

INTERNATIONAL FINANCE

TRANSACTIONS, POLICY,
AND REGULATION

EIGHTEENTH EDITION

HAL S. SCOTT
ANNA GELPERN

FOUNDATION PRESS

INTERNATIONAL FINANCE

**TRANSACTIONS, POLICY, AND
REGULATION**

EIGHTEENTH EDITION

By

HAL S. SCOTT

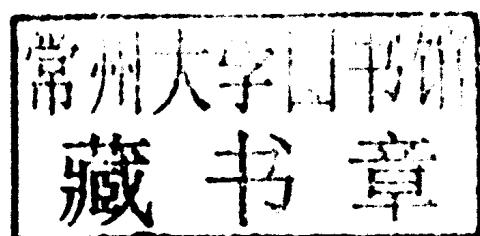
Nomura Professor of International Financial Systems
Harvard Law School

And

ANNA GELPERN

Professor of Law

American University Washington College of Law



**NEW YORK, NEW YORK
FOUNDATION PRESS
2011**

This publication was created to provide you with accurate and authoritative information concerning the subject matter covered; however, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

Nothing contained herein is intended or written to be used for the purposes of 1) avoiding penalties imposed under the federal Internal Revenue Code, or 2) promoting, marketing or recommending to another party any transaction or matter addressed herein.

© 1995–2004 FOUNDATION PRESS

© 2005–2010 THOMSON REUTERS/FOUNDATION PRESS

© 2011 By THOMSON REUTERS/FOUNDATION PRESS

1 New York Plaza, 34th Floor

New York, NY 10004

Phone Toll Free 1-877-888-1330

Fax 646-424-5201

foundation-press.com

Printed in the United States of America

ISBN 978-1-59941-975-6

Mat #41127615

SUMMARY OF CONTENTS

| | |
|---------------|-----|
| PREFACE | iii |
|---------------|-----|

| | |
|--------------------------------------------------|----------|
| CHAPTER ONE <u>Introduction</u>..... | 1 |
|--------------------------------------------------|----------|

| | |
|--------------------------------------------------------------------|----|
| A. International Financial Transactions | 1 |
| B. The Major Financial Markets Compared | 11 |
| C. How Globalized Are Financial Markets?..... | 17 |
| D. Costs and Benefits of the Internationalization of Finance | 20 |
| E. The Global Financial Crisis | 23 |
| F. The Problem of Systemic Risk | 31 |
| G. The Road Map | 43 |

| | |
|------------------------------------------------------------------------------|-----------|
| PART ONE INTERNATIONAL ASPECTS OF MAJOR DOMESTIC MARKETS | 44 |
|------------------------------------------------------------------------------|-----------|

| | |
|----------------------------------------------------------------------------------------|-----------|
| CHAPTER TWO <u>International Aspects of U.S. Capital Markets</u> | 45 |
|----------------------------------------------------------------------------------------|-----------|

| | |
|---------------------------------------------------------|-----|
| A. Internationalization of U.S. Securities Markets..... | 46 |
| B. The U.S. Securities Law Framework | 57 |
| C. Revision of the Overall U.S. Structure | 158 |
| D. International Disclosure and Accounting | 172 |
| E. U.S. Public Market Alternatives..... | 186 |
| F. Issuing Securities Abroad | 196 |
| Conclusions | 203 |

| | |
|-----------------------------------------------------------------------------------------|------------|
| CHAPTER THREE <u>International Aspects of U.S. Banking Markets</u>..... | 205 |
|-----------------------------------------------------------------------------------------|------------|

| | |
|---------------------------------------------------------------|-----|
| A. The Importance of Foreign Banks in the United States | 205 |
| B. Global Banking Markets | 208 |
| C. Basic Features of U.S. Regulatory System | 209 |
| D. Regulation of Foreign Banks..... | 217 |
| E. Concern with the Operations of U.S. Banks Abroad | 249 |
| F. The GATS | 250 |
| Conclusions | 253 |

