Contents

					XV
Pre	face				
				4 777	1
Par	t I	Introd	uction to th	ne Law of Capital Markets in the EU	1
I to					
	701.	Tound	ations of th	he Law of Capital Markets in the EU	3
1		Introd		ne Law of our	3
	1.1				4
	1.2	A Shor	rt History	omic Stages	4
			The Embry	ve Steps Towards Harmonization	5
		1.2.2	The Decision	ment of EU Regulation	8
		1.2.3	The Resine	ment of to telephone	11
	1.3	Regul	atory Ratio	11W1C3	12
		1.3.1	Market In	Allocation of Resources and Economic Growth	12
		1.3.2	Efficient A	Confidence and Investor Protection	13
		1.3.3	Investor C	onjuitute und Investor I recette	14
		1.3.4	Harmoniz	zation and Convergence	17
		1.3.5	Regulator	y Visibility Destroy in consequences	17
				y Responsiveness	19
	1.4	Conc	usion		
					21
2	Ma	rkets.	Participant	s and Financial Instruments	21
And	2.1	Intro	duction		21
		Mark			21
			ncial Instru	ments	22
			ket Actors		23
	2.1		Issuers		23
		20121-	Investors		25
		2.1.2	2421	Various Investor Profiles	25
			2.4.2.2	The Concepts of Stewardship and Shareholder	
				Engagement	28
					vii

		2.4.3 Financial Intermediaries	32
	2.5	Conclusion	34
3	Sup	ervision and Enforcement	35
	3.1		35
	3.2	Supervision of Capital Markets	36
		3.2.1 The New EU Financial Supervision Architecture	36
		3.2.2 The European Securities and Markets Authority (ESMA)	37
		3.2.3 The Role of NCAs	40
	3.3	Enforcement in Capital Markets Law	41
		3.3.1 Background	41
		3.3.2 Civil Liability	43
		3.3.3 Criminal Sanctions	45
		3.3.4 Administrative Sanctions and Measures	46
		3.3.5 Social Sanctions	47
	3.4	Conclusion	48
Pa	rt II	Listed Companies and Disclosure Obligations	51
4	Duo	spectus Disclosure Obligations	53
4		Introduction	53
		The Regulatory Scope of Prospectus Disclosure Obligations	55
	1.2	4.2.1 Public Offers and Listing	55
		4.2.2 Exemptions from Prospectus Requirements	57
	43	The Single Passport Mechanism and Harmonization Issues	58
		The Informational Scope of Prospectus Disclosure Obligations	60
	1. 1	4.4.1 Required Prospectus Content	60
		4.4.2 Disclosure of Critically Important Information:	
		The Case of Risk Factors	62
		4.4.3 Voluntary Prospectus Content	63
	4.5		64
	1.0	4.5.1 The Vehicles of Disclosure	64
		4.5.2 Publication Methods	66
		4.5.3 Prospectus Language	67
		4.5.4 The Exhaustiveness of the Rhythm of Disclosure	69
	4.6	The Supervisory Framework of Prospectus Disclosure Obligations	70
	2.0	4.6.1 The Auditors' Role	70
		4.6.2 The Role of NCAs	73
		4.6.2.1 Pre-approval Prospectus Control	73
		4.6.2.2 Post-approval Prospectus Control	74
	4.7	27 21 21 21	75
	,	4.7.1 Civil Liability	75

		4.7.2 Administrative and Criminal Sanctions	77
	4.8	Conclusion	79
	7.0		
5	Peri	odic Disclosure Obligations	81
3		Introduction	81
		The EU Regulatory Scope of Periodic Disclosure Obligations	82
	0.2	5.2.1 EU and Third Country Issuers	82
		5.2.2 The Degree of Harmonization	84
		5.2.3 The Periodic Disclosure Spectrum	86
		5.2.3.1 Informational Spectrum	86
		5.2.3.2 Dissemination and Storage Mechanisms	90
	53	Control and Ongoing Supervision	93
	0.0	5.3.1 Audit Control	93
		5.3.2 NCA Supervisory Framework	95
	54	The Enforcement Spectrum	96
	5.1	5.4.1 Civil Liability	97
		5.4.2 Criminal and Administrative Sanctions	98
	55	Conclusion	101
	0.0	Concussion	
6	Enis	sodic Disclosure Obligations	103
0	-	Introduction	103
	6.2	The EU Informational Scope	104
	0.2	6.2.1 The Harmonization of Episodic Disclosure Obligations	104
		6.2.2 The Criterion of Inside Information	105
		6.2.3 Ensuring Flexibility for Issuers	108
		6.2.4 Voluntary Episodic Disclosure	110
		6.2.5 The Vehicles of Episodic Disclosure	111
	63	The Ongoing Supervision Framework	113
	6.4		114
	0.1	6.4.1 Criminal Sanctions	114
		6.4.2 Administrative Sanctions and Measures	115
		6.4.3 Civil Liability	117
	6.5	Conclusion	118
	0.0		
7	Tra	nsparency of Ownership Structures	119
		Introduction	119
		The EU Notification of Major Holdings Regime	121
		7.2.1 Applicable Disclosure Rules	121
		7.2.1.1 Applicable Thresholds	121
		7.2.1.2 Triggering Conditions for Disclosure	
		Obligations	122
		7.2.1.3 The Types of Financial Instruments and Their	
		Calculation	123

