ABHANDLUNGEN / ARTICLES

The New Financial Instruments Exchange Law

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I. BACKGROUND

By virtue of the Law on the Amendment of the Securities and Exchange Law which was adopted in 2006, the Securities and Exchange Law (SEL) will be replaced by the new Financial Instruments Exchange Law (FIEL) in September 2007.[1]

The SEL dates back to 1948 when Japan was under the Allied occupation. It was primarily modelled on the US securities acts. Until the end of the 1980s, the Law remained without major amendment. While the securities market in Japan had substantially expanded in the 1980s, the regulatory framework did not match this. Only in 1988, the SEL was amended in order to strengthen control over insider trading. In the aftermath of the securities scandals in the early 1990s, the SEL was substantially amended as part of a comprehensive reform of the financial system. Since then, the Law was amended almost every year. A major amendment took place in 1998 as part of the reform of the financial system resulting from the "Big Bang", *i.e.* major deregulation of the financial sector which started in 1997.[2]

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1 An English summary of the FIEL is available at *http://www.fsa.go.jp* in the *FSA Newsletter*, August/September, October, and November issues in three parts.

2 H. BAUM, *Der japanische „Big Bang" 2001 und das tradierte Regulierungsmodell – Ein regulatorischer Paradigmenwechsel?*, in: RabelsZ 64 (2000) 633-659.

The SEL has never been a comprehensive law covering a whole range of financial products. The US 1933 Securities Act has a broadly defined concept of securities which includes investment contracts, *i.e.* contract, transaction or scheme whereby a person invests his money in a common enterprise. In contrast, Article 2 of the SEL has an exhaustive list of specific securities it covers. Although the list had been expanded over the years, various financial products fell outside the scope of the SEL and were left entirely unregulated or regulated by other laws implemented by different agencies. Starting in the 1990s, a wide range of financial instruments emerged, but the regulations failed to catch up with such developments. Some financial instruments were left without any regulation at all. An example is the foreign exchange margin transaction which was unregulated and resulted in investors with insufficient knowledge and expertise lured into investment and losing. Only with the amendment to the Financial Futures Trading Law in 2005, such transactions were placed under the supervision of the Financial Services Agency and the problems more or less subsided. As for collective investment schemes, only part of them was covered by the SEL.

In 1997, a forum of experts was set up by the then Ministry of Finance and other ministries in the process of the Big Bang in order to discuss a prospective reform of the financial system. The interim report of this group published in June 1998 pointed out that a new law or a set of rules which encompass a wide range of financial instruments and services across the board was needed, with the UK Financial Services Act of 1986 type of law in view. The need for common rules applicable to collective investment schemes, irrespective of the investment vehicles or the objects of investment, was stressed.[3]

However, in the autumn of 1997, the Japanese financial system fell into a major crisis which led to the collapse of a city bank and one of the big four securities companies, followed by some more. The Ministry of Finance, which was promoting the idea of a new comprehensive law covering financial instruments, was criticised for the way it had been supervising financial institutions. Furthermore, a major scandal involving Ministry officials was exposed, and the Ministry was seriously discredited. Eventually, the supervisory function of financial services was transferred from the Ministry to a new agency – the Financial Services Agency (FSA). The FSA is attached to the Prime Minister's Office. With the decline of the Ministry, the momentum for the enactment of a comprehensive law was lost. In the wake of the financial crisis, discussions on the comprehensive law almost ceased. It should be noted that while the financial system in Japan was dwindling, in the UK, the 1986 Financial Services Act was replaced by the Financial Services and Market Act (FSMA) of 2001 which covers securities, banking, and insurance.

3 *Atarashii Kin'yû no Nagare ni kansuru Kondan-kai* [Forum on the New Developments of Finance], *Ronten Seiri* [Identification of Issues], June 17, 1998.

The proposal in the late 1990s for a comprehensive law covering a wide range of financial instruments resulted in a law of a much reduced scale than the UK Financial Services Act of 1986 – the Law on the Sale of Financial Instruments in 2000. This law was primarily a civil law by nature covering transactions as contrasted to administrative/ regulatory law regarding the market. It limited itself to imposing the duty of the seller of financial instruments to provide information regarding the risks involved in the financial product to investors. The information required of disclosure was merely the risk of losing the amount of investment (capital). Sellers were to be held liable for damages and a provision on the presumption of loss was introduced. The coverage of this law was insufficient in that for example, the area of commodity futures trading was exempted from the obligation of the seller to provide information.

When the financial crisis more or less settled, the discussion regarding a new comprehensive law was revived by the FSA. The 2003 report of the Financial System Council, which is an advisory body to the FSA, proposed the replacement of the SEL by a new "Investment Services Act". This was followed by the "Program for Further Financial Reform" published by the FSA in December 2004.[4] The First Sub-Committee of the Financial System Council (hereinafter, "FSC Sub-Committee") published a report in late 2005 stressing the need for comprehensive rules encompassing various financial services including collective investment schemes.[5] The intention was to provide a comprehensive and across the board framework for a wide range of financial instruments, filling the gaps of the existing laws. Fragmented rules applicable to segmented businesses were to be unified and the same rules were to be made applicable to financial instruments of an identical nature with a similar level of risk, which was not necessarily the case then. The goal of the law was not limited to investor protection; the creation of a fair, efficient, transparent and vibrant financial market was the ultimate goal.

The government policy of reinvigorating the securities market, which was slow to recover from the financial crisis, was behind this move. In Japan, a large portion of household savings are not invested in the financial market; instead, they are deposited as postal savings. In fact, as of 2004, only 10.7% of household assets are invested in securities.[6] The overall intention of the government was to induce the general public to the financial market, but for this goal, a comprehensive and developed legal framework such as the UK FSMA was needed. Or to put it the other way round, in the light of the vast amount of personal savings ready for investment, an appropriate system was needed for its best utilisation.

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4 See *http://www.fsa.go.jp/news/newse/e20041224-2.pdf* (in English).

5 See *http://www.fsa.go.jp/en/refer/councils/singie_kinyu/tosin/20051222.pdf* (in English).

6 JAPAN SECURITIES RESEARCH INSTITUTE, Securities Market in Japan 2006 (Tokyo 2006) 9. According to a government survey, 79.7% of respondents had no experience of investing in securities and 82.7% had no intention to do so (including those who have invested, but would like to withdraw). Concerning the compliance by securities companies, 37% of those who had invested thought there were problems. Survey by the Cabinet Office of May 2002.