| | | |
|------------------------------------------------------------------|-------------------------------------------------------------------------|------------|
| CHAPTER FOUR | The European Union: The Single Market in Financial Services..... | 254 |
| A. Introduction..... | 255 | |
| B. Securities Markets..... | 257 | |
| C. Banking Markets | 293 | |
| Conclusions | 319 | |
| CHAPTER FIVE | Europe's Economic and Monetary Union | 321 |
| A. The Design of the European Monetary Union | 321 | |
| B. The Transition: Getting to Stage 3 | 330 | |
| C. Euro Transition..... | 333 | |
| D. The Euro Today..... | 335 | |
| E. Will the Euro Survive? | 353 | |
| Conclusions | 357 | |
| CHAPTER SIX | Japanese Financial Markets..... | 359 |
| A. Banking Markets | 360 | |
| B. Capital Markets | 387 | |
| Conclusions | 410 | |
| PART TWO | INFRASTRUCTURE OF FINANCIAL MARKETS | 411 |
| CHAPTER SEVEN | Capital Adequacy | 412 |
| A. Background of the Basel Accord and Definition of Capital..... | 413 | |
| B. Credit Risk under Basel I..... | 421 | |
| C. The New Basel Accord (Basel II) | 428 | |
| D. Current Issues of Capital Adequacy: Basel II and Beyond..... | 440 | |
| E. Basel II Revisions and Basel III | 450 | |
| F. Market Discipline Alternative | 455 | |
| G. Market Risk..... | 460 | |
| H. Operational Risk | 469 | |
| I. Home-Host Problems | 471 | |
| Conclusions | 473 | |

| | | |
|-----------------------|------------------------------------------------------------------------------------------|------------|
| CHAPTER EIGHT | Foreign Exchange Regimes..... | 474 |
| A. | Basic Types of Exchange Rate Systems | 474 |
| B. | Types of Existing Exchange Rate Systems | 479 |
| C. | Sovereign Wealth Funds | 492 |
| D. | Capital Controls and Foreign Exchange Regimes | 502 |
| E. | Foreign Exchange Markets | 504 |
| | Conclusions | 515 |
| CHAPTER NINE | The Payment System | 516 |
| A. | The Use of the U.S. Payment System for International Transactions..... | 516 |
| B. | Fedwire and CHIPS: Risk Reduction Measures | 529 |
| C. | Herstatt Risk..... | 540 |
| D. | Some Aspects of the International Payment System | 545 |
| | Conclusions | 552 |
| CHAPTER TEN | Clearance and Settlement | 553 |
| A. | The Basic Elements | 553 |
| B. | International Dimensions | 569 |
| C. | Future Arrangements..... | 587 |
| D. | Capital Requirements and Prudential Supervision | 592 |
| | Conclusions | 593 |
| PART THREE | INSTRUMENTS AND OFFSHORE MARKETS..... | 595 |
| CHAPTER ELEVEN | Euromarkets | 596 |
| A. | Introduction to the Eurocurrency Market..... | 596 |
| B. | Syndicated Eurodollar Loans: An Overview | 599 |
| C. | The Allocation of Risk Among the Parties to a Eurocredit Based on Sample Agreement | 601 |
| D. | Eurobonds..... | 612 |
| | Conclusions | 624 |

| | | |
|-----------------------------------------------------------------------------------------|------------------------------------------------------------|-----|
| CHAPTER TWELVE | Asset Securitization and the Financial Crisis | 625 |
| A. Introduction..... | 625 | |
| Part One: Securitization Process..... | 628 | |
| A. Key Issues in Structuring an Offering | 628 | |
| B. The Development of National ABS Markets in Germany and Europe | 646 | |
| C. Capital Adequacy Rules for ABS | 649 | |
| Part Two: The Response to the Financial Crisis— | | |
| Stabilizing the Financial System and Regulatory Reform..... | 654 | |
| A. Monetary Policy | 654 | |
| B. Debt Guarantees and Deposit Insurance | 667 | |
| C. Insolvency or Potential Insolvency | 670 | |
| D. Reform of the Securitization Process..... | 698 | |
| E. Housing Markets: Relief for Borrowers and Consumer Protection .. | 731 | |
| F. Unfair and Deceptive Practices | 745 | |
| G. Liability for the Past..... | 747 | |
| H. International Response | 749 | |
| Conclusions | 751 | |
| CHAPTER THIRTEEN | Stock Market Competition | 753 |
| A. U.S. Market | 754 | |
| B. Foreign Markets..... | 781 | |
| C. Alliances and Mergers | 787 | |
| Conclusions | 793 | |
| CHAPTER FOURTEEN | Futures and Options | 795 |
| A. Introduction..... | 795 | |
| B. Futures, Options, and Markets: An Introduction | 795 | |
| C. Futures and Options Exchanges: Competition and Regulation | 808 | |
| D. Cross-Border Electronic Access to Futures Exchanges..... | 816 | |
| E. A Case Study in the Regulation of Futures and Options Markets: The Barings Case..... | 818 | |
| F. National Regulatory Responses | 831 | |
| Conclusions | 832 | |
| CHAPTER FIFTEEN | Swaps..... | 834 |
| A. Swap Transactions and Markets | 834 | |

