

Asia-Pacific Regulatory Profiles

April 2014

This collection of profiles lists key institutions, regulatory milestones, key developments and ISDA submissions for the OTC derivatives markets in the following jurisdictions:

- Australia
- China
- Hong Kong
- India
- Indonesia
- Korea
- Malaysia
- New Zealand
- Philippines
- Singapore
- Taiwan
- Thailand

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<http://www2.isda.org/regions/asia-pacific/> or contact Keith Noyes, knoyes@isda.org

AUSTRALIA

AT A GLANCE

Central Bank:	Reserve Bank of Australia (RBA) http://www.rba.gov.au
Bank Regulators:	RBA Australian Prudential Regulation Authority (APRA) http://www.apra.gov.au
Fin. Mkts Regulator:	Australian Securities & Investments Commission (ASIC) http://www.asic.gov
Association:	Australian Financial Markets Association (AFMA)
Master Agreement:	ISDA
Legal Opinions:	Netting and collateral opinions by Mallesons Stephen Jaques Opinion on transactions entered into electronically and electronic records by Mallesons Stephen Jaques
CCP/TR Status:	The Australian Securities Exchange (ASX) has announced that it will offer clearing services for OTC interest rate derivatives, starting with inter-dealer AUD interest rate swaps (IRS) and overnight index swaps (OIS). Subsequently, it plans to expand the product coverage to AUD forward rate agreements (FRA) and to NZD IRS, OIS and FRAs. It also plans to offer client clearing. The Council of Financial Regulators (comprising RBA, APRA, ASIC and the Treasury) as well as the individual agencies have released various consultation papers on the implementation of the G20 OTC derivatives commitments.

Key Regulatory Milestones

1. G20 OTC derivatives commitments

- On April 18, 2012, the Treasury published a Consultation Paper on 'Implementation of a framework for Australia's G20 over-the-counter derivatives commitments'. It was proposed that the Minister for Financial Services and Superannuation (Minister) will prescribe a certain class of derivatives as being subject to one or more mandatory obligations for trade reporting, central clearing and trade execution. ASIC will make derivatives transaction rules (DTRs), which will require the Minister's consent. ASIC will be required to undertake a minimum period of consultation with other regulatory agencies (as well as stakeholders) in developing DTRs and to ensure sufficient notice or a transition period is provided prior to the commencement of any mandate. A new trade repository licensing regime will also be introduced.
- On October 12, 2012, the Corporations Legislation Amendment (Derivative Transactions) Bill 2012 (2012 Bill) was introduced into Parliament. The 2012 Bill will amend the Corporations Act 2001 and introduce a legislative framework to carry out the proposals set out in the Treasury's April 18, 2012 Consultation Paper.
- On February 27, 2014, the Treasury issued a proposal paper on the G4 IRD central clearing mandate. This proposal paper is the next step in the mandating of central clearing for US Dollars, Euro, British Pound and Japanese Yen interest rate derivatives (G4 IRD). The central clearing mandate would apply to large financial institutions with significant cross-border activity in these products (G4 dealers). The proposed implementation timeline is: 2nd quarter 2014 for the Ministerial determination

and for ASIC to consult on rules relating to the details of the central clearing obligation; late 2014 for central clearing rules to be completed and early 2015 for central clearing obligations to commence.

For trading platforms, no decision will be taken until subsequent reviews by the regulators. However, the Government will be reviewing the licensing arrangement for financial markets. The review will consider whether the framework is adequate to deal with derivatives trading platforms that would be suitable for mandatory trade execution. The proposal paper seeks feedback on the following questions:

- For the central clearing mandate for the G4 IRD, should the coverage scope be wider or narrower?
- Do you agree with the proposal to restrict ASIC rulemaking to entities that are considered to be G4 dealers, and to exempt intra-group trades?
- What should be the calculation methodology used for determining the proposed threshold of activity and the appropriate level of activity for a G4 dealer?
- Do you have any comments on the proposed timetable for implementing the central clearing obligation?
- Do you have any comments on the proposal that some CCPs may be prescribed in order to ensure Australian market participants have appropriate access to CCPs?
- Do you have preliminary views on the costs and benefits of mandatory central clearing of AUD IRS, North American and European referenced CDS or any other derivatives?
- What are the characteristics that make a trading platform suitable for mandatory trading of derivatives?
- Should end-users be exempted from trade reporting on a permanent level?
- Should a more tightly targeted AFSL be used for trade reporting?

The submission deadline is April 10, 2014.

2. Trade reporting

- On March 15, 2013, ASIC released Consultation Paper 201 on ‘Derivatives trade repositories’ (CP 201). CP 201 sets out proposed guidance on the process of applying for an Australian derivative trade repository (ADTR) license and the information required; the conditions that ASIC may consider imposing on ADTR licensees; and ASIC’s approach for granting exemptions from all or specified provisions of the Corporations Act 2001.
- On March 28, 2013, ASIC released Consultation Paper 205 on ‘Derivative transaction reporting’ (CP 205) which in summary proposes the following:
 - All Australian entities and foreign subsidiaries of an Australian entity will be subject to the reporting requirements.
 - All foreign authorized deposit-taking institutions (ADI) with a branch located in Australia or a foreign company registered under Division 2 of Pt. 5B.2 of the Corporations Act 2001 will be subject to the reporting requirements but only in respect of transactions booked in the ADI’s Australian branch or entered into by the Australian office.
 - The derivative contracts that will need to be reported are identified by asset classes (credit derivatives, interest rate derivatives, foreign exchange derivatives, equity derivatives, and commodity derivatives excluding electricity derivatives). Reporting will apply to futures and options as well as cleared and uncleared OTC derivatives.
 - Reporting will be phased-in by asset class and reporting entity type. Interest rate derivatives and credit derivatives transactions will be first, followed by foreign exchange derivatives, equity derivatives and commodity derivatives 6 months later. Phase 1 will consist of major financial institutions above the threshold (AUD50 billion notional outstanding in OTC derivatives across all asset classes per legal entity as measured as at September 30, 2013), Phase 2 will consist of major financial institutions below the threshold and Phase 3 will consist of end users. Phase 1 will

start on December 31, 2013, Phase 2 will start on June 30, 2014 and Phase 3 will start on December 31, 2014.

- “Two-sided reporting” will apply.
- On June 5, 2013, the Australian Treasury released the Draft Regulation to Facilitate the Operation of Australia’s Derivatives Trade Reporting Regime. The purpose of the Corporations Amendment (Derivatives Transactions) Regulation 2013 (the draft regulation) is to implement measures that temporarily restrict ASIC’s rulemaking power in relation to end users, and operational measures to ensure the derivatives trade reporting regime has appropriate Regulations governing the enforcement of trade reporting rules and Regulations for confidential information. The draft regulation will commence on the day after it is registered.

The draft regulation temporarily restricts ASIC’s rulemaking power from imposing requirements on end users. An end user is defined as a person who is not an authorized deposit taking institution, an Australian financial services licensee (and certain foreign person exempted from requiring a license), and a clearing and settlement facility licensee. This regulation ceases to have effect on December 31, 2014.

The draft regulations also inserts an enforceable undertaking regime, whereby ASIC may accept enforceable undertakings from person alleged to have not complied with section 901E and 903D as an alternative to civil proceedings. Undertakings that could be made are undertakings to perform or refrain from performing a specific action, or to pay a specified amount to a specified party. These undertakings may be altered with ASIC’s agreement. If a person breaches these undertakings, ASIC may apply to a court to make an order that the court considers appropriate, including orders directing the person to comply with the undertaking, to pay the benefit obtained by the breach to the Commonwealth, or to compensate a person who has suffered losses from the breach.

The draft regulations also inserts an infringement notice regime, which allows ASIC to request a person who is alleged to have contravened section 901E or 903D of the Act to pay a penalty to the Commonwealth, undertake remedial measures, enter into an undertaking or otherwise accept sanctions, as an alternative to civil proceedings. The offer of an infringement notice is at ASIC’s discretion. The draft regulation sets out certain parameters for the infringement notice, such as: the circumstances under which an infringement notice can be given; what is required in the issuing of an infringement notice; and the details required, as well as others. The draft regulation also contains provisions on how information provided to ASIC will be treated under section 127 (confidentiality) of the ASIC Act.

- On July 10, 2013, ASIC published its final guidance, ASIC Derivative Transaction Rules (Reporting) 2013. An Australian entity will be required to report all OTC derivatives contracts to which it is a party, regardless of where the contract is entered into. A foreign Authorised Deposit-taking Institution (ADI) that has a branch in Australia will need to report all OTC derivatives contracts that are booked to the profit and loss account of that branch; or entered into by that branch.

An Australian entity that is registered as a swap dealer (SD) with the Commodity Futures Trading Commission (CFTC) will begin reporting from October 1. An Australian ADI, an AFS Licensee, a CS Facility Licensee, an exempt Foreign Licensee or a foreign ADI, which has a total gross notional outstanding position of AUD \$50 billion as at December 31, 2013, and is not required to report under Phase 1, will begin reporting from October 1, 2014 onwards. An Australian ADI, an Australian financial services (AFS) Licensee, a CS Facility Licensee, an exempt Foreign Licensee or a foreign ADI that did not begin reporting in Phase 2 will begin reporting in Phase 3. Reporting will commence for credit derivatives and interest rate derivatives from October 1, 2014 to March 31, 2015. From April 1, 2015 onwards, these reporting entities will report all OTC transactions.

Position reporting will also be phased-in started with Phase 1 on October 1, 2014 for Australian entities that are registered as a SD with the CFTC. Phase 2 will apply to an Australian ADI, an AFS Licensee, a CS Facility Licensee, an exempt Foreign Licensee or a foreign ADI, which has a total gross notional outstanding position of AUD \$50 billion as at December 31, 2013; and is not required to report under Phase 1, on October 1, 2014 for credit and interest rate products. This will be followed by equity, foreign exchange and commodity derivative from April 1, 2015. Phase 3 will apply to those entities that did not begin reporting in Phase 2 and will begin on April 1, 2015 for interest and credit derivatives, followed by equity, foreign exchange and commodity derivative from October 1, 2015.

3. Financial market infrastructure

- On October 21, 2011, the Council of Financial Regulators released a Consultation Paper on 'Review of Financial Market Infrastructure Regulation' that sets out proposals to enhance the supervision of Australia's critical financial market infrastructure (FMI). The proposals include new powers to require certain systemically-important FMIs to have key aspects of their operations located in Australia and be overseen by *'fit and proper'* persons, as well as increased power for regulators to intervene in the event of the FMI experiencing substantial difficulties.
- On March 30, 2012, the Deputy Prime Minister and Treasurer released the Council of Financial Regulators Working Group's letter of advice on financial market regulation. Key recommendations included: (i) ensuring ASIC and RBA have appropriate powers to ensure FMIs manage their risk effectively; (ii) ASIC and RBA having explicit powers to impose location requirements in key areas; and (iii) Australian regulators having the power to establish oversight arrangements for overseas-based FMIs.
- On July 27, 2012, the Council of Financial Regulators issued a Consultation Paper on 'Ensuring Appropriate Influence for Australian Regulators over Cross-border Clearing and Settlement Facilities'. This is a supplementary paper to the October 21, 2011 Consultation Paper. This provides further clarity on the measures that could be applied to cross-border clearing and settlement (CS) facilities and how they may be implemented in practice under current legislative arrangements. The framework will apply to overseas facilities operating in Australia and to domestic facilities looking to move some of their operations offshore.
- The Payments System Board of RBA updated its eligibility requirements for Exchange Settlement Accounts (ESA) on July 31, 2012. The Board created a specific category of ESA for CCPs and has developed a policy for use of these accounts that recognizes the important role that access to an ESA can play in assisting a CCP to manage its liquidity and settlement risks. The policy applies to any CCP that holds an Australian Clearing and Settlement Facility License.
- On August 29, 2012, RBA released a Consultation Paper on 'New Financial Stability Standards'. The consultation seeks views on a proposal to revoke existing financial stability standards (FSSs) for CCPs and securities settlement facilities (SSFs) and to determine new FSSs for both CCPs and SSFs. The proposed FSSs will also implement key elements of the Council of Financial Regulators' framework for ensuring Australian regulators have appropriate influence over cross-border CS facilities. FSSs will only apply to licensed CS facilities and only in matters concerning the stability of the Australian financial system.
- On December 18, 2012, ASIC published its amended regulatory guidance for CS facilities, which takes into account CPSS-IOSCO's 'Principles for financial market infrastructures' (FMI Principles) and the Council of Financial Regulators' policy. These changes ensure continuing access to Australian-based CS facilities by overseas participants and also provide an appropriate degree of

Australian regulatory influence over foreign-based CS facilities that wish to offer services in Australia. It clarifies the circumstances under which a systemically important overseas CS facility with a strong domestic connection may need to hold a domestic licence.

- On February 15, 2013, ASIC and RBA issued a joint statement on implementing the FMI Principles in Australia.
- On May 8, 2013, three members of the Council of Financial Regulators, RBA, APRA and ASIC published information on how they will assess the case for a clearing mandate under the new regulatory framework for the OTC derivatives markets. The information issued addresses:
 - the preconditions for central clearing such as liquidity and standardization;
 - the benefits for central clearing for products that are widely traded in Australia for the efficiency, integrity and stability of financial markets;
 - consideration to the availability of central clearing options to meet the needs of the Australian market participants. Any incremental costs of imposing a mandate will likely be lowered if there is a choice of clearing solutions either domestic or international.

By mandating central clearing of products that have been mandated in other jurisdictions, this would increase the likelihood that the Australian regime will be considered equivalent to relevant overseas jurisdictions.

- On July 17, 2013, RBA, APRA and ASIC (collectively known as “the regulators”) issued a Report on the Australian OTC Derivatives Market – July 2013. The regulators recommended that the Government considers a central clearing mandate for USD, EUR, GBP and JPY denominated interest rate derivatives. The initial focus of such a mandate should be dealers with significant cross-border activity in these products. At this time, the regulators do not see a need for mandating North American and European referenced credit derivatives. Before recommending mandatory central clearing, the regulators will monitor for a further period the Australian banks’ progress in implementing the appropriate arrangements for Australian dollar denominated interest rate derivatives. The regulators have not made a specific recommendation regarding mandatory platform trading obligation at this time. A further report is expected in early 2014.

4. ASX

- On October 25, 2012, ASX issued a market discussion paper on ‘Derivatives Account Segregation and Portability’. The paper seeks market feedback on potential changes to the account structures such as levels of segregation that meet the regulatory requirements of the Australian regulators as well as the FMI Principles. For derivatives clearing, the paper considers the following: the appropriate level of client protection benefits arising from the CCPs holding client margin monies; and whether cash margins should be held in trust or on the balance sheet of the CCP.
- On February 21, 2013, ASX released a consultation paper on the Draft Operating Rules for its central counterparty clearing services for OTC interest rate derivatives (OTC Clearing Services). ASX will introduce OTC Clearing Services in phases. Phase 1 will be dealer-to-dealer clearing for AUD IRS and OIS, and will be available from July 1, 2013. The product coverage may be extended to include AUD FRAs in the third quarter, 2013. Phase 2 will introduce client clearing and extend product coverage to include NZD IRS, OIS and FRAs.
- On May 1, 2013, ASX released its response to the Consultation Paper on Draft Operating Rules released on Feb 21, 2013:

- ASX will maintain a single default fund, however, ASX will formally review its default fund structure in consultation with the Risk Committee annually;
- The symmetry between the Futures and OTC Commitments will be increased by reducing the Futures Clearing Participants Commitments from AUD\$120 million to AUD\$100 million, in-line with the OTC Clearing Participants Commitments. ASX group will inject a further AUD\$20 million, increasing the “first loss” tranche in the default waterfall to AUD\$120 million. All Secondary Commitments will be removed for Futures Clearing Participants;
- The trigger points for “scaling up” process for the transitional OTC Clearing Participant (“CP”) Commitments were clarified. The Aggregate OTC Commitment will be equal to AUD\$100 million if there are 8 or more OTC CPs. If there are less than 8 OTC CPs, the commitment will be AUD\$12.5 million x Number of OTC CPs, if (1) total OTC initial margin (including offsetting futures) reaches AUD\$500 million, (2) a competent authority directs ASX or (3) all OTC CPs agree, then aggregate OTC Commitment will increase to AUD\$100 million;
- ASX group will provide the next AUD\$100 million, added in increments as required if total Commitment requirements increase beyond AUD\$470 million for the single default fund in the future;
- Voting rights will be one vote per CP rather than one vote per authorization held by a CP;
- Only OTC CPs that fail to bid in the default auctions when they are required to bid will have the OTC Commitment juniorized.

ASX retains the ultimate decision on whether to implement the DMG’s advice. However, ASX will be required to explain its reasons when it does not follow the DMG’s advice.

- On August 28, 2013, ASX released a consultation paper on the Draft Operating Rules for the ASX 24 Exchange Traded Derivatives and OTC Interest Rate Derivatives Client Clearing Service (the Consultation Paper). This is the first of two consultation papers in which ASX seeks stakeholders’ input on the draft Operating Rules for its Client Clearing Service for ASX 24 Exchange Traded Derivatives and OTC Interest Rate Derivatives. Deadline for comments is October 2, 2013. Main points of the consultation paper are as follows:
 - ASX plans to initially offer 2 different “client account” types: Omnibus Account and Individual Client Account (ICA). A Clearing Participant (CP) may choose whether to offer their Clients one account type or both. The ICA structure is modeled on, but is not the same, as ‘LSOC without excess’. ASX plans to offer these two client account structures by March 31, 2014.
 - For an Omnibus Account, a Client’s positions and collateral are held in a single client account of the CP and ASX calculates initial margin (IM) on the net position in that account. In the event of a CP’s default, the IM calculated will be protected from losses on the defaulting CP’s house positions and on positions in other client accounts, but it will not be protected from losses of other Clients in the Omnibus Account.
 - For Individual client account ‘without excess’, a Client’s positions are segregated from those of other Clients and IM is calculated on the basis of the Client’s positions exclusively. The aim is to allow ASX to port Client’s positions and associated IM in the event of a CP’s default. If the Client’s position is not ported, ASX will close out the positions and return the associated IM to the Client directly, less any losses, costs and expenses attributable to closing out the positions. Collateral is not segregated at the ICA level and therefore collateral held by the clearing house in excess of the IM requirement with respect to the Client’s position cannot be ported with the positions and associated IM.

- Client positions will be netted within each Omnibus Account or ICA for the purposes of calculating the IM requirement with respect to the account. Collateral will be posted to ASX as margin by CP and not by the Clients directly. As CP will post collateral to ASX in respect of a single IM obligation for all client accounts maintained by them, ASX will not be able to determine which non-cash collateral (if any) came from which client. Upon a CP default, ASX will liquidate any non-cash collateral in order to realize the IM requirement calculated by ASX in respect of each client account. The cash value of IM that ASX ports or returns in respect of each client account will not include any portion of the value of excess collateral. Excess collateral may be used by ASX to offset the losses incurred upon close-out or termination of positions in any client account and any shortfalls in the liquidated value of non-cash/ cross-currency collateral as a consequence of insufficient collateral haircuts. Under ASX's account structure, end-of-day payments to and from each CP's Client Clearing Account are netted to a single flow per currency per day. This means each CP has only one client collateral account with ASX, irrespective of how many Omnibus and ICA it has.
- Upon a CP default, ASX will communicate the details of the positions in the account to any Alternate CP(s) nominated by the Client and will request confirmation from the Alternate CP if it accepts the positions. An Alternate CP will have 48 hours after ASX's declaration of default to confirm its acceptance of Client positions. If the Alternative CP agrees to accept all positions in a client account, ASX will transfer all positions, and the cash value of IM calculated by ASX in respect of the account to the Alternate CP. The positions transferred will include any positions recorded in the client account since the defaulting CP's last end-of-day IM settlement. It is possible that the Alternate CP may be credited with an amount of collateral that is less than the IM requirement for those positions. In such an instance, the Alternate CP will be required to make up the difference to ASX. If an Alternate CP does not confirm within 48 hours, ASX will close-out the client positions and return directly to the Client or the defaulting CP's external administrator the cash value of IM calculated by ASX for the account, less any losses, costs and expenses attributable to closing out of those positions.
- Under an Omnibus account, clients will not have the ability to nominate an Alternate CP. Upon a CP default, ASX may in its discretion transfer the positions of all Clients holding positions in the account, the associated IM, to a non-defaulting CP, provided that all Clients holding positions in the account agree to port to the same CP and that CP confirms acceptance of all positions in the account.
- Client Protection Model (the Model) refers to the legal relationships established between a Client, its CP and ASX. The Model recognizes that a CP is acting as agent for its Client. The CP remains fully liable as principal to ASX in connection with its clients' contracts. ASX agrees to not take any action against the Client personally for the performance of any obligation owed by the CP. A Client may enforce its rights and entitlements against ASX directly on one of three bases: (i) as a party to cleared contracts; (ii) as the party on whose behalf the CP holds those rights and entitlements; or (iii) as a "person aggrieved" by the failure of any person who is under an obligation to comply with or enforce the Operating Rules. In the ordinary course of events, ASX will deal only with the CP in relation to position registration and maintenance. Only in the event of a CP's default, will Clients of the CP be entitled to communicate directly with ASX.
- The OTC Client Clearing Service will only be available initially to 'wholesale clients' (as defined in the Corporations Act) connected with Australia. A Client must be connected to Australia in that they are: (a) incorporated/ carrying on business in Australia; or (b) acting on behalf of an entity or entities, in respect of contracts to be registered in the client account maintained for the Client, that are incorporated / carrying on business in Australia.

