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International Securities and Capital Markets

Pratibha Jain

Gordon N. Cameron

Precia Darshan

Priscilla Tshibemba

Prashant Prakhar

See next page for additional authors

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International Securities and Capital Markets

Authors

Pratibha Jain, Gordon N. Cameron, Precia Darshan, Priscilla Tshibemba, Prashant Prakhar, Ken Kiyohara, and Sabin Volciuc-Ionescu

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International Securities and Capital Markets

PRATIBHA JAIN, GORDON N. CAMERON, PRECIA DARSHAN,
PRISCILLA TSHIBEMBA, PRASHANT PRAKHAR, KEN KIYOHARA, AND
SABIN VOLCIUC-IONESCU¹

The following article summarizes selected developments that occurred in 2017 in the regulation of international securities and capital markets in Canada, Europe, India, Japan, and Romania.

I. Developments in Canada

On September 5, 2017, Canada joined the United States in implementing a new standard settlement timeframe for certain securities to trade date plus two days (T+2) from trade date plus three days (T+3).² The Canadian transition to a shorter settlement cycle not only matches a similar move by the United States, but brings it into line with twenty three European countries, Australia, and New Zealand.³ Other major markets in the Asia-Pacific region are already on T+2 (or T+1).⁴ The move to T+2 will immediately impact Canadian equity and long-term debt market trades in Canada.⁵

A. BACKGROUND

In early 2017, the Canadian Securities Administrators (CSA) adopted amendments to National Instrument 24-101 Institutional Trade Matching and Settlement (NI 24-101) to reflect the new shorter settlement cycle.⁶ As

1. Pratibha Jain, Nishith Desai Associates (New Delhi) served as the committee editor. Gordon N. Cameron and Precia Darshan, Stikeman Elliott (NY) LLP Canadian Barristers & Solicitors (New York) contributed Canada's development. Priscilla Tshibemba, CMS Bureau Francis Lefebvre (Neuilly sur Seine, France) contributed Europe's development. Pratibha Jain and Prashant Prakhara, Nishith Desai Associates (New Delhi) contributed India's development. Ken Kiyohara, Kiyohara International Law Office (Tokyo) contributed Japan's development. Sabin Volciuc-Ionescu, Volciuc-Ionescu (Bucharest) contributed Romania's development.

2. Ryan Mapa & Zach Austin, *Canada's Move to a T-2 Settlement Cycle*, TIMELY DISCLOSURE (Aug. 4, 2017), <https://www.timelydisclosure.com/2017/08/04/canadas-move-to-a-t-2-settlement-cycle/>.

3. *Id.*

4. *Id.*

5. *Id.*

6. Amendments to National Instrument 24-101 Institutional Trade Matching and Settlement and Changes to Companion Policy 24-101CP to National Instrument 24-101 Institutional Trade Matching and Settlement (2017), 40 OSCB Bull. 3941 (Can. Ont. Sec. Com.), http://www.osc.gov.on.ca/documents/en/Securities-OSCB/20170427_oscb_4017_toc.pdf.

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part of the amendments, provisions of NI 24-101 relating to non-North American trades were repealed, as they were no longer seen to be appropriate in a standard T+2 settlement environment.⁷ Parties will need to match earlier on T+1 regardless of the cross-border nature of the trade.⁸

In Ontario, ministerial approval of the NI 24-101 amendments was granted on June 26, 2017.⁹ In addition, the Investment Industry Regulatory Organization of Canada (IIROC) adopted amendments to its Universal Market Integrity Rules, Dealer Member Rules and Form 1.¹⁰ The Toronto Stock Exchange Company Manual also provides for the T+2 cycle.¹¹

1. *More Amendments to Follow*

As trades in securities of conventional mutual funds are not subject to NI 24-101, on August 31, 2017, the CSA published a notice announcing that the CSA (other than the British Columbia Securities Commission and the Financial and Consumer Affairs Authority of Saskatchewan) had adopted amendments to National Instrument 81-102 Investment Funds and National Instrument 81-104 Commodity Pools to shorten the standard settlement cycle of conventional mutual funds to T+2.¹² The amendments substantially reflect those proposed by the CSA in early 2017, and the amendments came into force on November 14, 2017.¹³

B. BENEFITS

Canadian regulators believe that shortening the settlement cycle in Canada to T+2 will help mitigate operational and systemic risk by reducing exposure between the parties to a trade, between the counterparties to the clearinghouse, and for the clearinghouse itself.¹⁴ Additionally, operational

7. *Id.*

8. *Id.*

9. Notice, Ont. Secs. Comm'n., Notice of Ministerial Approval of Amendments to National Instrument 24-101 Institutional Trade Matching and Settlement (July 13, 2017), http://www.osc.gov.on.ca/en/SecuritiesLaw_20170713_24-101_trade-matching.htm.