The revamping of the SEL was necessitated also by other reasons. Firstly, the need for the strengthening of the corporate audit system had come on the agenda as a result of incidents of window dressing by banks and business companies and the failure of the accountants to prevent them in the early 2000s. The introduction of a stricter internal system of compliance with the law became necessary. This was to be made part of the corporate disclosure system in line with the US Sarbanes Oxley Act. This meant that listed companies were required to produce a report on the state of their internal compliance system regarding the accuracy of accounting documents. A working group of the Corporate Accounting Council had been working on the compliance system and disclosure since 2004 and published its proposals in December 2005.

Secondly, in 2005, the celebrated takeover of the Nippon Broadcasting System by a company called Live Door took place. Flaws in the SEL regarding the regulation of takeover bids became apparent through this case and subsequent takeover cases.[7] Another working group of the Financial System Council was set up in 2005 and produced proposals for reform.

Thirdly, as a result of the series of incidents involving insider trading and false reporting, the fairness and transparency of the financial market came to be questioned in 2005/2006. In the light of the internationalisation of the financial and capital market, in order to increase the credibility of the Japanese market, improvement of the regulatory system was thought to be necessary. Regarding this matter, a sub-committee of the Financial System Research Council of the ruling Liberal Democratic Party published a broad range of proposals for the "building of a fair and transparent market" in February 2006.

Against this background, the view of the FSC First Sub-Committee was accepted by the government and the bill on the amendments to the SEL and other laws was submitted to Parliament in March 2006. It became law in June of the same year.

As for the title of the law, until 2005, the discussion centred on the enactment of the "Investment Services Act". The expert forum in the late 1990s was discussing the enactment of the "Financial Services Act" in line with the 1986 UK Act. The FSA's "Program for the Future Financial System" of 2004 and the First Sub-Committee's report of 2005 referred to "Investment Services Act" with the hope of including banking and insurance businesses. Clearly they had the 2001 UK FSMA in view. Presumably since the new law in the end did not cover banking and insurance transactions, and also because in Japan the term "finance" is often construed narrower than in other countries (*e.g.* "finance and securities business"), the legislature stopped short of using the title of "Financial Services Act". In the end, it was decided that the new law should be called "Financial Instruments Exchange Law". It was thought that the term "investment" might be construed narrowly, meaning only investment in tangible assets like "direct investment" or "investment in equipment". Also the term "service" could not be accurately

7 *Cf.* S. KOZUKA, Recent Developments in Takeover Law, in: ZJapanR / J.Japan.L. 21 (2006) 5 ff.

translated into Japanese other than by transcription into Japanese alphabets. This had to be avoided.[8] On the other hand, replacing the term "securities" with "financial instruments" was understood to symbolise the broadening of the coverage of financial products covered by the new law.

II. THE STRUCTURE OF THE BILL

The actual bill took the form of the law amending the SEL and other laws covering some financial instruments. Concerning the SEL *per se*, the amendments took three steps and have been taking effect "in the order of urgency". Firstly, penalties provided by the SEL were strengthened. Criminal penalty for false disclosure, spreading of rumours, use of artifice and market manipulation was increased from five years to a maximum of ten years imprisonment. Fines imposed on individuals were increased to a maximum of 10 million yen (60,241 Euro). Fines on companies based upon vicarious liability were increased to a maximum 700 million yen (4.2 million Euro). Penalty for insider trading was increased from a maximum of three years to five years. The investigative power of the Securities Surveillance Commission was marginally strengthened. This part of the amendment took effect in July 2006.

Secondly, the insufficiency in the regulations on takeover bids (TOB), which came into light in the course of a series of rather distorted takeover attempts in 2005/2006, was addressed.[9] As a result of the reform:

- The scope of occasions where the acquisition has to be made by means of a tender offer bid was clarified. If the holding of shares is to exceed 30%, further acquisition has to go through TOB;
- In cases where a TOB is in progress, a shareholder with shares exceeding 30% is required to resort to TOB in order to increase the share;
- The bidder is allowed to modify the terms in cases where the target company splits the shares;
- In the TOB process, the target company is mandated to express its views on the bid and if the opinion contains questions to the bidder, the bidder is obliged to respond;
- The target company may demand the extension of the bidding period;
- A mandatory bid was introduced (for those who acquired more than 70%).

Concerning the disclosure system, the reporting requirements for a large shareholding went through a reform. The existing system was thought to be insufficient, since it allowed a special regime for investment funds etc. The disclosure requirement for a large shareholding was strengthened for investment funds.

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8 N. MATSUO (ed.), *Ichimon ittô kin'yû shôhin torihiki-hô* [Questions and Answers regarding the FIEL] (Tokyo 2006) 38.

9 For details, see various contributions in: ZJapanR / J.Japan.L. 21 (2006).

This part of the law came into effect in December 2006.

Finally, the SEL was replaced by the FIEL. This is to take effect in September 2007. The arrangement of the chapters of the FIEL is identical to that of the SEL. Many provisions of the SEL were inherited by the FIEL without significant changes. However, substantial changes regarding the scope of the law and basic concepts have taken place in the FIEL. The changes can be summarised as follows:

- Broadening of the range of financial instruments and services covered by the law:
  - The concept of securities expanded, collective investment schemes are now covered by the FIEL;
  - The coverage of derivatives expanded.
- Replacement of the concept of "securities dealers" by the concept of "financial instruments firms":
  - Business hitherto covered by laws other than the SEL came to be covered by the FIEL.
- Determining the organisational structure of a self-regulatory body of the exchanges;
- Enhancement of disclosure:
  - Introduction of quarterly reporting for listed companies;
  - Introduction of internal compliance reporting.

In the present article, the first three points of these changes will be focussed upon.

III. THE GOAL OF THE FIEL

The declared goal of the SEL was to ensure the fairness of the issue, sale and other transactions involving securities and the smooth circulation of securities and thus contribute to the adequate management of the national economy and the protection of investors (Art. 1 SEL). The interpretation of this provision varied. There was a view that the protection of investors was the primary goal of the SEL, but there was another school of thought which contended that the goal of the law should be the ensurance of the functioning of the securities market through the fair price formulation.[10]

In contrast, the provision regarding the goal of the FIEL reads as follows:

> This law aims at ensuring the fairness of the issue of securities and transactions involving financial instruments etc., making the circulation of securities smooth, and also at the fair price formulation of financial instruments etc. by sufficient functioning of the capital market through the development of the disclosure system of corporate information, setting out requirements to those who are involved in financial instruments trading business, and ensuring of the adequate management of the financial instrument exchanges, and thus contributing to the sound development of the national economy and the protection of investors (Art. 1 FIEL).