- ASX proposes to clarify that positions held by a CP on behalf of a Client that is a related body corporate, where the Client acts, directly or through a chain of entities in the same corporate group, as agent for unrelated end user clients, these positions must be designated as 'Client' positions; and may be allocated by the CP to either an Omnibus Account or an ICA; and where the Client acts in any other capacity (i.e. as principal or as agent for other related bodies corporate only), these positions may be designated as 'House' or 'Client' positions. In such an instance, if it is designated as 'House' positions, it must be allocated to the House Account and if it is designated as 'Client' positions, it must be allocated to an ICA for each such related entity.
- ASX proposes to require CP to (i) maintain 1 or more Client's Segregated Accounts (outside the clearing facility) for monies the CP receives from Clients; (ii) perform daily and monthly reconciliation of client monies in the Client's Segregated Account(s); and (iii) submit an annual director's declaration and auditor's report.
- ASX proposes to require CP to maintain a separate Client's Segregated Accounts for monies the CP receives from a Clients that is a related bodies corporate where the Client's positions have been designated as 'Client' positions.
- The Risk Committee is to comprise of representatives of Clearing Participants and will have an independent, member-elected chairperson.
- ASX proposes initially to require non-cash collateral for IM to be absolutely transferred to it by the CPs, in accordance with existing practice for ASX 24 Exchange Traded Derivatives.

ASX proposes a new Part 11(Security Interest Provisions) of the Futures Rules, that will apply to the acceptance by ASX of property from a CP as IM where ASX is granted a security interest in the property rather than an absolute transfer.

- On October 17, 2013, ASX released its second consultation paper on the Draft Operating Rules for the ASX 24 Exchange Traded Derivatives and OTC Interest Rate Derivatives Client Clearing Service. This is the second consultation paper in which ASX seeks stakeholders' input on the draft Operating Rules. Submission deadline is November 15, 2013.

Highlights include:

- This Consultation Paper focuses exclusively on the default of Clearing Participants. There are no changes proposed in the paper for the default of Clients that was published in the first Consultation Paper.
- The Default Portfolio will comprise all OTC and portfolio-margined ETD transactions of the defaulting OTC Clearing Participant in its own name ("House" transactions) and Client transactions that have not been ported successfully within the porting window, and hedging transactions entered into by ASX following the default. ASX reserves the right to sell/auction the Default Portfolio either as one or more lots comprising either or both House and Client transactions according to the Default Management Process. In the event of multiple contemporaneous or near-contemporaneous defaults, ASX may further combine into a single Default Portfolio House and non-ported Client transactions of multiple defaulting OTC Clearing Participants.
- If Terminated Open Contracts in a default management process relate to both House and Client Positions of a Defaulted OTC Participant, or the OTC Positions of more than one Defaulted OTC

Participant then ASX Clear (Futures) may combine any such Terminated Open Contracts such that they are treated as part of one or more portfolios at any time after the commencement of the default management process; and allocate any Loss in conjunction with that default management process between the relevant Defaulted OTC Participants and between the House Accounts, Client Accounts and Client Sub-Accounts of the relevant Defaulted OTC Participant (a Relevant Account). This will be done as of the time of combination of such Terminated Open Contracts and will be conducted by allocating any Losses to each Relevant Account proportionately to its relative risk as determined by ASX Clear (Futures) using the value of Initial margin calculated with respect to each Relevant Account; and if the Relevant Account is a Client Sub-Account, the Loss will be deducted in accordance with (ii) above from the Guaranteed Initial Margin value of that Client Sub-Account.

- ASX Clear (Futures) will establish default management groups (a DMG) in respect of each OTC transaction Type for the purposes of advising and assisting ASX Clear (Futures) for all DMG matters.
- In addition to what has been previously stated in Schedule 3 of the Default Management Process, ASX Clear (Futures) may choose to convene a meeting of one or more DMGs for (a) the Open Contracts which are to be Terminated Open Contracts and their respective Termination Times in accordance with OTC Rule 6.6; (b) the entry into of Independent DM Transactions; (c) the holding of one or more DM auctions; (d) determining the Auction Pool Risk Weighting for each Auction Pool and the price at which a Bid for a particular DM Auction will be taken to be an Uneconomic Price; and (e) to obtain advice related to the default management in any other circumstances as considered appropriate by ASX Clear (Futures).
- After consultation with the relevant DMGs, ASX Clear (Futures) may include a single OTC Transaction Type in more than one Auction Pool and a single DM Auction Transaction may be split into multiple transactions by ASX Clear (Futures) with each transaction being included in a different Auction Pool as separate DM Auction Transaction. DM Auction Transactions which are related to Client and House Positions, and which are related to different Defaulted Clearing Participants may be included in the same Auction Pool.
- If there is more than one Auction Pool, then ASX Clear (Futures), in consultation with the relevant DMGs, will calculate a risk weighting multiplier attributable to each Auction Pool (an Auction Pool Risk Weighting). The Mandatory OTC Participant in the DM Auction will be notified of the Auction Pool Risk Weighting.
- After consultation with the relevant DMGs, each Auction Pool will be separated into homogeneous units (an Auction Unit). If there is more than one Auction Unit in an Auction Pool, then each Auction Unit must be composed of identical components of DM Auction Transactions.
- For each Auction Pool, ASX in consultation with the relevant DMG, will determine a price (referred to as the Uneconomic Price) at or beneath which a Bid in a particular DM Auction will be taken to be uneconomic. The Uneconomic Price will not be disclosed prior to the Expiration Time of the DM Auction.
- For each Auction Pool, ASX Clear (Futures) will (a) determine which Mandatory OTC Participants (Non-Contributing Participants) have failed to submit a Bid in the DM Auction corresponding to the relevant Auction Pool which is greater than its Uneconomic Price, including those which have failed to submit any Bid; (b) rank all Mandatory OTC Participants, other than the Non-Contributing Participants, by the Bids they have submitted in the DM Auction in the

relevant Auction Pool in order of price from the highest price Bid to the lowest price Bid; and (c) when there is only one Auction Pool, rank OTC Participants which are not Mandatory OTC Participants who submitted Bids in the DM Auction equally with the OTC Participants who submitted the highest Bid for that DM Auction. ASX Clear (Futures) will group the OTC Participants into Priority Groups using these rankings, i.e., from highest Bids to the lowest Bids.

- Using the rankings of Mandatory OTC Participants in Priority Groups and the Weighted OTC Commitments of Mandatory OTC Participant's applicable to each Auction Pool, ASX Clear (Futures) will determine the aggregate amount of the Weighted OTC Commitment of each Mandatory OTC Participant applicable to each Priority Group.
- ASX Clear (Futures) will use the OTC Commitment of the OTC Participants in order of Priority Group, from lowest Bid received to highest bid received. Each Commitment Application Amount for each Priority Group will be used in full before applying the Commitment Application Amount to the next Priority Group unless losses of ASX Clear (Futures) have been met or all the Commitment Application Amounts for all Priority Groups have been used.

5. Australia proposes legislative changes

- On July 1, 2011, the Treasury released a Consultation Paper on the Exposure Draft – Financial Sector Legislation Amendment (Close-out Netting Contracts) Bill 2011 (2011 Bill). The 2011 Bill seeks to strike the right balance between ensuring market confidence in the enforceability of close-out netting contracts and protecting depositors and insurance holders by imposing a short stay before close-out netting rights can be enforced. The 2011 Bill will address the inconsistency related to close-out netting contracts between the Banking Act, the Insurance Act and the Life Insurance Act on the one hand and the Payment Systems and Netting Act 1998 (PSN Act) on the other hand that was introduced when the former Acts were amended in 2008.
- On March 20, 2013, the Corporations and Financial Sector Legislation Amendment Bill 2013 (2013 Bill) was introduced in Parliament. The 2013 Bill amends a number of statutes, in particular, the PSN Act. The amendments to the PSN Act will clarify that porting of positions, including associated collateral, in the case of a default or insolvency of a CCP participant is allowed, regardless of provisions in other legislation including the Corporations Act 2001. The proposed amendments to the PSN Act will also clarify that a CCP may enforce security that it holds over any type of assets of a defaulting participant.
- On December 20, 2013, Hon Joe Hockey announced the final terms of reference for the Financial System Inquiry (FSI). The FSI is charged with examining how the financial system may be positioned to best meet Australia's evolving needs and support Australia's economic growth.. By way of background, the FSI is the first major inquiry into Australia's financial systems since the Wallis Report in 1997. The FSI's terms of reference are wide in scope and encompasses a wide range of financial activities. The FSI is accepting submissions on the issues raised in the terms of reference until March 31, 2014. The FSI is due to publish an interim report by mid-2014, followed by a second round of consultations. The final report is expected to be published by November 2014.

6. Resolution regime

- On September 12, 2012, the Australian Treasury released a consultation paper on ‘Strengthening APRA’s crisis management powers’ to set out a range of options on, among others, strengthening APRA’s crisis management powers in relation to ADIs, superannuation entities and general and life insurers and simplifying APRA’s regulatory powers across the various statutes it administers in the banking, insurance, and superannuation sectors, given that many firms operate across sectors.

7. Basel III reforms.

- On August 10, 2012, APRA released a discussion and consultation paper on implementing the Basel III counterparty credit risk capital reforms. APRA intends to apply the Basel III capital framework for counterparty credit risk to ADIs; subsidiaries of foreign banks and clearing members of a CCP. APRA’s proposals for counterparty credit risk include, among others, the introduction of the Credit Value Adjustment (CVA) risk capital charge.
- In September 2012, APRA released a final set of prudential standards and reporting standards that give effect to Basel III capital reforms in Australia. Some key reforms that will apply to ADIs include, among others, the introduction of a new definition of regulatory capital under which common equity is the predominant form of Tier 1 capital.
- On May 6, 2013, APRA released a second consultation package, which includes a draft Prudential Standards APS 210 Liquidity (APS 210), a draft Prudential Practice Guide APG 210 Liquidity (APG 210) and a discussion paper on Implementing Basel III Liquidity Reforms in Australia (the Discussion paper). The consultation package outlines APRA’s proposed amendments to its 2011 proposals on the implementation of the Liquidity Coverage Ratio (LCR) in Australia and addresses the main issues raised in submissions, and in dialogue with the industry and other interested parties.

The Basel III liquidity framework introduces two new minimum global standards: a 30-day LCR to address an acute stress scenario and a Net Stable Funding Ratio (NSFR) to encourage longer-term funding resilience. APRA has not made any amendments to its proposed implementation of the NSFR but will ensure that concerns raised in the submissions for the NSFR will be fed to the Basel Committee.

APRA intends to issue the final APS 210 and APG 210 in mid-2013. The new prudential standard is intended to be effective on January 1, 2014. The LCR and NSFR requirements are intended to commence on January 1, 2015 and January 1, 2018, respectively. The LCR will become effective on January 1, 2015 with no phase-in allowed.

The changes to the LCR announced in the Basel III liquidity reforms allowed national authorities to have discretion to include certain additional assets in the new Level 2B category of high-quality liquid assets (HQLA). These assets are:

- residential mortgage-backed securities (RMBS) with a long-term credit rating of AA or higher;
- corporate debt securities with long-term credit rating between A+ and BBB-; and
- certain listed non-financial equities.

APRA is proposing not to exercise this discretion, hence, the definition of HQLA remains unchanged. However, some debt securities included in the definition of Level 2A and level 2B assets are repo-eligible with the RBA for normal market conditions and are eligible collateral for the Committed Liquidity Facility (CLF).

APRA is also proposing to adopt the revised Basel III assumed cash inflow and outflow rates, with only one minor modification for maturing central bank funding transactions. APRA proposes for maturing secured funding transactions with a central bank backed by CLF eligible debt securities, it will have an outflow rate of zero percent. All other maturing secured funding transactions with a central bank not backed by HQLA will have an outflow rate of 100 percent.

Currently, ADIs are subject to a simple quantitative liquidity ratio requirement, the minimum liquidity holdings (MLH) regime. APRA proposes to leave the MLH regime broadly unchanged but to revise the definition of assets that are eligible for inclusion in an ADI's minimum liquidity holdings.

- On August 8, 2013, APRA released a note for Authorized Deposit-taking Institutions (ADIs) with further details on its approach to the implementation of the Basel III liquidity framework, in particular the Committed Liquidity Facility (CLF). Due to the relatively short supply of Australian-dollar high quality liquid assets (HQLA), the Reserve Bank of Australia (RBA) will allow “scenario analysis” ADIs to establish a secured CLF sufficient to cover any shortfall between the ADI's holdings of HQLA and the requirement to meet the liquidity coverage ratio (LCR). The note provides details on APRA's role in determining the appropriate size of the CLF for each scenario analysis ADI. The main steps are as follows:
 - ADIs will be required to apply for inclusion of a CLF for LCR calculation purposes on an annual basis;
 - ADIs will be required to demonstrate they have taken “all reasonable steps” towards meeting their LCR requirements through their own balance sheet management, before relying on the CLF;
 - ADIs must meet relevant qualitative and quantitative liquidity requirements, including having in place a statement of the Board's tolerance for liquidity risk, a robust liquidity transfer pricing mechanism, appropriate remuneration arrangements for those executives responsible for the ADI's funding plan and liquidity management;
 - The CLF will be available to address Australian dollar liquidity needs only;
 - The size of the CLF for each ADI will be limited to a specified percentage of that ADI's Australian dollar net cash outflow target as agreed by APRA, plus an allowance for an appropriately sized buffer.

8. APRA releases final liquidity prudential standard

- In December 2013, APRA released its final prudential standard APS 210 on Liquidity, which came into effect on January 1, 2014. This prudential standard requires authorized deposit-taking institutions (ADIs) to adopt sound management of their liquidity risk; maintain a liquidity risk management framework; maintain sufficient liquidity to meet their obligations as they fall due and hold a minimum level of high-quality liquid assets (HQLA) to survive a severe liquidity stress.

APRA will determine whether an ADI is classified as a Liquidity Coverage Ratio (LCR) ADI or an ADI subject to the Minimum Liquidity Holdings (MLH) regime for liquidity by taking into account the ADI's size and complexity with respect to the liquidity risk. An LCR ADI must undertake scenario analysis of domestic and foreign currency liquidity and must complete the following scenarios:

- the Liquidity Coverage Ratio (from January 1, 2015);
- the “name crisis” scenario (until December 2014); and
- the “going concern” scenario.

An MLH ADI will be required to maintain a minimum holding of 9% of its liabilities in specified liquid assets. An MLH ADI is also required to complete the going concern scenario.liquid assets.

ISDA Submissions (since 2010)

- March 16, 2010: [ISDA submission to the Treasury on the Financial Sector Legislation Amendment \(Prudential Refinements and Other Measures\) Bill 2010 \(Commonwealth\)](#)
- May 26, 2010: [ISDA submission to the Attorney General on the Exposure Draft of the Personal Property Securities Regulations 2010](#)
- July 30, 2010: [ISDA \(as part of the JAC\) submission to ASIC on 'Review of Disclosure for Capital Protected Products and Retail Structured or Derivatives Products'](#)
- August 1, 2011: [ISDA submission to the Treasury on Financial Sector Legislation Amendment \(Close-out Netting Contracts\) Bill 2011](#)
- August 26, 2011: [ISDA submission to RBA on the discussion paper 'Central Clearing of OTC Derivatives in Australia'](#)
- November 28, 2011: [ISDA submission to the Treasury on the discussion paper 'Review of Financial Market Infrastructure Regulation'](#)
- January 27, 2012: [ISDA submission to the Treasury with regard to the Consultation Paper on 'Handling and use of client money in relation to over-the-country derivatives transactions'](#)
- June 15, 2012: [ISDA submission to the Treasury with regard to the Consultation Paper on the 'Implementation of a framework for Australia's G20 over-the-counter derivatives commitments'](#)
- August 20, 2012: [ISDA submission to the Treasury on Corporations Legislation Amendment \(Derivative Transactions\) Bill 2012 - Exposure Draft](#)
- October 18, 2012: [ISDA submission to RBA with regard to the Consultation on New Financial Stability Standards](#)
- October 19, 2012: [ISDA submission to ASIC with regard to Consultation Paper 186 on Clearing and Settlement Facilities: International Principles and Cross-Border Policy \(Update to RG 211\)](#)
- December 14, 2012: [ISDA submission to ASX with regard to Derivatives Account Segregation and Portability](#)
- December 14, 2012: [ISDA submission to the Treasury with regard to Strengthening APRA's Crisis Management Powers](#)
- February 15, 2013: [ISDA submission to the Treasury with regard to its proposal paper on 'Implementation of Australia's G-20 Over-the-counter Derivatives Commitments'](#)
- April 5, 2013: [ISDA submission to ASX with regard to Draft Operating Rules](#)
- April 12, 2013: [ISDA submission to ASIC on Consultation Paper 201 Derivatives Trade Repositories.](#)
- April 19, 2013: [ISDA submission to Parliamentary Joint Committee regards to Corporations and Financial Services on Corporations and Financial Sector Legislation Amendment Bill 2013](#)
- May 3, 2013: [ISDA submission to Australian Securities and Investments Commission regards to the Consultation Paper 205 on Derivatives Trade Reporting.](#)
- June 20, 2013: [ISDA submission to The Treasury regards to Corporations Amendment \(Derivatives Transactions\) Regulation 2013.](#)
- November 19, 2013: [ISDA submission to ASX Limited on ASX 24 Exchange Traded Derivatives and OTC Interest Rate Derivatives Client Clearing Service Second Consultation Paper on Draft Operating Rules.](#)
- March 28, 2014: ISDA submission to the Financial System Inquiry. This submission is not yet public.

CHINA

AT A GLANCE

Central Bank:	People's Bank of China (PBOC) http://www.pbc.gov.cn
Bank Regulator:	China Banking Regulatory Commission (CBRC) http://www.cbrc.gov.cn
Securities Regulator:	China Securities Regulatory Commission (CSRC) http://www.csrc.gov.cn
Insurance Regulator:	China Insurance Regulatory Commission (CIRC) http://www.circ.gov.cn
Other Regulators:	State Administration of Foreign Exchange (SAFE) http://www.safe.gov.cn State-owned Assets Supervision and Administration Commission of the State Council (SASAC) http://www.sasac.gov.cn
Associations:	National Association of Financial Market Institutional Investors (NAFMII, a self regulatory organization on China's interbank market and supervised by PBOC) Securities Association of China (SAC, a self-regulatory organization of securities companies and supervised by CSRC)
Master Agreement:	Onshore transactions: NAFMII Master Agreement is mandatory for OTC derivatives transactions linked to currency, rate, bond, credit and gold entered into between participants of China's interbank bond market. SAC Master Agreement is mandatory for OTC derivatives transactions entered into by domestic securities companies unless Chinese law provides otherwise. Cross-border transactions: ISDA Master Agreement for cross border trades
Legal Opinions:	Legal memorandum on enforceability of close-out netting of OTC derivatives transactions under the ISDA Master Agreement issued by King & Wood Mallesons
CCP/TR Status:	Shanghai Clearing House (SCH) was established in 2009 to provide clearing services for financial market participants in China. According to the authorization of PBOC, SCH will provide centralized and standardized clearing services for spot and derivatives transactions in RMB and foreign currencies as well as RMB cross-border transactions approved by PBOC. According to a circular issued by PBOC in January 2014, mandatory central clearing of onshore RMB IRS transactions between financial institutions will commence on July 1, 2014.

Key Regulatory Milestones

1. SAC publishes its own master agreement and onshore OTC equity derivatives trading commences

- On November 18, 2012, CSRC published the revised Provisions on the Investment Scope of the Proprietary Trading Business of Securities Companies and Related Issues (the "Proprietary Trading Regulation").

The amendments to the Proprietary Trading Regulation are intended to expand the scope of investment products of proprietary trading business of securities companies, and clarify the regulatory policies for securities companies' investment in financial derivatives. Under the revised Proprietary Trading Regulation, the securities companies with proprietary securities business qualification would be allowed to trade financial derivatives listed on exchanges and enter into OTC derivatives

transactions regardless of whether the transactions are for hedging purpose or not. The securities companies which are not qualified to conduct proprietary securities business can only enter into financial derivatives transactions for hedging purpose.

- On December 21, 2012, SAC issued the Regulation of Securities Company's Over-the-Counter Trading Business (only Chinese is available). "OTC trading" is defined under the Regulation as (i) trading carried out between a securities company and its counterparty on a market other than a centralized exchange, or (ii) services provided by a securities company to investors in relation to transactions effected on a market other than a centralized exchange.

The products subject to the Regulation include any underlying or derivative financial products which have been approved, authorized by or filed with the relevant regulatory authority and are issued or sold outside a centralized exchange. A security company conducting OTC trading with counterparties must hold a proprietary securities trading license, and a securities company which provides services to investors in relation to OTC trading must hold a securities brokerage license.

