

Legal Issues of Derivatives

Abstract

Derivatives symbolize one of the most successful instruments of international markets in 20. century boosted by ongoing globalization and never-ending technological progress. Though origins of derivatives could had been found in Ancient times, the real “explosion” of derivatives has blown in last two centuries. The essential objective and purpose of the thesis is firstly to analyse the true meaning and definition of the term “derivative” and surrounding legal issues and secondly to provide comprehensive list of basic derivatives according to the historical and financial-economic indicators.

My thesis consists of six chapters. First two introductory chapters deal with the general aspects of derivatives, such as definition and legal nature. Derivatives, generally speaking, are legal contracts between market participants allowing contracting parties to transfer risks connected with particular underlying to another party or speculate on market movements in order to gain profits. Derivatives are traded in both, standardized and OTC markets, which embodied them with ultimate flexibility and range. Assessing true legal nature of derivatives stands for one of the main issues concerned by academics and practitioners, in particular whether derivatives fall under the category of bets and games, insurance policies or pure commercial contracts.

Systematization and related issues together with common features of derivatives form the content of the third chapter. Common features represent the list of basic principles which are “common” to most types of derivatives and highlight their specific nature in comparison with other market products.

Main part of the thesis, included in chapter 4 and 5, examines basic forms of derivatives and their characteristics. The list of all forms of derivatives is literally endless, nevertheless certain basic building principles repeatedly emerge in majority of the types. So-called cornerstones of the derivatives represent futures, swaps, forwards and FRA and options. Combinations and mixing of these basic instruments have led to all other derivative forms and varieties. The final part of the fifth chapter assesses the influence of credit derivatives on global financial crisis.

Last chapter discusses proposed EU regulation of OTC markets. Some voices recently called for stricter derivative regulation and more thorough control by public (or legally-empowered) bodies because of the role derivatives had played in the collapse of global

markets. Referring to this argumentation, some developed states and international organizations (e.g. ISDA) drafted (or already adopted) more complex and robust regulation to control and manage derivatives worldwide. Neither EU wants to stay behind these efforts. Whether proposed regulation goes against or in favour of derivatives and their users is also considered.

Conclusions are drawn in the Summary. This part briefly sums up the outcome of each separate chapter in correspondence with questions set in the Introduction.