			7.2.1.4 No	tification Exemptions	125
				tification of Intent	126
		7.2.2		t of Notification Rules	127
		/ 12.1	7.2.2.1 En	forcement at the Issuer Level	127
			7.2.2.2 En	forcement at the Public Level	128
	7.3	The E		Disclosure Regime	131
	7.0	7.3.1	The EU Tak	eeover Disclosure Perimeter	131
		7.0.1	7.3.1.1 Di	sclosure during the Pre-offer Announcement	132
			7.3.1.2 Di	sclosure during and after the Offer	
				nnouncement	135
			7.3.1.3 Ac	ting in Concert	139
		7.3.2	The Enforce	ement of Takeover Disclosure Rules	143
		,	7.3.2.1 Th	ne Neutralizing Sanctions of Opaque	
				ractices	143
			7.3.2.2 R	epressive Sanctions	144
	7.4	Concl			146
Pa	rt III	Inaj	propriate N	Market Practices and Market Integrity	149
8	Insi	der De	aling		151
	8.1		luction		151
	8.2	Unde	rpinnings of	Insider Dealing Laws	152
		8.2.1	Arguments	for the Acceptance of Insider Dealing	152
		8.2.2	Arguments	for the Prohibition of Insider Dealing	153
	8.3	Legisi	ative Frame	work	154
		8.3.1	Legal Sour	ces and Harmonization Objectives	154
		8.3.2	Criterion o	of Inside Information	157
			8.3.2.1 P	recise Information	157
			8.3.2.2 N	Ion-public Information	159
				nformation with Significant Effect on Prices	160
		8.3.3	Concerned		160
		8.3.4		Insider Dealing Practices	161
				cquisition or Disposal of Financial	1.71
		1		nstruments	161
				Lecommendation or Inducement to Engage	163
				n Insider Dealing	164
				Inlawful Disclosure of Inside Information	165
	8.4			ervision Framework	165
		8.4.1		STS	166
		8.4.2		E	167
	8.5	The I	Enforcement	Framework	167
				rative Sanctions and Measures	168
		8.5.2	Criminal	Sanctions	100

		8.5.3 Civil Liability	170
	8.6	Conclusion	171
0	3.5	Lat Maninylation	173
9		ket Manipulation Introduction	173
		The Inherent Difficulties in Regulating Market Manipulation	174
	9.2	9.2.1 Defining the Contours of Market Manipulation	174
		9.2.2 The EU Position	176
		9.2.3 A Dearth of Conclusive Empirical Studies	177
		9.2.4 Limitations of Disclosure Obligations	178
	03	Types of Market Manipulation	178
		Ensuring Flexibility for Firms	182
	7.1	9.4.1 Accepted Market Practices	182
		9.4.2 Buyback Programmes and Stabilization Measures	183
	9.5		185
	7.0	9.5.1 ESMA and NCAs	185
		9.5.2 The Close Cooperation with Market Actors	187
	9.6	Sanctions	188
	,,,	9.6.1 Introductory Comments	188
		9.6.2 Administrative Measures and Sanctions	191
		9.6.3 Criminal Sanctions	192
		9.6.4 Civil Remedies	194
	9.7	Conclusion	196
10	Sh	ort Selling	198
10		.1 Introduction	198
		.2 Short Selling Regulatory Concerns	200
	10.	10.2.1 Market Stability Concerns	200
		10.2.2 Corporate Governance Concerns	202
	10.		205
	20.	10.3.1 Short Selling Bans	205
		10.3.2 Circuit Breakers	206
	10	.4 Informational Constraints on Short Selling Activities	207
		10.4.1 Disclosure Duties towards the Regulator	207
		10.4.2 Disclosure Duties towards the Market	209
	10	.5 Supervision and Sanctions	211
		10.5.1 Supervisory and Investigatory Powers	211
		10:5.1.1 NCAs	211
		10.5.1.2 ESMA	213
		10.5.2 Sanctions	214
	10	.6 Towards a Reinforced but Less Restrictive Framework	215
		10.6.1 Enhanced Disclosure Duties	215
		10.6.2 Shareholder Disenfranchisement	217
	10	7. Conclusion	219

