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FINANCIAL COLLATERAL ARRANGEMENTS

Thomas Keijser

FINANCIAL COLLATERAL ARRANGEMENTS

**THE EUROPEAN COLLATERAL DIRECTIVE CONSIDERED
FROM A PROPERTY AND INSOLVENCY LAW PERSPECTIVE**

AN ACADEMIC ESSAY IN LAW

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**TER VERKRIJGING VAN DE GRAAD VAN DOCTOR
AAN DE RADBOUD UNIVERSITEIT NIJMEGEN OP GEZAG
VAN DE RECTOR MAGNIFICUS PROF.DR. C.W.P.M. BLOM
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PREFACE BY THE SERIES' EDITORS

The Business and Law Research Centre, established in 1994, is a leading research institute in the fields of commercial and private law, and is recognised by the Royal Dutch Academy of Sciences. Participants in the Research Centre include the Faculty of Law of the University of Nijmegen as well as a number of prominent companies and law firms.

Partly as a consequence of the introduction of the euro, the cross-border use of collateral has increased considerably. At present, it seems that this growth will continue. The European Commission has foreseen this development, and in addition to the Settlement Finality Directive of 1998, has enacted the European Collateral Directive in 2002 in order to facilitate the development of a liquid cross-border cash and securities market in the European Union. The European Collateral Directive, which has become so important to the financial markets, is the subject of the doctoral thesis of Thomas Keijser. This directive offers a framework for collateral arrangements in the European Union and addresses a number of issues of property and insolvency law, the practical and theoretical implications of which are examined by Keijser. His study clearly illustrates the ever increasing influence of European law on national systems of private law and the resulting frictions this influence causes.

We feel privileged to have this doctoral dissertation published in our Series and hope that it will find its way to legal practitioners and scholars throughout Europe.

Nijmegen, The Netherlands,
May 2006

Professor Sebastian Kortmann
Chairman of the Board of the
Business and Law Research Centre

Dennis Faber
Director of the Business
and Law Research Centre

ABBREVIATIONS

BIS	Bank for International Settlements
CD	Collateral Directive ¹
CPMA	Cross-Product Master Agreement
CSSA	Credit System Supervision Act 1992 ²
DNB	De Nederlandsche Bank (i.e. the Dutch central bank)
ECB	European Central Bank
EMA	European Master Agreement
EMU	Economic and Monetary Union
ERC	European Repo Council
ESCB	European System of Central Banks
FBE	Fédération Bancaire de l'Union Européenne
GCC	German Civil Code ³
GMRA	Global Master Repurchase Agreement ⁴
GMSLA	Global Master Securities Lending Agreement
ICMA	International Capital Market Association
IRC	International Repo Council
ISDA	International Swaps and Derivatives Association
ISLA	International Securities Lenders Association
ISMA	International Securities Market Association
LIBOR	London Inter-Bank Offered Rate
MEFISLA	Master Equity & Fixed Interest Stock Lending Agreement
MGESLA	Master Gilt Edged Stock Lending Agreement
NBC	Netherlands Bankruptcy Code ⁵
NCB	National Central Bank
NCC	Netherlands Civil Code ⁶
OSLA	Overseas Securities Lender's Agreement
PSA	Public Securities Association
SFD	Settlement Finality Directive ⁷
SGTA	Securities Giro Transfer Act 1995 ⁸
SIA	Securities Industry Association
STSA	Securities Trade Supervision Act ⁹
TBMA	The Bond Market Association
UCC	American Uniform Commercial Code

1 See the list of legislation at the end of this book.

2 The Dutch *Wet toezicht kredietwezen* 1992.

3 The German *Bürgerliches Gesetzbuch*.

4 In this book the abbreviation GMRA refers to the 2000 version of this agreement, unless otherwise indicated.

5 The Dutch *Burgerlijk Wetboek*.

6 The Dutch *Faillissementswet*.

7 See the list of legislation at the end of this book.

8 The Dutch *Wet giraal effectenverkeer*.

9 The Dutch *Wet toezicht effectenverkeer* 1995.

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