
FINANCIAL MARKETS AND EXCHANGES LAW

SECOND EDITION

EDITED BY
MICHAEL BLAIR QC
GEORGE WALKER
STUART WILLEY



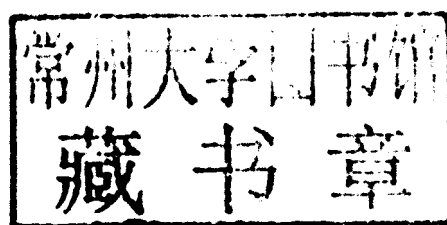
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PREFACE

In the five years since the first edition of this book, there has been a great deal of change in the field that it covers. We hope therefore that this second edition will be welcomed by all of its readers and users.

A substantial proportion of this development is attributable, directly or indirectly, to the financial crisis of 2008 and its after-effects. For example, the new emphases on macro-prudential matters and on 'resolution', while mainly concerned with financial banking and trading institutions of systemic importance, do not leave untouched the ways in which the organized markets themselves now operate.

Financial regulators globally have identified a new key policy objective with the desirability of minimizing and containing contagion and systemic risk. This objective has created a heightened interest in 'infrastructure', including not only clearing houses, but also payments systems and other market service providers. Indeed, the focus of regulation has, over the time since our first edition, moved to some extent away from organized markets and the clearing and settlement systems that support them, and new changes are in place or proposed to reduce the risks now identified in the less intensively supervised trading environments in in-house trading systems and in over-the-counter (OTC) markets.

In both editions of this work, we have taken a broad interpretation of 'markets and exchanges' to include not only formal and informal markets, but also systems for market support, including those for making and recording payments, as well as the clearing, settling, and reporting of securities transactions. As to informal markets, the treatment of the OTC market has been expanded in this second edition. Trade reporting, which has now become an important aspect of the oversight of the less formal trading arrangements, now features in this edition in its own right.

The arrival of an EU Directive on Payment Services has meant that the new edition gives an account of the reorganization of this area at the European and UK levels. Readers will also find a new treatment of the management of the public debt in the UK and an enhanced coverage of global custody. Finally, the fact that the role of credit rating agencies has come under closer scrutiny since the financial collapse has also meant that this element of the financial infrastructure and its regulation now feature in this work for the first time.

In the UK, the financial crisis of 2008 has led directly (albeit also with a change in government) to proposals to reorganize fundamentally the financial regulatory structure itself. At the time of writing, the Financial Services Bill is still before Parliament and its final effects are not yet fully clear. However, one clear conclusion is that the Bank of England will emerge at the centre of this structural reorganization with an even more substantial and extended role. Its remit is significantly enlarged and the oversight functions that it lost in 1997–2001 are being returned as part of an even wider supervisory responsibility. This is the main purpose of the Bill, even if prudential powers relating to specific institutions are to

be operated through a subsidiary and not, as before, directly, albeit with some answerability to a partly external supervisory board within the Bank. In this edition, we have sought to recognize these changes by offering a new chapter early in the book devoted to the Bank of England in its new and forthcoming landscape.

Structural change has not been limited to the UK. In the European Union as a whole, the central institutions concerned with the policy content and effectiveness of financial regulation have been refashioned and their powers have been substantially extended again. The financial crisis has given impetus to the establishment of three influential new European Supervisory Authorities (ESAs). These bodies also have been given nascent powers of direct intervention in financial markets, as well as new legislative powers. Here, too, we offer a chapter describing this process of change and its effect.

At the time of the first edition, the Markets in Financial Instruments Directive 2004 (MiFID) was about to take effect through transposition into the law of the member States. It represented the first phase, building on the early work in 1992 with the Investment Services Directive, in embedding the European principles of fair and open access and equal treatment in the field of financial services. The application of MiFID and of others in its wake on different aspects of securities trading has led to changes in practice and in the marketplace itself. Two apparently conflicting developments—that is, first, the arrival of new market entrants, bringing competition between different types of trading venue, and, second, the process of consolidation among established exchanges in the search for greater efficiency—have both been noticeable in this period.

In this context, we also include a new chapter on the still relatively recent group of Financial Services Authority (FSA) rule modules affecting securities, especially those that are listed or admitted to trading on UK regulated markets. This area has been overhauled as a result of several key EU directives on prospectuses, transparency, and market abuse, and now receives detailed treatment in this work.

We give some account of these developments on the ground, and, in relation to the Directives themselves, we devote a chapter to this general area of EU law, contributed by colleagues from Switzerland (a non-EU country).

Only five years on, a new initiative is under way to overhaul and expand the footprint of MiFID. Accordingly, in the UK, there is currently in progress a double process of adaptation and reform—that is, in the Financial Services Bill and also in the European legislative arena. Where relevant, the individual chapters of this work seek to give an account of both proposed and likely future developments in each area.

The international reach of the book has also been reconsidered and enlarged. The chapters on international institutions show how the pace of modernization has not slackened worldwide. And we are also happy to have been able to include new chapters on two of the most important international financial markets: New York and Hong Kong.

Most of the chapters in the previous edition of the book remain, but each of them has been revised so as to cover the developments in the relevant areas over the last five or six years.

Preface

We would like to record our most grateful thanks to three persons working in the Oxford University Press without whom this edition would never have seen the light of day: Rachel Mullaly, Lucinda Yeates, and Faye Judges. Editors are fortunate indeed to be supported by such able and untiring colleagues.

Michael Blair QC
George Walker
Stuart Willey
August 2012

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