Part	IV	Gatekeepers	221
11	Inve	stment Firms	223
	11.1	Introduction	223
		Regulatory Rationales and Principles-based Approach	224
		EU Legal Sources	226
	11.4		227
		Client Classification	229
	11.6		232
	11,0	11.6.1 Authorization Requirements	232
		11.6.2 Organizational Requirements	234
		11.6.2.1 General Requirements	234
		11.6.2.2 Compliance Requirements	236
		11.6.3 Conflicts of Interest	237
		11.6.4 Conduct Regulation	240
	11.7		242
	11.7	11.7.1 NCAs	242
		11.7.2 ESMA	243
	11.8		244
	11.0	11.8.1 Administrative and Criminal Sanctions	244
		11.8.2 Civil Liability and Alternative Dispute Resolution	245
	11.9	·	246
12	Fina	ncial Analysts	248
12	12.1	· ·	248
	12.2		249
	12.2	12.2.1 Different Types of Financial Analysts	249
		12.2.2 Potential Conflicts of Interest	251
		12.2.3 Analysts' Influence on Investors	253
	12 2	EU Legal Sources	254
		The 'Recommendations' Regime	255
	12.1	12.4.1 The Concept of Recommendations'	255
		12.4.2 The Different Layers of Requirements	256
		12.4.3 The Presentation of Recommendations	257
		12.4.4 Conflicts of Interest	258
	125	Dissemination of Recommendations by Third Parties	259
		Generally Applicable Rules	260
	12.0	12.6.1 Market Abuse	261
		12.6.2 Investment Firms	262
	12.7		264
	14./	12.7.1 Administrative Sanctions and Measures	264
		12.7.1 Thumissi with Summing the Medistrics 12.7.2 Civil Liability	265
	12.8	Conclusion	266

13	Cred	it Ratin	g Agencies	268		
	13.1	.1 Introduction				
	13.2	Regula	tory Framework Applicable to the Issuance of Ratings	270		
		13.2.1	Credit Ratings and Ratings Outlooks	270		
		13.2.2	Registration Process	271		
		13.2.3	Ratings Issued by a Third Country	272		
		13.2.4	Issuing Principles and Methodologies	273		
		13.2.5	Comparability of Ratings	275		
	13.3	Major.	Regulatory Challenges	276		
		13.3.1	Conflicts of Interest	276		
			13.3.1.1 Prescriptive Rules	278		
			13.3.1.2 Broader Rules	280		
		13.3.2	Reducing the Over-Reliance on Credit Ratings	281		
		13.3.3	CRA Rotation	283		
		13.3.4	Sovereign Ratings	285		
		13.3.5	Structured Finance Instruments	286		
	13.4	The CI	RA Supervisory Framework	287		
		13.4.1	ESMA's Supervisory Competence	287		
		13.4.2	Supervisory Powers	288		
		13.4.3	ESMA and NCAs	288		
	13.5	The En	forcement Framework	290		
			General Observations	290		
		13.5.2	ESMA Non-pecuniary Sanctions	290		
			ESMA Pecuniary Sanctions	291		
		13.5.4	Civil Liability	293		
	13.6	Toward	ds a Refinement of the Current EU Framework	295		
		13.6.1	'Systemic-Risk' Sensitive Regulatory Approaches			
			and Investors' Role	295		
		13.6.2	The Feasibility of a More Meaningful Enforcement			
			Framework	296		
	13.7	Conclu		297		
			,			
				200		
14		y Advis		299		
	14.1			299 300		
		2 Background				
		The UK and French Approaches				
		The Best Practice Principles				
			areholder Rights Directive	304		
	14.6	Conclu	usion	306		
Bib	liogra	phy		307		
	- '					
Ind	ev			311		