

The Law on Financial Derivatives

Fifth edition

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Preface

This fifth edition of *The Law on Financial Derivatives* has been almost completely re-written since the last edition in 2006. It continues to present a comprehensive analysis of the substantive law of England and Wales and of financial regulation in general as they affect financial derivatives, together with a detailed analysis of the standard market documentation of financial derivatives. Since the last edition there have been approximately 5,000 pages of case law dealing with financial derivatives, a large number of significant cases dealing with finance law more generally, an entirely new tax code governing derivatives contracts, and of course a seismic change in the public policy approach to the regulation of derivatives markets. New chapters dealing in detail with the regulatory developments since the last edition have been added to this book. Of most significance, however, for many readers will be the greatly expanded and reorganised chapters on the documentation issues with financial derivatives.

The methodology which was used in the last edition was developed in my books *The Law of Finance* (London: Sweet & Maxwell, 2009) and a revised practitioner edition, (London: Sweet & Maxwell, 2010); and *Securities Law* (London: Sweet & Maxwell, 2008). Those developments, in essence attempting to conceive of the law of finance as a distinct field of law, have been reflected in this edition. Consequently, this book is both a practical analysis and delineation of derivatives law, and a scholarly analysis of the many legal issues which arise in relation to modern, global financial markets. My aim is to consider the law on financial derivatives in a manner which will be of particular use to those practitioners for whom derivatives are the core of their practice and of use also to those who encounter them only from time to time.

This fifth edition presents analysis of over 100 cases decided since the last edition, as well as a number of new statutes, regulations and pre-legislative policy documents. Such is the volume of case law that is available to the practitioner with the advent of electronic reporting of every case decided in this and many other jurisdictions that the role of the treatise writer has become both more difficult (in that there is much more raw material to synthesise and explain than before) and more essential (in that busy practitioners require a route map and updater through the torrents of case law which are theoretically within reach, as well as an analysis of the legal issues). Consequently, this new edition has been substantially re-written so as to explain the shape of the law coherently, as opposed simply to bolting-on mentions of new cases so that the entirety of the discussion loses its shape across successive editions. Since the last edition there has been the global financial crisis which will precipitate a revolution in the legal

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PART A**The Documentation and Nature of Derivatives****1. The Products**

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