| | |
|----------------------------------------------|-----|
| B. Credit and Market Risks | 841 |
| C. Credit Derivatives..... | 851 |
| D. Operational Risk and OTC Regulation | 879 |
| E. Capital Requirements..... | 880 |
| F. Enforceability Issues | 888 |
| Conclusions | 911 |

CHAPTER SIXTEEN Mutual and Hedge Funds913

| | |
|-----------------------------------------------------------|-----|
| A. United States Regulation of Offshore Mutual Funds..... | 915 |
| B. Current Issues in U.S. Mutual Fund Regulation | 925 |
| C. Hedge Funds | 942 |
| D. Tax Considerations | 963 |
| Conclusions | 967 |

PART FOUR EMERGING MARKETS969

CHAPTER SEVENTEEN Project Finance970

| | |
|-----------------------------------------|-----|
| A. Introduction..... | 970 |
| B. The Philippines' Need for Power..... | 972 |
| C. Project Finance in General..... | 973 |
| D. The Pagbilao Power Project | 974 |
| E. Financing Pagbilao | 981 |
| F. Subsequent Developments | 996 |
| Conclusions | 998 |

**CHAPTER EIGHTEEN Privatization and
Institutional Investors999**

| | |
|----------------------------------------------------------------|------|
| A. Introduction..... | 999 |
| B. Privatization in the 1980s and 1990s | 1000 |
| C. Telmex as a State-owned Enterprise..... | 1001 |
| D. Investment in Mexico | 1003 |
| E. The Transfer of Control over Telmex to the Consortium | 1004 |
| F. The Offer of Telmex Shares in World Markets..... | 1010 |
| G. Demand for the Telmex Offer | 1012 |
| H. The December 1994 Peso Crisis | 1012 |
| Conclusions | 1016 |

| | | |
|---------------------------|----------------------------------------------------------------------------------------------------------------|------|
| CHAPTER NINETEEN | <u>Emerging Market Debt</u> | 1017 |
| A. | Introduction..... | 1017 |
| B. | The Debt Problem | 1018 |
| C. | Reform of the Debt Resolution Process | 1060 |
| | Conclusions | 1100 |
| CHAPTER TWENTY | <u>Financial System Reforms in Developing and Emerging Markets</u> | 1102 |
| A. | An International Banking Standard | 1102 |
| B. | The International Financial Architecture Approach..... | 1106 |
| C. | Regional Integration | 1114 |
| D. | Capital Controls | 1115 |
| | Conclusions | 1119 |
| CHAPTER TWENTY-ONE | <u>Chinese Financial Markets</u> | 1122 |
| A. | An Overview of the Chinese Financial System..... | 1124 |
| B. | Foreign Exchange and Capital Controls | 1129 |
| C. | Chinese Domestic Banking Regulation | 1133 |
| D. | Chinese Securities Markets | 1153 |
| E. | Emerging Issues in Chinese Finance | 1170 |
| | Conclusions | 1172 |
| PART FIVE | <u>FIGHTING TERRORISM</u> | 1173 |
| CHAPTER TWENTY-TWO | <u>Controlling the Financing of Terrorism, Terrorism Insurance, and Financial Terrorism</u> | 1174 |
| A. | Money Laundering and Anti-Terrorism | 1174 |
| B. | Freezing Terrorist Assets | 1200 |
| C. | Reinsurance Crisis..... | 1225 |
| D. | Attacking the Financial System | 1231 |
| E. | Costs and Benefits | 1231 |
| | Conclusions | 1232 |
| | INDEX | 1234 |