10. Inv. Indus. Regulatory Org. of Canada Notice 17-0133, AMENDMENTS TO FACILITATE THE INVESTMENT INDUSTRY'S MOVE TO T+2 SETTLEMENT (June 9, 2017), http://www.iiroc.ca/Documents/2017/54f535f0-7355-4e86-90ba-28342e927f7d_en.pdf.

11. TSX Equities Trading Notice TORONTO STOCK EXCHANGE, EQUITIES TRADING NOTICE: CHANGES TO THE SETTLEMENT CYCLE (T+2) (July 19, 2017), <https://www.tsx.com/resource/en/1548>.

12. Adoption of a T+2 Settlement Cycle for Conventional Mutual Funds and Amendments to National Instrument 81-102 Investment funds (2017), 40 OSCB Bull. 7415 (Can. Ont. Sec. Com.), http://www.osc.gov.on.ca/documents/en/Securities-Category8/ni_20170831_81-102_investment-funds.pdf.

13. Notice of Ministerial Approval of Amendments to National Instrument 81-102 Investment Funds and National Instrument 81-104 Commodity Pools (2017), 40 OSCB Bull. 8945 (Can. Ont. Sec. Com.), http://www.osc.gov.on.ca/documents/en/Securities-Category8/ni_20171109_81-102_investment-funds-commodity-pools.pdf.

14. *Canada Tipped to Diversity*, Secs. Lending Times, May 30, 2017, at 26, http://www.securitieslendingtimes.com/sltimes/SLT_issue_178.pdf.

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process improvements and enhanced global settlement harmonization are expected to result.¹⁵ It was particularly important to harmonize the settlement regime with the United States given the high number of United States and Canadian inter-listed securities and integration between the two markets.¹⁶

II. Developments in Europe

A. MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE II

Since its implementation in November 2007,¹⁷ the original Markets in Financial Instruments Directive (MiFID) has been the foundation of the EU's regulatory framework for financial markets. The MiFID was a regulation of the European Parliament and the Council of April 21, 2004,¹⁸ that sought to create a single financial market, improve transparency in investment markets, and ensure harmonized protection for investors within Europe.¹⁹

In light of the 2008 financial crisis, the European Union opted to reform the MiFID, which resulted in the Markets in Financial Instruments Directive²⁰ (MiFID II) and Markets in Financial Instruments Regulation²¹ (MiFIR) (collectively the MiFID II package) in June 2014. The MiFID II package will come into force on January 3, 2018,²² a year later than originally planned, and will radically impact the regulation of EU securities and derivative markets.

The reforms to be introduced by the MiFID II package include:

Primary markets:

- Product governance;
- Packaged Retail and Insurance-based Investment Product;
- Allocation justification recording;
- Inducements;
- Cost and charges;
- Trade and transaction reporting;

15. *Id.*

16. *Id.*

17. Council Directive 2004/39/EC, 2004 O.J. (L 145) 2 (EC).

18. *Id.*

19. *ESMA Updates MIFID II/MIFIR Investor Protection Q&A*, EUROPEAN SECS. & MKTS. AUTH., (June 6, 2017), <https://www.esma.europa.eu/press-news/esma-news/esma-updates-mifid-ii-mifir-investor-protection-qa>.

20. Council Directive 2014/65/EU, 2014 O.J. (L173/349) (EU).

21. Council Regulation 600/2014, 2014 O.J. (L 173/84) (EU).

22. *ESMA Updates MIFID II/MIFIR Investor Protection Q&A*, EUROPEAN SECS. & MKTS. AUTH., (June 6, 2017), <https://www.esma.europa.eu/press-news/esma-news/esma-updates-mifid-ii-mifir-investor-protection-qa>.