10 T. UEMURA, in: Kigyô Kaikei 53, 135.

The novelty here is that the "fair price formulation of financial instruments via the sufficient functioning of the capital market" was added. Although the SEL was regarded as a capital market law as well as the law regulating securities transactions and business, this aspect was not reflected in the wording of Article 1. In contrast, the corresponding provision of the FIEL stresses the nature of the law not only as a law regulating the issuing and trading of securities, but as a law which provides for the infrastructure – an efficient and fair capital market. The concept of the capital market itself has been widened, since this is not only the securities market, but also the market in a broader sense where transactions involving a wider range of financial instruments take place.[11]

IV. THE SCOPE OF THE FIEL

As mentioned above, the SEL was not the only law which regulated financial instruments. The legislation in the area has been fragmented, divided along the line of financial products and agencies in charge of implementing relevant laws. The SEL could be characterised as a law which regulated securities, securities industry and the securities market. Banking and insurance businesses were, and still are, regulated by the Banking Law and the Insurance Business Law respectively. Commodity funds came under the scope of the Law on the Regulation of Business involving Investment in Commodities as well as the Law on Financial Futures Trade. Commodity futures are covered by the Law on Commodities Exchange. Agencies responsible for these businesses ranged from the Ministry of Finance (later replaced by the Financial Services Agency (FSA)) to the Ministry of Economy, Trade and Industry, the Ministry of Land and Transportation and the Ministry of Agriculture and Fishery.

While the SEL and the Law on Commodities Exchange had a fairly well developed system of rules, other laws were simply laws regulating the given type of business and were insufficient in the protection of investors. It was thought that there should be a law which encompasses all these areas of business, regulating financial products and services of a similar kind in the same manner, and a single agency implementing it.

The absence of such a comprehensive law was felt in recent years when investors suffered losses by investing in financial instruments which did not fall within the scope of the SEL or any other law, or were insufficiently regulated by law. These included variable (equities) insurance, commodity futures, overseas commodity futures, commodity futures options, and foreign exchange margin transactions. Remedies were not readily available in many of these cases. Foreign exchange margin transactions claimed

11 See also S. OSAKI, *Kaisetsu kin'yû shôhin torihiki-hô* [Commentary to the FIEL] (Tokyo 2006) 16-17; E. KURONUMA, *Kin'yû shôhin torihiki-hô nyûmon* [Introduction to the FIEL] (Tokyo 2006) 34-35.

many victims until 2004 when the then Financial Futures Trade Law was amended in order to cover such transactions.[12]

The FSA had expressed its intention to "strive for establishing overall uniform rules for transactions regarding financial products and services" in the form of the Investment Services Law in 2004. The FSC Sub-Committee report in 2005 stressed the need for the reconsideration of the segmented regulation and a law covering a wide range of financial products and proposed that the new law encompass a wide range of financial instruments as much as possible. Here, the concept of financial instruments instead of that of securities was used. The underlying idea was that financial instruments of a similar nature and risk should be subject to the same level of regulation by the new law regardless of the agencies in charge.

The FSC Sub-Committee report did not precisely define financial instruments (it used the term "investment products"), but listed three of their characteristics:

- Financial instruments involve monetary investment with the possible return of monetary value;
- The investment is related to assets or indexes;
- Taking of a risk with the expectation of economic benefit.

It was proposed that the products, including collective investment schemes, should be listed in a broad and comprehensive manner insofar as it is necessary for the protection of investors. On the other hand, it was also added that exemptions and designations of financial instruments should be available in order to respond to changing circumstances.

However, whether or not the new law should be as comprehensive as the UK FSMA which encompasses banking and insurance businesses was not decided. The FSC Sub-Committee report was rather cautious on the scope of the new law. In order to facilitate the enactment of the law, it was proposed that the new law cover "financial instruments which involve risk" which have been agreed so far. A view was expressed at the last session of the FSC Sub-Committee that the proposed law should include bank deposits and insurance as the UK FSMA. It was pointed out that although it was inevitable to enact a new law in a reduced scope at this stage, the future direction of the legislation should be made clear to the general public.[13]

Views varied within the government on the coverage of the new law. For example, while the FSA proposed to accommodate commodity derivatives trade including futures trade regardless of whether it takes place within or outside Japan, the Ministry of Economy, Trade and Industry and the Ministry of Agriculture and Fishery were strongly opposed to this. As a result, the Law on Commodities Exchange, which is not specifical-

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12 T. UEYANAGI ET AL., *Shin-kin'yû shôhin torihiki-hô handobukku* [Handbook on the New FIEL] (Tokyo 2006) 48-54.

13 Summary of the First Sub-Committee meeting of December 22, 2005.

ly designed to cover commodity futures, remains to regulate commodity futures.[14] For overseas commodity futures, there is another law – the Law on Acceptance of Futures Transactions in Overseas Commodities Futures Market. Although the FIEL has expanded the scope of coverage in comparison to the SEL in a significant way, still, it is yet to become a comprehensive law encompassing all kinds of financial instruments. Concerning unit trusts, as a result of the FIEL accommodating regulations on collective investment schemes, the provisions of the FIEL are applicable, but it was thought that supplementary regulation was needed by the Law on Unit Trust and Trusts of Corporative Types.

Thus, for various reasons, some laws concerning financial instruments remain together with the FIEL. These include the following:

- The Banking Law;
- The Law on Insurance;
- The Law on Commodities Exchange;
- The Law on Specific Joint Businesses on Real Estate;
- The Law on Unit Trust and Investment Corporations;
- The Law on the Futures Trade in Overseas Commodity Market.

While the FIEL does not cover some financial instruments, by the amendment to the relevant laws, relevant provisions of the FIEL are applicable with modification to the following:

- Foreign currency denominated deposits (Banking Law);
- Derivatives deposits (*ibid.*);
- Foreign currency denominated insurance (Insurance Business Law);
- Variable insurance and annuity (*ibid.*);
- Commodity futures (Commodity Exchange Law);
- Real estate syndication business (Real Estate Syndication Business Law).