TABLE OF CONTENTS

| | |
|---------------|-----|
| PREFACE | iii |
|---------------|-----|

| | | |
|--------------------|---------------------------|----------|
| CHAPTER ONE | Introduction | 1 |
|--------------------|---------------------------|----------|

| | | |
|----|------------------------------------------------------------------------------------|----|
| A. | International Financial Transactions | 1 |
| 1. | Definitions | 1 |
| 2. | Regulation..... | 6 |
| B. | The Major Financial Markets Compared | 12 |
| C. | How Globalized Are Financial Markets?..... | 18 |
| D. | Costs and Benefits of the Internationalization of Finance | 21 |
| E. | The Problem of Systemic Risk | 24 |
| 1. | Connectedness: The Chain Reaction Problem..... | 24 |
| 2. | Contagion | 26 |
| 3. | The Extent of Overall Systemic Risk | 27 |
| 4. | Systemic Risk Beyond the Banks: The Story of Long-Term Capital Management | 29 |
| F. | The Global Financial Crisis | 34 |
| 1. | Causes of the Crisis | 35 |
| 2. | Description of the Crisis: Measuring Severity | 36 |
| 3. | The U.S. Policy Response..... | 42 |
| 4. | Emergency Authority of the Federal Reserve | 80 |
| 5. | The International Response | 82 |
| G. | The Road Map | 84 |

| | | |
|-----------------|------------------------------------------------------------------|-----------|
| PART ONE | INTERNATIONAL ASPECTS OF MAJOR DOMESTIC MARKETS | 85 |
|-----------------|------------------------------------------------------------------|-----------|

| | | |
|--------------------|----------------------------------------------------------------|-----------|
| CHAPTER TWO | International Aspects of U.S. Capital Markets | 86 |
|--------------------|----------------------------------------------------------------|-----------|

| | | |
|----|-----------------------------------------------------|-----|
| A. | Overview: Securities and Securities Markets..... | 87 |
| 1. | Securities | 87 |
| 2. | Securities Markets | 88 |
| 3. | Market Actors and Transactions..... | 91 |
| B. | The U.S. Securities Law Framework | 93 |
| 1. | General Approach: Registration and Disclosure | 93 |
| 2. | Exemptions from Registration and Reporting..... | 96 |
| 3. | Liability for Deficient Disclosure | 108 |

| | |
|-------------------------------------------------------------------------------|-----|
| 4. Framework Applied: Transactions and Alternatives..... | 114 |
| C. Enforcement of U.S. Securities Laws | 124 |
| 1. Public Enforcement | 124 |
| 2. Private Enforcement | 132 |
| 3. Comparing the United States and the United Kingdom | 140 |
| D. Regulation and Market Competitiveness..... | 142 |
| 1. Bonding | 143 |
| 2. Cross-Listing and Liquidity..... | 143 |
| 3. Emerging Market Competition | 145 |
| 4. Offshore and Private Alternatives | 146 |
| 5. Delisting | 147 |
| 6. Listing Premium Studies | 148 |
| 7. Trend Implications | 149 |
| E. Corporate Governance | 151 |
| 1. The Sarbanes-Oxley Act of 2002 | 151 |
| 2. Market Structure and Corporate Governance | 178 |
| F. International Coordination of Disclosure and Accounting Standards | 201 |
| 1. Disclosure..... | 201 |
| 2. Accounting | 202 |
| G. Regulation of Securities Firms | 216 |
| 1. SEC, Capital Adequacy and Regulatory Competition | 216 |
| 2. Self-Regulatory Organizations (SROs) | 218 |
| 3. Investment Banking Practices | 219 |
| Conclusions | 230 |

| | |
|----------------------|--------------------------------------|
| CHAPTER THREE | International Aspects of U.S. |
| | Banking Markets..... |
| | 232 |

| | |
|------------------------------------------------------------------------------------|-----|
| A. Domestic and International Banking Markets | 233 |
| B. Basic Features of U.S. Bank Regulation | 237 |
| 1. Safety and Soundness (Prudential) Regulation | 237 |
| 2. Deposit Insurance and Lender of Last Resort..... | 238 |
| 3. Limits on Activities and Affiliations | 242 |
| 4. Dual Banking System | 251 |
| 5. Other Regulations | 253 |
| C. Foreign Banks in the United States: Host Regulation..... | 256 |
| 1. Subsidiaries | 257 |
| 2. Branches | 259 |
| 3. Activities and Affiliation Restrictions on Foreign Banks | 263 |
| 4. The Daiwa Scandal: A Case Study in Host Regulation | 266 |
| D. Home Regulation, Transnational Banking, and International Coordination | 269 |
| 1. Concern with the Operation of U.S. Banks Abroad | 269 |

