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Eilís Ferran

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## BUILDING AN EU SECURITIES MARKET

This highly topical book considers some of the fundamental issues concerning the legal framework that has been established to support a single EU securities market. It focuses particularly on how the emerging legal framework will affect issuers' access to the primary and secondary market. The Financial Services Action Plan (FSAP, 1999) was an attempt to equip the Community better to meet the challenges of monetary union and to capitalise on the potential benefits of a single market in financial services. It led to extensive change in securities market regulation: new laws; new law-making processes; and more attention to the mechanisms for the supervision of securities market activity and legal enforcement. With the FSAP nearing completion, it is a good time to take stock of what has been achieved, and to identify challenges that lie ahead.

EILÍS FERRAN is a Reader in the Law Faculty, University of Cambridge, specialising in corporate and securities law. She is a former Director of the Faculty's Centre for Corporate and Commercial Law. She is the author of *Company Law and Corporate Finance* (1999), and of various articles on corporate law, securities law and financial regulation and is an editor of the *Journal of Corporate Law Studies*. In 2000 she was a special adviser to the UK Parliamentary Joint Committee on the Financial Services and Market Bill, and more recently has advised the UK Department of Trade and Industry on the Company Law Reform Project. Dr Ferran is a graduate (MA and PhD) of Cambridge University and is a qualified solicitor.

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*To Rod, Aoife and Oliver*

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## PREFACE

The European Union is the world's leading example of regional economic integration. Whilst integration of European securities markets has been on the policy agenda since the 1970s, this aspect of the market integration project acquired a new intensity after the European Commission's announcement in 1999 of an ambitious five-year Action Plan of policy objectives and specific measures to improve the single market for financial services. The Commission's Financial Services Action Plan has largely been adopted within its original timeframe, which is a remarkable achievement. However, many fascinating questions still remain and in this book I explore some of them.

Regulation, in its narrow rule-making sense, was the favoured policy tool employed in the Financial Services Action Plan. The new laws move significantly beyond early interventions, which concentrated on removing national barriers to cross-border activity by issuers, investors and intermediaries, and put in place increasingly detailed, standardised EU-wide re-regulation in the interests of market efficiency and investor protection. There is room for disagreement on whether the details are right in every respect. Certainly the close examination of the new regime for issuer disclosure contained in this book identifies a number of areas where the rules could be counterproductive in their practical operation. More fundamentally, it is open to question whether the emphasis on regulation in the Financial Services Action Plan was the right strategic approach. Even if we assume that the rule-makers have done a good job and that whatever regulatory mistakes they may have made are not too significant, the point remains that high-quality rules are just one of the factors that can help to build a strong, deep securities market and, in fact, the value of their contribution may be quite small. EU policy-makers might thus have done better to have been more open to policy alternatives to regulation. In particular, the recent recognition of the importance of ensuring that there is in place a system of supervisory oversight that can support the effective implementation of an increasingly heavy body of rules might have received closer attention at an earlier stage.

This book looks critically at EU policy and law-making processes for securities law to see how successfully the risks of regulatory mistake are managed and controlled. It also examines substantive new EU securities laws on issuer disclosure with a view to establishing whether they are likely

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to enhance the attractiveness of the EU marketplace for issuers and investors, or whether they are likely to detract because they are too rigid, too standardised, and involve excessive compliance costs.

I would like to record my gratitude to various people who provided valuable assistance in the process of writing this book. Without Niamh Moloney's magisterial work, *EC Securities Regulation* (Oxford, Oxford University Press, 2002), finding relevant background material and assessing its significance would have been much harder tasks. It has been rightly said of her book that it helps to define and develop the law in this field. I have also benefitted from Niamh's personal support and encouragement throughout this project and her comments on early drafts of the main chapters.

Howell Jackson read and commented on a number of the chapters and provided welcome general encouragement. He also gave me an opportunity to discuss some of the draft chapters with his International Securities LL.M. Class 2003/4 at Harvard Law School. Those sessions helped to clarify my thinking in certain key respects.

Others who assisted by providing helpful comments on drafts of individual chapters, answering specific questions, supplying useful material, suggesting new lines of inquiry or discussing issues with me include Albertina Albors-Llorens, Kern Alexander, Jesús Alfaro, Philip Augar, Chris Brayford, Didier Cahen, Brian Cheffins, Wolfgang Ernst, Christophe Hillion, Angus Johnston, Steffen Kern, Ian Mackintosh, Clive Maxwell, Colin Mayer, Michael McKee, Nigel Phipps, Pippa Rogerson, Anibal Sanchez, Jochen Seitz, Alberto Vaquerizo, Philip Wynn-Owen, Eddy Wymeersch, the Partners at Herbert Smith (particularly Charles Howarth, Malcolm Lombers, James Palmer, Jonathan Scott and Carol Shutkever), and two anonymous referees.

The staff of the Squire Law Library answered my queries and located material with their customary efficiency and cheerfulness. The Law Faculty's Computer Officers dealt well with occasional technological challenges along the way. Daud Khan provided timely assistance in the closing stages of writing the book by finding outstanding references and checking notes.

My thanks go to the staff at Cambridge University Press, especially Kim Hughes and Jane O'Regan, for guiding the book through to production with calm professionalism and efficiency.

My biggest debt is owed to my children, Aoife and Oliver, who had to put up with a mother who was often preoccupied with arcane aspects of securities regulation and my husband, Rod, who not only provided thoughtful comments on individual chapters, but also supported and encouraged me in countless other ways throughout this project. The book is dedicated to him and to our children.

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- Council Directive 80/390/EEC of 17 March 1980 coordinating the requirements for the drawing up, scrutiny and distribution of the listing particulars to be published for the admission of securities to official stock exchange listing, OJ 1980 L100/1 (Listing Particulars Directive), 34, 35, 136, 138, 186  
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## CASES

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