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- Access to trading venues and algorithmic trading: licensing of “investment firms.”²³

Secondary markets:

Over-the-counter (OTC) derivative trading is obligated to move to trading venues. New requirement for trading venues include:

- Pre and post-trade transparency obligations for equity and non-equity markets (including derivatives);
- Trade reporting obligations;
- Systematic Internaliser (SI) regime;
- Best execution;
- New market structure: MTFs, SIs, OTFs (only for non-equity instruments).²⁴

On September 29, 2017, the European Securities and Markets Authority (ESMA) issued its final draft Regulatory Technical Standard (RTS)²⁵ implementing the trading obligation for derivatives under the MiFIR. The RTS provides that fixed-to-float IRS and CDS indices will be subject to on-venue trading.²⁶ ESMA’s draft RTS has been submitted to the European Commission for its endorsement.²⁷

The UK regulator, the Financial Conduct Authority (FCA), published in May 2017 near-final rules in the Policy Statement (PS) on the implementation of MiFID II with regard to some technical changes from the finalisation of the Treasury’s implementing legislation, Handbook guides on the implementation of the markets provisions in MiFID II, and the organizational requirements in MiFID II.²⁸ The FCA also published a PS on the implementation of MiFID II that sets out final rules on conduct of business, as well as client assets in some areas where FCA has gone beyond what the legislation requires them to do,²⁹ and encourages financial services firms to submit applications for MiFID II authorization.³⁰ The FCA

23. *MiFID II/R in Primary Markets*, INT’L CAPITAL MKT. ASS’N, <https://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/Primary-Markets/primary-market-topics/mifid-ii-r-in-primary-markets/> (last visited Mar. 27, 2018). See Council Regulation 600/2014, *supra* note 21.

24. *MiFID II/R implementation in secondary markets*, INT’L CAPITAL MKT. ASS’N, <https://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/Secondary-Markets/secondary-markets-regulation/mifid-ii-r/> (last visited Mar. 27, 2018). See Council Regulation 600/2014, *supra* note 21.

25. European Securities and Markets Authority, *Final Report Draft RTS on The Trading Obligation For Derivatives Under MiFIR*, ESMA70-156-227 (Sept. 23, 2017).

26. *Id.* at 40.

27. *Id.* at 4.

28. *Markets in Financial Instruments Directive II Implementation - Policy Statement II*, FIN. CONDUCT AUTH., 3 (July 2017, 2017), <https://www.fca.org.uk/publication/policy/ps17-14.pdf>.

29. *Id.*

30. Press Release, Fin. Conduct Auth., FCA Publishes Near Final Rules on MiFID II and Encourages Firms to Submit Applications for MiFID II Authorization (Mar. 31, 2017), <https://www.fca.org.uk/news/press-releases/fca-publishes-near-final-rules-mifid-ii-encourages-firms-submit-applications>.

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received a significant number of applications from firms seeking to operate a trading venue or become a Data Reporting Services Provider.³¹

In the Netherlands, the Dutch parliament passed the Amendment Act Financial Markets 2015³² that amended several laws regarding the financial markets, including the Dutch Financial Supervision Act. The law introduced an exemption from licensing requirements for non-EU users of Dutch venues.³³

B. INITIAL COIN OFFERINGS

Inspired by initial public offerings (IPO), initial coin offerings (ICO) are growing rapidly and have raised billions of dollars globally through many different methods, including crowdfunding through Blockchain and raising cash by the company instead of conventional shares.³⁴ ICOs are unregulated in most countries in Europe.³⁵

One of the biggest challenges regulators will face when adopting regulatory laws specifically applicable to ICOs due to the lack of subjects of supervision is categorizing the legal nature of the tokens being offered under the ICO.³⁶ ICO may be considered “currency” or “securities” in accordance with the laws of each relevant jurisdiction.³⁷ The nature of the tokens offered under the ICO and the role of the issuer, service provider, and participant may trigger licensing/registration, authorization requirements, or other regulatory compliance requirements.³⁸

The Securities and Exchange Commission of the United States (SEC) issued a report of investigation into Decentralized Autonomous Organization (DAO), which is “a ‘virtual’ organization embodied in

31. Press Release, Fin. Cond. Auth., MiFID II: Authorisation and Variation of Permissions (Sept. 18, 2017), <https://www.fca.org.uk/news/news-stories/mifid-ii-authorisation-and-variation-permissions>.

32. Reinout Slot & Clair Wermers, *Amendment Act Financial Markets 2015*, CTRS. FOR MEDICARE AND MEDICAID SERVS. (Nov. 18, 2014), <https://cms.law/en/NLD/Publication/Amendment-Act-Financial-Markets-2015>; The Amendment Act contains substantive and technical amendments to the Financial Supervision Act (Wet op het financieel toezicht, the “FSA”). The First Chamber of the Dutch Parliament adopted the Amendment Act Financial Markets 2015 (Wijzigingswet financiële markten 2015, the “Amendment Act”), dated November 30, 2014 (will enter into force on Jan. 1, 2015).