The Regulation also provides that when carrying out a derivatives business, securities companies should execute the SAC Master Agreement in accordance with the applicable requirements; if the derivatives business involves other derivatives markets, securities companies should also comply with the requirements applicable to those markets.

Securities companies are required to file an application with SAC before commencing OTC trading, and afterwards, monthly and annual reports on its OTC trading business. SAC will supervise and regulate the OTC trading business of securities companies. According to SAC, securities companies' OTC market is designed to be a platform for issuance, transfer and trading of privately offered products and investors will mainly be institutional. To start with, the market will mainly focus on wealth management products issued by securities companies and distribution of financial products.

- On March 15, 2013, as a further step to enable securities companies to carry out their OTC financial derivatives businesses, the Securities Association of China (SAC) published a set of self-regulatory rules (the Regulations), together with a master agreement governing the OTC derivatives businesses of securities companies. The Regulations provide that a securities company which has obtained OTC trading business qualification may trade financial derivatives products subject to a filing with the SAC. The financial derivatives products which a securities company can trade are limited to those which have been approved authorized or filed with the relevant regulator or self-regulatory organization. Under the Regulations, a securities company may only trade with institutional counterparties. A securities company is required to classify its counterparties into professional investors (PI) and non PIs and conduct suitability checks with trading with non-PIs.

On the same date, SAC also published the China Securities Market Financial Derivatives Master Agreement (2013 Version) (the "SAC Master Agreement"). The SAC Master Agreement adopts the "three pillars" of the ISDA Master Agreement (i.e., "single agreement", "flawed asset" and "close-out netting") and is similar to the ISDA Master Agreement (single jurisdiction) both in structure and substance.

2. CBRC Implements Basel III

- On June 7, 2012, CBRC issued the Measures for Commercial Banks' Capital (Trial Implementation) (the "Measures"). The Measures apply to commercial banks established in China and set out the requirements for the capital adequacy ratio (CAR). The Measures follow the Basel guidelines and do not provide any exceptional deviation from the Basel guidelines. The CAR will consist of 5% Core Equity Tier 1, 6% Tier 1 and 8% for Total Capital.

A Conservation Buffer of 2.5% of Core Tier 1 capital and a Countercyclical Buffer of 0%-2.5% Core Tier 1 capital will be applied. Additionally, domestic systemically important banks will have to hold an additional 1% of Core Tier 1 capital. A systemically important bank will need to hold a total of 11.5% capital while the non-systemically important banks will need to hold 10.5% capital. Banks should develop and implement a step-by-step compliance plan to meet the new capital requirements and will need to report it to CBRC for approval. CBRC has the right to take regulatory action if banks do not meet their capital requirements.

The Measures also sets out the definition of what constitutes Core Tier 1 capital, Tier 1 capital and Tier 2 capital, and have listed which items may be deducted from the CAR, such as goodwill and sales from asset securitization. Additionally, guidance on credit risk, market risk and operational risk are provided in the Measures.

- On November 29, 2012, CBRC released its guidance on innovative capital instruments of commercial banks (the "Guidance"). The aim of this Guidance is to promote and regulate commercial banks issuing innovative capital instruments, broaden the forms of capital replenishment and enhance the soundness of the banking system. From January 1, 2013, new capital instruments must have a provision that enables either a write off or a conversion to common stock when a "trigger event" occurs:
 - the core equity tier 1 ratio of the commercial bank falls below 5.125% (at which point the additional Tier 1 (AT1) capital instrument will be triggered);
 - the CBRC determines that a commercial bank will be non-viable and/or the relevant authority determines a commercial bank will become non-viable without a public sector injection of capital or its equivalent support.

For capital instruments containing a write down provision, upon a trigger event occurring, the AT1 instrument should be written down, in full or in part, as per the contractual agreements, in order for the core equity Tier 1 ratio to return above the trigger point. Upon occurrence of a trigger event for Tier 2 capital instruments, the AT1 and Tier 2 capital instruments shall be immediately written down in full, subject to contractual agreements. If a commercial bank is going to compensate investors for their losses, payment should make in the form of ordinary shares to be paid immediately.

For capital instruments containing a conversion clause, upon a trigger event occurring, the AT1 instrument should be converted to ordinary shares, in full or in part, as per the contractual agreements, in order for the core equity Tier 1 ratio to return above the trigger point. Upon occurrence of a trigger event for Tier 2 capital instruments, the AT1 and Tier 2 capital instruments shall be immediately converted to ordinary shares in full, subject to contractual agreements. To issue capital instruments containing a conversion clause, prior authorization are required to ensure the bank is able to issue the corresponding amount of ordinary shares as per the contractual agreement upon the occurrence of a trigger event.

- On September 27, 2013, the Basel Committee on Banking Supervision published a report on the regulations that implement the Basel capital framework in China. China's implementation of the Basel capital framework was found to be closely aligned with the Basel III global standards.

3. CIRC allows securities companies to enter into derivatives transactions for hedging purposes

- On October 12, 2012, CIRC issued the long-awaited Implementing Rules of the Interim Measures on Overseas Investments by Insurance Companies (the “Implementing Rules”). The Implementing Rules seek to broaden the scope of permissible overseas investment by domestic insurance companies and set out detailed qualification and ratio requirements in relation to overseas investments.

Qualified domestic insurance companies are now permitted to enter into interest rate forwards, interest rate swaps, interest rate futures, FX forwards, FX swaps, stock index futures transactions, or purchase index options and other types of derivatives for hedging purposes. When conducting derivatives transactions, the insurance companies are required to comply with certain requirements which include signing an ISDA Master Agreement with each of their counterparties. Although the Implementing Rules require that the agreement between a domestic insurance company and its asset manager or custodian be governed by Hong Kong law or the PRC law, there is no such requirement in respect of the ISDA Master Agreement. The Implementing Rules prohibit insurance companies from entering into any *speculative* derivatives transactions or commodity (including precious metal) related derivatives transactions.

- On October 12, 2012, CIRC also issued the Interim Measures on Insurance Funds’ Participation in Financial Derivatives Trading (the “Interim Measures”). According to the Interim Measures, PRC-incorporated insurance group (holding) companies, insurance companies and insurance assets management companies (together known as “insurance institutions”) are allowed to enter into derivatives transactions in the domestic market for *hedging* purposes.

The Interim Measures set out the qualification criteria and risk management requirements for the insurance institutions which wish to engage in financial derivatives trading. The insurance institutions are required to submit a report to CIRC before commencing trading and afterwards report to CIRC certain information of their derivatives transactions periodically.

4. CSRC and SAFE relax regulation of QFIIs

- CSRC released the revised Rules on Implementation of “Measures on Administration of Domestic Securities Investments of Qualified Foreign Institutional Investors (QFIIs)” (the “QFII Rules”) on July 27, 2012. CSRS amended the QFII Rules in order to attract more long term investors to China’s capital markets. The major changes include (1) relaxing the qualification requirements that QFII applicants need to meet such as requirements regarding minimum operating period and assets under management; (2) allowing a QFII to transact via multiple securities brokers; (3) permitting QFIIs to invest in bonds traded on the interbank bond market and bonds issued via private placements by SMEs; (4) raising the cap on total A-shares that can be held by all QFIIs in one A-share listed company from 20% to 30% of the total outstanding shares of the company; and (5) simplifying the QFII qualification application procedures and allowing electronic submission of documents.
- In December 2012, SAFE issued the revised Rules on Foreign Exchange Administration of Securities Investments in the PRC by Qualified Foreign Institutional Investors (the “FX Rules”). The revised FX Rules made several important amendments to the version issued in 2009. The revised FX Rules specifically refer to the futures trading account, which provides the implementation measures which will finally allow QFIIs to open accounts to commence stock index futures trading. The revised FX Rules also allow a RMB special account to be split into a maximum of six for different clients’ assets, which will help QFIIs to better meet client asset segregation requirements of their home jurisdictions. In addition, the revised FX Rules relax certain restrictions on repatriation/remittance of funds by QFIIs.

5. CBRC issues guidelines on capital requirements for bank exposures to CCPs and PBOC mandates central clearing of RMB IRS

- On July 19, 2013, CBRC issued a set of documents on regulatory capital requirements for commercial banks in China. These documents include banks' exposures to central counterparties (CCPs); enhancing disclosure requirements for the composition of capital; regulatory policies for implementing IRB for commercial banks and policy clarification of capital rules.

For bank exposures to a CCP, a qualifying CCP (QCCP) is an entity that is licensed to operate as a CCP and is permitted by the regulator to offer such products. If the regulator of the CCP publicly announces the status of a CCP as qualifying, then banks will be allowed to treat exposures to this CCP as a QCCP. If not, a bank will determine if a CCP is qualifying based on the following criteria:

- the CCP is based and is supervised by a regulator who has publicly indicated it applies on an on-going basis, domestic rules and regulations that are consistent with the CPSS-IOSCO Principles for Financial Market Infrastructures (PFMIs);
- if the regulator of the CCP has yet to implement the PFMIs, the bank shall provide to CBRC a list of CCPs it has exposures to and an evaluation of the relevant criteria to determine if the CCP is a QCCP. An important consideration is whether the CCP will be subject to domestic rules and regulations that are consistent with the PFMI principles. This list of QCCPs will be subject to CBRC's approval.

To be considered a QCCP, a CCP must be able to perform the calculations for the various components that are part of the calculation for the default fund exposures. This data should be provided to the clearing members, the regulators and other parties and should be submitted at least on a quarterly basis.

- On January 21, 2014, PBOC and CSRC published the "Notice on Carrying out Evaluation of Financial Market Infrastructures". In the notice, it was mentioned that the regulators would jointly evaluate a number of China's financial market infrastructures including CCPs and TRs according to the "Principles for financial market infrastructure Disclosure framework and Assessment methodology" issued by IOSCO and CPSS. The assessment is due to be completed by March, 2014.
- On January 28, 2014, PBOC issued a notice to banks regarding central clearing of RMB interest rate swaps. The notice provides that all RMB interest rate swaps referencing 7-day repo, overnight SHIBOR or 3-month SHIBOR which are entered into after July 1, 2014 between financial institutions and have a tenor of no more than 5 years must be submitted to SCH for central clearing, as long as the transactions satisfy SCH's requirements regarding counterparties and contracts.

6. PBOC supports the development of Shanghai free trade zone

- On December 2, 2013, PBOC issued an opinion setting out financial measures to support the development of the China (Shanghai) Pilot Free Trade Zone (the FTZ). The Opinion aims to facilitate cross-border investment and financing, expand the cross-border utilization of Renminbi (RMB), promote interest rate liberalization and reform the foreign exchange administration system. The opinion encourages institutions in the FTZ to carry out hedging transactions within and outside the FTZ, and allows qualified enterprises within the FTZ to invest in securities and derivatives overseas. In addition, banks in the FTZ will be permitted to enter into OTC commodity derivative transactions with domestic clients. The PBOC intends to issue further detailed rules to implement all the relevant measures.

7. SAFE relaxes regulation on RMB/FX hedging transactions and consults on new rules regarding cross-border security arrangements

- On December 19, 2013, SAFE issued the Notice on Adjusting the Administration of RMB/FX Derivative Business (the Notice) which is intended to facilitate domestic entities' hedging of foreign exchange risks. The Notice took effect on January 1, 2014. The Notice appeals the filing requirement for conducting currency swap and foreign exchange swap business. Banks and their branches that are qualified to conduct RMB/FX forward transactions before the effective date of the Notice may start conducting currency swap and foreign exchange swap business automatically. The Notice also relaxes certain restrictions on banks' currency swap business: banks are now permitted to enter into a currency swap transaction without exchanging principal at the effective date with their clients who have borrowed debts denominated in a foreign currency. The Notice also allows a bank to decide its own reference exchange rate when conducting cash-settled RMB/FX options with clients or on interbank market as long as the rate is a real and effective rate used in the onshore market. Banks are also permitted to use reasonable and appropriate method and parameters at their discretion to calculate the Delta of their RMB/FX option transactions. Under previous regulations, banks had to use the method and parameters set out in the CFETS guidance when calculating the Delta.
- On February 13, 2014, SAFE published a consultation draft of the "Provisions for Foreign Exchange Control over Cross-border Security". The proposed regulations are intended to identify the issues subject to foreign exchange control, significantly reduce the types of cross-border security arrangements subject to quantitative limit, and implement a regime using registration as the main regulatory tool and removing all prior approval requirements. The draft regulations define a "cross-border security" as an undertaking made by an entity which uses its own assets, rights or credits to secure obligations owed by itself or a third party by way of a security whether in the form of a guarantee, mortgage, pledge or other forms recognized under Chinese law. The regulations divide cross-border security into two types according to the nature of the secured obligations: financing and non-financial security. The draft regulations further categorize cross-border security into outbound security, inbound security and other cross-border security based on the registration place of various parties in a transaction and set out different rules accordingly. The explanatory note of the draft regulations emphasizes that FX exchange control should be delinked from legality and validity of the security contract. Article 30 provides that registration or filing with SAFE is not a condition to the effectiveness of a cross-border security contract.

ISDA Submissions (since 2010)

- April 15, 2010: [First ISDA submission to the CSRC and CFFEX regarding index futures trading by the Qualified Foreign Institutional Investors](#)
- May 4, 2010: [Second ISDA submission regarding index futures trading by the Qualified Foreign Institutional Investors](#)
- January 14, 2011: Joint Associations Committee (JAC) submission to CBRC on the draft Regulations governing Sales of Wealth Management Products by Commercial Banks. This submission is not public.
- February 21, 2011: [ISDA submission to CBRC on the revised Provisional Administrative Rules Governing Derivatives Activities of Banking Financial Institutions](#)
- June 5, 2012: [ISDA letter to Shanghai Clearing House on Clearing proposal regarding interest rate swaps \(IRS\) denominated in RMB](#)
- December 2013, ISDA letter to PBOC on central clearing and some other issues relating to OTC derivatives transactions. This submission is not public.
- March 11, 2014, ISDA submission to SAFE on the draft Provisions for Foreign Exchange Control over Cross-border Security. This submission is not public.

HONG KONG

AT A GLANCE

Central Bank:	Hong Kong Monetary Authority (HKMA) http://www.hkma.gov.hk
Bank Regulator:	HKMA
Securities Regulatory:	Securities and Futures Commission (SFC) http://www.sfc.hk
Other Regulators:	Financial Services and Treasury Bureau (FSTB) http://www.fstb.gov.hk
Association:	Treasury Markets Association (TMA)
Master Agreement:	ISDA
Legal Opinions:	Netting and collateral opinions by Linklaters; Opinion on transactions entered into “electronically” and electronic records by Clifford Chance
CCP/TR Status:	<p>On July 11, 2012, HKMA and SFC released consultation conclusions on proposals to regulate the OTC derivatives market. The proposed mandatory reporting and clearing obligations will initially only cover certain types of interest rate swaps (IRS) and non-deliverable forwards (NDF). HKMA and SFC have also issued a Supplemental Consultation Paper on the proposed scope of newly-regulated activities to be introduced under the proposed OTC derivatives regulatory regime, and the proposed oversight of systemically important players.</p> <p>The Securities and Futures (Amendment) Bill was gazatted on June 28, 2013 and is now pending the approval of the Legislative Council. Subject to the passage of the relevant legislation by LegCo by end of this year, the new regulations on trade reporting and record keeping are expected to take effect in the second half of 2014. Interim reporting requirements for certain OTC derivatives transactions between licensed banks went effective in August 2013, and have been in full force since February 4, 2014 after expiration of the transitional arrangements.</p>

Key Regulatory Milestones

1. Hong Kong implements Basel III

- HKMA issued two consultation papers, Implementation of Basel III Capital Standards in Hong Kong and Implementation of Basel III Liquidity Standards in Hong Kong on January 20, 2012. These documents are the first in a series of consultation papers which HKMA intends to issue for seeking the banking industry’s feedback on its proposals to implement Basel III.
- HKMA released a notice on March 9, 2012, that the Banking (Amendment) Bill 2011 was passed by the Legislative Council on February 29, and enacted as the Banking (Amendment) Ordinance 2012 (BAO 2012).
- On October 19, 2012, HKMA released a notice that three rules were published in the Gazette:
 - The Banking (Amendment) Ordinance 2012 (Commencement) Notice 2012 amends the powers of HKMA, enabling them to make rules prescribing capital and disclosure requirements for AIs incorporated in HK. The notice also prescribes the procedures for remedial action upon contravention of these requirements;
 - The Banking (Capital) (Amendment) Rules 2012 introduces the amendments to the Banking (Capital) Rules to implement the first phase of the Basel III requirements. The new rules will

- revise the capital requirements for locally incorporated AIs which are scheduled to take effect in Jan 2013. Under the revised framework, a bank will need to maintain a Common Equity Tier 1 (CET1) capital ratio of 405%, a Tier 1 ratio of 6% (both Tier 1 and CET1 to be phased in from January 1, 2013 to January 1, 2015) and a total capital of 8% from January 1, 2013.
- The Banking (Specification of Multilateral Development Bank) (Amendment) Notice 2012 amends the Banking (Specification of Multilateral Development Bank) to include the Multilateral Investment Guarantee Agency (MIGA), which is a member of the World Bank, to the list of multilateral development banks to enable it to be eligible for preferential risk-weighting under the Basel capital framework.
 - On December 13, 2012, HKMA issued a notice which indicated that the LegCo has completed the negative vetting of the above 3 Acts which were gazette on Oct 19, 2012.
 - On January 17, 2013, HKMA released a memorandum on the revisions to the Liquidity Coverage Ratio (LCR). As Basel recently issued its full text with some changes from the original version published in 2010, HKMA plans to develop, with industry consultation, a framework for local implementation of the revised LCR. Some issues under consideration include:
 - Two-tiered approach: HKMA still maintains the view of adopting a two-tiered approach for Hong Kong banks. Under this approach, only AIs considered at the core of the local banking system will be subject to the LCR. All other AIs will be subject to a modified version of the existing Liquidity Ratio (LR);
 - Phase-in of the LCR: HKMA is considering the BCBS phase-in arrangement and assessing the need to adhere to the original timetable;
 - Level 2B Assets: HKMA will be examining the attributes of Level 2B assets to determine their level of liquidity in times of market stress. Specific focus will be placed on assessing the price volatility and market liquidity of these assets based on their historical performance in the local markets in times of stress as well as the potential for incentivizing banks to assume more proprietary risk through increased holdings of particular asset classes;
 - Usability of High Quality Liquid Assets (HQLA) in times of stress: HKMA will incorporate into their rules the flexibility of banks to use their HQLA, even to the extent of causing their LCR to fall below the minimum requirement during a period of financial stress. HKMA will develop supervisory guidance to set out the circumstances under which such usage may be allowed and the considerations underlying HKMA's supervisory response in such circumstances;
 - Use of alternative liquidity approaches (ALA): As there is limited supply of HQLA denominated in Hong Kong dollars, AIs have been given three ALA options. However, HKMA is most likely to adopt the second ALA option, i.e., the use of foreign currency HQLA to cover local currency liquidity needs for banks subject to the LCR;
 - Implications for the modified LR (MLR) regime: HKMA will be reviewing the implementation timetable of the MLR and how this would be affected if a decision is made to phased-in the LCR. Further deliberation is required particularly in areas in which the LR adopts a more stringent approach than the LCR;
 - Update of LM-2: In addition to meeting the LCR, banks will need to adhere to the enhanced liquidity standards set out in the BCBS Principles for Sound Liquidity Risk Management and Supervision. These Principles have been incorporated into HKMA's Supervisory Policy Manual (LM-2) which will be updated later in the year.
 - On March 4, 2013, HKMA released their consultation paper on draft banking (Capital) (Amendment) Rules 2013 (B(C)(A)R) together with two letters to the Hong Kong Association of Banks and the Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies (the DTC Association) respectively. The consultation paper is seeking feedback on the refinements to the Banking (Capital) Rules (B(C)R). The additional refinements include:

- Sections 226 X and 226ZD of the B(C)R have been amended to recognize the credit risk mitigation given to exposures of authorized institutions (AIs) to central counterparties. One of the refinements proposed is where an AI's exposure is covered by a recognized credit derivative contract cleared by a qualifying CCP (QCCP), the AI may allocate to the credit protection covered portion of the exposure a risk weight of 2% if the AI is a clearing member (CM) of the QCCP; the AI may allocate a 4% if the AI is a client of a CM of a QCCP and certain conditions of section 226ZA(6) are met. The attributed risk-weight of the credit protection provider is 2% if the concerned credit derivative is cleared by a QCCP and the AI concerned is a CM of that QCCP, or a risk weight of 4% if the AI concerned is a client of a CM of the QCCP and only certain conditions are met.
- Sections 265 and 278 of the B(C)R addresses some internal inconsistencies between certain provisions in the IRB approach for AI's non-securitization exposures and the IRB approach for AI's securitization exposures.

The banking (Capital) (Amendment) Rules 2013 was published on April 12, 2013. The Rules will come into operation on June 30, 2013.

