The Markets in Financial Instruments Directive (MiFID) is a detailed re-writing of the regulation of capital markets. To the extent those rules permit, the Financial Services Authority (FSA) is also introducing high-level ‘principles-based regulation’. In response to this, Paul Nelson presents practical guidance on the regulation of the capital markets, ranging from new issues and IPOs to investment banking, broker-dealing and asset management. All laws and rules relevant to the regulation of the capital markets are explained and put into context within the economic operation of markets, institutions and products, the European Single Market, the FSA’s policies and objectives, the historical evolution of the regulations and the general civil and criminal law. Drawing on 30 years’ experience as a practitioner, and referring to a vast range of supporting materials, the author provides an insightful analysis and critique of the rules, the rule makers and the institutions.

Paul Nelson is a partner at Linklaters, London. He is also the FINRA Professor of Capital Markets Regulation and Compliance at the ICMA Centre, University of Reading.
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Paul Nelson
Capital Markets Law and Compliance: The Implications of MiFID

PAUL NELSON
For Myrtle, Aubrey, Dora, Saul, Joel,
with love and respect
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Preface

This book, like all books, is a product of time, place, circumstances and personality. My aims in writing it are explained in Chapter 1; why I did it is, ultimately, a psychological question which I will not answer here. Instead, I want to acknowledge a number of debts which are important to me in its creation, although most will not recognise it and none have read the result in advance: Robert Orme, Head of History of Art at Latymer Upper School, Hammersmith, who taught me that history is the foundation of explanation; Graham Routledge, late Fellow of Corpus Christi College Cambridge, who taught me law as an analytic discipline; Iain Murray, late Partner of Linklaters, who showed me not only that all aspects of law are interconnected, but also that the socio-economic consequences are profound; Charles Allen-Jones, retired Senior Partner of Linklaters, who showed me law as a creative tool in solving commercial problems; Professor John Board, Director ICMA Centre, University of Reading, who has shown me not only great understanding but also how an economist’s view of the Capital Markets can immeasurably enhance a lawyer’s view; and my friend Dora Lawson who continues to teach me that in a world of relative, ever-shifting and, ultimately, futile values it is possible to live according to the highest standards of integrity. In the production of this book I have had the privilege of working with Andrea Philo, whose support over many years I cannot repay.

The law, or at least the regulation, is stated as at 20 September 2007.

Paul Nelson
West Hampstead

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List of acronyms

APER  FSA’s Statements of Principle and Code of Practice for Approved Persons
ATS  Alternative Trading System
AUTH  FSA’s Authorisation Manual, part of its Handbook of Rules, in force on and after 1 November 2007
BCD  The Banking Consolidation Directive, 2000/12/EC
BN  Board Notice
CA  Companies Act
CCA  Consumer Credit Act 1974
CASS  FSA’s Client Asset Rules, part of its Handbook of Rules, in force on and after 1 November 2007
CEBS  The Committee of European Banking Supervisors
CESR  The Committee of European Securities Regulators
CJA  Criminal Justice Act 1993
COAF  FSA’s Complaints against the FSA Rules, part of its Handbook of Rules, in force on and after 1 November 2007
COBS  FSA’s Conduct of Business Rules, part of its Handbook of Rules, in force on and after 1 November 2007
COLL  FSA’s Collective Investment Scheme Sourcebook, part of its Handbook of Rules, in force on and after 1 November 2007
COMP  FSA’s Compensation Rules, part of its Handbook of Rules, in force on and after 1 November 2007
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FSA FS 06/1 Reviewing our Training and Competence Regime, FSA Feedback Statement 06/1, March 2006
FSA PM CASS FSA's Client Assets Rules, part of its Handbook of Rules, in force up to 31 October 2007
FSA PM COB FSA's Conduct of Business Rules, part of its Handbook of Rules, in force up to 31 October 2007
FSA PM ECO FSA's Electronic Commerce Directive Rules, part of its Handbook of Rules, in force up to 31 October 2007
FSA PM GLOSSARY FSA's Glossary of Definitions, part of its Handbook of Rules, in force up to 31 October 2007
FSA PM MAR FSA's Market Conduct Rules, part of its Handbook of Rules, in force up to 31 October 2007
FSA PM SUP FSA's Supervision Manual, part of its Handbook of Rules, in force up to 31 October 2007
FSA PM SYSC FSA's Senior Management Arrangements, Systems and Controls, part of its Handbook of Rules, in force up to 31 October 2007
FSA PM TC FSA's Training and Competence Rules, part of its Handbook of Rules, in force up to 31 October 2007
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<td>FSA's Training and Competence Sourcebook, part of its Handbook of Rules, in force on and after 1 November 2007</td>
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<tr>
<td>2005 FPO</td>
<td>The FSMA (Financial Promotion) Order 2005, 2005/1529</td>
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<td>TRUP</td>
<td>Transaction Reporting User Pack, Version 1, FSA, July 2007</td>
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<tr>
<td>UCIT/UCITs/UCITS</td>
<td>Undertakings for Collective Investment in Transferable Securities</td>
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