The Banking Law and the Insurance Business Law were also amended, and as a result, structured deposits and variable insurances came under the same level of regulation as the FIEL. However, it should be noted that this primarily concerns conduct rules, but not the requirements to the entities involved in these businesses.

Concerning commodity futures in the domestic market, the Law on Commodity Exchange was amended in order to align it with the FIEL. However, although there have been a large number of trouble cases with general investors, the much needed prohibition of uninvited solicitation was not made applicable. For overseas commodity futures, the relevant law, which is not sufficient, has not been amended. Nothing has been done to the overseas commodity futures options.[15]

14 UEYANAGI ET AL., *supra* note 12, 262-263.
15 UEYANAGI ET AL., *supra* note 12, 50-51.

The Financial Instruments Sales Law of 2000 also remains in force. The Sub-Committee report proposed to incorporate this law in the FIEL, but this was rejected in the end, primarily because the coverage of this law differed from that of the FIEL. While the FIEL regulates registered financial instruments, the Financial Instruments Sales Law covers the sale of financial instruments by any entities, regardless of registration. The scope of the coverage of financial instruments differs in both laws. The Financial Instruments Sales Law was not integrated into the FIEL, but it was amended on this occasion. The duty to provide information to the customer was expanded in order to incorporate information not only on the possible deficit of the capital, but the fact that loss may exceed the capital.

V. THE CONCEPTS OF SECURITIES AND FINANCIAL INSTRUMENTS

The two pillars of the FIEL are "securities" and "derivatives transactions".

The key concept in the SEL was "securities". Once a financial product fell within the scope of securities listed in the SEL, various rules, including the prohibition of financial institutions to handle them, became applicable. The Sub-Committee report used the term "investment products" to denote products which are to be regulated by the prospective "Investment Services Act". However, the FIEL retained the concept of securities, although its coverage was significantly broadened. Despite its name, "securities" is still the key concept in the FIEL. It would be misleading to say that the FIEL regulates financial instruments in the same way as the SEL covered securities. The FIEL covers "securities" and "derivatives trade". "Financial instruments" are by no means a higher concept than those. It neither demarcates the scope of the FIEL nor the scope of business of the financial instruments firms.

The FIEL sets out a list of securities as is the case with the SEL. Although various rights have since come to be covered by the FIEL, the structure of the provision defining securities has not changed. The list of securities which has been expanded by the successive amendments to the SEL has been further expanded by the FIEL. At the end of paragraph 1 of Article 2 which lists 20 securities, there is a general clause which enables other financial products to be designated as securities by a cabinet order in consideration of their circulation and the need to protect public interest or investors. Paragraph 1, which covers securities with high liquidity, has been expanded as compared to the SEL, in that mortgage securities as well as securities embodying options in derivatives transactions were added. Accordingly, the Law on Mortgage Securities Business was abolished.

Paragraph 2 of Article 2 provides for 1) securities without a certificate (paperless securities) and 2) rights which are not represented in securities or certificates, but are listed in this paragraph.

2) covers securities with low liquidity, including the following:

- Beneficiary rights in unit trusts;
- Shares in limited liability partnership companies and full partnership companies;
- Shares in foreign juridical persons;
- Rights emanating from collective investment schemes.

Rights under category 2) of Paragraph 2 are categorised as "deemed securities". The scope of deemed securities has been substantially broadened. There are two major additions – 1) beneficiary rights of trust and 2) a share in collective investment schemes. Concerning 1), according to the new Law on Trust, securities embodying the beneficiary right can now be issued. Previously, this was limited to beneficiary rights in loan trusts.

Under the FIEL, the consequence of a particular financial instrument qualifying as securities is that firstly, the given financial instrument, in principle, can only be handled by financial instruments firms (FIFs: previously securities dealers etc.). Various rules of securities business become applicable. Japan has introduced the segregated system of banks and securities companies in line with the US Glass-Steagall Act. Over the years, the wall between the two businesses has become lower. In 1993, securities companies were allowed to set up their banking subsidiary and banks were allowed to set up securities subsidiaries. In 1998, the establishment of financial holding company groups allowed. This led to the emergence of financial conglomerates with securities companies and banks under a holding company with a strict firewall between them. However, the segregation still continues.

Another outcome of being qualified as securities used to be, and still is, that requirements for disclosure as well as market regulations become applicable. However, deemed securities, including collective investment schemes, are in general not subject to disclosure requirements under the FIEL.

Thirdly, prohibition of unjust trading becomes applicable.

Finally, securities will be able to be traded in financial instrument exchanges.[16]

Together with securities, the other pillar of the FIEL is derivatives trade. The Sub-Committee report had pointed out that derivatives transactions should be covered by the FIEL, regardless of the underlying assets.

Derivatives trade started in Japan in 1985 when government bond futures trade was introduced at the Tokyo Stock Exchange. In 1988, stock index (TOPIX) futures trade started. Since then, various kinds of futures and options trading have developed in Japan.[17] The SEL regulated derivatives transactions involving securities, whereas a separate law – the Law on Financial Futures Trade – regulated financial futures transactions. This latter law was integrated into the FIEL and the original law was abolished.

16 MATSUO, *supra* note 8, 84-85.

17 JAPAN SECURITIES RESEARCH INSTITUTE, *supra* note 6, 124-144.

According to the FIEL, derivatives transactions can be categorised into three types:

- Derivatives transactions on the financial instruments market;
- Over-the-counter transactions;
- Transactions in the foreign financial instruments market.

In order to specify various types of derivatives transactions, the FIEL used the term "financial instruments". This is where the concept of financial instruments is given a functional meaning. The FIEL has a provision which defines financial instruments, but this provision actually sets out the underlying assets of derivatives transactions under the heading of "financial instruments". These are:

- Securities;
- Claims and other rights based upon a contract of deposit or securities or certificates listed in a cabinet order and representing such rights;
- Currency;
- Assets, a similar kind of which exist in multiples and are subject to substantial price fluctuation and designated to be in need of investor protection;
- Standard products set by the Financial Instruments Exchange Law in relation to the above (except for currencies) by standardising interest rate, redemption date and other terms in order to facilitate transaction in derivatives.

In addition to the concept of financial instruments, the FIEL also accommodates a provision which defines financial indexes. These are:

- Price or interest rates of financial instruments;
- Indexes regarding the result of the observation by the meteorological office;
- Indexes whose fluctuation is impossible or extremely difficult to influence and significantly affects the business activities of an entrepreneur, or statistical indexes regarding the state of society or economy in relation to which protection of investors is required in derivatives transaction and designated as such by a cabinet order.