- On August 19, 2013, HKMA issued a circular on Basel III implementation, setting out the final version of the standard templates (including associated explanatory text) to be used by locally incorporated authorized institutions for the purpose of making disclosures in relation to their capital base under the Banking (Disclosure) (Amendment) Rules 2013.
- On September 4, 2013, HKMA published a supplementary guidance in the form of Frequently Asked Questions (FAQs) to facilitate a consistent application of the Banking (Capital) Rules and the Banking (Disclosure) Rules (also known as Basel III implementation). These are FAQs on the counterparty credit risk framework under the Banking (Capital) Rules and are intended to be explanatory in nature. They do not seek to introduce any new requirements into, or replace any requirements specified in, the Banking (Capital) Rules. Highlights include:
 - When applying to HKMA for approval to use the Internal Models Method (IMM) approach, an Authorized Institution (AI) should discuss and agree with HKMA the approach/ methodology for determining and reviewing the stress period.
 - The standard supervisory haircut applicable in consequence of a currency mismatch (8%) should be applied to each element of the collateral that is provided in a currency different from that of the exposure.
 - The supervisory floors set out in Section 226M are minimum requirements. The actual margin period of risk that should be used in the determination of default risk exposures may be longer than the supervisory minima if the liquidity of the positions concerned warrants it.
 - Inter-company transactions between an AI and its subsidiaries subject to consolidation can be excluded from the calculation of the solo-consolidated/ consolidated capital adequacy ratio. These transactions include CVA hedges that are with an internal desk.
 - For the purposes of Section 226P(6) paragraph (e) in Formula 23F, as the market convention is to use a fixed recovery rate for CDS pricing purposes, the AI may use this information to calculate the LGDMKT if both a market instrument of the counterparty concerned and an appropriate proxy spread are not available and there is no other information.
 - Under Section 226T(1)(e), hedges that depend on cross-default are not eligible CVA hedges.
 - It is the primary responsibility of the AI to determine whether a CCP is qualifying. In Hong Kong, HKMA and SFC announced in March 2013 their commitment to comply with the PFMI. Therefore AIs can regard CCPs overseen by SFC as QCCPs for capital adequacy purposes. If a CCP regulator has not made any public statement about its intention to implement the PFMI during 2013, or a CCP regulator has yet to implement the PFMI (regardless of whether a public statement has been made) after 2013, AIs should determine whether a CCP regulated by the CCP

regulator is qualifying based on the criteria set out in the definition of “qualifying CCP” in Section 226V(1).

- Although a CCP’s documentation may not prohibit client trades from being carried over and continued, other evidence such as the criteria in Section 226ZA(6)(c) is necessary to make this claim.
- The requirement set out in Section 226ZA(6)(a) means that upon insolvency of the clearing member, there is no legal impediment to the transfer of the collateral belonging to the AI to the CCP, to one or more of the other surviving clearing members or to the AI or the AI’s nominee.

2. Hong Kong strengthens the fixing mechanism of HIBOR

- On February 6, 2013, HKMA announced a package of measures to strengthen the fixing mechanism of the HKD Interest Settlement Rate (more commonly known as HIBOR). The following measures are to be implemented in six months’ time:
 - Transfer administrator function of HIBOR fixing process to the Treasury Markets Association (TMA);
 - Institute an effective surveillance and governance structure for the administrator function;
 - Develop a comprehensive Code of Conduct;
 - Phase out HIBOR fixings with little market demand (4-month, 5-month, 8-month, 9-month, 10-month and 11-month); and
 - Review the composition of the panel of reference banks every 12 months.

Additionally, once HKMA is satisfied with the Code of Conduct developed by the industry, banks will need to comply with the Code, through the issuance of a HKMA Guideline pursuant to Section 7 of the Banking Ordinance. Under Section 7 of the Guidelines, Managers, as defined under the Banking Ordinance, in charge of treasury, risk control and compliance functions will take responsibility for the reference bank’s rate submission activities. Banks are encouraged to participate voluntarily; however, HKMA has powers to ensure a sufficient number of reference banks contribute to the HIBOR benchmark. Independent external audits on TMA’s systems of control will also be conducted periodically.

3. Hong Kong plans to implement mandatory reporting and clearing requirements

- On March 27, 2012, the Legislative Council Secretariat published a joint paper from FSTB, HKMA and SFC called Progress in the Regulation of Over-the-counter Derivatives Market.

In response to the industry’s comments, HKMA and SFC will provide further clarification and/or refine the proposals, and aim to publish the consultation conclusions in the second quarter. In the fourth quarter, the regulators plan to introduce the bill into the Legislative Council, to provide a regulatory framework for the OTC derivatives market in Hong Kong. A further public consultation on the draft subsidiary legislation will also be conducted.

While mandatory clearing has yet to be implemented, regulators intend to enable voluntary clearing of OTC derivatives in Hong Kong through a local CCP, pending the introduction of a full-fledged regulatory regime for the OTC derivatives market in Hong Kong.

- On June 27, 2012, the securities and futures (futures contracts) notice 2012 made pursuant to section 392 of the Securities and Futures Ordinance (SFO) became effective on 27 June. It extended the insolvency override provisions under part iii of the SFO to cover also OTC derivatives transactions that are cleared through a recognized local CCP and are subject also to the rules of a recognized

exchange. The availability of insolvency override protection is a key consideration for market participants when deciding whether to implement voluntary clearing. The notice is a temporary measure which has the effect of extending insolvency clawback protection to certain cleared OTC derivative contracts. It is not expected to have any impact on the way that an OTC derivatives business is currently licensed or operated or on how the SFC Code of Conduct (and other guidance issued by SFC) will apply to OTC derivatives. It is also not expected to have any impact on how existing futures contracts or securities are traded or cleared or how the futures market or stock market currently operates.

- On July 11, 2012, HKMA and SFC released consultation conclusions on proposals to regulate the OTC derivatives market. HKMA and SFC also issued a Supplemental Consultation Paper on the proposed scope of newly-regulated activities to be introduced under the proposed OTC derivatives regulatory regime, and the proposed oversight of systemically important players. The proposed regulatory regime regarding OTC derivatives proposed in the consultation conclusions are as follows:

Joint oversight by HKMA and SFC: The new regime is proposed to be subject to the joint oversight of HKMA and SFC, with HKMA regulating the OTC derivatives activities of locally and overseas incorporated authorized institutions (“AIs”) and inter-dealer brokers who are licensed and regulated by HKMA as approved money brokers (“AMBs”), and SFC regulating that of licensed corporations (“LCs”) and Hong Kong persons.

Scope of the new regime: The term “OTC derivatives transaction” will be defined by reference to the term “structured product” (as defined in the Securities and Futures Ordinance(SFO)) with carve-outs for securities and futures contracts, structured products, securitized products, embedded derivatives and similar products (i.e. products offered by a single issuer to a number of investors) and spot contracts.

Mandatory reporting obligation: The mandatory reporting obligation will apply to a reportable transaction: (1) to which a LC, an AMB, a locally incorporated AI (whether acting through a local or an overseas branch) (“Local AI”), a Hong Kong branch of an overseas incorporated AI (“Overseas AI”) or (subject to meeting the reporting threshold) a Hong Kong person is a counterparty; or (2) which a LC, an AMB, a Local AI or a Hong Kong branch of an Overseas AI has originated or executed if the transaction has a “Hong Kong nexus”. HKMA TR is proposed to be the only designated TR although market participants may appoint a reporting agent (e.g. a global TR) through whom reporting to HKMA TR could be made.

Mandatory clearing obligation: The mandatory clearing obligation is proposed to apply to a LC, a Hong Kong person, an AMB, a Local AI (whether acting through a local or an overseas branch) or an Overseas AI (where the trade is booked through its Hong Kong branch) if it is a counterparty to a clearing eligible transaction, both counterparties exceed the clearing threshold, and neither party is exempt from the clearing obligation. The regulators have proposed to exempt transactions entered into by central banks, monetary authorities and certain public bodies and global institutions (such as IMF and BIS), intra-group transactions and transactions involving “closed markets” from the mandatory clearing obligation. Both local and overseas CCPs may become designated CCPs for the purposes of the mandatory clearing obligation provided that the CCPs are either a recognized clearing house (RCH) or an authorized automated trading services (ATS) provider under the SFO.

Mandatory trading obligation: Hong Kong will not impose a mandatory trading requirement at the outset.

Capital and margin requirements: The regulators have indicated that they intend to impose higher capital and margin requirements for non-cleared OTC derivatives transactions and specific proposals will be put forward for consultation later.

Regulation of intermediaries: Two new types of Regulated Activities (RA) will be introduced: (i) a new Type 11 RA which will capture the activities of dealers and advisers, and (ii) a new Type 12 RA which will capture the activities of clearing agents. The scope of the existing Type 9 RA (asset management) will also be expanded to cover the management of portfolios of OTC derivatives.

Regulations of systemically important players (SIPs): The regulators also proposed to regulate players who are not otherwise regulated by HKMA or SFC but whose positions or activities may nevertheless raise concerns of potential systemic risk.

- On September 11, 2012, HKMA announced it intends to offer a matching and confirmation service in December for market participants to transmit their OTC derivatives transactions to the HK Exchange CCP for voluntary clearing.
- On December 10, 2012, HKMA published its update of Administration and Interface Development Guide (AIDG) for Reporting Service, which lays out the finalized technical and logistical arrangements for reporting OTC derivatives transactions to the HKMA Trade Repository. The TR will initially cover IRS Floating vs Fixed (deliverable), IRS Floating vs Fixed (non-deliverable), Basis Swap (Floating vs Floating), Overnight Index Swap (Floating vs Fixed) and non-deliverable foreign exchange forwards. Users subscribing to the TR are required to pay a membership fee (if applicable) and transaction fees. The fee schedule is to be advised.
- On March 14, 2013, HKMA wrote to the Hong Kong Association of Banks, consulting the association on an interim proposal requiring the reporting of specified OTC derivative transactions by licensed banks until such time as the relevant legislation implementing the local regulatory regime for OTC derivative transactions is in place. According to the proposal, HKMA will require licensed banks to report, on an interim basis, certain OTC derivative transactions from August 5, 2013, subject to some transitional arrangement. Reportable transactions are those conducted by a reporting bank that have the following characteristics:
 - the transaction is an interest rate swap or FX non-deliverable forward supported by the HKMA-TR;
 - the transaction is booked in the HK office or branch of a licensed bank;
 - the other counterparty to the transaction is also a licensed bank; and
 - The transaction is outstanding as of implementation date (i.e., August 5, 2013) or entered into after the implementation date, subject to the transitional reporting requirements set out below.

A three-month grace period will be allowed for setting up reporting channels to the HKMA-TR and a six-month grace period will be allowed for completing any backloading or reporting of reportable transactions entered into on or before the expiry of the three-month grace period.

The proposed interim reporting requirements by HKMA do not apply to Licensed Corporations regulated by SFC. However, SFC has also written to some Licensed Corporations, seeking their comments on the proposed reporting requirements if they were to apply to Licensed Corporations in a similar way. SFC asks the Licensed Corporations to give feedback on whether it would be possible for the Licensed Corporation to participate in the interim reporting on a voluntary basis and if not possible, the major obstacles that need to be resolved.

- On March 28, 2013, HKMA and SFC jointly announced their commitment to comply with the new international regulatory standards for financial market infrastructures (FMIs). These standards are contained in the Principles for financial market infrastructures (PFMIs) issued by the Bank for International Settlements' Committee on Payment and Settlement Systems (CPSS) and the International Organization of Securities Commissions (IOSCO) in April 2012.

The FMIs under HKMA's purview are those designated under the Clearing and Settlement Systems Ordinance, and the trade repository established and operated by HKMA. The FMIs under the purview of SFC are the clearinghouses recognized under the Securities and Futures Ordinance. Both HKMA and SFC will implement the PFMI within their respective regulatory frameworks through their regulatory guidelines. HKMA has revised its oversight guideline on the designated systems, adding new or more elaborate requirements on governance, disclosure and risk management, etc. SFC will issue its guidelines for recognized clearinghouses, after consultation with relevant stakeholders. HKMA and SFC will continue to monitor the compliance of their FMIs against the international standards.

- On April 8, 2013, Hong Kong Exchanges and Clearing Limited (HKEx) announced that 12 financial institutions would join OTC Clearing Hong Kong Limited (OTC Clear), a clearing house HKEx established for the purpose of providing clearing services for OTC derivatives, as founding shareholders. The 12 financial institutions are Agricultural Bank of China Limited, Hong Kong Branch, Bank of China (Hong Kong) Limited, Bank of Communications Co., Ltd. Hong Kong Branch, The Bank of East Asia Limited, CCB International Securities Limited, Citibank, N.A., Deutsche Bank AG, The Hongkong and Shanghai Banking Corporation Limited, Industrial and Commercial Bank of China (Asia) Limited, J.P. Morgan, Standard Chartered Bank (Hong Kong) Limited and one other financial institution which was in the final stage of obtaining formal internal approval at the time of the issuance of the HKEx press release.
- The Securities and Futures (Amendment) Bill 2013 was gazetted on June 28, 2013 and comprises three key aspects:
 - to introduce mandatory reporting, clearing and trading obligations in line with the G20 commitments;
 - to provide for the establishment and regulation of the necessary infrastructure through which the mandatory obligations will be fulfilled;
 - to provide for the regulation and oversight of key players in the OTC derivative market, i.e. authorized institutions (which covers licensed banks, restricted license banks and deposit-taking companies), approved money brokers, licensed corporations and other persons to be prescribed by subsidiary legislation.

Under the proposed regulatory regime, two new regulated activities (RAs) in relation to OTC derivatives will be introduced, namely a new Type 11 RA to cover the activities of dealers and advisers and a new Type 12 RA to cover the activities of clearing agents. In addition, the existing Type 9 RA (asset management) and Type 7 RA (provision of automated trading services) will be expanded to cover OTC derivative portfolios and transactions respectively.

The Bill will also provide for the regulation of systemically important participants who are not licensed or registered with either HKMA or SFC, but whose positions or transactions in the OTC derivative market are so significant that they may nevertheless raise concerns of potential systemic risks.

- On June 28, 2013, HKMA announced rules for interim trade reporting. Licensed banks are required to report FXNDF and vanilla single currency interest rate swaps (Fixed vs Floating swaps, basis swaps and overnight indexed swaps) to a trade repository operated by HKMA (HKMA-TR). Trades (including cleared transactions) conducted by a licensed bank and booked in its Hong Kong office (or Hong Kong branch), of which the counterparty is also a licensed bank (or the original counterparty, in the case of cleared transactions), are required to report to HKTR within 2 business days (T+2 basis). Trades remain outstanding on August 5 or are traded on or after such date are subject to the reporting requirements. A grace period of approximately four months is granted to licensed banks to

commence reporting by December 9 and a period of six months is granted to backload the transactions (including transactions entered on or before December 8) by February 4, 2014. All licensed banks are required to join HKTR regardless of whether they have any reportable transaction and whether they adopt direct or indirect reporting.

- On September 6, 2013, HKMA and SFC jointly published their conclusions on a joint supplemental consultation (the "Consultation Conclusions") regarding the proposed scope of activities to be regulated under the new over-the-counter (OTC) derivatives regime, and regulatory oversight of systemically important participants. HKMA and SFC's proposals in relation to these two areas are already included in some detail in the Securities and Futures (Amendment) Bill 2013 (the "Bill") introduced to the Legislative Council on June 28, 2013. The bill is anticipated to come into effect in early 2014. The Consultation Conclusions explained the regulators' rationale in framing the new regulated activities and summarized their responses to public comments. The new regulated activities, Type 11 RA and Type 12 RA, were proposed to be introduced under Schedule 5 to the Securities and Futures Ordinance (SFO). Type 11 RA would cover the activities of dealers and advisers and Type 12 RA would cover the activities of clearing agents. Additionally, the existing Type 7 RA and Type 9 RA were proposed to be expanded to cover OTC derivatives.
- On November 25, 2013, OTC Clearing Hong Kong Limited (OTC Clear) launched its clearing services for inter-dealer interest rate swaps denominated in four currencies: RMB, Hong Kong Dollars, US Dollars and Euros. It also offers clearing services for inter-dealer non-deliverable forwards referencing RMB, Taiwan Dollars, Korean Won and the Indian Rupee. OTC Clear plans to introduce client clearing in 2014 after the new legislation on the Securities and Futures (Amendment) Bill is in place and relevant amendments to OTC Clear rules are approved by the Securities and Futures Commission. In addition, it will expand its clearing services to cover other OTC derivatives when appropriate. OTC Clear's clearing members currently comprise of the Bank of China (Hong Kong) Limited, the Hongkong and Shanghai Banking Corporation Limited and Industrial and Commercial Bank of China (Asia) Limited, three of its 12 founding shareholders. OTC Clear is also working with a number of financial institutions in Hong Kong on membership admission arrangements.
- On December 3, 2013, HKMA published its latest update AIDG for Reporting Service. The changes made are mainly for reflecting the new developments and clarifications.
- At the Legislative Council meeting on March 26, 2014, the Council passed the Securities and Futures (Amendment) Bill 2013 with amendments moved by Secretary for Financial Services and the Treasury at the Committee Stage.

The Bill includes the introduction of mandatory reporting, clearing and trading obligations in line with G20 commitments. It provides for regulating and overseeing key players in the over-the-counter derivative market, introducing two new regulated activities, to cover dealers', advisers' and clearing agents' activities. Asset management and automated trading services provisions will also be expanded to cover over-the-counter derivative portfolios and transactions. The Bill also provides for the regulation of systemically important participants who are not licensed or registered with either HKMA or SFC, but whose positions or transactions in the OTC derivative market are so significant that they may nevertheless raise concerns of potential systemic risks. The amendments introduced at the Committee Stage include, among others, adding a record keeping obligation and some clarificatory language which provides that even if a transaction contravenes the mandatory reporting, clearing, trading or record keeping obligation, this should not of itself affect the validity and enforceability of the transaction.

In view of the passage of the Bill, it is anticipated that the additional consultation papers to introduce new sub-legislations, codes and/or guidelines will come through in Q2 of 2014.

- On March 31, 2014, HKMA announced that the new phase of the OTC derivatives Trade Repository (HKTR) will be launched in September 2014. In this new phase, 15 products of FX, Rates and Equity will be introduced and institutions could report on a voluntary basis. HKMA has also updated the Reference Manual for Reporting Service and the Administration and Interface Development Guide to accommodate these new products together with some refinements to the existing procedures and technical specifications for reporting. Another batch of products will be added by the end of 2015 to complete the product coverage of the HKTR.

4. Hong Kong launches CNH HIBOR fixing

- On April 25, 2013, TMA announced its plan to launch the CNH Hong Kong Interbank Offered Rate fixing (CNH HIBOR fixing) in June 2013. The launch of the fixing will provide a formal benchmark for market participants to make reference to in pricing their RMB loan and interest rate contracts. The planned CNH HIBOR fixing will include tenors of overnight, 1 week, 2 weeks, 1 month, 2 months, 3 months, 6 months and 12 months and will be calculated from rates contributed by 15 to 18 reference banks that are active in the RMB interbank market. The rate was launched on June 24, 2013.
- On August 20, 2013 following a consultation with the Hong Kong Association of Banks (HKAB), HKMA announced that it will issue the Code of Conduct for Reference Banks for TMA's CNH Hong Kong Interbank Offered Rate as Annex B to module CG-7 of the Supervisory Policy Manual (SPM).

The Code was published by notice in the Gazette on August 23. The SPM module issued on May 3 sets out the supervisory requirements on systems of control to be maintained by authorized institutions (AIs) that are benchmark submitters. The module is intended to be of generic application to benchmark submitters, while its Annexes provide detailed requirements and rate submission guidance for specific benchmark fixings. As an Annex to the SPM module, the new Code provides sound practices on systems of control for the CNH Hong Kong Interbank Offered Rate (CNH HIBOR) fixing process as well as clear guidance for reference banks to observe in making rate submissions for this fixing. HKMA requires AIs that are submitting rates for CNH HIBOR take active steps to comply with the guidance set out in the Code as quickly as possible and achieve full compliance within six months from the date of the Gazette notice.

5. SFC amends Professional Investor Regime and the Client Agreement Requirements

- On May 15, 2013, SFC issued a consultation paper on the Proposed Amendments to the Professional Investor Regime and the Client Agreement Requirements. In it, SFC seeks views on whether corporate and individual professional investors should continue to be allowed to participate in private placement activities and whether the monetary thresholds set out in the Professional Investors Rules should be increased.

SFC also proposes to require intermediaries to comply with all requirements in the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (the "Code"), including the suitability requirement, when dealing with all investors who are individuals, their wholly owned investment vehicles and investment vehicles that are wholly owned by family trusts. For institutional professional investors, SFC proposes to maintain the current position so that intermediaries dealing with them are automatically entitled to all current Code exemptions; and for professional investors that are corporations, SFC proposes that intermediaries can continue to be exempt from the suitability requirement and other current Code exemptions after conducting a principles-based assessment of knowledge and investment experience and obtaining their consent etc.

SFC also proposes that amendments be made to the client agreement requirements in the Code. SFC proposes, in summary, that the Suitability Requirement should be incorporated into client agreements as a contractual term; and client agreements should not contain terms which are inconsistent with the Code and should accurately set out in clear terms the actual services to be provided to the client.

