

CAPITAL MARKETS UNION IN EUROPE

Edited by

DANNY BUSCH
EMILIOS AVGOULEAS
GUIDO FERRARINI

OXFORD
UNIVERSITY PRESS

CONTENTS

<i>Table of Cases</i>	xv
<i>Table of Legislation</i>	xix
<i>List of Contributors</i>	xxxv
<i>List of Abbreviations</i>	xli

PART I GENERAL ASPECTS

1. Capital Markets Union after Brexit	
<i>Danny Busch, Emiliios Avgouleas, and Guido Ferrarini</i>	
I. Introduction	1.01
II. CMU Objectives	1.06
III. EBU–CMU Relationship	1.08
IV. Regulatory Burden	1.10
V. Better Regulation and Call for Evidence	1.14
VI. Final Remarks	1.22
2. CMU and the Deepening of Financial Integration	
<i>Diego Valiante</i>	
I. Introduction	2.01
II. Brief History of EU Financial Integration Policies	2.03
III. CMU as a Risk Absorber	2.13
IV. The Greatest Capital Market Integration: A Glimpse into the Economic History of the United States	2.26
V. Conclusions	2.43
3. A Stronger Role for the European Supervisory Authorities in the EU27	
<i>Danny Busch</i>	
I. Introduction	3.01
II. Pan-European Governance of the ESAs	3.07
III. Direct ESA Supervision	3.16
IV. Direct ESMA Supervision of CCPs	3.31
V. Concluding Remarks	3.108
4. A Single Listing Authority and Securities Regulator for the CMU and the Future of ESMA: Costs, Benefits, and Legal Impediments	
<i>Emiliios Avgouleas and Guido Ferrarini</i>	
I. Introduction	4.01
II. Nature and Reach of ESMA Powers	4.12

III. The Proposed EULA System	4.23
IV. A Possible CMU-SEC and Configuration of Powers	4.46
V. The Constitutionality of a Euro-SEC and EULA	4.57
VI. Conclusion	4.70
PART II BREXIT	
5. Some Aspects of the Impact of Brexit in the Field of Financial Services <i>Eddy Wymeersch</i>	
I. Introduction	5.01
II. Access	5.02
III. The Equivalence of Third Country Regulations or Standards	5.14
IV. Euro Derivatives Clearing	5.33
V. Brexit and the EBA	5.44
6. Capital Markets Union, Third Countries, and Equivalence: Law, Markets, and Brexit <i>Niamh Moloney</i>	
I. Capital Markets Union, Regulation, and Equivalence	6.01
II. CMU and its Investment Banker	6.07
III. Third Country Rules, the UK, and CMU: Access and Export Implications	6.17
IV. Managing Access and Export: The International Context	6.45
V. Building a New Model: The EU Perspective and a Proposal	6.63
VI. Conclusion	6.90
7. OTC Derivatives Clearing, Brexit, and the CMU <i>Guido Ferrarini and Davide Trasciatti</i>	
I. Introduction	7.01
II. Central Clearing of OTC Derivatives	7.07
III. Brexit, EMIR, and Equivalence	7.19
IV. Speculating on the Worst-case Scenario	7.39
V. Network Strategies as an Alternative Solution	7.47
VI. Concluding Remarks	7.61
PART III FINANCING INNOVATION, START-UPS, NON-LISTED COMPANIES, AND INFRASTRUCTURE PROJECTS	
8. The Role of Financial Innovation in EU Market Integration and the Capital Markets Union: A Reconceptualization of Policy Objectives <i>Emilios Avgouleas</i>	
I. Introduction	8.01
II. Financial Innovation: A Principled Cost-Benefit Analysis	8.11
III. EU Market Integration and Financial Law Harmonization	8.27

