Through a 10-year Capital Markets Master Plan (2014 – 2023) the Kenyan capital markets industry set down not only its aspiration, but its projected roadmap, to emerge as the “Heart of African Capital Markets.” Undoubtedly, as a frontier market in the process of transitioning from its nascent stages, this blueprint for the transformation of the capital markets industry identified a great many critical steps and deliverables (over 100 in total) to attain the desired outcome. The scope and scale of these activities cut across, at the highest level: (i) ensuring the capital markets are in a position to support fundamental economic development; (ii) ensuring the infrastructure of the markets in terms of systems, intermediaries, products, services and institutional arrangements are sufficiently robust and responsive to local and international market needs; (iii) catering for a legal and regulatory framework that provides transparency, consistency and reliability and ultimately; (iv) ensuring the Kenyan capital markets remain competitive and interlinked into the global capital markets. Noting the focus of this conference, I will however focus on the context of the legal and regulatory environment.

As a regulatory agency, the Authority is imminently conscious of the role it plays in promoting an environment within which timely and reliable information is made available to inform investor decision making. This challenge is all the more palpable when operating in a “frontier” market where access to information and data remains an actual, and in certain circumstances perceived, barrier to the effective linkage of the seekers of capital and those seeking a return on their investment. In this regard, the completeness, reliability and transparency of investor information remains one of the core challenges for promoting the deepening of the capital markets through greater domestic and international investment.

To this end, and with excellent support from the world Bank Group, the Authority has been implementing a multi-year and multi-pronged initiative to strengthen the corporate governance and accountability environment in the capital markets in Kenya. This began with the convening of an industry steering committee of pre-eminent voices on corporate governance to carry out an in-depth assessment of the corporate governance environment and culture operating in the country as against global comparators. This work, then informed the design of a robust new Code of Corporate Governance for Public Issuers of Securities which contextualized global trends on corporate governance for implementation in Kenya. Following extensive domestic and international consultation and validation, this new Code was promulgated into law in March 2016 and came into full force one year later in March 2017. Having adopted an “Apply or Explain” framework, the Code was promptly complemented with a Stewardship Code to empower institutional investors (the owners and managers of capital) to play a more proactive role in holding public issuers to account for their corporate governance practices as well as for the quality and robustness of their reporting on not only financial performance, but also social, environmental and governance issues. Built around the recognition that governance enforcement in “apply or explain” regimes is a function of the available information on actual practices and quality of application, the Authority further developed an
extensive Reporting Template for issuers to publicly disclose how they are applying the Code. This Reporting Template was issued in June 2017 and importantly placed clear obligations on issuers to provide explanations and reference information to support their statements on compliance. This measure served to take on the lessons that application without explanation may be of very limited impact.

All the above components of corporate governance reform in the capital markets have been implemented within the wider environment of the introduction of a comparable governance framework to the Code for State Owned Enterprises across all sectors of the economy together with a complete overhaul of the Companies Act. The changes to company law have been so fundamental, they have in one swoop moved the companies law statute from the equivalent of the United Kingdom 1948 Companies Act to the 2006 UK Companies Act.

With this level of accelerated reform, there exists a real risk and challenge of stakeholder fatigue and potential capacity gaps in the industry’s ability to implement the reforms being rolled out. In this regard, the Authority, in conjunction with its technical partners in the development and implementation of the corporate governance framework including the Institute of Certified Public Secretaries, Institute of Directors, Law Society and the World Bank Group, has been committed to consistent stakeholder engagement and participation to ensure ownership and implementability of the framework. These efforts have involved proactive consultation at the policy development, framework drafting and post enactment implementation phases. In this context, the development and roll out of tools such as the Reporting Template have served to create a more even playing field for issuers of different sizes and capacity to report in a consistent and comparable manner. The implementation of all this reform is in a fairly early stage and therefore the Authority remains committed to ensuring that positive examples and not so positive examples can be highlighted from the beginning to give industry guidance on expectations and best practices. To this end, the Authority has developed a Score Card tool for the evaluation of the issuer practices that will allow for annual public reporting on those that are stand-outs and slow adopters to inspire continuous improvement in not only governance practices but also the manner those practices are disclosed and explained.

In the context of the progressive promotion of ESG reporting, Kenya as a nation, through the Vision 2030 economic blueprint has emphasized the importance of development in a sustainable manner in the interest of future generations. To this end, the new Corporate Governance Code has mainstreamed the expectation for public issuers to report on their Environmental and Social impact and required the annual independent audit of governance practices. This is being complemented with industry efforts to establish a green financing framework for the country as well as the Nairobi Securities Exchange (a member of the Sustainable Stock Exchanges Initiative) beginning work on its own sustainability guidelines to classify companies listed on its different segments as well as to facilitate the listing of the first Green Bond by December 2017.

In recognition of the scale of ongoing reforms, the Code for Corporate Governance has however stopped short of mandating integrated reporting, but the Authority is nonetheless encouraged by a number of Kenyan listed companies that have already taken steps to begin preparing integrated reports. Noting the proliferation of IR guidelines around the world, there remains to be critical work towards developing convergence standards on IR best practices and we look forward to seeing this taken up by global standard setters to catalyze IR adoption.