| | | |
|----|------------------------------------------------------------------------------------------------------|-----|
| 2. | The BCCI Affair | 269 |
| 3. | International Response to BCCI: The Basel Concordat and Its Progeny | 272 |
| 4. | U.S. Response to BCCI: FBSEA | 275 |
| E. | Bank Failure and Resolution | 278 |
| 1. | Bank Resolution Framework in the United States..... | 278 |
| 2. | The Dodd-Frank Resolution Reforms | 281 |
| 3. | Failures of Cross-Border Banking Organizations..... | 283 |
| F. | The Structure of Regulation and Supervision | 287 |
| 1. | Systematic Risk, Macroprudential Regulation, and Institutional Design | 287 |
| 2. | U.S. Institutions for Regulation and Supervision..... | 291 |
| G. | Trade in Financial Services: The GATS | 302 |
| 1. | Structure of the GATS | 302 |
| 2. | General Obligations: MFN and Transparency | 303 |
| 3. | Specific Commitments: Market Access and National Treatment | 303 |
| 4. | Special Provision for Financial Services: Understanding on Commitments in Financial Services..... | 303 |
| 5. | Annex on Financial Services | 303 |
| 6. | The Doha Round..... | 304 |
| | Conclusions | 305 |

**CHAPTER FOUR The European Union: The Single
Market in Financial Services.....306**

| | | |
|----|--------------------------------------------------|-----|
| A. | Introduction..... | 307 |
| B. | Securities Markets..... | 309 |
| 1. | Disclosure..... | 314 |
| 2. | Provision of Services | 328 |
| 3. | UCITS | 334 |
| 4. | Securitization and Credit Rating Agencies | 336 |
| 5. | Derivatives..... | 341 |
| 6. | Corporate Governance | 342 |
| 7. | The Structure of E.U. Securities Regulation..... | 345 |
| C. | Banking Markets | 348 |
| 1. | The Second Banking Directive | 352 |
| 2. | Conglomerates | 366 |
| 3. | State Subsidies and Merger Restrictions | 368 |
| 4. | Impact of Banking Policy | 372 |
| 5. | Deposit Insurance | 373 |
| 6. | Bailouts and the Credit Crisis..... | 375 |
| | Conclusions | 376 |

| | | |
|---------------------|-------------------------------------------------------------------------------------------------------|------------|
| CHAPTER FIVE | Europe's Economic and Monetary Union | 378 |
| A. | The Design of the European Monetary Union | 378 |
| 1. | The Maastricht Treaty | 379 |
| 2. | The Pros and Cons of Monetary Union | 382 |
| B. | The Transition: Getting to Stage 3 | 387 |
| 1. | Convergence..... | 387 |
| 2. | The Shift from Multiple Currencies to One..... | 387 |
| C. | Euro Transition..... | 390 |
| 1. | From 1999 to 2002: EMI's Schedule..... | 390 |
| D. | The Euro Today..... | 392 |
| 1. | The Greek Crisis..... | 392 |
| 2. | The Response to the Greek Crisis | 393 |
| 3. | Restructuring Greece's Debt..... | 398 |
| 4. | The Ireland Crisis | 399 |
| 5. | The "Pact For The Euro" | 401 |
| 6. | PIIGS After The "Pact" | 403 |
| 7. | Lender of Last Resort..... | 404 |
| 8. | Impact on Financial Markets | 409 |
| 9. | Fiscal and Monetary Policy and the Stability Pact..... | 412 |
| 10. | Continuity of Contract | 418 |
| 11. | U.K. Entry into EMU | 420 |
| E. | Will the Euro Survive? | 421 |
| 1. | Reestablishing National Currencies | 422 |
| 2. | Continuity of Contract | 423 |
| | Conclusions | 425 |
| CHAPTER SIX | Japanese Financial Markets | 427 |
| A. | Banking Markets | 429 |
| 1. | Structure of Japanese Banking Today | 429 |
| 2. | Non-performing Loans | 432 |
| 3. | Capital Adequacy | 438 |
| 4. | Corporate Restructuring..... | 441 |
| 5. | Restructuring Japanese Banks | 443 |
| 6. | Deposit Insurance | 451 |
| 7. | Postal Savings System | 451 |
| 8. | The Regulators | 453 |
| B. | Capital Markets | 455 |
| 1. | The Big Bang in Capital Markets | 456 |
| 2. | Licensing Requirements for Foreign Securities Firms | 458 |
| 3. | The Financial Services Agreement (FSA) of 1995: Liberalization of Cross-Border Capital Flows | 459 |

| | |
|----------------------------------------------------------------|-----|
| 4. Rules for Issuance of Foreign Securities in Japan | 462 |
| 5. Stock Exchanges and the Bond Markets | 463 |
| 6. Government Intervention in Capital Markets | 464 |
| 7. Disclosure Practices | 466 |
| 8. Corporate Governance and Corporate Control..... | 466 |
| 9. Financial Instruments and Exchange Act of 2006 (FIEA) | 471 |
| 10. Regulators and Enforcement..... | 473 |
| Conclusions | 478 |

