CONTENTS

Preface xxv
About the authors xxviii
List of figures xxx
List of tables xxxi
List of abbreviations xxxii
Table of cases xli
Table of legislation xlvii

PART I  FINANCIAL COLLATERAL DIRECTIVE AND UK IMPLEMENTING REGULATIONS

1. Purpose of the Financial Collateral Directive, the legislative background and key issues addressed by the Directive 3
2. Scope of the Financial Collateral Regulations 37
3. The types of financial collateral: Cash, financial instruments and credit claims 50
4. Formal requirements disapplied by the FCARs and extent of exemption from those requirements 72
5. Impact of UK insolvency law and bank resolution measures and the extent to which these are disapplied in relation to financial collateral arrangements 87
6. Title transfer financial collateral arrangements 144
7. Security financial collateral arrangements 158
8. ‘Possession’ or ‘control’ test to be satisfied when creating a security financial collateral arrangement 166
9. Extent to which a collateral-provider may be permitted to exercise rights attaching to charged securities, such as voting rights and the right to receive income, if the ‘possession’ or ‘control’ test is to be satisfied 198
10. Close-out netting provisions and the Financial Collateral Regulations 221
11. The right of use and the legal consequences of its exercise, including issues of priority 243
12. Remedy of appropriation 253
13. Financial collateral and the conflict of laws 289
14. Retroactivity of the Financial Collateral Regulations 328
CONTENTS

PART II USE OF FINANCIAL COLLATERAL

15. Taking and perfecting security over financial collateral 339
16. Use of securities held in the CREST system as collateral 381
17. Use of close-out netting and financial collateral in relation to derivatives (including ISDA documentation) 434
18. Special issues arising from the use of financial collateral in repos, securities lending and prime brokerage, including treatment of client assets and use of market standard documentation (other than ISDA documentation) 461
19. Use of book entry securities as collateral 513
20. Use of financial collateral in UK clearing houses 546
21. Use of contractual set-off and flawed asset arrangements for taking cash collateral 600
22. Regulatory treatment of financial collateral arrangements; margin requirements for non-centrally cleared derivatives; and reporting of securities financing transactions 630
23. Scottish law perspective on the Financial Collateral Regulations and their application 681
24. Law reform 699

Appendix 1: Shortcomings and uncertainties of the FCARs 731
Appendix 2: Texts of the Financial Collateral Directive and Financial Collateral Regulations, as amended 735

Glossary of terms 783
Index 793