6. Resolution regime for financial institutions

- On January 7, 2014, FSTB, together with HKMA, SFC and the Insurance Authority (IA), issued the first-stage public consultation paper on An Effective Resolution Regime for Financial Institutions in Hong Kong.

Key highlights of the paper include:

- Initial thinking and proposals on how a “resolution regime” might be established, which provides the authorities in Hong Kong with powers to bring about the orderly resolution of financial institutions (FIs) which could pose systemic risk if they were to become non-viable and, in so doing, complies with the Financial Stability Board (FSB)’s “Key Attributes of Effective Resolution Regimes for Financial Institutions” (Key Attributes) published in November 2011. The Key Attributes are the new international standards for resolution regimes. The FSB has indicated that all of its member jurisdictions (including Hong Kong) should implement resolution regimes which are compliant with the Key Attributes by the end of 2015;
- The Government and regulators’ current thinking on legislative changes needed to bring Hong Kong’s existing arrangements in line with the Key Attributes are described. A number of gaps were identified in the existing supervisory intervention powers or toolkits of the local regulators when compared to the Key Attributes. To address these gaps and provide the basis for a robust resolution regime, a single cross-sectoral regime is proposed and a case is made for each of the sectoral regulators (HKMA, SFC and IA) to be designated as the resolution authorities for FIs within their purview.
- Consideration on which FIs should fall within the scope of the regime (taking into account which FIs could pose systemic risk on failure) as well as the conditions under which the regime will be used and the objectives to be advanced in any resolution. The powers which are proposed to be made available to the resolution authorities to stabilize and resolve an FI are those identified in the Key Attributes (namely transfer of the FI or some or all of its business to another FI or to a bridge institution and “bail-in” of liabilities to recapitalize the FI);
- Discussion on whether a “temporary public ownership” option should be made available;
- Safeguards that should be available to parties affected by resolution and how the resolution regime might operate in a cross-border context;
- Discussion on how certain rights of creditors might be temporarily suspended during the initial stages of resolution.

ISDA Submissions (since 2010)

- January 27, 2010: [ISDA submission in response to the Consultation Paper on the Review of Corporate Rescue Legislative Proposals](#)
- December 2, 2010: [JAC submission to the Bills Committee on the Securities and Futures and Companies Legislation \(Structured Products Amendment\) Bill](#)
- July 8, 2011: [ISDA submission to HKMA on the Conceptual Framework of the Trade Repository](#)
- November 30, 2011: [ISDA submission to HKMA and SFC on the consultation paper on the proposed regulatory regime for Hong Kong’s over-the-counter derivatives market](#)

- December 6, 2011: [ISDA submission to HKMA on the report on consultation on logistical and technical arrangements for reporting to the Hong Kong trade repository](#)
- January 29, 2013: [ISDA submission to HKMA and SFC with regard to the “originate or execute” definition in the consultation paper on the proposed regulatory regime for the over-the-counter derivatives market in Hong Kong](#)
- April 5, 2013: ISDA submission to HKMA and SFC regards to the “originated or executed” definition in the consultation paper on the proposed regulatory regime for the over-the-counter derivatives market in Hong Kong. This submission is not yet public.
- April 15, 2013: ISDA submission to HKMA regards to HKMA Consultation on reporting requirement for OTC derivatives transactions. This submission is not yet public.
- May 16, 2013: ISDA submission to HKMA regarding HKMA Consultation on reporting requirement for OTC derivatives transactions. This submission is not yet public.
- June 4, 2013: ISDA submission to HKMA regarding the reporting logic for historical records amendment. This submission is not yet public.
- July 16, 2013: ISDA submission to HKMA and SFC on the “originated or executed” definitions under the trade reporting regime. This submission is not yet public.
- July 6 and 25, 2013: ISDA submissions to HKMA on the Reporting Service Agreement. These two submissions are not yet public.
- August 30, 2013: ISDA submission to HKMA and SFC on the “originate or execute” definition under the trade reporting regime. This submission is not yet public.

INDIA

AT A GLANCE

Central Bank:	Reserve Bank of India (RBI) http://www.rbi.org.in
Bank Regulator:	RBI
Securities/Futures Regulator:	Securities and Exchange Board of India (SEBI) http://www.sebi.gov.in
Other Regulator:	Forward Markets Commission (FMC) http://www.fmc.gov.in
Associations:	Fixed Income Money Market and Derivatives Association (FIMMDA) Foreign Exchange Dealers' Association of India (FEDAI) Primary Dealers Association of India (PDAI)
Master Agreement:	ISDA
Legal Opinions:	Netting and collateral opinions by Juris Corp Opinion on transactions entered into electronically and electronic records by Juris Corp
CCP/TR Status:	The Clearing Corporation of India Ltd (CCIL) clears inter-dealer USD-INR FX spots and forwards, and is expected to launch inter-dealing clearing for INR interest rate swaps (IRS) and forward rate agreements (FRA) in the future. While clearing is currently voluntary, FEDAI has issued a circular requiring its members to clear their eligible USD-INR FX forwards through CCIL though the deadline has been postponed indefinitely. Reporting to CCIL of inter-dealer INR IRS, FRA and credit default swap (CDS) trades and INR and foreign currency FX forwards, swaps and currency options is required. Reporting of client trades in FX forward and options above a reporting threshold is also required.

Key Regulatory Milestones

1. OTC Derivatives Market Reforms

- On March 6, 2014, the Implementation Group on OTC Derivatives Market Reforms released its report on progress in implementing OTC derivatives reform measures in India. In this report, the Group has made a gap analysis with regard to various OTC derivative products and has suggested tentative timelines for reform implementation.

The report notes that while India is fully committed to achieving the G-20 reform agenda for OTC derivatives, the pace and nature of such reforms depends on domestic market conditions. The recommended roadmap for implementation of reform measures with regard to OTC derivatives in India has been worked out with timelines extending up to March 2015. As some of these milestones may be dependable on variables such as an improvement in liquidity, there is a possibility that timelines may be revisited or revised based on developments in the OTC derivatives market.

2. Trade reporting

- Reporting of inter-dealer transactions in INR IRS and FRAs to CCIL has been required since August 30, 2007.
- Since the launch of the onshore CDS market on December 1, 2011, market-makers have been required to report their CDS transactions with both users and other market-makers.
- In line with the G20 commitments, CCIL was designated as the OTC derivatives trade repository for India and reporting was extended to inter-dealer USD-INR FX forwards and swaps and foreign currency (FCY)-INR options on July 9, 2012. This was expanded to other inter-dealer FX forwards and swaps and currency options (i.e., transactions in 13 FCY other than USD against INR, and FCY against FCY transactions) on November 5, 2012. The FCYs (in addition to USD) are EUR, GBP, JPY, AUD, CAD, CHF, HKD, DKK, NOK, NZD, SGD, SEK and ZAR.
- Reporting of client trades in FX forwards and options has commenced on April 2, 2013, subject to a reporting threshold of USD1 million (or equivalent in other currencies). The reporting threshold applies to the base currency of the trade at the time of transacting.
- On December 4, 2013, RBI issued a circular on the Reporting Platform for OTC Foreign Exchange and Interest Rate Derivatives. All/selective trades in OTC foreign exchange and interest rate derivatives between the Category-I AD banks/ market makers (banks/PDs) and their clients shall be reported on the CCIL platform, subject to a mutually agreed upon confidentiality protocol.

CCIL has now completed the development of the platform for reporting of the following OTC derivative transactions: Inter-bank and client transactions in Currency Swaps; Inter-bank and client transactions in FCY FRA/IRS; and Client transactions in INR FRA/IRS. Additionally, CCIL has put in place a confidentiality protocol, in consultation, with the market representative bodies. The platform will be operationalized from Dec 30, 2013 for the above OTC derivative transactions.

3. Clearing

- CCIL clears inter-dealer USD-INR FX forwards and plans to launch inter-dealer clearing of INR IRS and FRAs.
- On January 17, 2012, FEDAI issued a notice to its members requiring them to join CCIL's Forex Forward Guaranteed Settlement Segment by June 30, 2012 and to start clearing their eligible FX forward transactions through CCIL by October 1, 2012. The clearing deadline has since been postponed indefinitely.
- CCIL has amended its regulations governing the Forex Forward Guaranteed Settlement Segment with the amendments taking effect on March 31, 2013. The key amendments confer a right upon members to resign and limits the liability of members for losses arising from the default of another member.
- On January 28, 2013, RBI issued a circular on the 'Standardization of Interest rate Swap (IRS) Contracts', which aims to facilitate central clearing and settlement of IRS contracts in the future and to improve tradability. FIMMDA will prescribe the terms regarding minimum notional principal amount, tenors, trading hours, settlement calculations etc., in consultation with market participants. Standardization will be mandatory for INR Mumbai Inter Bank Offer Rate (MIBOR) Overnight Index Swap (OIS) contracts and for all IRS contracts other than client trades. All new INR MIBOR-OIS contracts executed from April 1, 2013 onwards will need to be standardized.

- On January 1, 2014, RBI granted the status of Qualified Central Counterparty (QCCP) to CCIL. CCIL has qualified as a QCCP on the basis that it is authorized and supervised by the RBI under the Payment and Settlement Systems Act, 2007. It is also subject, on an on-going basis, to rules and regulations that are consistent with the Principles of Financial Market Infrastructures (PFMIs) issued by CPSS-IOSCO. In July 2013, CCIL was designated as a critical Financial Market Infrastructure (FMI) for oversight considering its systemic importance in financial markets regulated by the RBI.
- On February 28, 2014, the Risk Management Department of CCIL released its consultation paper on “the Segregation and Portability Related Changes & Clearing Member Structure”. CCIL currently deals directly with all its members, with no indirect participation except in the securities segment. All trades of a member and its constituents are not segregated for margin computation. CCIL is seeking to create a structure so that some of its members, based on agreed criteria, may become Clearing Members (CMs). Indirect participants may access the clearing system via these CMs. The CM structure will be implemented in all segments of CCIL after suitable modification. The aim of the proposals is to meet Principle 14 “Segregation and Portability” of the CPSS-ISOCO PFMIs.

CCIL seeks to create a basic structure through which it will receive all trades of the indirect participants through their CMs for settlement. These trades will have identifiers to denote those as trades of individual participants. CMs will have the option to allow indirect participants to report their trades through CMs or even directly to CCIL within certain pre-specified limits. CMs be responsible for any margin deficit or any settlement shortfall in the account of any of the indirect participants which accesses clearing through them.

Indirect participants will have the option to select fully segregated collateral model or otherwise. If any indirect participant selects fully segregated collateral, it will have full visibility through CCIL system of margins deposited on its behalf by their CMs. This information will be less detailed for indirect participants who select group or omnibus margin accounts. In the CBLO & Forex Segments, indirect participants have to maintain segregated collateral accounts only. However, an indirect participant, when allowed, may clear through multiple CMs.

The consultation paper covers and seeks views on margin shortfall, settlement shortfall, default on account of indirect participant and clearing member default.

- On March 27, 2014, RBI issued a circular on the Exposure Norms for Standalone PDs. With effect from April 1, 2014, as an interim measure, a standalone Primary Dealer’s (PD) clearing exposure to a Qualifying Central Counterparty (QCCP) will be kept outside the exposure ceiling of 25% of its net owned funds applicable to a single borrower/counterparty.

4. Onshore CDS market

- RBI’s Guidelines on Introduction of CDS for Corporate Bonds (CDS Guidelines) were issued on May 23, 2011, and came into effect on December 1, 2011. Revisions were made via the Guidelines on ‘Credit Default Swaps (CDS) for Corporate Bonds – Permitting All India Financial Institutions’ (AIFIs) on April 23, 2012 and via Revised Guidelines on January 7, 2013.
- Only single-name INR CDS on Indian-resident corporates are allowed. There are a number of other constraints on what CDS can be written. While ‘Restructuring’ is allowed as a Credit Event, this is a modified version that departs significantly from the international market definition of ‘Restructuring’.
- The CDS Guidelines creates two categories of participants – market-makers and users. Currently, only commercial banks and primary dealers that fulfil certain eligibility norms are allowed to be

market-makers. Commercial banks, primary dealers, non-banking financial companies, mutual funds, insurance companies, housing finance companies, provident funds, listed corporates and foreign institutional investors, and AIFs, namely, Export Import Bank of India (EXIM), National Bank of Agriculture and Rural Development (NABARD), National Housing Bank (NHB) and Small Industries Development Bank of India (SIDBI) are allowed to be users.

- Market-makers can buy or sell CDS without any underlying position in the bonds. Users can only buy CDS as a hedge for a bond that they hold and must unwind the CDS (or with the consent of the CDS seller, novate the CDS to their bond purchaser) within 10 business days of selling the bond with their original protection seller at a mutually agreeable or FIMMDA price. If no agreement is reached, then unwinding will be done at the FIMMDA price.
- Participants are required to mark-to-market their CDS positions daily and to margin their CDS positions at least weekly.

5. OTC derivatives guidelines

- “The 2007 Comprehensive Guidelines on Derivatives” (Derivatives Guidelines) were amended by RBI on August 2 and November 2, 2011. The November amendments came into effect on January 1, 2012. The Derivatives Guidelines describe the types of generic and structured derivative products that can be offered by market-makers (generally commercial banks and primary dealers). The Derivatives Guidelines also sets out the requirements that must be complied with by market-makers (including risk management practices, conducting a ‘user appropriateness’ and ‘product suitability’ assessment, obtaining Board Resolutions from the user, providing term sheets and risk disclosure statements to the user and making available mark-to-market calculators to the user) before offering derivative products to users (primarily corporates). The requirements differentiate between the offer of generic and structured derivative products, being more rigorous where structured derivative products are concerned.
- On May 16, November 23 and December 15, 2011, RBI amended its “Comprehensive Guidelines on Over the Counter (OTC) Foreign Exchange Derivatives and Overseas Hedging of Commodity Price and Freight Risks” (FX Guidelines) issued on December 28, 2010. The FX Guidelines set out the categories of persons permitted to participate in the OTC foreign exchange derivatives market in India, the types of products that they can use and the conditions under which they may do so. The FX Guidelines also set out the circumstances in which residents are permitted to hedge commodity price and freight risk overseas. The Derivatives Guidelines also apply *mutatis mutandis* to foreign exchange derivatives. The part of the FX Guidelines that attract great interest deals with the entry into foreign exchange derivatives by Authorized Dealer Category I banks (AD Banks) with persons resident in India that are non-AD Banks under the ‘Contracted Exposures’ or ‘Probable Exposures based on Past Performance’ routes. In particular, the FX Guidelines restrict the categories of persons that can engage in cost reduction structures and the types of cost reduction structures that are permitted. The FX Guidelines also clarify the nature and extent of the due diligence that the AD Banks are required to undertake to verify that the user has the underlying exposure.

6. Financial Sector Legislative Reforms Commission

- The Financial Sector Legislative Reforms Commission (FSLRC) has issued its final report in March 2013. The FSLRC was constituted by the Ministry of Finance to review and recast the legal and institutional structures of the financial sector in India in tune with the contemporary requirements of the sector.

- In determining the financial legal framework, the FSLRC identified 9 areas that needed to be covered by such framework:
 - consumer protection,
 - micro-prudential regulation,
 - resolution of failing financial firms,
 - capital controls,
 - systemic risk,
 - development and redistribution,
 - monetary policy,
 - public debt management, and
 - contracts, trading and market abuse.
- The FSLRC took a principles-based instead of a sectoral-based approach in drafting an Indian Financial Code (Code). The draft Code establishes a single framework for regulatory governance across all regulatory agencies and defines the functioning of regulators with considerable specificity in the areas of regulation-making, executive functions and administrative law functions.
- The FSLRC proposes that there be 7 agencies but suggests that the possibility of a single unified financial regulator be considered over a horizon of 5 to 10 years. The 7 agencies are:
 - RBI (but with modified functions).
 - SEBI, FMC, the Insurance Regulatory and Development Authority and the Pension Fund Regulatory and Development Authority be merged into a new unified agency.
 - The Securities Appellate Tribunal be subsumed into the new Financial Sector Appellate Tribunal.
 - The Deposit Insurance and Credit Guarantee Corporation of India be subsumed into the new Resolution Corporation.
 - A new Financial Redressal Agency be created.
 - A new Debt Management Office be created.
 - The Financial Stability and Development Council will continue to exist, though with modified functions and a statutory framework.

On June 6, 2013, the Ministry of Finance also invited comments on the FSLRC Report to be submitted by July 15, 2013.

7. Constitution of a Standing Council of Experts

- On June 7, 2013, the Ministry of Finance constituted a Standing Council of Experts with a view to assessing the international competitiveness of the Indian financial sector. The Standing Council will examine various pecuniary and non-pecuniary transaction costs/burden of doing business in the Indian market and make certain recommendations for enhancing its competitiveness. It will also examine possibilities for and make recommendations aimed at enhancing transparency, promoting developments of and strengthening governance in the Indian capital markets /financial sector while ensuring that risks are contained and investor interests are protected.

8. Implementation of Basel III

- On February 21, 2012, RBI released the draft guidelines on Liquidity Management and Basel III Framework on Liquidity Standards. RBI will introduce the Liquidity Coverage Ratio (LCR) and the Net Stable Funding Ratio (NSFR) as prescribed by the Basel Committee, with effect from January 1, 2015 and January 1, 2018, respectively. Supervisory reporting of the LCR and NSFR will begin from the end of the second quarter, 2012. The LCR and NSFR will be applicable to Indian banks on a whole bank level, i.e., on a stand-alone basis including overseas operations through branches, and

later on a consolidated level. For foreign banks operating in India, the LCR and NSFR will be applicable on a stand-alone basis.

- On May 2, 2012, RBI released the final guidelines on Implementation of Basel III Capital Requirements stating a minimum Common Equity Tier 1 (CET1) ratio at 5.5%, Total Tier 1 capital at 7% and Total capital (Tier 1 + Tier 2) at 9%. A Capital Conservation Buffer (CCB) of 2.5%, comprising of CET1, will be applied. Banks would be required to hold a total of 11.5% of capital. The transitional arrangements will begin on January 1, 2013, in a phased manner and be fully implemented by March 31, 2018.

9. Regulation and Supervision of Financial Market Infrastructures

- On July 26, 2013, RBI released a policy document on Regulation and Supervision of Financial Market Infrastructures. The policy document describes in detail the criteria for designating an FMI, the applicability of the Principles for Financial Market Infrastructures (PFMIs) to the FMIs, oversight of FMIs and other related aspects. The financial market infrastructures regulated by RBI include Real Time Gross Settlement (RTGS), Securities Settlement Systems (SSSs), CCIL and Negotiated Dealing System (NDS). RBI also states in the policy document that as a member of the Financial Stability Board (FSB) and the Committee on Payment and Settlement Systems (CPSS), it is committed to the adoption of the PFMI issued by CPSS and the International Organisation of Securities Commission (IOSCO) in April 2012.

10. RBI issues guidelines on capital requirements for bank exposures to CCPs

- On January 10, 2013, RBI issued draft Guidelines on Capital Requirements for Bank Exposures to Central Counterparties which differs from the Basel Committee on Banking Supervision (BCBS)'s interim framework in the following respects:
 - The RBI capital framework treats a CCP as a financial institution while the BCBS framework does not;
 - Only the Current Exposure Method (CEM) can be used by a bank clearing member to calculate its trade exposures to the CCP;
 - Bank clearing members of CCIL may calculate their total replacement cost to CCIL on a net basis. For all other CCPs, banks must calculate their total replacement cost on a gross basis; and
 - A clearing member exposure to clients is treated as a bilateral trade. However, under the BCBS framework, in addition to the clearing member exposure being treated as a bilateral trade, a margin period of risk is calculated by multiplying the exposure at default by a scalar of no less than 0.71 if a bank adopts either the CEM or the Standardized Method.
- On July 2, 2013, RBI issued finalized guidelines on Capital Requirements for Banks' Exposures to Central Counterparties. Exposures from the settlement of cash transactions (e.g. equities, spot FX, commodity etc.) will not be subject to these requirements.

Capital requirements will be dependent on whether the CCP is a qualifying CCP (QCCP) or a non-Qualifying CCP. If a bank acts as a clearing member (CM) of a QCCP, the risk weight of 2% applies. The exposure amount will be calculated by using the Current Exposure Method (CEM). Banks will need to demonstrate via a legal opinion the legal certainty of netting exposures to a QCCP. If a bank is a client of a CM of a QCCP, it may apply the same risk weight as a CM's exposure to a QCCP. The client must obtain a legal opinion that, in the event of a legal challenge, the relevant courts and administrative authorities will find that the client will bear no losses on account of the insolvency of an intermediary under the relevant laws. If a client is not protected from losses in the event of a CM

and another client of a CM jointly defaulting, but all other conditions are met, a risk weight of 4% will apply.

Collateral posted by a CM that is held by a custodian and is bankruptcy remote from the QCCP will have a 0% risk weight. Collateral posted by a client that is held by a custodian and is bankruptcy remote from the QCCP, CM and other clients, will also apply a 0% risk weight, otherwise it will apply a 2% or a 4% risk weight depending on the degree of protection the client has from a default.