Specific types of derivatives transaction are listed. These include:

- Futures transaction, forward transaction, option transaction;
- Index futures transaction, index forward transaction, index option transaction, swap transaction;
- Credit derivatives transaction.

Derivatives transactions which were not regulated before, such as currency and interest rate swap, credit derivatives, and climate derivatives, are included. In addition, the FIEL provides for the possibility of adding new types of derivatives transactions by way of a cabinet order.

On the other hand, commodities and commodities indexes which fall within the framework of the Law on the Commodities Exchange are excluded from the coverage of the FIEL, although this law was amended in order to have the same level of regulation as the FIEL applicable.

The effect of derivatives being covered by the FIEL is that only registered FIFs can handle such transactions and, as a result, rules of the FIEL regarding conducts of FIFs become applicable. On the other hand, unlike securities, the disclosure requirements are not applicable. Providing of information to investors is ensured via regulations, such as the duty to provide documents which is part of the "conduct rules" of FIFs.[18]

VI. COLLECTIVE INVESTMENT SCHEMES

Collective investment schemes are often called "funds" in Japanese. They were not fully regulated under the SEL regime, since the SEL only covered unit trusts, investment corporations (mutual funds) and schemes which invest in securities. Schemes investing in real estate, commodities, commodity futures were regulated by separate laws.[19] Funds investing in other objects were not regulated at all, unless a limited partnership for investment (LPS) was used as a vehicle. Many funds which took the form of voluntary partnership under the Civil Code, or silent partnership under the Commercial Code, were not subject to supervision by any administrative agency.[20]

The necessity of improved regulation of collective investment schemes was already felt in the 1990s. Schemes such as the private offer of unit trusts, corporate type investment trusts (mutual trusts) etc. were introduced into Japan in the aftermath of the burst of the bubble economy and developed in the late 1990s. Whereas in the UK, the law – FSA – covered "units of collective investment schemes", the then existing system of regulations in Japan was highly segmented. These laws included the Law on Trust Businesses, the Law on Securitisation of Assets through Special Purpose Companies and the Law on the Securities Investment Trust. However, as various new and complex schemes emerged, these segmented regulations were unable to cover them adequately. Furthermore, these schemes encompass diverse stages such as structuring the scheme, assets management, advisory business, custodian, and sale. Again, they were regulated by different laws, if any. By the amendment to the SEL in 2004, shares in LPS were added to deemed securities and came to be covered by the SEL. However, this was only part of the collective investment schemes.

18 MATSUO, *supra* note 8, 100.
19 T. UEYANAGI ET AL., *supra* note 12, 130.
20 FSA, Summary of Regulation on Funds, *http://www.fsa.go.jp*.

Concerning the types of funds, the report of a study group of the Ministry of Economy, Trade and Industry (METI) listed the following:

1) Securities/real estate investment funds structured on the basis of the Law on Unit Trusts and Investment Corporations;
2) Investment funds organised as a partnership;
3) Commodity funds investing in commodities and commodity futures regulated by the Law Regulating the Commodity Investment Business;
4) Real estate joint business funds structured on the basis of the Law on Specific Joint Business on Real Estate;
5) Trust type funds structured on the basis of Law on Trust Business;
6) Other funds investing in businesses other than the above and which are not subject to any law.

2) includes "activist" funds, mezzanine funds, and private equity funds. In recent years, funds investing in diverse businesses, such as investment in IT contents, leisure hotels and food have emerged.[21]

Investment vehicles varied. In 1988, a law was enacted in order to facilitate the financing of medium and small companies. This law was substantially amended in 2004 and became the Law on Limited Partnership for Investment (the LPS Law). It was made possible for the partnership to invest in large listed companies. Certain provisions for the protection of investors were introduced in the amended law. Many funds such as venture capital funds, private equity funds and other funds use this vehicle now. In 2004 there were 399 funds registered.[22]

There are other types of partnership available to collective investment schemes as a vehicle. The Civil Code has provisions on partnership, but this involves unlimited liability, and therefore, it is not widely used. Anonymous partnership as provided in the Commercial Code involves limited liability and is said to be sufficiently flexible. However, it is a bundle of contracts between the managing partner and the investor and not a collective agreement as is the case with the Civil Code partnership.

Already in the late 1990s, a working group on collective investment schemes was set up as part of the above-mentioned expert forum. The working group referred to securities unit trusts, commodity funds, real estate funds, securitised products, business investment partnerships, variable insurance, fixed contribution pensions etc. as collective investment schemes. The common thread was that they were schemes in which the sponsor pools the invested fund and the fund manager manages and administers it. Common denominators are the "passiveness" and "collectiveness" of the scheme.

21 METI, *Keizai seichô ni muketa fando no yakuwari to hatten ni kansuru hôkoku-sho* [Report of the Research Group on the Role and Development of Funds towards the Economic Growth], December 2005.

22 *Ibid*.

Passiveness means that participants are not involved in the day-to-day management of the assets and leave it to someone else. Collectiveness means that the investment of the participants and the profits or income to be distributed to the participants are pooled. This was in line with the UK FSA and the US Howey doctrine.[23]

The report suggested that rules applicable to collective investment schemes regardless of the object of investment or investment vehicle should be sought. Due to the segmented system, rules differ, depending on the object of investment. However, investments of a similar nature should be subject to the same rules. Furthermore, there were schemes which do not fall within the coverage of any of the laws, cases where no clear rule exists, or situations where the scheme itself was not feasible. The working group proposed that financial instruments which have "passiveness" and "collectiveness" should have a set of across-the-board rules on collective investment schemes applied, regardless of the objects of investment or the types of vehicles used for the investment. It was proposed that disclosure rules, conduct rules, rules on the solicitation and sale of the schemes, and rules on their structuring should be made applicable.

It should be noted that the rules, as a whole, are intended to make various financial instruments available to investors and invigorate the financial market. The rules will assist identifying the risks involved, set out the allocation of the risk and thus ensure the efficiency and stability of trade as well as the protection of investors. In other words, the rules are designed to ensure fair and transparent trade and regain the confidence of investors on the market. The prevention of fraudulent business per se is not the immediate goal of the rules, but naturally, the rules will contribute to such a goal as well.[24]

In the FSC Sub-Committee's 2005 final report, it was proposed that effective and comprehensive, across-the-board rules for collective investment schemes should be introduced insofar as non-professional investors are involved. On the other hand, the METI study group report published at the same time proposed de-regulation of funds aimed at professional investors in the light of international competitiveness. The concern of the METI was that over-regulation may fend off funds from the Japanese market.