IV. FinTech and the CMU	8.52
V. Conclusion	8.67
9. Capital Markets Union: Why ‘Venture Capital’ is not the Answer to Europe’s Innovation Challenge	
<i>Erik PM Vermeulen</i>	
I. Introduction	9.01
II. Innovation Ecosystems	9.05
III. Stimulating Venture Capital	9.13
IV. But ... Entrepreneurs Don’t Always Benefit	9.39
V. A Different Approach for Europe?	9.45
VI. Both Cultures Need to Adapt	9.62
10. FinTech and Alternative Finance in the CMU: The Regulation of Marketplace Investing	
<i>Guido Ferrarini and Eugenia Macchiavello</i>	
I. Introduction	10.01
II. Economics and Technology of Alternative Finance	10.03
III. Loan-based and Investment-based Crowdfunding: Characteristics and Comparison	10.12
IV. Regulation of Crowdfunding Platforms: EU and Member States	10.22
V. Policy Proposals and Conclusions	10.48
VI. Conclusions	10.65
 PART IV RAISING CAPITAL ON THE CAPITAL MARKETS	
11. Modernizing the Prospectus Directive	
<i>Bas de Jong and Tomas Arons</i>	
I. Introduction	11.01
II. Background and Purposes of the Reformed Prospectus Rules	11.05
III. Most Important Modifications	11.14
IV. General Comments on the Prospectus Regulation: The Problem of the Information Paradigm	11.39
V. Final Remarks	11.45
12. Small and Medium Enterprises Growth Markets	
<i>Andrea Perrone</i>	
I. Introduction	12.01
II. The SME GM Regime	12.05
III. A Critical Evaluation	12.27
IV. An Alternative Proposal	12.36
V. Conclusions	12.53

13. Initial Public Offerings in the CMU: A US Perspective

Merritt B Fox

I. Introduction	13.01
II. The Information-Asymmetry Problem	13.13
III. Market-Based Solutions to Adverse-Selection Problems	13.27
IV. Affirmative-Disclosure Regimes	13.51
V. Mandated Liability Terms	13.66
VI. Application to the CMU	13.97
VII. Conclusion	13.108

14. Private Placements in the Capital Markets Union: A Priority Moving in Reverse?

Frank GB Graaf

I. Introduction	14.01
II. What is a Private Placement?	14.03
III. A Closer Look at US Private Placements and European Market Initiatives	14.12
IV. Private Placements in the CMU Agenda: Gradual De-prioritization	14.22
V. Private Placements and the PD3 Regime	14.33
VI. An Interim Scorecard on PEPPs in the CMU	14.44
VII. Conclusions	14.49

15. Damages Actions by Investors on the Back of Market Disclosure Requirements

Paul Davies

I. Introduction	15.01
II. Investor Actions and the Promotion of Disclosure	15.05
III. Investor Litigation in the Context of Public Offerings	15.17
IV. Investor Litigation in the Context of Continuing Disclosures	15.28
V. Conclusion	15.43

**PART V FOSTERING RETAIL
AND INSTITUTIONAL INVESTMENT**

16. Investor Protection in the Capital Markets Union

Veerle Colaert

I. Introduction	16.01
II. Product Information	16.06
III. Service Quality Requirements (Conduct of Business Rules)	16.27
IV. Product Regulation	16.48
V. Conclusion	16.76

17. A Policy Framework for European Personal Pensions?

Mark Heemskerk, René Maatman, and Bas Werker

I. Introduction	17.01
II. Background: The Dutch Pensions System	17.10
III. Towards Personal Pension in the Netherlands: The PPR	17.36
IV. Obstacles to Realizing the PPR	17.47
V. A Model for (European) PPP	17.70
VI. Conclusion	17.88

18. Institutional Investors and Development of Europe's Capital Markets

Zsolt Darvas and Dirk Schoenmaker

I. Introduction	18.01
II. Home Bias in the Literature	18.08
III. Evolution of Institutional Investment and the Supply of Securities	18.21
IV. Empirical Results on Home Bias and Euro-Area Bias	18.30
V. Policy Recommendations	18.58

