

ISDA® News

A roundup of news and developments from the
International Swaps and Derivatives Association

Issue 1, 2011

PUBLIC POLICY

Comment letters to SEC and CFTC

Over the last month, ISDA has submitted several comment letters to the SEC and CFTC on various aspects of the Dodd-Frank rulemaking process and legislation. The most recent documents:

- March 8 to CFTC on [NPR: Core Principles and Other Requirements for SEFs \(ISDA/SIFMA's Comments\)](#)
- March 7 to CFTC on [NPR: Governance Requirements for DCOs, DCMs, and SEFs; Additional Requirements Regarding the Mitigation of Conflicts of Interest](#)
- February 28 to CFTC on [Confirmation, Portfolio Reconciliation, and Portfolio Compression](#)
- February 22 to SEC on [Trade Acknowledgment and Verification of Security-Based Swap Transactions](#)
- February 22 to SEC/CFTC on [Definitions of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," more](#)
- February 14 to SEC on [Mandatory Clearing for security-based swaps;](#)
- February 11 to CFTC on [Derivatives Clearing Organizations;](#)

To see a complete list: <http://www.isda.org/speeches/comments.html>.

BASEL COMMITTEE

Response to consultation on bank exposures to CCPs

ISDA submitted a [response to the Basel Committee](#) on their consultative paper on exposures to CCPs on February 4. The main issues covered were international coordination, alternatives to the Committee's proposed hypothetical capital calculation, and the importance of flexibility as clearing develops and new structures (e.g. new waterfalls) are developed. ISDA is beginning a project to respond to the related EU consultation on the topic.

Contact: David Murphy dmurphy@isda.org

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ISDA 26th Annual General Meeting
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FINANCIAL LAW REFORM

UK: ISDA response on British opt-in to Brussels 1 Regulation

[ISDA submitted a response](#) to a consultation by the UK Ministry of Justice on the British opt-in to the revised EU Brussels 1 Regulation (44/2001) on Jurisdiction and the Recognition of Judgments in Civil and Commercial Matters. The UK needs to decide whether to opt in to the regulation, as with the EU Rome 1 Regulation a few years ago.

The consultation outlines the British Government's current position on a number of key issues in the regulation. The *lis pendens* rule on choice of court agreements is of particular relevance to ISDA in the wake of "forum shopping" in cases in various EU member states and the European Court of Justice. Another area of concern to ISDA is the operation of the Brussels 1 Regulation in the international legal order, and its scope with non-EU domiciled parties.

Several of the revised provisions are intended to bring the future EU regime in line with the 2005 Hague Convention on Choice of Court Agreements, which is the main international legal instrument outside of the EU. The EU as a member of the Hague Conference on Private International Law has expressed its intention to ratify this convention.

European Union: Securities Law Directive

ISDA has responded to the EU consultation on *Legislation On Legal Certainty Of Securities Holdings And Dispositions* (the Securities Law Directive). The aim is to create a harmonized legal framework across all EU member states. The proposed Securities Law Directive is of particular relevance for intermediated securities that are used as financial collateral in connection with OTC derivatives transactions. The [ISDA response](#) put particular emphasis on the proposed EU rules regarding conflict of law, as well as substantive provisions on intermediated securities. It is desirable to create an EU legal framework that is in line with global standards in this area, especially the Hague Securities Convention and the Geneva Securities Convention. This applies also to the definition of securities under the proposed instrument. The current proposal is not in line with global standards and appears too broad by including OTC derivatives in the definition.

Contact: Peter Werner - pwerner@isda.org

MARKET INFRASTRUCTURE

Electronic confirmation templates: new credit products go live on DTCC

ISDA's Credit Implementation Group has partnered with MarkitSERV to launch new electronic confirmation templates for European MBS. On February 25, electronic confirmation templates for European CMBS and European RMBS went live on MarkitSERV's DSMatch platform. The new credit transaction types will make reference to existing publications by ISDA.