- On January 7, 2014, RBI issued a circular on the interim arrangements for Banks' Exposure to Central Counterparties (CCPs). As an interim measure, a bank's clearing exposure to a Qualifying CCP (QCCP) will be excluded from the exposure ceiling of 15% of its capital funds for a single counterparty. The clearing exposure will include trade exposure and default fund exposure. Other exposures to QCCPs such as loans, credit lines, investments in the capital of the CCP, liquidity facilities etc. will remain within the existing exposure ceiling of 15% of capital funds to a single counterparty. All exposures of a bank to a non-QCCP will fall within the 15% exposure ceiling to a single counterparty.

Banks will be required to report their clearing exposures to each QCCP to RBI. RBI may initiate suitable measures, requiring banks to initiate risk mitigation plans if their exposures to QCCPs are considered high. Currently, there are four QCCPs in India: CCIL, National Securities Clearing Corporation Ltd. (NSCCL), Indian Clearing Corporation Ltd. (ICCL) and MCX-SX Clearing Corporation Ltd. (MCX-SXCCL).

11. Amendments to Maharashtra Stamp Act published

- The Maharashtra Tax Laws (Levy and Amendment) Act, 2013 (Mah. Act No. VIII of 2013) (2013 Act) (Indian version) was published in the Maharashtra Government Gazette and came into force on May 1, 2013. This Act amends certain tax laws in the State of Maharashtra. It provides that where any instrument referred to in clauses (a) to (g) of Section 30 of the Maharashtra Stamp Act is executed after the commencement of the 2013 Act, the liability to pay proper stamp duty shall be on such financial institution concerned without affecting their right, if any, to collect it from the other party. In respect of any such instrument executed before the commencement of the 2013 Act, and are effective and where proper stamp duty is not paid, the financial institution shall impound such instrument on or before September 30, 2013 and forward the same to the relevant authorities for recovery.

12. RBI releases circular on prudential norms for off-balance sheet exposures of banks

- On June 18, 2013, RBI released its circular on Prudential Norms for Off-balance Sheet Exposures of Banks – Deferment of Option Premium. By way of background, banks are permitted to defer, at their discretion, the premium on plain vanilla options sold by them to users subject to certain prescribed conditions, with effect from January 25, 2012. This facility has now been extended to cost reduction forex option structures in which the liability of the users never exceeds the net premium payable to the bank under any scenario. Certain conditions have been prescribed such as deferral of the payment of premium for option structure with maturity of more than 1-year, provided that the premium payment period does not extend beyond the maturity date of the contract. Banks will also need to carry out the necessary due diligence with regard to the ability of users to adhere to the premium payment schedule.

13. RBI releases capital and provisioning requirements for bank exposures

- On July 2, 2013, RBI released its draft guidelines on Capital and Provisioning Requirements for Exposures to Unhedged Foreign Currency Exposure. RBI proposes to introduce incremental provisioning and capital requirements for bank exposures to corporates that have unhedged foreign currency exposures. RBI proposes the following calculation methodology:
 - determine the amount of unhedged Foreign Currency Exposure (UFCE);
 - estimate the extent of likely loss;
 - estimate the riskiness of unhedged position.

This loss may be calculated as a percentage of EBID per the latest quarterly results certified by statutory auditors. The higher the percentage, the higher the incremental capital and provisioning requirements will apply.

14. RBI issues circular on Risk Management and Interbank Dealings relating to PN/ODI

- On August 1, 2013, RBI issued a circular on Risk Management and Interbank Dealings. RBI refers to its earlier circular issued on June 26 which provides that if a foreign institutional investor (FII) wishes to hedge the rupee exposure of one of sub-account holders, it should be done on the basis of a mandate from the sub-account holder for this particular purpose. In the August 1 circular, RBI clarifies that if an FII wishes to enter into a hedge contract for the exposure relating to that part of the securities held by it against which it has issued any Participatory Notes (PN) / Overseas Derivative Instruments (ODI), it must have a mandate from the PN /ODI holder for this specific purpose of hedging. AD Category banks are expected to verify such mandates. In cases where this is rendered difficult, they may obtain a declaration from the FII regarding the nature/structure of the PN/ODI establishing the need for a hedge operation and that such operations are being undertaken against specific mandates obtained from their clients.

15. RBI allows exporters and importers to cancel and rebook forward contracts

- On September 4, 2013, RBI issued a circular on Risk Management and Inter Bank Dealings. With a view to providing operational flexibility to importers and exporters to hedge their foreign exchange risk, RBI has reviewed market conditions and decided to allow exporters to cancel and rebook forward contracts to the extent of 50 percent of the contracts booked in a financial year for hedging their contracted export exposures. Additionally importers are now allowed to cancel and rebook forward contracts to the extent of 25 percent of the contracts booked in a financial year for hedging their contracted import exposures.

16. Companies Bill 2013

- On August 8, 2013, the Upper House of the Indian Parliament passed the Companies Bill, 2013 which had previously been passed by the Lower House of the Indian Parliament on December 18, 2012. The Bill received the President's assent on August 29, 2013. The Bill is intended to replace the Companies Act 1956. The provisions of the Bill will be enforced in phases. A notification in the Official Gazette announced the coming into force of 98 sections of the Bill. The Ministry of Corporate Affairs will facilitate the setting up of the National Company Law Tribunals (NCLTs). In parallel, the draft rules of the Bill be finalized through a process of consultation with stakeholders. The Bill brings about significant changes to existing corporate law and procedures. The changes are varied in nature and range from issues relating to the formation of companies, corporate social responsibility, governance, transparency as well as mergers and acquisitions.

17. RBI framework for foreign banks' wholly owned subsidiaries

- On November 6, 2013, RBI released the framework for setting up of Wholly Owned Subsidiaries (WOS) by foreign banks in India. The policy is guided by the two cardinal principles of reciprocity and single mode of presence. As a locally incorporated bank, the WOSs will be given near-national treatment which will enable them to open branches anywhere in the country at par with Indian banks (except in certain sensitive areas where the RBI's prior approval would be required). They would also be able to participate fully in the development of the Indian financial sector. The policy creates an incentive for existing foreign bank branches which operate within the framework of India's commitment to the World Trade Organisation (WTO) to convert into WOS, due to the attractiveness of near-national treatment. Key features of the framework include:
 - Banks with complex structures, banks which do not provide adequate disclosure in their home jurisdiction, banks which are not widely held, banks from jurisdictions having legislation giving a preferential claim to depositors of home country in a winding up proceedings, etc., would be mandated entry into India only in the WOS mode;
 - Foreign banks in whose case the above conditions do not apply can opt for a branch or WOS form of presence;
 - A foreign bank opting for branch form of presence shall convert into a WOS as and when the above conditions become applicable to it or it becomes systemically important on account of its balance sheet size in India;
 - Foreign banks which commenced banking business in India before August 2010 shall have the option to continue their banking business through the branch mode;
 - To prevent domination by foreign banks, restrictions would be placed on further entry of new WOSs of foreign banks/capital infusion, when the capital and reserves of the WOSs and foreign bank branches in India exceed 20 per cent of the capital and reserves of the banking system;
 - The initial minimum paid-up voting equity capital for a WOS shall be Rs5 billion for new entrants. Existing branches of foreign banks desiring to convert into WOS shall have a minimum net worth of Rs5 billion;
 - The parent of the WOS would be required to issue a letter of comfort to the RBI for meeting the liabilities of the WOS;
 - Corporate Governance: (i) not less than two-third of the directors should be non-executive directors; (ii) a minimum of one-third of the directors should be independent of the management of the subsidiary in India, its parent or associates; (iii) not less than fifty per cent of the directors should be Indian nationals / Non-Resident Indians (NRIs) /Persons of Indian Origin (PIOs) subject to the condition that not less than one-third of the directors are Indian nationals resident in India.
 - The branch expansion guidelines as applicable to domestic scheduled commercial banks would generally be applicable to WOSs of foreign banks except that they will require prior approval of RBI for opening branches at certain locations that are sensitive from the perspective of national security;
 - Priority Sector lending requirement would be 40 percent for WOS like domestic scheduled commercial banks with adequate transition period for existing foreign bank branches converting into WOS;
 - On arm's length basis, WOS would be permitted to use parental guarantee/ credit rating only for the purpose of providing custodial services and for their international operations. However, WOS should not provide counter guarantee to its parent for such support;
 - WOSs may, at their option, dilute their stake to 74 percent or less in accordance with the existing FDI policy. In the event of dilution, they will have to list themselves.

The issue of permitting WOS to enter into M&A transactions with any private sector bank in India subject to the overall investment limit of 74 per cent would be considered after a review is made with regard to the extent of penetration of foreign investment in Indian banks and functioning of foreign banks (branch mode and WOS).

18. Financial Benchmarks

- On January 3, 2014, RBI released its Draft Report of the Committee on Financial Benchmarks. The Report considers different measures recommended by various international bodies/committees and reforms which are already underway in key benchmarks, and provides an in-depth analysis of the existing methodology and governance framework of the major Indian Rupee interest rate and foreign exchange benchmarks.

The Report found the existing system generally satisfactory, but several measures are recommended to strengthen benchmark quality, methodology and the governance framework of the Benchmark Administrators, Calculation Agents and Submitters. In line with the international move towards greater regulatory oversight, the Report also reviews the existing regulatory powers of RBI over the financial benchmarks. It recommends, as a long term measure, amendments to the Reserve Bank of India Act to empower RBI to determine benchmark policy in Money, G-sec, Credit and Foreign Exchange markets and to issue binding directions to all the agencies involved. Pending these amendments, the Report recommends appropriate regulatory and supervisory framework to be put in place by RBI for the above financial benchmarks under its existing statutory powers.

- On February 7, 2014, the Final Report of the Committee on Financial Benchmarks was released. The Committee had finalized its report after taking into account the feedback received from market participants and other stakeholders.

19. RBI releases guidelines on intra-group transactions and exposures

- On February 11, 2014, RBI released its “Guidelines on Management of Intra-Group Transactions and Exposures” (Guidelines). RBI decided to prescribe these Guidelines based on, among others, comments received on its draft guidelines issued on August 14, 2012. These Guidelines contain certain quantitative limits on financial intra-group transactions and exposures (ITEs) and prudential limits for non-financial ITEs to ensure that banks engage in ITEs in a safe and sound manner in order to contain concentration and contagion risks arising out of ITEs. The Guidelines set out that banks should adhere to the following intra-group exposure limits:

Single Group Entity Exposure

- 5% of paid-up capital and reserves in the case of non-financial companies and unregulated financial services companies; or
- 10% of paid-up capital and reserves in the case of regulated financial services companies.

Aggregate Group Exposure

- 10% of paid-up capital and reserves in the case of all non-financial companies and unregulated financial services companies taken together; or
- 20% of paid-up capital and reserves in the case of the group i.e. all group entities (financial and non-financial) taken together.

Banks should also put in place a board approved comprehensive policy on monitoring and managing of ITEs. The policy should lay down effective systems and processes to identify, assess and report risk concentrations and material ITEs. The policy should also be reviewed at least annually.

The Guidelines also provide that banks should not enter into cross-default clauses whereby a default by a group entity on an obligation (whether financial or otherwise) is deemed to trigger a default of

the bank on its obligations. This requirement will be applicable from the effective date of the Guidelines. Such agreements which have already been executed by banks would be exempted from this requirement. However, the existing agreements should not be renewed by banks.

The Guidelines become effective from October 1, 2014. Banks should accordingly submit data on intra-group exposures to RBI from the quarter ending December 31, 2014. In the event a bank's current intra-group exposure is more than the limits stipulated in the Guidelines, it should bring down the exposure within the limits at the earliest but not later than March 31, 2016. The exposure beyond permissible limits subsequent to March 31, 2016, if any, would be deducted from Common Equity Tier 1 capital of the bank.

ISDA Submissions (since 2010)

- March 9, 2010: [ISDA submission to the MOF Working Group on Foreign Investment in India](#)
- June 11, 2010: [ISDA submission to the MOF Working Group on Foreign Investment in India](#)
- June 22, 2010: [ISDA submission to the MOF Working Group on Foreign Investment in India](#)
- October 4, 2010: [ISDA submission to RBI on the draft Report of the Internal Group on Introduction of Credit Default Swaps for Corporate Bonds](#)
- October 8, 2010: [ISDA submission to the MOF on Report of the Working Group on Foreign Investment in India](#)
- March 8, 2011: [ISDA submission to RBI on the draft Guidelines on Credit Default Swaps for Corporate Bonds](#)
- April 26, 2012: [ISDA submission to MOF in response to the Finance Bill 2012](#)
- May 4, 2012: [ISDA submission to MOF with regard to service tax in response to the Finance Bill 2012](#)
- October 12, 2012: [ISDA submission to RBI, MOF and the FSLRC on 'Consistency of netting application to spur financial market growth'](#)
- October 16, 2012: [ISDA submission to RBI on the draft Guidelines on Management of Intra-Group Transactions and Exposures](#)
- January 31, 2013: [ISDA submission to RBI on the draft Guidelines on Capital Requirements for Bank Exposures to Central Counterparties](#)
- March 20, 2013: [ISDA submission to RBI, the Ministry of Finance \(MOF\) and CCIL on CCIL's Forex Forward Guaranteed Segment](#)
- July 15, 2013: [ISDA submission to The Ministry of Finance on Report of the Financial Sector Legislative Reforms Commission](#)
- February 28, 2014: ISDA submission to CCIL on USD/INR Segment - Procedure to be adopted for allocation of funds shortage if shortage exceeds available resource. This submission is not yet public.
- March 14, 2014: ISDA submission to CCIL on Intra-day Mark-to-Market Margin Collection in CCIL's CCP Cleared Segments. This submission is not yet public.
- March 21, 2014: ISDA submission to CCIL on Segregation and Portability Related Changes & Clearing member Structure. This submission is not yet public.

INDONESIA

AT A GLANCE

Central Bank:	Bank Indonesia (BI) http://www.bi.go.id
Bank Regulator:	BI but scheduled to be transferred to OJK beginning end-2013
Capital & Fin. Mkts Regulator:	Otoritas Jasa Keuangan (OJK) http://www.ojk.go.id Bapepam-LK http://www.bapepam.go.id (in the interim)
Associations:	Persatuan Bank-Bank Umum Nasional (Perbanas) http://www.perbanas.org Foreign Banks Association of Indonesia (FBAI) http://www.fbai.or.id
Legal Opinions:	Netting and collateral opinions by ABNR
Master Agreement:	ISDA with local language translation appended
CCP/TR Status:	No announced plans

Key Regulatory Milestones

1. OJK

- The law setting up the OJK was passed in October 2011. Pak Muliaman D Hadad (formerly a BI Deputy Governor) was appointed as the first OJK Chairman. Like the UK FSA, the OJK is an independent body set up to regulate and supervise the financial services industry. OJK has started to take over the regulation and supervision of capital markets and non-banking financial institutions from Bapepam-LK at the beginning of 2013. OJK is to start taking over the banking supervisory function from BI at the end of 2013. The OJK law also creates a Coordinating Forum for Financial System Stability, comprising the Minister of Finance, the BI Governor, the Chairman of the Board of Commissioners of the OJK and the Chairman of the Indonesia Deposit Insurance Corporation. In this forum, the OJK is required to monitor and evaluate the stability of the financial system and communicate its findings to other institutions.

2. Currency Law

- Law No. 7 of 2011 (Currency Law) came into effect on June 28, 2011. The Currency Law (in particular Articles 21 and 23) creates uncertainty around the use of a currency other than IDR as the settlement currency or the denomination currency for domestic and cross-border transactions. The Directorate General of Treasury at the Ministry of Finance published “Sosialisasi Undang-Undang Nomor 7 Tahun 2011 Tentang Mata Uang” (Socialization Booklet) and together with BI, conducted a briefing session in December 2011. The Socialization Booklet clarifies that the Currency Law is limited to transactions that involve physical payment in bank notes and coins. As OTC derivative transactions rarely involve settlement by physical delivery of bank notes and coins, this would mean that the Currency Law will not apply to OTC derivatives. However, as the Socialization Booklet does not have the force of law, concern remains that neither the enforcement agencies nor the courts are bound by it. Pending legal confirmation of the scope of the Currency Law, it may be prudent to take steps to try to bring a cross-border OTC derivative transaction within the “international trade transactions” exemption in Article 21(2) of the Currency Law or to include explicit ‘contracting out’

language to bring a domestic OTC derivative transaction within Article 23(2) (though it should be noted that the scope of Articles 21(2) and 23(2) are themselves unclear).

3. National Language Law

- On July 9, 2009, Law No.24 of 2009 on the National Flag, Language, Seal and Anthem (National Language Law) came into effect. The National Language Law requires that all agreements involving an Indonesian party must be in the national language, Bahasa Indonesian. ISDA has published Indonesian translations of the 2002 ISDA Master Agreement as well as confirmation templates and glossaries for certain plain vanilla FX, currency option, interest rate and cross currency swap transactions.
- In June 2013, the West Jakarta District Court in PT Bangun Karya Pratama Lestari v Nine AM Ltd case ruled that a loan agreement governed by Indonesian law and written only in English to be void for being in violation of Law No. 24 of 2009.

4. Regulations impacting OTC derivatives

- BI Regulation No. 11/26/PBI/2009 on ‘Structured Products’ (SP Regulation) came into effect on July 1, 2009. OTC derivatives fall within this Regulation. Banks must obtain an in-principle approval from BI before they can offer any structured products. In addition, for non-principal protected structured products, banks must obtain transaction-type approval from BI. Banks with an FX license can offer structured products with FX and/or interest rates as underlying. Non-FX banks can only offer structured products with interest rates as underlying. Foreign currencies against IDR structured products are prohibited. The SP Regulation imposes restrictions on the types of structured products that can be offered to different customer categories. There are other business conduct and disclosure requirements such as a mandatory cooling-off period for non-principal protected structured products and a requirement that term sheets and agreements be in the Indonesian language.
- BI Regulation No. 12/9/PBI/2010 on ‘Prudential Principles in Conducting Offshore Financial Products Agency Activities by Commercial Banks’ came into effect on June 29, 2010. Commercial banks in Indonesia (including Indonesian branches and subsidiaries of foreign banks) with an FX license can carry out agency activities for offshore financial products (OFP) only if certain conditions are met. Although an OFP is defined as an “investment instrument issued by foreign issuers”, BI has clarified that OTC derivatives could be impacted. OFPs can only be offered to non-retail customers. The issuer of the OFP must be licensed and supervised by a competent authority in the issuer’s home country. For a non-security OFP, the issuer must have a branch in Indonesia. The bank must carry out an analysis of the OFP and provide offering materials to the customer in the Indonesian language.

ISDA Submissions (since 2010)

- January 17, 2012: [ISDA submission to the Ministry of Finance and Bank Indonesia on Law No. 7 of 2011 \(Currency Law\)](#)
- January 28, 2014: ISDA submission with regards to the West Jakarta District Court decision in PT Bangun Karya Pratama Lestari v Nine AM Ltd on Law No 24 of 2009 concerning the National Flag and Emblem. This submission is not public yet.

KOREA

AT A GLANCE

Central Bank:	Bank of Korea (BOK) http://www.bok.or.kr
Bank Regulator:	Financial Services Commission (FSC) (policy-making) http://www.fsc.go.kr Financial Supervisory Service (FSS) (execution of financial market supervision) http://english.fss.or.kr
Securities Regulators:	Financial Services Commission (FSC) Financial Supervisory Service (FSS)
Other Regulators:	Ministry of Strategy and Finance (MOSF) http://english.mosf.go.kr
Associations:	Korean Financial Industry Association (KOFIA) Korean Federation of Banks (KFB) Foreign Banks Association
Master Agreement:	ISDA (an “ISDA Lite” Korean version is commonly used between Korean banks and domestic corporate for documenting FX transactions but is not mandated)
Legal Opinions:	Netting and collateral opinions by Kim & Chang Opinion on transactions entered into electronically and electronic records by Lee & Co
CCP/TR Status:	On March 5, 2013, the Revision Bill of the Financial Investment Services and Capital Markets Act (FSCMA) passed the plenary session of the National Assembly, following approval by the Legislation and Judicial Committee of the National Assembly the previous day. The legislation creates central counterparty clearinghouses (CCPs), to deal with clearing for OTC transactions in financial investment products. On September 11, 2013, KRX was authorized as a CCP in Korea for OTC clearing services by the FSC. Mandatory clearing of Korean Won interest rate swap is scheduled to start from June 30, 2014.

Key Regulatory Milestones

1. Korea plans to impose mandatory clearing requirements

- Korea Exchange (KRX) issued in December 2011 the first draft central clearing proposal for public consultation and the second draft in March 2012.
- On March 5, 2013, the Revision Bill of the Financial Investment Services and Capital Markets Act (FSCMA) passed the plenary session of the National Assembly, following approval by the Legislation and Judicial Committee of the National Assembly the previous day. The final steps for this amendment to come into force require only that the government promulgate the Amendment and a grace period be given prior to implementation.