33. *MiFID II - Licence Obligation and Exceptions*, DUTCH AUTH. FOR THE FIN. MKTS., <https://www.afm.nl/en/professionals/onderwerpen/mifid-2/grondstofderivaten-emissierechten-vergunning> (last visited Mar. 27, 2018).

34. Rocky Mui, *Initial Coin Offerings—Asking the Right Regulatory Questions*, CLIFFORD CHANCE LLP 2 (Dec. 2017), https://www.cliffordchance.com/briefings/2017/12/initial_coin_offerings_askingtherigh.html; See European Securities and Markets Authority, *ESMA alerts investors to the high risks of Initial Coin Offerings (ICOs)*, at 1, ESMA50-157-829 (Nov. 13, 2017).

35. Chance, *supra* note 34 at 5; European Securities and Markets Authority, *supra* note 34.

36. Chance, *supra* note 34 at 3.

37. *Id.* at 2.

38. *Id.* at 3.

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computer code and executed on a distributed ledger or blockchain.”³⁹ The SEC concluded that the DAO tokens were securities under the Securities Act 1933 and the Securities Exchange Act of 1934.⁴⁰ While no jurisdiction in Europe has yet implemented a regulatory framework specific to ICOs and/or tokens, regulators globally are focused on them. The ESMA has stated, “[Blockchain technology] does not liberate users from the need to comply with the existing regulatory framework.”⁴¹

Currently in France, there is a regulatory status quo. The French regulator Autorité des Marchés Financiers (AMF) believes that tokens do not trigger the definition of financial instruments under article L.211-1 of the French Monetary and Financial Code.⁴² Commentators point out that tokens may be similar to a security under article L.212-2-1 A of the French Monetary and Financial Code.⁴³ The AMF published a discussion paper on ICO and initiated a program involving the support and analysis of these transactions, named UNICORN.⁴⁴

The German Federal Financial Supervisory Authority (BaFin) published on its website a guidance note on virtual currencies.⁴⁵ According to BaFin, virtual currencies are neither currencies nor foreign notes or coins.⁴⁶

In Poland, there are no laws, regulations, or guidance specific to ICOs that have been implemented or issued. In July 2017, however, the Polish Financial Supervision Authority (Komisja Nadzoru Finansowego or KNF) and the National Bank of Poland (Narodowy Bank Polski or NBP) issued a statement⁴⁷ in relation to virtual currencies that warned against the risks associated with purchasing and investing funds in virtual currencies.

In the UK, the FCA published on its website a consumer warning about the risks of ICOs.⁴⁸ The FCA stated that “ICOs are very high-risk,

39. Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO, Exchange Act Release No. 81207, 1 (July 24, 2017).

40. *Id.*

41. European Securities and Markets Authority, *The Distributed Ledger Technology Applied to Securities Markets*, at 2, ESMA50-1121423017-28 (Feb. 7, 2017).

42. News Release, AMF, Discussion Paper on Initial Coin Offerings (ICOs), 7 (Oct. 26, 2017), http://www.amf-france.org/en_US/Publications/Consultations-publiques/Archives?docId=workspace%3A%2F%2FSpacesStore%2Fa2b267b3-2d94-4c24-acad-7fe3351dfc8a.

43. *Id.* at 8.

44. News Release, AMF, The AMF publishes a discussion paper on Initial Coin Offerings and initiates its UNICORN programme (Oct. 26, 2017), http://www.amf-france.org/en_US/Actualites/Communiqués-de-presse/AMF/annee-2017?docId=workspace%3A%2F%2FSpacesStore%2F5097c770-e3f7-40bb-81ce-db2c95e7bdae.

45. *Virtual Currency (VC)*, BAFIN, https://www.bafin.de/EN/Aufsicht/FinTech/VirtualCurrency/virtual_currency_artikel_en.html (last visited Mar. 27, 2018).

46. *Id.*

47. *Statement by Narodowy Bank Polski (NBP) and the Polish Financial Supervision Authority (KNF) on “virtual currencies”*, NARODOWY BANK POLSKI (July 7, 2017), <http://www.nbp.pl/homen.aspx?f=/en/aktualnosci/2017/ww-en.html>.

48. *Consumer Warnings About the Risks of Initial Coin Offerings (ICOs)*, FIN. CONDUCT AUTH. (Sept. 9, 2017), <https://www.fca.org.uk/news/statements/initial-coin-offerings>.