**PART TWO INFRASTRUCTURE OF FINANCIAL
MARKETS.....** 480

CHAPTER SEVEN Capital Adequacy 481

| | |
|-------------------------------------------------------------------------------|-----|
| A. Background of the Basel Accord and Definition of Capital..... | 482 |
| 1. Overview | 484 |
| 2. Definition of Capital..... | 486 |
| B. Credit Risk under Basel I..... | 491 |
| 1. Risk-weighting..... | 491 |
| 2. Off-Balance Sheet (OBS) Items | 495 |
| 3. The Effect of the Credit Risk Rules..... | 497 |
| C. The New Basel Accord (Basel II) | 498 |
| 1. The Standardized Approach | 499 |
| 2. The Internal Ratings-Based Approach | 501 |
| D. Current Issues of Capital Adequacy: Basel II, Basel III and Beyond..... | 511 |
| 1. How Much Capital? | 511 |
| 2. Basel III Capital and Liquidity Reforms | 512 |
| 3. Bank Holding Company Capital | 522 |
| 4. Accounting and Capital..... | 522 |
| 5. Cyclicalty | 523 |
| E. Market Discipline Alternative | 525 |
| 1. Subordinated Debt | 525 |
| 2. Spreads on Credit Default Swaps | 527 |
| 3. Stress Tests..... | 528 |
| F. Market Risk..... | 531 |
| 1. Associated with Securities Operations | 531 |
| 2. The Basel Committee Approach..... | 532 |
| G. Operational Risk | 539 |
| H. Home Hosting Problems | 541 |
| Conclusions | 543 |

| | | |
|----------------------|---------------------------------------------------------------------------|------------|
| CHAPTER EIGHT | Foreign Exchange Regimes..... | 545 |
| A. | Basic Types of Exchange Rate Systems | 545 |
| 1. | Fixed Rate Systems: The Gold Standard..... | 547 |
| 2. | Fixed Rate Systems: The Bretton Woods Dollar Standard | 549 |
| 3. | Floating Rate Regimes—An Overview | 551 |
| B. | Types of Existing Exchange Rate Systems | 552 |
| 1. | Exchange Arrangements with No Separate Legal Tender..... | 552 |
| 2. | Currency Board Arrangements | 553 |
| 3. | Conventional Fixed Peg Arrangements | 554 |
| 4. | Pegged Exchange Rates within Bands..... | 555 |
| 5. | Crawling Pegs..... | 558 |
| 6. | Exchange Rates within Crawling Bands | 559 |
| 7. | Managed Floating with No Preannounced Path for the Exchange Rate | 559 |
| 8. | Independent Floating..... | 560 |
| 9. | Overall Trends..... | 560 |
| 10. | The Debate about the Non-system | 560 |
| C. | Sovereign Wealth Funds | 565 |
| 1. | Types and Sizes | 565 |
| 2. | Investments in Banks | 569 |
| 3. | Host Country Review Procedures: National Security | 571 |
| 4. | Policy Concerns Apart From National Security | 572 |
| 5. | Voluntary Codes of Conduct | 574 |
| D. | Capital Controls and Foreign Exchange Regimes | 575 |
| E. | Foreign Exchange Markets | 578 |
| 1. | The Spot Foreign Exchange Market | 579 |
| 2. | The Forward Market..... | 580 |
| 3. | The 1997 International Foreign Exchange Master Agreement (IFEMA)..... | 580 |
| | Conclusions | 589 |
| CHAPTER NINE | The Payment System | 590 |
| A. | The Use of the U.S. Payment System for International Transactions..... | 590 |
| 1. | In-house and Correspondent Transfers | 591 |
| 2. | Fedwire | 595 |
| 3. | CHIPS | 598 |
| B. | Fedwire and CHIPS: Risk Reduction Measures | 603 |
| 1. | Fedwire | 603 |
| 2. | CHIPS | 609 |
| 3. | Gross Versus Net Settlement | 612 |
| C. | Herstatt Risk..... | 614 |

| | |
|-----------------------------------------------------------|-----|
| D. Some Aspects of the International Payment System | 619 |
| 1. Off-shore Dollar Payment Systems..... | 619 |
| 2. European Union | 621 |
| 3. International Standards | 624 |
| 4. Global Trends | 626 |
| Conclusions | 626 |