The legislation creates a new business sector, central counterparty clearinghouses (CCPs), to deal with clearing for OTC transactions in financial investment products. While clearinghouse operators will be approved depending upon the types of financial products they deal with, KRX is believed to be the only institution currently considered as a CCP for OTC clearing in Korea. The FSC press

release also states that "Over-the-counter (OTC) derivatives whose default could deliver significant impact to the market will be mandatorily cleared through a CCP."

- On May 15, 2013, the Korean FSC issued its draft regulation regarding central clearing of OTC derivatives. The regulation mainly deals with CCP licensing process and CCP's reporting obligation.
- On July 3, 2013, after consulting with market participants, the Korean FSC decided to postpone the enforcement date of mandatory clearing obligations under the amended Financial Investment Services and Capital Markets Act from October 2013 to June 30, 2014.
- On September 11, 2013, KRX received authorization on over-the-counter (OTC) derivatives clearing business from FSC. KRX will be the central counterparty for both exchange traded and OTC market products. The mandatory clearing of KRW-denominated interest rate swaps will come into effect on June 30, 2014.
- Effective from March 3, 2014, KRX started to provide a voluntary clearing service of Korea Won (KRW)-denominated interest rate swap (IRS) contracts to meet the G20 mandate on OTC derivatives clearing. KRX has indicated that the service is temporarily offered to 35 members on a voluntary basis until June 30, 2014. Thereafter, all KRW-IRS contracts will be cleared through the KRX on a mandatory basis.

2. FSC clarifies the policy regarding derivatives-linked securities

- FSC announced proposed amendments to the Enforcement Decree of the Financial Investment Services and Capital Markets Act (FSCMA) on February 24, 2012. The amendments seek to, among other things, clarify the regulations on issuance of derivatives-linked securities (DLS) by foreign financial institutions and exempt the foreign issuers which satisfy certain requirements from the licensing requirement under the FSCMA. The amendment came into affect on September 30, 2012.

3. South Korea implements Basel III

- On May 30, 2013, FSC issued a press release to announce Korea's plan to implement Basel III rules as of December 1. On July 31, 2013, FSC issued a press release announcing the Basel III Implementation for Bank Holding Companies to begin in December. The revision of the banking supervision rules and regulations had been completed in July 2013. Common Equity Tier 1 ("CET1") must be at least 4.5% of the risk-weighted assets and Tier 1 capital must be at least 6% of risk-weighted assets. Tier 1 and Tier 2 capital must be at least 8%. The new rules will incorporate the new CET1 capital and Tier 1 capital requirement from 2015. The new rule also introduces a capital conservation buffer of 2.5% of risk-weighted assets to be phased-in from Jan 1, 2016.
- On November 25, 2013, FSC issued a press release announcing the capital regulations under Basel III, which will be phased in for domestic banks from December 1, 2013. The Tier 1 Capital Ratio will increase from 4.5% to 6% from December 2013 to December 2015. Common Equity Tier 1 (CET1) will increase from 3.5% to 4.5% from December 2013 to December 2015. 90% of non-qualifying instruments as contingent capital already issued will be recognized as regulatory capital under Basel III from December 1, 2013. This percentage will be gradually reduced by 10% per year. Capital Conservation Buffer will start from 0.625% in January 2016 and gradually increased to 2.5% in December 2019. The total Capital Ratio and the Capital Conservation Buffer will be 10%.

The FSC plans to introduce the Liquidity Coverage Ratio (LCR) in 2015 and the Countercyclical Capital Buffer in 2016. Domestic systemically important banks (D-SIFIs) will be required to hold capital surcharges from 2016.

4. FSS issues best practices for managing FX settlement risk

- On June 17, 2013, FSS issued the Best Practices for Managing Settlement Risk in Foreign Exchange Transactions. The key recommendations are:
 - A comprehensive internal risk management framework that ensures all FX settlement-related risks are properly identified, measured, monitored and controlled;
 - A bank should maximize the use of PVP to eliminate principal risk when settling FX transactions, where practicable;
 - In non-PVP settlements, a bank should set exposure limits for FX trading and settlement on a counterparty basis. A bank should use legally enforceable netting agreements and legally enforceable collateral arrangements;
 - A bank should conduct stress tests on a regular basis and develop contingency plans to address possible liquidity shortfalls due to a counterparty's failure to settle. A bank should maximize the use of STP to control operational risks and ensure that netting and collateral agreements are legally enforceable for each aspect of its activities in all relevant jurisdictions;
 - A bank should consider including principal risk and replacement cost risk among all FX settlement-related risk. A bank should ensure it has sufficient capital held against these potential exposures, as appropriate.

The best practices were implemented on October 1, 2013.

- On November 11, 2013, MOSF issued a press release announcing the easing of regulations by the Korean government in regard to foreign exchange transactions. The revised regulations will expand the scope of FX transaction-related businesses by non-bank financial institutions and promote the use of the won in foreign exchange related settlements.

The revised regulations will take effect in 2014 and include:

- Foreign exchange transactions between securities brokerages will be allowed;
- Investment banks will be allowed to lend securities denominated in a foreign currency by notifying the Bank of Korea following the transaction, instead of reporting it beforehand;
- Trust companies will be allowed to deal with derivatives and credit derivatives. However, credit derivatives which have high capital movement risks should be reported to the Bank of Korea before transactions;
- Borrowing the won from the Korea-China swap currency line will be made easier with the fund to be made available by opening won accounts in Chinese branches of Korean banks instead of having won accounts in Korea;
- Accessing won deposits in foreign banks will be made easier with transactions through domestic banks' accounts to be allowed.

5. Government plans to improve the security of derivatives transactions

- On January 15, 2014, FSC together with FSS, KRX and KOFIA announced a plan to improve the security of derivatives transactions. The introduction of a "shutdown switch" and price banding limits is intended to prevent the recurrence of large scale losses from erroneous orders, and to mitigate settlement risk and violent price fluctuations of derivatives. FSC will implement the measures before the end of the first half of 2014 by amending the related rules and improving systems.

Key highlights of the plan include:

- FSC will encourage securities firms to strengthen the standard of their internal control systems related to excessive orders, and supervision thereof by FSS and KRX will be enhanced;
- Currently, KRX runs the price limits and circuit breakers (CBs) as safety mechanisms, which are inadequate for controlling excessive price fluctuations. In future, KRX will allow all securities firms to trade derivatives within a certain price range of the latest trade price during market hours, depending on the type of derivatives. Similar systems are now in force in the US (CME), Germany (Eurex) and Japan (OSE);
- At present, under an agreement by counterparties, a derivatives price could only be corrected. Going forward, if necessary, erroneous transactions can be canceled by KRX's authority in order to maintain stability in settlement;
- All securities firms dealing derivatives will be required to upgrade their trading platforms so as to minimize algorithmic errors and enhance their risk management and internal control systems against possible mistakes.

6. Government plans to levy capital gains tax on derivatives

- On February 17, 2014, the Tax Reform Subcommittee, under the umbrella of the Strategy and Finance Committee, announced that the ruling and the opposition parties agreed to levy a capital gains tax on derivatives. Though there would be further discussions, the plan to include a 10 percent capital gains tax rate on derivatives with an exemption for the first Won 2.5 million of annual capital gains is most likely. This plan will be ratified in a provisional session of the National Assembly in April after simulations for its alignment with the policy direction, effects on tax revenue and impacts on Korean economy and stock market.
- In response, KRX's CEO and Chairman Choi Kyoung Soo recommended delaying the derivatives tax until after the market recovers. Given the stagnant Korean derivatives market, it would be best not to impose tax on derivatives. However, if it is unavoidable for tax fairness, such taxation should be delayed until 2016 or 2017 when the stock market may bounce back.
- FSC will be preparing their opinions on this plan after analyzing the background of this consensus and gleaning market participant views. FSC will also announce a plan to revitalize the Korean derivatives market in March and it is unknown how FSC will be dealing with this capital gains tax in their plan.

7. KOFIA amends rules to prevent serious financial incidents

- On March 18, KOFIA amended the "Financial Investment Company Model Rules for Preventing Financial Accidents" (Korean only) to prevent any future recurrence of disastrous financial incidents like the default of HanMag Securities.

This rule, among others, was implemented to limit daily order amounts of self-account transaction by financial investment companies to the ratio which they set up within 50% of their net working capital which is calculated based on #3-11 in the rulebook for Financial Investment Business of FSC. Members of KOFIA must comply with this rule which will take immediate effect.

ISDA Submissions (since 2010)

- June 3, 2011: [ISDA submission to the Ministry of Strategy and Finance \(MOSF\) on the Foreign Exchange Prudential-Stability Levy](#)
- September 19, 2011: [ISDA submission to FSC on Proposed Amendment to Financial Investment Services and Capital Markets Act \(FSCMA\) Relating to Central Counterparty](#)
- June 24, 2013: ISDA submission to FSC on the draft FSC regulation on central clearing counterparties.
- March 17, 2014: ISDA submission to KRX on OTC clearing house risk management procedures. This submission is not public yet.

MALAYSIA

AT A GLANCE

Central Bank:	Bank Negara Malaysia (BNM) http://www.bnm.gov.my
Bank Regulator:	BNM
Fin. Mkts Regulator:	Securities Commission, Malaysia (SC) http://www.sc.com.my
Associations:	Association of Banks in Malaysia (ABM) Malaysian Investment Banking Association (MIBA) Association of Islamic Banking Institutions Malaysia (AIBIM)
Master Agreement:	ISDA
Legal Opinions:	Netting and collateral opinions by Shearn Delamore & Co Opinion on transactions entered into electronically and electronic records by Shearn Delamore & Co
CCP/TR Status:	The Capital Markets and Services (Amendment) Act 2011 provides the legislative framework for trade reporting but this will come into force at earliest in October 2013. The SC, Perbadanan Insurans Deposit Malaysia (PIDM) and BNM issued a joint consultation paper on trade reporting requirements in November 2013.

Key Regulatory Milestones

1. Trade reporting

- The Capital Markets and Services (Amendment) Act 2011 (CMSA 2011) in Subdivision 4 of Division 3 of Part III introduces the legislative framework for the licensing and regulation of OTC derivatives trade repositories by the SC. It also empowers the SC to impose mandatory trade reporting for OTC derivatives (except transactions to which BNM or the Government of Malaysia is a party). This Subdivision only comes into operation in October 2013 (and may be deferred for up to another year).
- On March 26, 2012, Perbadanan Insurans Deposit Malaysia (PIDM) together with BNM, issued a joint concept paper on 'Recordkeeping and Reporting Requirement for Over-the-Counter Derivatives'. These requirements were to apply to banks and insurance companies regulated by BNM and all member institutions of PIDM, and were intended as an interim measure pending the establishment of the trade repository in Malaysia and mandatory trade reporting under the CMSA 2011.
- On April 3, 2013, PIDM and BNM announced that they have decided not to proceed with the proposals set out in the March 26, 2012 joint concept paper. Instead, they will work with the SC on the implementation of the trade repository. The detailed requirements for the trade repository are expected to be substantially similar to the transaction-level data requirements set out in the joint concept paper. Although an appropriate transitional arrangement will be considered, PIDM and BNM note that it is important that reporting institutions plan their system enhancements at a sufficiently early stage to ensure readiness in meeting the future requirements under the trade repository. PIDM and BNM also note that the readiness of reporting institutions to report the required data will allow PIDM and BNM to reduce the temporary suspension period before the safe harbor for qualified

financial agreements comes into operation under the PIDM Act 2011, FSA and IFSA (each as defined below).

- On November 20, SC, BNM and PIDM issued a joint public consultation paper on requirements for the reporting of OTC derivatives trading activity to a trade repository in Malaysia.

The regulatory agencies will look to leverage on the trade repository as a single point of access to OTC derivatives information for the purpose of performing their respective mandates. Accordingly, the interim reporting of aggregated level data on OTC derivatives implemented by BNM will be phased out when the trade repository has been established. The Consultation Paper highlights include:

- **Reportable Transactions:** All OTC derivative contracts (which may include a swap, forward or option with an underlying reference to foreign exchange, interest rates, credit, commodity or equity, conventional or Islamic derivatives, and of any remaining maturity) must be reported, subject to certain exemptions. Foreign exchange spot transactions are not deemed to be an OTC derivative contract and therefore will not be required to be reported to the trade repository.
- **Exempted Transactions:** A structured product is not a reportable transaction. However, the reporting entity must report these OTC derivative transactions to the trade repository if it enters into an OTC derivative or hedging transaction as a principal party to manufacture the underlying economics of a structured product or if it enters into a hedging transaction as a principal party to manage risks arising from the portfolio of structured products sold to their customers. BNM or SC may also require a reporting entity to report information on structured products that they offer separately on a need to basis. Transactions where BNM or the Government of Malaysia is a party are exempted from reporting requirements under Section 107J(2) of the Capital Markets and Services Act 2007 (CMSA). In addition, PIDM's "member institution" means a financial institution or any person that is deemed to be or prescribed as a member institution under the Malaysia Deposit Insurance Corporation Act 2011. The reporting obligation shall not apply to BNM or the Government of Malaysia.
- **Principal Party:** Each reporting entity who is a principal party to an OTC derivative transaction has an obligation to report the required information directly to the trade repository.
- **Branches:** Each reporting entity must ensure that their reporting covers all transactions to which the reporting entity is a principal party, including transactions which are originated from, negotiated, arranged or booked by its domestic or foreign branches.
- **Treatment of subsidiaries of CMSL holders and BNM licensed entities:** The reporting obligation would apply to a subsidiary company of a CMSL holder or an entity licensed by BNM under the FSA 2013 and IFSA 2013 only if the subsidiary is a "reporting entity" as set out above. The reporting obligation does not extend to a subsidiary which is incorporated in a foreign jurisdiction.
- **Phase-in-reporting:** Reporting will be implemented in three phases. Phase 1 will involve the investment banks licensed by the SC and BNM. Phase 2 will include the CMSL holders other than those captured in Phase 1. Phase 3 will involve any registered person or any other persons who deals in OTC derivative transactions and have exceeded certain reporting thresholds, not captured in Phase 1 or Phase 2. The specific type of entity, the reporting threshold and an appropriate commencement date for reporting to the trade repository will be determined at a later date by the regulatory agencies.

Reporting entities with mandatory reporting obligations include:

- Investment banks licensed by SC under the CMSA and by BNM under the Financial Services Act (FSA) 2013;
- Holders of a Capital Markets Services Licence (CMSL) under the CMSA. These include derivatives brokers, stockholding companies and fund management companies;

- Institutions licensed by the Bank under the FSA and the Islamic Financial Services Act (IFSA) 2013. These include conventional and Islamic commercial banks, international Islamic banks, insurance and reinsurance companies, as well as takaful and re-takaful operators; and
- Any other person dealing in OTC derivatives as prescribed by the SC. The SC will further define the scope of these entities and consult the industry before prescribing any person for this purpose.

2. Regulation of OTC derivatives activity

- The CMSA 2011 (except the provision amending Section 92 of the Capital Markets and Services Act (CMSA)) which came into force on October 3, 2011 makes OTC derivatives a regulated activity. However, participants that deal bilaterally on a principal-to-principal basis (as would generally be the case for OTC derivatives under an ISDA Master Agreement) would fall within the exemption in Schedule 3 and licensed banks would also fall within the exemption in Schedule 4. Persons that fall within the Schedule 3 or Schedule 4 exemptions are not required to obtain a Capital Market Services License (CMSL) from the SC. A person falling within Schedule 3 is not subject to the business conduct requirements in the CMSA whilst a registered person under Schedule 4 is subject to the business conduct requirements set out in Section 76(5) to (8) of the CMSA. Other provisions of the CMSA such as Part V (Market Misconduct and Other Prohibited Conduct) and the obligation to report trades to a trade repository under Section 107J applies to both a person falling within Schedule 3 and a person falling within Schedule 4.

3. Offer of unlisted capital market products

- The Capital Markets and Services (Amendment) Act 2012 (CMSA 2012) which has come into force on December 28, 2012 introduces a new approval framework intended to facilitate the offering of a broader array of capital market products. The definition of “capital market products” has been amended and includes, among others, derivatives and any product or arrangement which is based on securities or derivatives or any combination thereof. The framework distinguishes between listed and unlisted capital market products, taking into account their characteristics and risk profiles and seeks to apply the appropriate level of regulation for these products. In particular, authorization of the SC is required for an unlisted capital market product or in the case of a foreign unlisted capital market product, recognition by the SC.
- The SC also issued Guidelines on Sales Practices of Unlisted Capital Market Products (Guidelines) which applies to all capital market products (other than shares, debentures and sukuk) that are not listed on a stock exchange or derivatives exchange in Malaysia, regardless of whether they are manufactured within or outside Malaysia. Investors are divided into two main classes of investors, namely retail investors and non-retail investors comprising of high net-worth individuals, high net-worth entities and accredited investors. The Guidelines require, among others, that a Product Highlights Sheet be prepared providing certain prescribed information and a Suitability Assessment be conducted to ensure that any product recommendation provided by a product distributor is made on a reasonable basis. Additionally, the Guidelines include principles on treating investors fairly which require that product issuers and product distributors have in place certain policies and processes that give due regard to the interests of the investors. The requirements relating to Product Highlights Sheet and Suitability Assessment will apply to all retail investors and high net-worth individuals. These requirements will also apply to high net-worth entities, unless they opt out. They will not however apply to accredited investors. The principles on treating investors fairly will apply to all categories of investors.

- The SC also released the Guidelines on Private Debt Securities, the Business Trusts Guidelines, the Guidelines on Sukuk, the Guidelines on Real Estate Investment Trusts, the Guidelines on Unlisted Capital Market Products: Structured Products and Unit Trust Schemes, the Prospectus Guidelines and the Guidelines on Disclosure Documents.

4. Developments relating to close-out netting enforceability

- The Financial Services Act (FSA) and the Islamic Financial Services Act (IFSA) rationalize the legislative regime for institutions, payment systems and markets under the purview of BNM. The FSA repeals the Banking and Financial Institutions Act 1989, the Exchange Control Act 1953, the Insurance Act 1996 and the Payment Systems Act 2003 and the IFSA repeals the Islamic Banking Act 1983 and the Takaful Act 1984. The FSA and the IFSA introduces the concept of a “qualified financial agreement” (QFA) (please refer to the Annex for the definition) and provides a safe harbor for QFAs when BNM exercises its powers under these statutes to issue directions to institutions or when exercising its intervention powers over distressed institutions (but subject in this case to a temporary stay before the safe harbor operates) or when taking measures relating to international and domestic transactions. The FSA and the IFSA came into force on June 30, 2013.
- The Central Bank of Malaysia (Amendment) Act 2013 (CBA 2013) which has come into force on February 8, 2013 introduces a comparable safe harbor for QFAs into the Central Bank of Malaysia Act when powers under Sections 31, 32 (read with the Third Schedule) and 77 are exercised by BNM.
- On October 25, 2013, the Malaysian Prime Minister and Minister of Finance Datuk Seri Najib Tun Razak tabled the 2014 Malaysia Budget Speech at the Dewan Rakyat and made the following statements:

“Currently, the domestic bond market is the largest in South-East Asia with a value exceeding RM1trillion, while daily transactions in the foreign exchange and money markets are more than RM30 billion. To ensure efficient operations of financial markets, a clear regulatory framework is required.

“In this regard, amendments will be made to existing laws and Bank Negara Malaysia will lead the initiative in formulating the Netting Act to protect enforcement rights of close-out netting under the financial contract. This is to reduce credit risk and promote the derivatives market, thereby reducing systemic risks in the domestic financial market as well as reduce the cost of doing business.”

5. BNM’s revised guidelines on product transparency and disclosure

- BNM’s Revised Guidelines on Product Transparency and Disclosure which took effect on June 30, 2011, requires banks to provide documents to customers in plain language and in the Malay language if so requested by the customer. While the ISDA Master Agreement and related ISDA documentation would be subject to the Revised Guidelines, BNM has acknowledged that it recognizes that it may be inefficacious for ISDA documents to be subject to the plain language and Malay language requirements. BNM has also confirmed that the aim of the Revised Guidelines is to establish a consistent and comprehensive disclosure regime for financial service providers in Malaysia when dealing with retail customers.

6. PIDM Act 2011

- The revised Perbadanan Insurans Deposit Malaysia or Malaysia Deposit Insurance Act 2011 (PIDM Act 2011) came into operation on December 31, 2010. The PIDM Act 2011 represents a significant improvement by protecting close-out netting rights under qualified financial agreements once a

temporary stay period has elapsed without PIDM deciding to transfer the outstanding derivatives positions of the distressed bank. However, there remain certain concerns which militate against close-out netting enforceability. These concerns center around the definition of a “qualified financial agreement” (which is significantly different from the definition under the FSA, IFSA and the CBA 2013) which requires the “derivative” to be the “subject of recurrent dealings in the over-the-counter derivatives markets” and the duration of the temporary stay period. Pursuant to the Malaysia Deposit Insurance Corporation (Temporary Suspension Period) Regulations 2012, the temporary stay period has been set at 10 days. One other concern was the nature of a “qualified third party” to whom outstanding derivative positions of the distressed bank could be transferred by PIDM and the terms of such transfer. However, in its below response, PIDM has narrowed the scope of who can be a qualified third party, in particular, removing as a qualified third party foreign financial institutions without a license in Malaysia in relation to a transfer of the positions of a PIDM member institution and anyone in relation to a transfer of the positions of an Affected Person (as defined in the PIDM Act 2011).