Contact: Andrew Kayiira – akayiira@isda.org

DOCUMENTATION

Additional Provisions for Recovery Lock Credit Derivative Transactions and Bespoke Tranche Annexes published

On March 2, ISDA published an updated version of the Additional Provisions for Recovery Lock Credit Derivative Transactions and updated versions of the Loan Settlement Annex, Cash Settlement Annex and the Loss at Maturity Annex for use with the Global Tranche Transactions Standard Terms Supplement. These updates were prepared by the Credit Derivatives 2010 Documentation Update Working Group to incorporate the changes made by the Small Bang Protocol.

This document can be found in the [Bookstore section of the ISDA website](#).

Global Tranching Transactions Standard Terms documents published

On February 1, ISDA published the Global Tranching Transactions Standard Terms Supplement and Confirmation. These documents are designed for use with the Credit Derivatives Physical Matrix to document tranching credit derivatives transactions on bespoke portfolios of Reference Entities. The Standard Terms Supplement has been updated since the last version published on December 1, 2010 to conform to the changes made to the CDX Tranche Transactions Standard Terms Supplement published on January 31 (see below). These documents can be found in the [ISDA Bookstore](#).

CDX documents published

On January 31, Markit published the CDX Untranching Transactions Standard Terms Supplement and Confirmation; the CDX Tranche Transactions Standard Terms Supplement and Confirmation; the CDX Untranching Transactions Swaption Standard Terms Supplement and Confirmation; and the CDX Emerging Markets Untranching Transactions Standard Terms Supplement and Confirmation. These documents were prepared by the CDX Legal Working group to incorporate the changes made by the Small Bang Protocol.

These documents can be found in the [Credit Index Annex Confirmations section](#) of the Markit website.

Index Loss At Maturity Additional Provisions published

On March 2, Markit published an updated version of the Index Loss At Maturity Additional Provisions, prepared by the CDX Legal Working group to incorporate the changes made by the Small Bang Protocol.

This document can be found in the [Credit Index Annex Confirmations section of the Markit website](#).

Contact: Mark New - mnew@isda.org

TRANSPARENCY

ISDA publishes independent studies on transparency in OTC equity derivatives

ISDA published two independent studies on transparency at the end of January. [Trade Transparency in OTC Equity Derivatives Markets](#) describes the structure, participants, products and existing forms of pre- and post-trade transparency. This is complemented by a [quantitative study](#) which analyzes differences in pricing among dealers, and between dealers and end-users.

The paper shows that the link between listed stock and options exchanges and the OTC market currently provides significant pre-trade transparency and price discovery mechanisms. Overall, the paper reports that the industry is evolving towards increased post-trade regulatory transparency via trade repositories, electronic reporting and centralized clearing.

For more, see the [ISDA press release](#).

Contact: Karel Engelen - kengelen@isda.org /
Clive Ansell - cansell@isda.org

ACCOUNTING

Accounting committees review IASB/FASB fair value project

ISDA's European and North America Accounting Committees will participate in a confidential review of the IASB/FASB draft of the forthcoming GAAP Accounting Standards Update and IFRS Fair Value Measurement project (click for a [project update](#)). The Boards will consider feedback from stakeholders before publishing new guidance, expected by June. The project's objective is to ensure that fair value has the same meaning in US GAAP and IFRS.

IASB/FASB: Exposure draft with proposal on offsetting assets and liabilities

On January 28, IASB/FASB published a joint [exposure draft](#) with a proposal on offsetting based on the somewhat restrictive current IFRS guidance. ISDA holds that reporting derivatives on a gross rather than net basis on the balance sheet is counterintuitive. Reporting positions on a net basis where netting is enforceable gives the best information for users of financial statements. Net presentation is consistent with the way derivatives are managed by the entity and with regulatory treatment, and provides the most relevant and risk sensitive information.

The proposed guidance may give rise to significant operational challenges and would necessitate the implementation of significant changes to systems and data capture processes to thoroughly analyze payments between an entity and its counterparties. There is a 90-day comment period.

