

Client Alert



November 2012

Committee recommendations on Derivatives Transactions Bill

The Parliamentary Joint Committee on Corporations and Financial Services (Committee) has released the recommendations from its inquiry into the *Corporations Legislation Amendment (Derivative Transactions) Bill 2012* (Cth) (Bill).

The Committee was tasked with inquiring into and reporting on the Bill (please view our October 2012 article [Government introduces derivatives bill](#)). It received submissions from stakeholders, and has released six recommendations based on those submissions and the Committee's findings.

The Bill is yet to be passed, but it is intended that initial phases of the derivatives trading framework will be in place by early next year. In particular, the regulators are hoping to encourage participants in the derivatives markets to start moving to the new derivatives framework prior to any rules being made. If you would like help with preparing your derivatives trading business for the new framework, please do not hesitate to contact one of our experienced financial services lawyers.

The submissions

The main concern expressed in the submissions was that the Bill provided only a framework without prescribing any relevant rules. When combined with a lack of safeguards on the rule making power, this could result in an inappropriate use of power by ASIC or the Minister, and a lack of certainty for traders in regulated derivatives.

In particular, concern was expressed that information provided to trade repositories could be used inappropriately, or that industries that were not meant to be caught by the legislation (such as the energy industry trading in energy derivatives) would be required to comply with the rules.

The recommendations

The Committee acknowledged the concerns raised in the submissions, but proceeded on the basis that the Bill be passed unamended, with external measures taken to address the concerns.

Specifically, the Committee recommended that:

- Treasury and the Australian Securities and Investments Commission (ASIC) publish information regarding the consultation process for developing derivative regulations and rules before the passing and commencement of the Bill;
- ASIC publish a regulatory guide explaining the derivative transaction and trade repository rules;

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- ASIC provide updates on the development of derivatives rules and the market's response to those rules;
- ASIC issue guidance on confidentiality of data and trade repositories and how information provided to trade repositories may be used;
- The Minister for Resources and Energy should be consulted before making the regulation or giving consent to an ASIC rule, where a rule or regulation will have an effect on the energy sector; and
- the Bill should be passed

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