The FIEL lists collective investment schemes as "deemed securities". In contrast to the SEL, the FIEL covers collective investment schemes in general. In the FIEL, a collective investment scheme is defined as follows:

> Rights based upon a partnership contract (Civil Code), contract of silent partnership (Commercial Code), contract of limited liability partnership for investment (Law of 1998), and contract of limited liability partnership (LLP Law of 2005), rights as a member of an association in which the rightholder (investor) is entitled to receive dividends or distribution of assets from the business in which the investor has contributed by way of investment or monetary payment (Art. 2, para. 5).

23 *SEC v. W.J.Howey Co.* 328 U.S. 293, 66 S.Ct.1100.
24 T. UEMURA, Report on Collective Investment Schemes by T. Uemura to the Forum.

The following are exempted:

1) Schemes designated by the cabinet order in which all investors take part in the business;
2) Contracts in which the investor is not to receive dividend or distribution of assets (return) in excess of the contribution or investment.

Furthermore, insurance contracts, certain types of contracts of mutual aid, and rights based upon real estate specific joint venture contracts are excluded. Commodity funds are exempted as well.

The first exception reflects the view that the scheme should be intended to profit from the effort of another person. Partnerships of lawyers and accountants are examples of this exception. If the investor does not intend to make a profit, such as in the cases of housing cooperatives, it is not a collective investment scheme.

In this context, a US Supreme Court judgment of 1946 was referred to in the drafting stage. According to this judgment, an "investment contract" in the US Securities Act is a contract, transaction or scheme whereby a person invests his or her money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party.[25]

The second exemption includes "NPO banks", *i.e.* funds investing in non-profit business for public interest (NPOs).

The consequence of collective investment schemes as a whole included in the list of deemed securities is that now 1) only FIFs can be involved in this business, and 2) various conduct and management rules in the FIEL are applicable. Thus, registered FIFs which meet the requirements[26] may structure, sell and manage these schemes. Rules regarding the solicitation and sale of securities as well as rules regarding the management of investment become applicable.

On the other hand, collective investment schemes are exempted from the application of the disclosure rules unless the scheme invests in securities. Collecting investment in business based upon a silent partnership contract from the general public does not require a securities report or the handing out of a prospectus. As the solicitation of investment to this kind of a scheme is a category II[27] financial instruments business, the advertisement regulation and the duty to provide documents before the conclusion of the contract apply.

However, this is questionable, since regardless of whether or not the object of investment is securities, information on the funds is relevant when making investment deci-

25 *SEC v. W.J.Howey Co.*, *supra* note 23.
26 See VII. Financial Instruments Business and Firms.
27 For an explanation, see VII. Financial Instruments Business and Firms.

sions for investors.[28] Recently there was an incident whereby a fund investing in a business collapsed ("*Heisei Denden*" case). The fund itself was closely involved in the invested business. The total amount of loss to more than 19 thousand investors is reported to be around 49 billion yen (295 million Euro[29]).[30]

VII. FINANCIAL INSTRUMENTS BUSINESS AND FIRMS

The FIEL has introduced a new concept of financial instruments businesses and financial instrument firms (FIFs). FIFs are defined as entities which are involved, as a business, in one of the financial instruments businesses listed in the FIEL. The list contains businesses involved in securities and derivatives transactions (but the term "financial instruments" is not used). Financial instruments business covers securities business under the SEL and the Law on Foreign Securities Dealers (now abolished), but goes much further than the core securities business. It can be summarised as "sale and solicitation, assets management and investment advice, and administration of monies and securities".[31]

The scope of the financial instruments business is broader than the securities business under the SEL. This is due, firstly, to the expansion of the concept of securities such as mortgage securities and collective investment schemes, businesses involving them are now financial instruments businesses. Secondly, the expansion of the coverage of derivatives resulted in businesses involving various types of derivatives to be included in the financial instruments business. Thirdly, agency and intermediary business regarding investment advisory contracts and discretionary investment contracts has come to be included in the financial instruments businesses.[32] Securities companies, dealers in financial futures, dealers in commodities investment, securities investment advisors, commissioners of unit trusts, and mortgage securities dealers under the SEL are now FIFs.

Under the SEL, securities business used to be subject to license. In 1998, as part of the financial deregulation, with the intention of liberalising entry into the market, this was replaced by a registration system. This was the first step towards the change from an *ex ante* to an *ex post* regulatory regime. However, due to the risks involved and the expertise needed in the business, certain categories of business were subject to license of the Prime Minister. These included over-the-counter trade of derivatives and underwriting of securities (directly from the issuer) as well as the management of the propriet-

28 UEYANAGI ET AL., *supra* note 12, 143-144.
29 As of June 15, 2007, 1 Euro = 166 yen
30 M. YOSHIDA ET AL., *Gaidansu kin'yû shôhin torihiki-hô* [Guidance to the FIEL] (Tokyo 2006) 87-88.
31 UEYANAGI ET AL., *supra* note 12, 57.
32 MATSUO, *supra* note 8, 108-109.

ary trading system (PTS) / multilateral trading facilities (MTF). Under the FIEL, in contrast, only businesses involving PTS/MTF are subject to license. To this extent, the FIEL has deregulated these businesses.[33] Thus, the scope of financial instruments business has been expanded with the broadening of the coverage of the law, and at the same time, the registration system became the rule.

The expansion of the scope of financial instruments business has created a "one stop shopping system". Under the previous system, for example, if securities companies were to provide "wrap accounts", various licenses and registration were required, but under the FIEL, a single registration would suffice.[34] Laws such as the Law on Securities Investment Advisory Business were abolished.

There are four types of financial instruments businesses: category I financial instruments business, category II financial instruments business, investment advisory and agency businesses, and investment management business. There are requirements common to all types of businesses. Eligible entities should not have had the registration revoked in the past five years, should not have other businesses which are against public interest, and should have sufficient personnel to carry out the business properly.

Other requirements for the entry into the business differ in those categories.