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speculative investments.”⁴⁹ The FCA added that “many ICOs will fall outside the regulated space. However, depending on how they are structured, some ICOs may involve regulated investments and firms involved in an ICO may be conducting regulated activities.”⁵⁰ The FCA urged,

[b]usinesses involved in an ICO should carefully consider if their activities could mean they are arranging, dealing or advising on regulated financial investments. Each promoter needs to consider whether their activities amount to regulated activities under the relevant laws. In addition, digital currency exchanges that facilitate the exchange of certain tokens should consider if they need to be authorized by the FCA to be able to deliver their services.⁵¹

III. Developments in India

A. INTRODUCTION

The Indian capital market has grown significantly over the past year. Foreign portfolio investments in India so far this year have been significantly high at USD 28 billion,⁵² compared to USD 6.5 billion at the same time last year.⁵³ The initial public offering (IPO) segment in India is also at a record high level with no failed IPO so far in 2017—the total amount raised from thirty-three successful IPOs is approximately USD 9.5 billion.⁵⁴ It has been possible due to the number of reforms that the Government of India has undertaken in the past couple of years in different areas of the economy to liberalise the foreign investment regime in India.

B. REGULATORY CHANGES IN INSURANCE SECTOR

This year there has been a rise in investment activity in the insurance sector due to regulatory changes, and consequently, a number of major insurance companies are getting ready for IPOs. In the last year, the Government of India and Insurance Regulatory and Development Authority of India (IRDAI) opened up the sector for foreign investments up to forty-

49. *Id.*

50. *Id.*

51. *Id.*

52. The data presented above is compiled on the basis of reports submitted to depositories by DDPs on October 31, 2017, and constitutes trades conducted by FPIs/FIIs on and up to the previous trading day(s). *Daily Trends in FPI Investments upto October 31, 2017*, NAT'L SECS. DEPOSITORY LTD., <https://www.fpi.nsdl.co.in/web/Reports/Archive.aspx> (input date of 10/31/16 into search bar) (last visited Mar. 27, 2018).

53. *Daily Trends in FPI Investments upto October 31, 2016*, NAT'L SECS. DEPOSITORY LTD., <https://www.fpi.nsdl.co.in/web/Reports/Archive.aspx> (input date of 10/31/16 into search bar) (last visited Mar. 27, 2018).

54. *Year Wise List of IPO's - Report of Public Issues in India Stock Market*, CHITTIORGARH, http://www.chittorgarh.com/ipo/reports/ipo_report_yearly_parent.asp (last visited Mar. 27, 2018).

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nine percent under the automatic route.⁵⁵ Another important regulatory change that triggered listing of Indian insurers from zero to four in one year (so far) was the introduction of the IRDAI (Listed Indian Insurance Companies) Guidelines, 2016 (notified on August 5, 2016)⁵⁶ that, among other things, provided that “[t]he minimum shareholding by promoters or the promoter group [of an insurer] shall at all times be maintained at 50% of the paid-up equity capital of the insurer.’ . . . However, if the present holding of the promoters is below 50%,” such holding shall be the minimum holding.⁵⁷

C. INCREASE IN FOREIGN INVESTMENT LIMITS IN INFRASTRUCTURE COMPANIES IN SECURITIES MARKET

Department of Industrial Policy and Promotion, Ministry of Commerce (DIPP) Press Note 1 of 2017⁵⁸ revised the position relating to foreign investment in Infrastructure Companies in Securities Markets, namely, stock exchanges, depositories, and clearing corporations, in accordance with respective Securities and Exchange Board of India (SEBI) regulations. Consequently, the foreign shareholding limit in a recognised stock exchange was raised from five percent to fifteen percent for foreign owned and controlled stock exchanges, depositories, banking companies, insurance companies, and public financial companies.⁵⁹ Further, the press note also allowed foreign portfolio investors (FPI) to acquire shares of a recognised stock exchange otherwise than through a secondary market, i.e., by initial allotment, which was an important factor as to why the initial public offering of BSE Limited (Bombay Stock Exchange) was overwhelmingly subscribed.⁶⁰

55. Department of Industrial Policy & Promotion, *Enhancement of FDI limit in Insurance Sector*, (May 4, 2016) <http://dipp.nic.in/sites/default/files/ru1131.pdf>.