Contact: Antonio Corbi - acorbi@isda.org

Malaysia

On February 28, ISDA met with the Perbadanan Insurans Deposit Malaysia (PIDM) on the recent PIDM Act. Topics discussed were the potential changes to ISDA's section 29(a)(iii), the proposed stay of 10 days once PIDM assumes control of a defaulting entity, the international norms for a stay and the possible impact to Malaysian banks and global CCPs because of the stay. On the same day, ISDA held its first Risk Management meeting in Malaysia with local members. An update of the Basel 3 changes were discussed as well as the Malaysian netting legislation.

On March 1, ISDA met with the Securities Commission to discuss the extraterritoriality of the Dodd-Frank Act and EU Regulations, the proliferation and impact of CCPs, the Commission's response to its Consultation on Review of Sophisticated Investors and Sales Practices for Unlisted Capital Market Products and the plain language requirement. ISDA also met with the Association Banks of Malaysia to discuss Bank Negara Malaysia's revised guidelines on Product Transparency and Disclosure and the netting legislation in Malaysia.

Contact:

Keith Noyes – knoyes@isda.org /
Jacqueline Low - jlow@isda.org /
Cindy Leiw – cleiw@isda.org

Hong Kong: meeting with US Treasury

On February 23, ISDA Hong Kong hosted a meeting with economic affairs representatives of the US Treasury based in Beijing, Hong Kong and Singapore. The meeting was requested by the US Treasury to learn more about Asian regional CCP developments and the implications for US financial institutions. ISDA described the current state of CCP developments in each of the Asia Pacific jurisdictions and the possibility that CCP proliferation could lead to inefficient allocations of capital. ISDA also described the types of OTC products and risks that could be effectively managed by a CCP as well as the types of products which might be inappropriate for central clearing.

Contact: Keith Noyes – knoyes@isda.org / Jing Gu – jgu@isda.org

Hong Kong: HKMA, SFC and HKEx

On February 24, ISDA Director Thibaut de Roux accompanied ISDA staff to visit the Hong Kong Monetary Authority (HKMA), the Securities and Futures Commission (SFC) and Hong Kong Exchange and Clearing (HKEx). The purpose of the visit was to understand better Hong Kong's CCP and trade repository development plans and to provide feedback on the issues that might arise for global market players.

Contact: Keith Noyes – knoyes@isda.org / Jeffrey Kan – jkan@isda.org

India: RBI and risk management meetings

On February 21-22, ISDA met with various departments of the Reserve Bank of India (RBI). Among the topics discussed were the enforceability of close-out netting for state-owned financial institutions, the potential impact of the Dodd-Frank Act on derivatives users in India, draft guidelines for a domestic Indian CDS market, recent developments in China's CDS market, and a potential seminar for RBI staff on developments, similar to one ISDA conducted with the Bank slightly over one year ago.

On February 21, ISDA also held its first risk management meeting in India to update local members on the impending changes proposed in Basel 3 and the Basel consultative paper on central counterparties.

Contact: Keith Noyes – knoyes@isda.org / Cindy Leiw – cleiw@isda.org

China: meeting with PBOC

On January 26, ISDA participated in a seminar organized for the People's Bank of China (PBOC). At the seminar, banks presented to PBOC the progress of the offshore RMB financial markets (including both bond and swap markets) in Hong Kong and the challenges faced by market participants. ISDA discussed related offshore deliverable forward/swap documentation issues. The industry highlighted to PBOC that offshore RMB financial markets are beneficial to the development of the real economy in China, and discussed with the central bank what can be done to facilitate further development of these markets.