The category I financial instruments business involves trading in high liquidity securities (*i.e.* securities other than "deemed securities (Article 2, para. 2 securities)" but extends to the following:

- Intermediary, brokerage, agency of the trading in high liquidity securities and derivatives transactions;
- Intermediary, brokerage, agency of the commissioning of the above;
- Brokerage of clearing of securities;
- Public and private offers of securities;
- Over-the-counter trade of derivatives, or its brokerage, intermediation, and agency;
- Underwriting of securities;
- PTS business;
- Custody of securities.

FIFs involved in category I financial instruments business must be joint stock companies and are subject to requirements including:

- Capital adequacy rule;
- Minimum capital requirement;
- Minimum net assets requirements;
- Requirements to major shareholders.

33 OSAKI, *supra* note 11, 40.
34 MATSUO, *supra* note 8, 170.

The minimum capital for the category I financial instruments business is set by the cabinet order at 50 million yen (301,200 Euro). However, for underwriting business in category I, the requirement is 3 or 5 billion yen (18 or 30 million Euro), depending on the size of the offer.

Category II financial instruments business covers sales and solicitation of securities with lower liquidity (deemed securities) and market derivatives as well as the following:

- Private offer of securities;
- Trading in deemed securities;
- Derivatives transactions not related to securities in the market or in a foreign market; their brokerage, agency, and intermediation.

The basic requirement for this category of business is the minimum capital requirement at 10 million yen (60,241 Euro). Even individuals are allowed to conduct category II financial instruments business with the placement of deposits.

The other two categories of financial instruments businesses are investment management business (including discretionary investment business) and investment advisory/ agency business. Investment advisory and agency business covers the provision of advice based upon an advisory contract, acting as an intermediary or agent for the conclusion of investment advisory contracts as well as discretionary investment contracts. The management of a collective investment scheme is investment management business and is regulated as such. Investment management business is subject to net assets requirement and minimum capital requirement.

Businesses related to securities handled by financial institutions are not financial instruments businesses and, therefore, no registration as an FIF is needed for financial institutions.

When the FIEL was enacted, some people expected that demarcation of banking and securities businesses would be further relaxed. However, the current system of segregation as provided by Article 65 SEL is maintained in the FIEL. The FIEL provides that banks, financial institutions with a cooperative structure, and other financial institutions, in principle, shall not conduct securities related business or investment management business (Art. 33, para. 1). If these entities effect securities related transactions for the purpose of investment, or by entrustment, they are exempted. "Securities related business" as defined in the FIEL covers not only securities business, but also businesses involving derivatives transactions involving securities (Art. 28, para. 8). This concept, which corresponds to the "securities business" under the SEL, demarcates the boundary between financial instruments businesses and banking businesses. Again, the concept of financial instruments has nothing to do with this. Instead, another concept, "securities related business" is used here.

The segregation of the securities and banking business was substantially eased in the US in 1999. It is coming under scrutiny in Japan as well. The Financial System Council is to start the review of the firewall between these businesses within the same financial group in autumn of 2007.[35] However, there is a concern that in the light of the lax compliance system of financial conglomerates in Japan, namely their low level of awareness of the conflict of interests, this may result in “tragedies for customers”.[36]

What is important is that the sale and its solicitation of share in the collective investment scheme by the scheme arranger itself has now become regulated as category II financial instruments business.[37] Under the SEL, the offer of securities by the issuer itself was not regulated as a business, although disclosure rules would be applicable if 50 or more people were offered the shares by the issuer. However, in recent years, problems occurred in cases involving collective investment schemes. In the above-mentioned *“Heisei Denden”* case, a silent partnership offered share in its scheme to a number of investors. Then the business company which was related to the fund and was the recipient of the funds collapsed.

The FSC Sub-Committee report had recommended that “self-offer” and “self-management” by the scheme arranger itself should be regulated by the FIEL. Under the FIEL, the offer falls within category II financial instruments business, and the management of the scheme is categorised as investment advisory business and, thus, is regulated.

In investment management business, FIFs owe a fiduciary duty to the customer. It is also under an obligation to act as a good manager.

FIFs are prohibited from the following actions:

- Transactions with the FIF itself, its directors or officers;
- Transactions between the assets which the FIF manages;
- Transfer of profit from one fund to another;
- Transactions without justifiable grounds for the pursuit of its own profit or of a third party via the fluctuation of prices resulting from the customer’s transaction;
- Transactions under terms which are not normal and which would harm contributors;
- Use of information obtained through investment management for securities transaction on their own account;
- Compensation of loss.

A FIF, when managing investment, is under an obligation to segregate its own assets from the assets it is managing for other entities.

35 Nikkei, June 13, 2007.
36 ’*Tonari no shibafu wa aokunai* [The Neighbour’s Turf is not Green)’, Nikkei, June 12, 2007.
37 UEYANAGI ET AL., *supra* note 12, 53; OSAKI, *supra* note 11, 42-44.

VIII. CONDUCT RULES APPLICABLE TO FIFS

FIFs are subject to a broad range of conduct rules. To FIFs in categories I and II businesses, the following duties apply:

- General duties:
  - Duty of sincerity and fairness;
  - Duty to display signs;
  - Observation of rules regarding advertisement;
  - Duty to explain the form of transaction in advance;
  - Duty to provide information in writing before the conclusion of the contract;
  - Duty to provide documents at the time of the conclusion of the contract;
  - Application of the cooling-off period;
  - Requirement of adequate handling of customer information;
  - Duty of defining the best execution policy.
- Prohibitions:
  - Name lending;
  - Provision of false information, conclusive judgment;
  - Uninvited solicitation;
  - Visits against desire;
  - Compensation of loss on the part of customers.
- Suitability principle in relation to potential customers.
- Duty to carry out the business in the best possible manner.

These requirements have been inherited from the SEL where they were applicable to securities dealers.[38]

IX. PROFESSIONAL AND NON-PROFESSIONAL INVESTORS

One of the goals of the new law was to place hitherto unregulated or insufficiently regulated financial instruments and businesses involving them under proper regulations. On the other hand, while in the SEL regulations were generally applicable without distinguishing professional investors from ordinary investors, the FIEL has introduced the distinction between professional and ordinary investors. This corresponds with an international regulatory trend. Rules were designed to place the FIF and the investor on an equal footing, such as the duty of the FIF to explain and provide documents before and on the occasion of the conclusion of the contract, cooling off, prohibition of uninvited solicitation, rules on advertisement, and the principle of suitability. However,

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38 For details, see JAPAN SECURITIES RESEARCH INSTITUTE, *supra* note 6.

various prohibitions, *e.g.* prohibition of compensation of loss, are still applicable. The cabinet order provides for details.