56. *Guidelines for Listed Indian Insurance Companies*, INS. REGULATORY & DEV. AUTH. OF INDIA (June 15, 2016), <https://www.irdai.gov.in/ADMINCMS/cms/Uploadedfiles/Guidelines%20for%20Indian%20Insurance%20Company%20going%20for%20public%20listing-14.06.2016.pdf>.

57. *Irda Releases Draft Norms for Listing of Indian Insurers*, MINT (June 14, 2016), <http://www.livemint.com/Industry/K5Ii1unKMfHDz0Qn6mqMG0L/Irda-releases-draft-norms-for-listing-of-Indian-insurers.html>.

58. Press Note, Gov't of India Ministry of Commerce & Indus. Dep't of Indus. Policy & Promotion, *Press Note No. 1 (2017 Series)* (Feb. 20, 2017), http://dipp.nic.in/sites/default/files/pn1_2017_0.pdf.

59. Prashant Prakhar, Kishore Joshi & Pratibha Jain, *Regulatory Alerts*, NISHITH DESAI ASSOCIATES (July 28, 2016), http://www.nishithdesai.com/information/research-and-articles/nda-hotline/nda-hotline-single-view/article/regulatory-alerts.html?no_cache=1&cHash=714721e8a64951b72e5a8da0b92ab921.

60. *Id.*

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D. ABOLISHMENT OF FOREIGN INVESTMENT AND PROMOTION BOARD

To streamline the process of foreign investments in India, the Foreign Investment Promotion Board (FIPB), an inter-ministerial body for approving foreign investment proposals in India, was abolished and replaced with a system of approval by distinct administrative ministries/departments in accordance with the standard operating procedure (SOP) prescribed by DIPP on June 29, 2017.⁶¹ The focus of the SOP is to process the investment proposals in a time bound manner so that the new regime for foreign investments may be simpler in execution and expeditious in disposal.⁶² The SOP came into effect on the date of its publication.⁶³

E. LIBERALISATION OF REGULATIONS FOR INFRASTRUCTURE INVESTMENT TRUSTS AND REAL ESTATE INVESTMENT TRUSTS

It has been three years since SEBI notified the SEBI (Infrastructure Investment Trusts) Regulations, 2014 and SEBI (Real Estate Investment Trusts) Regulations, 2014 on September 26, 2014, but Infrastructure Investment Trusts (InvITs) and Real Estate Investment Trusts (REITs) have not taken off in India due to multiple regulatory and tax-related issues.⁶⁴ In order to further liberalize the regime for the InvITs and REITs, SEBI in its board meeting dated September 18, 2017, approved a series of changes to be made to the respective regulations.⁶⁵ The proposed amendments, among other things, include allowing REITs and InvITs to undertake leverage by issuance of debt securities and allowing REITs to hold single assets and lend to the Holdcos/SPVs in which they have invested on similar lines as the InvITs.⁶⁶

61. Office Memorandum from the Gov't of India Foreign Inv. Promotion Board (June 5, 2017), <http://www.fipb.gov.in/Forms/OMabolitionFIPB.pdf>.

62. Prashant Prakhar, Kishore Joshi & Pratibha Jain, *DIPP Issues Standard Operating Procedures To Decide Fate Of Fdi Under Approval Route*, Nishith Desai Associates (July 12, 2017), http://www.nishithdesai.com/information/research-and-articles/nda-hotline/nda-hotline-single-view/article/dipp-issues-standard-operating-procedures-to-decide-fate-of-fdi-under-approval-route.html?no_cache=1&cHash=c593c6a1a82da16c464f2091a443c1a8.

63. *Id.*

64. Dipanshu Singhal & Ruchir Sinha, *SEBI Further Liberalizes the Reits Regime*, NISHITH DESAI ASSOCIATES (Sept. 22, 2017), http://www.nishithdesai.com/information/research-and-articles/nda-hotline/nda-hotline-single-view/article/sebi-further-liberalizes-the-reits-regime.html?no_cache=1&cHash=2ec1c737ca51f657fbe5b63ca5e07225.

65. *Id.*

66. *See* Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014, Gazette of India, pt. III sec. 4 (Sept. 26, 2014).