CHAPTER TEN Clearance and Settlement.....627

| | |
|----------------------------------------------------------|-----|
| A. The Basic Elements | 627 |
| 1. Overview | 627 |
| 2. Clearance and Settlement in the United States: | |
| The DTCC | 630 |
| 3. Multilateral Netting..... | 637 |
| 4. Group of Thirty Standards | 639 |
| 5. The Second Generation Group of Thirty Standards | 642 |
| B. International Dimensions | 648 |
| 1. Linkages..... | 649 |
| 2. ICSDs | 651 |
| C. Future Arrangements..... | 666 |
| D. Capital Requirements and Prudential Supervision | 671 |
| Conclusions | 672 |

**PART THREE INSTRUMENTS AND OFFSHORE
MARKETS.....674**

CHAPTER ELEVEN Euromarkets675

| | |
|---------------------------------------------------|-----|
| A. Introduction to the Eurocurrency Market..... | 675 |
| B. Syndicated Eurodollar Loans: An Overview | 678 |
| C. The Allocation of Risk Among the Parties to a | |
| Eurocredit Based on Sample Agreement | 680 |
| 1. The Basic Terms of the Loan | 681 |
| 2. Allocation of Risk Among Managers, Agents, and | |
| Participating Banks | 689 |
| D. Eurobonds..... | 691 |
| 1. The Market | 691 |
| 2. The Effect of Regulation | 693 |
| 3. Issuing Procedures | 694 |
| 4. Taxation | 698 |
| 5. Global Bonds..... | 702 |
| Conclusions | 703 |

| | | |
|-----------------------------------------------------------------------------------|------------------------------------------------------------|------------|
| CHAPTER TWELVE | Asset Securitization and the Financial Crisis | 704 |
| A. Introduction..... | 704 | |
| B. Key Issues in Structuring an Offering | 707 | |
| 1. Securizable Assets | 709 | |
| 2. The Special Purpose Vehicle..... | 709 | |
| 3. The Form of the SPV..... | 710 | |
| 4. Bankruptcy Remoteness | 713 | |
| 5. Collateralized Debt Obligations (CDOs)..... | 714 | |
| 6. Accounting Treatment | 718 | |
| 7. Taxation | 718 | |
| 8. Credit, Liquidity, and Other Enhancements..... | 719 | |
| 9. Investors and the Types of Asset Backed Securities (ABSs)..... | 722 | |
| 10. Ratings | 724 | |
| C. The Development of National ABS Markets in Germany and Europe | 725 | |
| 1. Pfandbriefe..... | 725 | |
| 2. Other Types of Securitizations | 726 | |
| D. Capital Adequacy Rules for ABS | 728 | |
| 1. Operational Requirements | 729 | |
| 2. Standardized Approach..... | 730 | |
| 3. IRB Approach | 731 | |
| E. Reform of the Securitization Process..... | 733 | |
| 1. The Credit Ratings Agencies | 733 | |
| 2. Disclosure..... | 745 | |
| 3. Incentives..... | 748 | |
| 4. Accounting Reforms | 755 | |
| 5. Structural Reforms: The Volcker Rules | 772 | |
| F. Housing Markets: Relief for Borrowers and Consumer Protection .. | 772 | |
| 1. Housing Markets Problem | 773 | |
| 2. The Bush Administration and the American Securitization Forum (ASF) Plan | 774 | |
| 3. Legal Protection for Mortgage Modifications | 776 | |
| 4. Federal Incentives for Loan Modifications | 779 | |
| 5. The FDIC Approach | 780 | |
| 6. The HAMP Plan | 781 | |
| 7. Other Plans..... | 783 | |
| 8. Mortgage Brokers and State Foreclosure Laws | 785 | |
| 9. Bankruptcy Reform | 786 | |
| G. Unfair and Deceptive Practices | 787 | |
| H. Liability for the Past..... | 789 | |
| Conclusions | 790 | |