What is important is that these categories are interchangeable to a certain extent, *i.e.* some professional investors may opt to be treated as non-professionals and *vice versa*. However, there are some professionals who do not have this choice. The same applies to certain categories of non-professionals.

- Professional investors who cannot opt to become non-professional investors:
  - Qualified institutional investors;
  - The State;
  - The Bank of Japan.
- Professional investors who can opt to become non-professional investors:
  - Local governments;
  - Government corporations and institutions;
  - Listed companies;
  - Companies with a capital of 500 million yen (3 million Euro) or more.
- Non-professional investors who may opt to become professional investors:
  - Individuals with one year or more of trading experience who can be reasonably assumed to have more than 300 million yen (1.8 million Euro) of net assets or financial assets;
  - Individuals who manage a partnership (if the partnership has more than 300 million yen (1.8 million Euro) of investment, consent of all members is required).

Qualified institutional investors, which is a concept under the SEL, include securities companies, banks, insurance companies, credit unions and cooperatives, and investment corporations.

If an individual opts to be treated as a professional, he can propose this to the FITF for each category of contracts. The FITF must verify that this individual is indeed qualified, and must provide him with details of exemptions and the risk involved in writing.

X. REFORMS CONCERNING THE SELF-REGULATORY SYSTEM

The FIEL has replaced the concept of stock exchange with that of financial instruments exchange. At the moment, there are stock exchanges and a financial futures exchange (Tokyo Financial Exchange) which are organised as joint stock companies. They will come under the same category of financial instruments exchange under the FIEL and be subject to the same set of rules. The FIEL does not obligate these exchanges to use the name "financial instruments exchange", but merely requires that the term "exchange" is used in their name. Therefore, they can continue to operate as a stock exchange or a financial exchange.

On the other hand, in the light of the conversion of the exchanges into joint stock companies since 2001, the FIEL has introduced novelties regarding the self-regulation of financial instruments exchanges. Financial instruments exchanges and financial instruments holding companies may set up a self-regulatory entity (juridical person) and entrust it with "self-regulatory businesses".

These businesses are:

- Listing and delisting of financial products, financial indexes and options;
- Review of compliance of law, regulations and rules by the members.

The independence of the self-regulatory juridical person is ensured by the fact that a majority of its council members must be externals and the chairman is elected from among the externals by themselves. The entrustment of the self-regulatory business to this entity is subject to approval by the Prime Minister. The Tokyo Stock Exchange has recently decided to set up a self-regulatory juridical person under the holding company. The former Vice-Minister of Finance has "parachuted" to the position of the chairman. This appointment has been subject to criticism.[39]

There is an option of setting up a self-regulatory committee within the exchange, instead of a self-regulatory juridical person. This seems to be a rather easy-going option, but to what extent this can be effective is questionable.

CONCLUDING REMARKS

Almost a decade after the "Big Bang" in Japan, the FIEL is finally replacing the SEL. Despite a major deregulation in this area and the series of amendments to the company law which accumulated to the enactment of the new Company Law, the SEL had remained in force with only patch work amendments. In the meantime, various incidents demonstrated the insufficiency of the regulation of the financial market, including cases involving fraudulent collective investment schemes.

The coverage of the FIEL has been substantially expanded compared to the SEL. Particularly the inclusion of collective investment schemes as "deemed securities" is a significant step forward. This is more or less a product of a compromise between those who promoted improved regulation of financial products and those entities dealing with them on the one hand and those who supported a more liberal approach on the other. The financial industry and METI were against the strengthening of regulation on collective investment schemes. It was argued that stringent regulation would reduce the international competitiveness of the Japanese market.

The FIEL is not as comprehensive as the UK FMSA in the sense that some financial instruments, including banking and insurance products, were left outside its scope. Due to sectoral rivalry, some laws involving financial instruments still coexist with the FIEL.

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39 Nikkei, June 25, 2007.

The METI and other ministries exercise their power over financial instruments within their portfolio. To be sure, relevant laws were amended in order to align the rules applicable to financial instruments with the FIEL. Sale and solicitation rules of the FIEL were made applicable with modification via these amendments. However, regulations of the FIEL on the FIFs are still not applicable.

There is widespread expectation that the enactment of the FIEL is merely a second step before the final step – the enactment of a genuinely comprehensive law.

Whether a comprehensive law of the UK FSMA type covering banking and insurance will be enacted in the near future is open, but at least the problem of the current segmented and not too powerful system of supervision needs to be addressed as the next step. At the moment, the Securities and Exchange Surveillance Commission, which is part of the FSA, oversees the securities market. The scope of coverage of the Commission is to be expanded with the enactment of the FIEL. The Commission announced that its inspection will cover all the fund managing entities from September 2007.[40] However, at present, the power of the Commission is rather limited. It does not even have the power to impose fines or issue a surcharge order – the Commission is merely empowered to propose it to the FSA. Banks and insurance companies are supervised by the relevant sections of the FSA and not by the Commission. In order to ensure effective and unified enforcement of the rules, a single supervisory agency with sufficient power seems to be necessary.

ZUSAMMENFASSUNG

Im September 2007 ist das Wertpapierbörsen- und Wertpapierhandelsgesetz (BWpHG) in Kraft getreten. Aufgrund der finanziellen Instabilität der späten neunziger Jahre hatte sich die Realisierung des Gesetzesvorhabens mehrmals verzögert. Das BWpHG löst das Wertpapierverkehrsgesetz ab. Struktur und Inhalt vieler Vorschriften des Wertpapierverkehrsgesetzes wurden in das neue Gesetz übernommen. Anders als beim britischen Financial Services and Markets Act, *der den Erlaß des BWpHG beeinflußt hat, wurden Bank- und Versicherungsgeschäfte aus verschiedenen Gründen nicht in den Anwendungsbereich aufgenommen. Dennoch deckt das neue Gesetz eine größere Bandbreite als das Wertpapierverkehrsgesetz ab, da es verschiedene Finanzprodukte umfaßt, die bisher entweder nicht ausdrücklich oder durch andere Gesetze geregelt waren. Kollektive Anlagen in Wertpapieren* (collective investment schemes) *haben jetzt eine umfassende Regelung im Gesetz gefunden. Die Schaffung des BWpHG ist ein wichtiger Schritt hin zu einer besseren Marktregulierung.*

40 Nikkei, June 25, 2007.