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IV. Developments in Japan**A. DISCLOSURE REFORM**

As proposed in the Report by the Working Group on Corporate Disclosure of the Financial System Council (Working Group Report),⁶⁷ the disclosure system for listed companies was reformed in 2017, by the Financial Services Agency (FSA) with respect to disclosure regulations under the Financial Instruments and Exchange Act (FIEA), and by the Tokyo Stock Exchange Inc. (TSE) with respect to the disclosure rule under its listing rules. From the perspective of promoting constructive dialogue (or engagement) between listed companies and shareholders/institutional investors, the Working Group Report proposed harmonization of rules and regulations under the FIEA and TSE (as well as those under the Companies Act) and streamlining of disclosure items thereunder to allow more timely, lucid, and digestible, as well as efficient, disclosure.

First, on February 10, 2017, the TSE published amendments to its disclosure rules, designed to increase flexibility of format of earnings reports by listed companies, with clarification as to TSE's position that the financial information included in such earnings reports need not be audited to achieve timely disclosure.⁶⁸ Next, the FSA implemented amendments to the rules and forms of annual and quarterly securities reports, as required under the FIEA. The first round of amendments to the disclosure regulation under the FIEA was announced by the FSA on February 14, 2017. These amendments added to the annual securities report disclosure items such as business policy and strategy (which used to be covered under the TSE disclosure rule), with effect from disclosure in respect of the fiscal year ending on or after March 31, 2017.⁶⁹

The second round of amendments were proposed by the FSA in late October 2017 for public consultation, addressing the technical aspect of harmonization and streamlining of disclosure items between those under the Companies Act and the FIEA, as well as enhanced disclosure of non-financial information,⁷⁰ and they are scheduled to take effect in April 2018.

67. Report by "Working Group on Corporate Disclosure" of the Financial System Council, FIN. SERVS. AGENCY (Apr. 18, 2016), http://www.fsa.go.jp/en/refer/councils/singie_kinyu/20160719-1/01.pdf.

68. Rules, TOKYO STOCK EXCH., <http://www.jpx.co.jp/rules-participants/rules/revise/nlsgeu0000029627-att/gaiyou.pdf>. For a proposed concept for amendments for public consultation, see *Increasing Flexibility of Earnings Reports and Quarterly Earnings Reports*, TOKYO STOCK EXCH. (Oct. 28, 2016), <http://www.jpx.co.jp/english/rules-participants/public-comment/detail/d01/b5b4pj000001bmaq-att/e20161028-1.pdf>.

69. Regarding the result of public comment on the revision bill such as "Cabinet Office Ordinance on Disclosure of Company Contents", FIN. SERVS. AGENCY (Feb. 14, 2007), <http://www.fsa.go.jp/news/28/syouken/20170214-1.html> (available only in Japanese). See *FSA Weekly Review No. 232*, FIN. SERVS. AGENCY (Feb. 23, 2017), <http://www.fsa.go.jp/en/newsletter/weekly2017/232.html> (discussing the amendments in English).

70. Publication of revised draft such as "Cabinet Office Ordinance on Disclosure of Company Contents", FIN. SERVS. AGENCY (Oct. 24, 2017), <http://www.fsa.go.jp/news/29/sonota/>

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Additionally, by way of the amendments to the FIEA approved in May 2017 and introduction of new rules thereunder, fair disclosure rules were introduced in Japan and are scheduled to take effect in April 2018.⁷¹ At a meeting held on November 16, 2017, the Financial System Council resolved to form a new disclosure working group to discuss disclosure issues further.⁷²

B. REVISIONS TO THE STEWARDSHIP CODE

Revisions to the Stewardship Code were adopted as of May 29, 2017,⁷³ which reflect various proposals made by the Council of Experts Concerning the Follow-up of Japan's Stewardship Code and Japan's Corporate Governance Code in November 2016.⁷⁴ The revisions address, among other things, (i) effective oversight of asset managers by asset owners, (ii) asset managers' proper management of conflict of interests, (iii) engagement by passive investors, (iv) enhanced disclosure of voting records, and (v) self-evaluation of asset managers. In the June 2017 proxy season in Japan, the immediate impact of the revisions was observed, mainly the enhanced disclosure of voting records for each investee company on an individual agenda item base.⁷⁵

C. GOVERNANCE CODE FOR AUDIT FIRMS

In response to a recommendation by the Advisory Council on the "System of Accounting and Auditing" in March 2016,⁷⁶ the Council of Experts on Audit Firm Governance Code (the Expert Council) was formed in July 2016. Following the discussions at the Expert Council and public consultation, the Principles of Effective Management of Audit Firm (Audit Firm Governance Code) was adopted as of March 31, 2017.⁷⁷

20171024.html. See *The International Capital Markets Review – Edition 7*, THE LAW REVIEW (Nov. 29, 2017), <https://thelawreviews.co.uk/chapter/1151177/japan> (discussing the amendments in English).