19. Cross-border Distribution of Collective Investment Products in the EU

Matteo Gargantini, Carmine Di Noia, and Georgios Dimitropoulos

I. Introduction	19.01
II. The Regulatory Menu for Collective Investment Products: Taxonomy and Structural Implications	19.04
III. The Disclosure Regime	19.12
IV. Conduct of Business Rules	19.32
V. Supervision on Product Regulation	19.35
VI. Is the EU Passport Working?	19.40
VII. Rules and Practices on Marketing and Distribution of Funds: Host Member States	19.45
VIII. Rules and Practices on Marketing and Distribution of Funds: Home Member States	19.71
IX. How to Address the Barriers	19.79
X. Conclusion	19.91

**PART VI LEVERAGING BANKING CAPACITY
TO SUPPORT THE WIDER ECONOMY**

20. Relief from Prudential Requirements to Support the Capital Markets Union

Bart Joosen and Kitty Lieveise

I. Introduction	20.01
II. The Impact of Capital Requirements of Banks on their Lending Portfolio: Comments from a Level Playing Field Perspective	20.05

III. Capital Relief when Financing Small and Medium-sized Businesses	20.10
IV. Equity Investments by Banks and Insurers: An Alternative for Traditional Lending?	20.17
V. Relief for Banks Purchasing STS Securitization Positions	20.29
VI. Capital Relief Insurers when Investing in Infrastructure	20.50
VII. Conclusions	20.58
 21. Securitization in the Capital Markets Union: One Step Forward, Two Steps Back	
<i>Gerard Kastelein</i>	
I. Introduction	21.01
II. How the Securitization Reform Fits in the Capital Markets Union	21.02
III. The Context: The European Securitization Market Pre and Post Crisis	21.05
IV. The Legislative Proposal and Process	21.14
V. The Securitization Regulation	21.17
VI. The Regulation Amending the CRR	21.63
VII. Conclusion	21.76
 22. A Global Perspective on Securitized Debt	
<i>Steven L Schwarcz</i>	
I. Introduction	22.01
II. US Regulatory Responses	22.12
III. European Regulatory Responses	22.18
IV. Critiquing the US and European Regulatory Responses	22.30
V. Rethinking the Regulatory Framework	22.43
VI. Conclusions	22.65
 PART VII FACILITATING CROSS-BORDER INVESTING	
 23. Shareholder Activism in the CMU	
<i>Alessio M Paces</i>	
I. Introduction	23.01
II. Entrepreneurial Shareholder Activism	23.08
III. Hedge Fund Activism as a Conflict of Entrepreneurship	23.23
IV. The Shareholder Rights Directive: A Missed Opportunity	23.35
V. Shareholder Rights Directive as Capital Market Regulation	23.49
VI. Conclusion	23.54

24. Efforts to Strengthen the Clearing and Settlement Framework of the Capital Markets Union	
<i>Bas Zebregs and Victor de Sèrière</i>	
I. Introduction	24.01
II. General Overview	24.03
III. The Transaction Chain	24.09
IV. EMIR	24.15
V. CCP Recovery and Resolution	24.26
VI. CSD Regulation	24.54
VII. Target2Securities	24.66
VIII. Segregation under EMIR and the CSDR	24.74
IX. Open Access and Competition between Market Infrastructures	24.85
X. Conclusion	24.88
25. Preventive Restructuring Frameworks	
<i>Michael Veder and Anne Mennens</i>	
I. Introduction	25.01
II. Background and Objectives of the Draft Directive	25.05
III. Justification for Restructuring Plans	25.14
IV. Preventive Restructuring Frameworks	25.19
V. Conclusion	25.86
26. Removing Cross-border Tax Barriers	
<i>Loredana Carpentieri and Stefano Micossi</i>	
I. The Long Shadow of National Tax Sovereignty over the Free Circulation of Capital	26.01
II. Freedom of Capital Movements from Article 67 EEC to Article 63 TFEU	26.11
III. Tax Derogations	26.20
IV. Tax Barriers in Cross-border Investments	26.36
V. Conclusions	26.73
<i>Index</i>	603