian Securities Commission has received 14 submissions from the big players in

derivatives trading, the consensus of the submissions requesting "safe harbor" legislation to protect from prosecution the trading of those bigger and more "sophisticated" traders in OTC derivatives. This "safe harbor" proposal is based on similar legislation in the United States. It appears that at this stage, the ASC is reluctant to proceed with such proposals. However, other legislative proposals are favored by the ASC, such as limited regulation of OTC trading and total legalization by specifically exempting all OTC derivatives trading from the Corporations Law.

There are no proposals to enforce the law as it stands; what is being proposed is a coverup of illegalities. The only people concerned with enforcing the law with regard to OTC derivatives trading are Lyndon LaRouche's co-thinkers in the Citizens Electoral Councils. The CEC submission to federal Attorney General Michael Lavarch requests that derivative trading be investigated "from the standpoint of national interest rather than the interests of the speculators." A pamphlet put out by the U.S. weekly newspaper *New Federalist*, titled "Tax Derivatives Speculation," has been circulated widely and requests for more copies have been made by the Attorney General.

State gaming authorities have begun their own investigations as a result of CEC initiatives, and have pointed out that illegalities might be involved in OTC trading and that it has "the potential for seriously destabilizing the world currency markets."

The CEC has given every member of the Australian Parliament a copy of the *New Federalist* pamphlet, and the stage is now set for a showdown between those who argue for the law to be enforced, and those who are defending a profiteering racket that has the potential to wreck Australia.