71. *Regarding Publication of Cabinet Order, Cabinet Office Ordinance Order, etc. pertaining to the Revision of the Financial Instruments and Exchange Act of Heisei 29*, FIN. SERVS. AGENCY (October 24, 2017), <http://www.fsa.go.jp/news/29/syouken/20171024.html>.

72. *39th General Assembly of the Financial Council- 27th Financial Subcommittee Joint Meeting Depending on the agenda*, FIN. SERVS. AGENCY (Nov. 16, 2017), http://www.fsa.go.jp/singi/singi_kinyu/soukai/siryoku/20171116-1.html (available only in Japanese).

73. *Principles for Responsible Institutional Investors*, FIN. SERVS. AGENCY (May 29, 2017), <http://www.fsa.go.jp/en/refer/councils/stewardship/20170529/01.pdf>.

74. *Effective Stewardship Activities of Institutional Investors To Enhance Constructive Dialogues toward Sustainable Corporate Growth - Opinion Statement No. 3*, FIN. SERVS. AGENCY (Nov 30, 2016) available at http://www.fsa.go.jp/en/refer/councils/follow-up/statements_3.pdf.

75. Leo Lewis, *Underperforming Japanese companies face intense AGM season*, FIN. TIMES (June 25, 2017), <https://www.ft.com/content/0d3bd186-5972-11e7-9bc8-8055f264aa8b>.

76. *Ensuring Confidence in Audit, Recommendations from the Advisory Council on the Systems of Accounting and Auditing*, FIN. SERVS. AGENCY (Mar. 8, 2016), <http://www.fsa.go.jp/en/news/2016/20160308-1/01.pdf>.

77. *Principles for Effective Management of Audit Firms*, FIN. SERVS. AGENCY (Mar. 31, 2017), <http://www.fsa.go.jp/news/28/sonota/20170331-auditfirmgc/3.pdf> [hereinafter the Audit Firm

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As is the case with the Corporate Governance Code and Stewardship Code in Japan, the Audit Firm Governance Code is principle-based, and takes a “comply or explain” approach. It has five principles, with a total of twenty two guidelines, and is targeted at large audit firms. To ensure the audit quality, those principles address, among other things, (i) the top management leadership in fulfilling its role in the public interest; (ii) effective management by roles of management; (iii) enhancement of supervisory functions by utilizing knowledge and expertise of independent third parties; (iv) promoting information exchange and discussions internally and also with outside parties toward improving audit quality; and (v) ensuring the transparency by disclosure of its application of the principles and dialogues with market participants.⁷⁸

V. DEVELOPMENTS IN ROMANIA

In spring 2017, Romania has updated and consolidated the regulations applicable to issuers of securities and capital market operations. Law 24/2017⁷⁹ entered in force on 1 April 2017 harmonising the legal framework with the EU legislation, including transposition of the recent EU Capital Markets Directive.

A key driver of this exercise was also to prepare the Romanian capital market in view of the expected upgrade to emerging markets status. Once achieved, this status would bring an increased visibility at the European and global level, establishing the premises for engaging new types of participants from other markets such as intermediaries, investment funds, issuers, institutional investors, and even retailers. Law 24/2017 is envisaged to determine the development of the market by achieving the following objectives:

- Increasing the degree of implementation of the corporate governance principles at the level of issuers;
- Optimizing the regime applicable to public offerings and to listing of securities; and
- Strengthening the regulations to ensure full observance of the fundamental rights pertaining to investors (e.g., voting rights of shareholders in the general assembly, the right to dividends, etc.).

The updated legal framework under Law 24/2017 is expected to increase the competitiveness of local issuers and to enhance the financing of local companies through local capital markets.

Governance Code]; See FSA Publishes “Audit Firm Governance Code”, JAPANESE INST. OF CERTIFIED PUB. ACCOUNTANTS (Apr. 19, 2017), <http://www.hp.jicpa.or.jp/english/news/2017/04/>.

78. *Id.*

79. Law no. 24/2017 on issuers of financial instruments and market operations [Law 24/2017] Mar. 29, 2017, *Official Journal, Part I*, no. 213 (Rom); translated by the Romanian Financial Supervisory Authority, <https://asfromania.ro/en/legislation/sectorial-legislation/capital-market/primary-legislation-cnvm/5853-law-no-24-2017-on-issuers-of-financial-instruments-and-market-operations>.

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