



Ashurst Morris Crisp

# The Financial Services and Markets Act: A Practical Legal Guide

Editor James Perry



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# THE FINANCIAL SERVICES AND MARKETS ACT: A PRACTICAL LEGAL GUIDE

ASHURST MORRIS CRISP, LONDON

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James Perry

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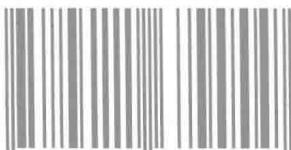
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# Foreword

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The relatively short history of financial services regulation in the U.K. has produced its own side industry of books, articles and comment. This book strides boldly into that already bustling marketplace.

In covering the FSA and the Financial Services and Markets Act, it enters the expanded areas for debate and discussion that have been created by such a step-change in financial services regulation. The importance of this change has not gone unnoticed—Parliament, the industry, consumer groups and other interested parties, not least the legal community, have all discussed it at great length with varying degrees of pleasure and enthusiasm. Nor has this debate been confined to the U.K.—the model of a single regulator for financial services is becoming a fast-growing export industry as other countries seek to adapt our structure for their own use.

It is sometimes easy to forget that, although the FSA has been up and running for four years, we have had to continue to work under the various regulatory regimes of the past with their different legal foundations, rulebooks and panoplies of powers. Now that the midnight hour has struck and the new Act has come into force, we can operate a single regime in the full hope that it will mean a better system of regulation—one that is not only responsive, risk-based and cost-effective but also considerably less confusing.

The four years in waiting have not seen us standing idly by for the Act to come into force. We have, as you will know to your personal cost of bleary eyes and late nights, been busy publishing consultation papers containing proposals on the detailed regime we will put into operation, including our single Handbook of rules and guidance. I apologise for the amount of paper that we have produced—frankly I wish it could have been less—but we are grateful for the responses we have received and have taken full account of them. As a regulator, we recognise the importance of well-informed debate and constructive dialogue with all interested groups and I know that the legal community will continue to play its full part in this.

I therefore welcome the appearance of this book, under its distinguished editorship as a contribution to that debate. No reader would expect me to say that I agree with all that it contains, but I hope it will play a part in developing an understanding of our powers and the checks and balances that apply, as well as bringing together in one place the main features of the legislation. I look forward to the ongoing debate.

Sir Howard Davies, Chairman of the Financial Services Authority

# Preface

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There have been moments during the past four and a half years when many a student of the Financial Services and Markets Act 2000 must have felt like the hero in a poem by Robert Browning, valiantly striving to reach a destination and nearly, but never quite, reaching it. Whatever one's view of the new Act and the statutory regulator, the journey from the Chancellor's announcement on May 20, 1997 to 'N2' has certainly been a long and arduous one for all concerned; along the way, as Lord Saatchi, a senior member of the Conservative team on the Bill observed, grown men have been seen weeping (though it is not clear whether this was in Parliament, Whitehall, Canary Wharf or the City). The regulated community has now, thankfully, reached some kind of resting place with the coming into force of most of the Act, and the advent of the new statutory regulator, on December 1, 2001.

The long period of gestation which the FSMA has undergone only partly hints at the difficulties which an author of this kind of work has faced. A brief perusal of the Act will confirm that the FSMA itself is, in essence, a framework; most of the detail sits in orders made by H.M. Treasury and principles, rules and guidance made by the FSA. These have been heavily consulted upon—with finality being achieved, in many cases, only in spring or summer this year (or, in some cases, even later). Some orders—for example, that relating to Control of Business Transfers—had yet to be published or made by the time that this work went to press. As a result, we have endeavoured to capture late development in the legislative and rule-making processes after May 2001 but have not succeeded in every case. We hope, nonetheless, that the reader will find that our efforts to reflect late changes (and new material) have borne some fruit.

For whom is this work intended? We hope, of course, that this work will have as wide-ranging an appeal as possible; however, if pressed, we would admit that the people most in our minds' eye while writing were those hard-pressed regulated and 'perimeter' firms which, for whatever reason, did not play an active part in the consultation process. These are the firms which seem most in need of a little guidance (written or otherwise) in the months following N2.

It would be wrong not to include here a customary word of thanks to certain people who have helped, in different ways, to realise this book. I am immensely grateful to my colleagues at Ashursts who have contributed individual chapters; they receive just recognition at the beginning of their work. I am also grateful to other colleagues who have read different sections of the manuscript and have made helpful comments. My personal debt is to David Toube and Jai Chavda, who have been as vigilant, supportive and knowledgeable as I could have wished (and then more). We are all, of course, in debt to our publishers, Sweet & Maxwell, whose enthusiasm and encouragement have been a source of inspiration (and occasional fear in the latter stages!). On a personal note, I would like to thank my wife, Andrea, and daughters, Melissa and Abigail, for their constant understanding and support and for remaining calm when I had seemingly disappeared under hundreds of draft orders and consultation papers.

We must add two final caveats that the process of change will continue after N2, though this edition is constant; and that the general comments in this work are not intended as a substitute for specific advice.

James Perry  
September 2001

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