Contact: Keith Noyes - knoyes@isda.org / Jing Gu - jgu@isda.org

EUROPEAN PARLIAMENT

ISDA circulates summary of ECON's Langen Report

On February 21, the [English translation](#) of the Langen Report on OTC derivatives, central counterparties and trade repositories was published by the European Parliament's Committee on Economic and Monetary Affairs (ECON). Some pros and cons of the report's findings:

Positive aspects

Backloading. Seems to oppose backloading for clearing (but supports it for the requirement to report to a trade repository);

Intra-group transactions. Includes an exemption for contracts between subsidiaries of the same parent company or between a parent company and a subsidiary;

Eligibility considerations. Suggests helpful considerations in assessing eligibility, including EU competitiveness, whether more than one CCP is able to clear a contract, time needed for counterparties to comply and interconnectedness in the class of derivatives;

Transitional period. Counterparties are given 6 months after ESMA guidelines to comply with clearing, reporting and bilateral collateralization requirements;

Bilaterally risk-managed contracts. Proportionate and scalable capital requirements are suggested.

Negative aspects

Interoperability and scope. Proposes the deletion of all of the Title V rules on interoperability, suggests that the scope would only cover OTC derivatives;

Risk Committee. There is no majority role in risk committees for clearing members, clients or independent experts. The role played by independent experts has also been enhanced;

Role of Colleges, role of ESMA. Virtual elimination of the role of colleges and reduction of the role of competent authorities. Many of these powers have been passed to ESMA;

Eligibility process-Top-down approach. ESMA should initiate a request for proposal when it determines that a class of derivatives not currently deemed eligible by any CCP should be cleared.

[Please see the full ISDA note for more.](#) The deadline to present amendments is on March 15, the voting in ECON is expected for March or April and the plenary vote in the European Parliament is planned for June.

Contact: Roger Cogan - rcogan@isda.org /
David Fernandez Valdes - dfvaldes@isda.org

JAPAN

Accounting standards issue paper

On February 25, the Accounting Standards Board of Japan (ASBJ) released an issue paper on improvements of Accounting Standards for Financial Instruments (Classification and Measurement of Financial Liabilities) for public comments. The issue paper includes the adoption of the fair value option, as well as the treatment of derivatives-embedded products (including whether to bifurcate the product and account for the derivative portion as a separate financial instrument). A meeting of Japan Accounting Committee is scheduled in early April to discuss the draft of ISDA comment letter that will be submitted to ASBJ by April 25.

Contact: Tomoko Morita - tmorita@isda.org

ISDA[®]

Conferences

To register for these conferences or for more information, visit:
<http://www.isda.org/conf/>

March 21, 2011	Current Developments in the OTC Derivatives Market Seoul	March 30, 2011	Understanding the ISDA Master Agreements Conference New York
March 22, 2011	Documenting and Confirming Credit Derivative Transactions Conference Seoul	March 30, 2011	ISDA Symposium - Litigation in the OTC Derivatives Market London
March 22, 2011	ISDA Symposium - Novations: Legal and Operational Processing Changes - Including Novation Consent Equals Confirmation London	March 31, 2011	Understanding Collateral Arrangements and the ISDA Credit Support Documents Conference New York
March 23, 2011	ISDA Symposium – Legal Aspects of Clearing Update London	April 5, 2011	ISDA Symposium - Litigation in the OTC Derivatives Market New York
March 23, 2011	Basel III Conference - The New Capital Accord, Proposals and Implications New York	April 6, 2011	Legal Aspects of Clearing Conference New York
March 24, 2011	Fundamentals of OTC Derivatives Clearing New York	April 6, 2011	ISDA/ IIFM Islamic Master Agreement Conference London
March 24, 2011	ISDA Symposium - How to Read ISDA Netting and Collateral Opinions London <i>ISDA Members Only</i>	April 12, 2011	ISDA Symposium - 2011 ISDA Equity Derivatives Definitions: Key New Provisions Hilton Prague
March 29, 2011	Fundamentals of OTC Derivatives Clearing London	April 12 - 14, 2011	ISDA 26th Annual General Meeting Hilton Prague <i>ISDA Members Only</i>
March 29, 2011	Fundamentals of Derivatives Seminar New York		