- On March 26, 2012, PIDM issued its Response to the Consultation Paper on Criteria for Qualified Third Party. PIDM will define a “qualified third party” as being any of the following entities:
 - an institution, other than a bridge institution, licensed under the Banking And Financial Institutions Act 1989, the Islamic Banking Act 1983, the Insurance Act 1996 and the Takaful Act 1984 or an institution prescribed under the Development Financial Institutions Act 2002 which is in compliance with the capital and prudential requirements of BNM;
 - an institution licensed under the Labuan Financial Services and Securities Act 2010 and Labuan Islamic Financial Services and Securities Act 2010, which is in compliance with capital and prudential requirements of the Labuan Financial Services Authority;
 - a public entity established under its own statutory act; or an entity whose obligations under the qualified financial agreements will be guaranteed by the Government of Malaysia, BNM or PIDM.

7. SSM releases consultation document on the Proposed Companies Bill

- On July 2, 2013, the Companies Commission of Malaysia (SSM) released its consultation document on the proposed Companies Bill. This Bill sets out the new legal framework to replace the existing Companies Act 1965. The provisions in in this Bill were drafted primarily on the basis of policies which had been approved by the Cabinet on June 18, 2010 and derived from a four-year comprehensive corporate law review conducted by the SSM’s Corporate Law Reform Committee (CLRC) as well as the recommendations by the Accounting Issues Consultative Committee (AICC). The deadline for comments was August 1, 2013.

ISDA Submissions (since 2010)

- April 30, 2010: [ISDA submission to SC on Public Consultation Paper on ‘Review of Sophisticated Investors and Sales Practices for Capital Market Products’](#)
- July 30, 2010: [ISDA submission to PIDM on Consultation Paper on ‘Proposed Amendments to the Malaysia Deposit Insurance Corporation Act 2005 Affecting Certain Financial Transactions’](#)
- December 17, 2010: [ISDA submission to BNM on Revised Guidelines on Product Transparency and Disclosure](#)
- September 15, 2011: [ISDA submission to PIDM regarding Consultation Paper on Criteria for Qualified Third Party](#)

- September 23, 2011: [ISDA submission to SC on Capital Markets and Services \(Amendment\) Bill 2011](#)
- November 3, 2011: [ISDA submission to SC on CMSA 2011](#)
- April 30, 2012: [ISDA submission to PIDM in response to the *Concept Paper on Recordkeeping and Reporting Requirements for Over-the-Counter Derivatives*](#)
- January 20, 2014: ISDA submission to Securities Commission Malaysia, Bank Negara Malaysia and Perbadanan Insurans Deposit Malaysia on Joint Public Consultation Paper on Trade Repository Reporting Requirement for Over-the-Counter Derivatives. This submission is not public yet.

Annex

Qualified financial agreements

(5) For the purposes of this Act—

(a) “qualified financial agreement” means—

(i) a master agreement in respect of one or more qualified financial transactions under which if certain events specified by the parties to the agreement occur—

(A) the transactions referred to in the agreement terminate or may be terminated;

(B) the termination values of the transactions under subparagraph (i) are calculated or may be calculated; and

(C) the termination values of the transactions under subparagraph (i) are netted or may be netted, so that a net amount is payable, and where an agreement is also in respect of one or more transactions that are not qualified financial transactions, the agreement shall be deemed to be a qualified financial agreement only with respect to the transactions that are qualified financial transactions and any permitted enforcement by the parties of their rights under such agreement;

(ii) an agreement relating to financial collateral, including a title transfer credit support agreement, with respect to one or more qualified financial transactions under a master agreement referred to in subparagraph (i); or

(iii) any other agreement as prescribed under section 4;

(b) “qualified financial transaction” means—

(i) a derivative, whether to be settled by payment or delivery; or

(ii) a repurchase, reverse repurchase or buy-sell back agreement with respect to securities;

(c) “financial collateral” means any of the following that is subject to an interest or a right that secures payment or performance of an obligation in respect of a qualified financial agreement or that is subject to a title transfer credit support agreement:

(i) cash or cash equivalents, including negotiable instruments and demand deposits;

(ii) security, a securities account or a right to acquire securities; or

(iii) futures agreement or futures account;

(d) “title transfer credit support agreement” means an agreement under which title to property has been provided for the purpose of securing the payment or performance of an obligation in respect of a qualified financial agreement.

NEW ZEALAND

AT A GLANCE

Central Bank:	Reserve Bank of New Zealand (RBNZ) http://www.rbnz.govt.nz
Bank Regulator:	RBNZ
Fin. Mkts Regulator:	Financial Markets Authority (FMA) http://www.fma.govt.nz
Bank Association:	New Zealand Bankers Association (NZBA)
Master Agreement:	ISDA
Legal Opinions:	Netting and collateral opinions by Bell Gully
CCP/TR Status:	No announced plans.

Key Regulatory Milestones

1. Financial Markets Conduct Bill

- The Financial Markets Conduct Bill passed the Third Reading on August 27, 2013 and received the Royal Assent on September 13, 2013. It represents the most comprehensive reform of New Zealand's securities and financial markets law in decades. OTC derivatives will, for the first time, become a regulated financial product. However, dealings between wholesale market participants will largely be exempted. The new Act will be brought into force progressively from April 2014. Much of the detail will be established through regulations with consultation on drafts to begin in October 2013.

2. Basel III

- On November 8, 2011, RBNZ released a consultation paper on 'Implementation of Basel III Capital Adequacy Requirements in New Zealand' and followed up on March 23, 2012, with a Consultation Paper on 'Further Elements of Basel III Capital Adequacy Requirements in New Zealand'. The RBNZ proposes the adoption of the Capital Conservation Buffer to be comprised of 2.5% of Common Equity Tier 1, above the minimum capital requirement and to be fully implemented by January 1, 2014. The paper also introduces a framework for implementing the Countercyclical Buffer which will be initially applied to registered banks but may extend it to include other lenders, such as non-bank deposit takers, in the future. The RBNZ intends to introduce the Basel III requirement that regulatory capital instruments be capable of absorbing losses.

ISDA Submissions (since 2010)

- August 20, 2010: [ISDA submission to MED on the discussion paper on 'Review of Securities Law'](#)
- September 6, 2011: [ISDA submission to the Ministry of Economic Development \(MED\) on the Financial Markets Conduct Bill](#)

PHILIPPINES

AT A GLANCE

Central Bank:	Bangko Sentral Ng Philipinas (BSP) http://www.bsp.gov.ph
Bank Regulator:	BSP
Securities Regulator:	Securities and Exchange Commission (SEC) http://www.sec.gov.ph
Associations:	Bankers Association of the Philippines
Legal Opinions:	Netting and collateral opinions by SyCip Salazr Hernandex & Gatmaitan
Master Agreement:	ISDA
CCP/TR Status:	No announced plans

Key Regulatory Milestones

1. Basel III

- On December 26, 2012, the Monetary Board approved the implementing guidelines for the January 1, 2014 adoption of the revised capital standards under the Basel III Accord. BSP maintained the minimum Capital Adequacy Ratio at 10%. The revised Common Equity Tier 1 (CET1) will be 6% and the Tier 1 ratio will be at a minimum of 7.5%. The new guidelines also introduce a capital conservation buffer of 2.5%, which will be comprised of CET1 capital. Banks that have issued capital instruments from 2011 will be allowed to count these instruments as Basel III-eligible until end-2015.

SINGAPORE

AT A GLANCE

Central Bank:	Monetary Authority of Singapore (MAS) http://www.mas.gov.sg
Bank Regulator:	MAS
Securities/Futures Regulator:	MAS
Associations:	Singapore Foreign Exchange Markets Committee (SFEMC) Association of Banks in Singapore (ABS) Singapore Investment Banking Association (SIBA)
Master Agreement:	ISDA
Legal Opinions:	Netting and collateral opinions by Allen & Gledhill Opinion on transactions entered into electronically and electronic records by Allen & Gledhill
CCP/TR Status:	SGX launched the first platform in Asia for central clearing of OTC derivatives in November 2010. The first products to be cleared were USD and SGD interest rate swaps. This was extended to non-deliverable Asian FX forwards in October 2011. The currencies cleared are CNY, IDR, INR, KRW, MYR, PHP and TWD. The Securities and Futures Act (SFA) was amended in November 2012 to introduce the legislative framework for the regulation of OTC derivatives trade repositories and clearing facilities and to empower MAS to implement mandatory reporting and clearing of OTC derivatives.

Key Regulatory Milestones

1. G20 OTC derivatives commitments

- On February 13, 2012, MAS released two consultation papers setting out MAS' proposals to implement G20 commitments. The key proposal was to extend the ambit of the SFA to OTC derivative contracts by implementing a legislative framework for the regulation of OTC derivatives trade repositories (TRs) and clearing facilities (CCPs), OTC derivatives intermediaries and derivative market operators and empowering MAS to mandate reporting, clearing and execution of OTC derivatives on exchanges or electronic trading platforms.

This was followed on:

- May 23, 2012 by its 1st Response to feedback received and its Consultation Paper I on proposed amendments to the SFA dealing with the regulation of TRs and CCPs; and
 - August 3, 2012 by its 2nd Response to feedback received and its Consultation Paper II on proposed amendments to the SFA dealing with mandatory reporting and clearing of OTC derivatives.
- On November 15, 2012, the Securities and Futures (Amendment) Bill 2012 was enacted. This introduces the following new Parts to the SFA:
 - Part IIA – regulation of TRs,
 - Part III – regulation of CCPs,

- Part VIA – mandatory reporting of OTC derivatives, and
- Part VIB – mandatory clearing of OTC derivatives.
- On January 10, 2013, MAS issued a Consultation Paper on the draft Securities and Futures (Trade Repositories) Regulations and the Securities and Futures (Clearing Facilities) Regulations which will operationalize the new Part IIA and Part III of the SFA respectively.

In summary:

TRs and CCPs

- A single-tier regulatory regime applies to TRs with Singapore-incorporated TRs being regulated as licensed trade repositories (LTR) and foreign-incorporated TRs being regulated as licensed foreign trade repositories (LFTR).
- A two-tier risk-based regulatory regime applies to CCPs with a “lighter touch” regime applicable to RCHs (as defined below). Entities (which must be Singapore-incorporated) operating clearing facilities that are systemically-important will be regulated as approved clearing houses (ACH) and entities (which can be Singapore- or foreign-incorporated) operating clearing facilities that are not systemically-important will be regulated as recognized clearing houses (RCH).
- One can establish or operate a TR without being licensed but reporting to a non-licensed TR will not fulfil any Singapore mandatory reporting requirement. However, it is an offence to hold oneself out as an LTR or LFTR if one is not licensed as such.
- In contrast, it is an offence to establish or operate a CCP or hold oneself out as operating a CCP unless one is an ACH or RCH.

Reporting

All financial institutions regulated by MAS (FIs) and non-FIs resident or having a presence in Singapore above a reporting threshold will be required to report all transactions (except FX spots) but only if booked or traded (based on trader location) in the Singapore office. However, Singapore-incorporated banks must report on a group-wide basis though there is no need for consolidated reporting.

- Single-sided reporting will apply. Where an FI faces a non-FI that is below the reporting threshold, the FI must still report the trade.
- However, where one party to the transaction is a central bank or government or a supranational organization, the other party (if otherwise subject to the reporting obligation) need not report the transaction.
- Outstanding contracts with a remaining maturity of more than one year on the relevant implementation date will need to be reported. However, this is expected to be phased-in at a later stage.
- Transactions will need to be reported by the next business day.
- Reporting by an agent will be permitted but the party subject to the mandate remains responsible.
- Reporting will be phased-in by asset class and reporting entity type.

Clearing

- All FIs and non-FIs resident or having a presence in Singapore above a clearing threshold will be required to clear certain products if one leg of the contract is booked in Singapore and either (i) both parties are resident or have a presence in Singapore and are subject to the clearing mandate; or (ii) one party is resident or has a presence in Singapore and is subject to the clearing mandate and the other party would have been so subject had it been resident or had a presence in Singapore.
- The products to be cleared will be identified through a bottom-up and top-down approach. FX spots and deliverable FX forwards and swaps will be exempted.
- FIs with minimal derivatives exposures in aggregate and by asset class, central banks and governments, and supranational organizations will be exempted. Intra-group transactions (subject to appropriate safeguards) and possibly pension schemes will also be exempted.

This was followed by:

- On July 25, 2013, MAS, published the Securities and Futures (Trade Repositories) Regulations 2013 which came into operation on August 1. An applicant for a trade repository (TR) license will need to demonstrate to MAS that it is able to meet the obligations of, and comply with the requirements imposed on, a licensed TR; and the applicant is able to maintain a minimum base capital of at least \$10 million. The TR will have the obligation to notify MAS of certain matters, such as any civil or criminal legal proceeding instituted against the licensed TR, whether in Singapore or elsewhere; and any disruption of or delay in, or any suspension or termination of any systems relating to, the reporting of transactions, including those from any system failure.

A licensed TR shall seek approval prior to commencing any linkage, arrangement or co-operative arrangements. The licensed TR will need to submit periodic reports to MAS. The licensed TR shall maintain confidentiality except in certain circumstances, such as: the disclosure of user information is necessary for the making of a complaint or report under any written law for an offence. A licensed TR will need to maintain at all times a business continuity plan and a recovery and resolution plan as well as procedures and systems to maintain the integrity and security of the transmission and storage of all information reported to the licensed TR. A licensed TR will also need prior approval from MAS to impose any reporting fee on its participants for any services provided by the licensed TR; or modify, restructure or otherwise change any existing reporting fee imposed on its participants.

- On July 25, 2013, MAS also published the Securities and Futures (Clearing Facilities) Regulations 2013, which came into operation on August 1 as well. An approved clearinghouse will need to comply with the requirements imposed for an approved clearinghouse and will need to maintain a minimum base capital of at least \$10 million. A recognized clearinghouse will need to comply with the requirements imposed for a recognized clearinghouse and will need to maintain a minimum base capital of at least \$5 million.

MAS may approve a Singapore corporation as an approved clearinghouse if MAS is satisfied that a disruption in the operations of a clearing facility could (a) trigger, cause or transmit further systemic disruptions to the financial system; or (b) affect public confidence in the financial system. A Singapore corporation will be a recognized clearinghouse if the above two conditions do not apply.

An approved clearinghouse will have the obligation to notify MAS of certain matters, such as any civil or criminal legal proceeding instituted against the approved clearinghouse, whether in Singapore or elsewhere; any disruption of or delay in any clearing or settlement procedures of the approved clearing house, including system failures. An approved clearinghouse will need to seek approval from MAS prior to making any change to its risk management frameworks, including the types of collateral accepted, the methodologies for collateral valuation and determination of margins, and the size of the financial resources available to support a member's default. An approved clearinghouse will need to maintain at all times a business continuity plan and a recovery and resolution plan as well as procedures and systems to maintain the integrity and security of the transmission and storage of its user information.

A member is required to notify an approved clearinghouse in such a manner that the approved clearinghouse is able to identify client money and assets and whether they are segregated in accordance with the instructions given by the client. If the client chooses to have its money and assets segregated from the books of the other customers of the member, the approved

clearinghouse will need to ensure the relevant money is deposited in a trust account or custody account, to be held for the benefit of the client; ensure the relevant assets and money are kept separate from all other money and assets of the members and clearinghouse accounts. If a client chooses not to segregate its money and assets from the books of other clients of the member, the approved clearinghouse shall deposit it in a trust or custody account; ensure all money and assets are kept separate from the other members and clearinghouse accounts. However, if a member fails to meet its obligations to the approved clearinghouse and may be attributable to the failure of the client to meet its obligations, the clearinghouse may use these money and assets under certain conditions. An approved clearinghouse may invest any money or assets received in certain investment products only, such as securities of the Government.

A recognized clearinghouse shall ensure that every member shall inform their clients that they may choose to have any money or assets separated from the books of any other customer or customers of that member. A recognized clearinghouse will need to maintain at all times a business continuity plan and maintain the integrity and security of the transmission and storage of its user information. Similar client segregation rules apply to a recognized clearinghouse which is a Singaporean corporation.

- On June 26, 2013, MAS released its consultation paper on Draft Regulations Pursuant to the Securities and Futures Act for Reporting of Derivatives Contracts (SF(RDC)R).

MAS proposes to require derivatives contracts which are traded in Singapore and/or booked in Singapore by specified persons to be reported to a licensed trade repository (LTR) or licensed foreign trade repository (LFTR). The term “traded in Singapore” means the execution of the specified derivatives contract by any trading desk (of a specified person) located in Singapore.

MAS proposed to subject non-financial specified person (NFSP) to the reporting obligation only when his aggregate gross notional amount of specified derivatives contracts traded in Singapore or aggregate gross notional amount of specified derivatives contracts booked in Singapore exceeds the reporting threshold of S\$8 billion. Once an NFSP exceeds the reporting threshold, he must notify MAS no later than one calendar month from the end of the quarter the threshold is exceeded. An NFSP ceases to be subject to the reporting obligation when both his aggregate gross notional amount of specified derivatives contracts traded in Singapore or aggregate gross notional amount of specified derivatives contracts booked in Singapore falls below the reporting threshold for four consecutive quarters. However, an NFSP will still be required to continue reporting any amendment, modification, variation or change to the information of all specified derivatives contracts that it had previously reported to the LTR or LFTR, even after it has stopped being subject to the reporting obligation. The Singapore Government and statutory boards; central banks; foreign central banks or agency of central government not incorporated for commercial purposes and; certain multilateral agencies, such as the Asian Development Bank, the Bank for International Settlements, the African Development Bank to name a few, will be exempt from the reporting obligation.

All asset classes will be reportable, however, it will be subject to a phased implementation process. Reporting will begin on October 31, 2013 for interest rate derivatives contracts and credit derivatives contracts. This will be followed by foreign exchange, equity and commodity derivatives contracts on April 1, 2014. FX spots will not be reported.

Reporting will also be subject to a phased implementation process by the type of reporting party which includes banks/merchant banks; other FIs and NFSPs. Banks/merchant banks will have a transition period of one month from the Date of Listing. Other FIs will have three months from the Date of Listing and NFSPs will have six months from the Date of Listing. Each of these dates will be

set out in the fourth schedule of the SF(RDC)R. Contracts with a remaining maturity of not less than one year as of the Date of Listing will need to be back-loaded. Firms will have six months from the reporting commencement date to do so. Contracts entered into on/ after the Date of Listing and before the reporting commencement date will need to be reported and will be given six months to do so from the reporting commencement date.

MAS has the power under Section 128 of the SFA to allow specified persons who are complying with a comparable reporting regimes in foreign jurisdictions to be deemed as having complied with Section 125 of the SFA. MAS will await further international consensus before exercising such power.

- On October 30, 2013, MAS published the Securities and Futures (Reporting of Derivatives Contracts) Regulations 2013, which came into operation on October 31, 2013. Reporting will begin on April 1, 2014 for licensed banks and merchant banks for credit and interest rate derivatives. All other financial entities will begin reporting for credit and interest rate derivatives on July 1, 2014. This will be followed by significant derivatives holders on October 1, 2014.

A significant derivatives holder is prescribed as a Singapore resident person with an aggregate gross notional exceeding SGD 8billion over 4 consecutive quarters. The reporting for all other asset classes is likely to begin in October 2014. A specified derivative contract will need to be reported if it is any interest rate or credit derivative contract which is traded in Singapore or booked in Singapore to a licensed trade repository or licensed foreign trade repository.

- On March 26, 2014, MAS published the Securities and Futures (Reporting of Derivatives Contracts) (Amendment) Regulations 2014, which came into operation on March 31, 2014.

Some of the changes include:

- a specified person or a specified person who enters into a specified derivatives contract as agent of a part to the specified derivatives contract, a specified person need not report counterparty information before November 1, 2014 if he is prohibited from reporting of counterparty information under the laws of any jurisdiction, or requirements imposed on him by any authority of any jurisdiction or is required to attain client consent and has made all reasonable efforts but was unable to attain such consent;
- for uncleared contracts that are not electronically confirmed and is entered into on or after April 1, 2015 will need to agree on the UTI to be reported;
- for counterparties that are not specified persons, if the counterparty does not have a LEI or a pre-LEI, the SWIFT BIC code, AVOX ID, any identifier issues by a licensed trade repository or licensed foreign trade repository, or client code may be used;
- for “traded in Singapore” contracts for interest rate contracts and credit derivatives contracts will start on April 1, 2015 instead of April 1, 2014.

2. MAS issues monograph on ‘Supervision of Financial Market Infrastructures in Singapore’

- On January 14, 2013, MAS issued a monograph on ‘Supervision of Financial Market Infrastructures in Singapore’. This monograph updates and replaces the monograph on ‘MAS’ Roles and Responsibilities in Relation to Securities and Clearing and Settlement Systems in Singapore’ issued in 2004; and complements earlier MAS monographs which set out MAS’ overall approach to financial supervision.
- The monograph sets out MAS’ adoption of the CPSS-IOSCO Principles for Financial Market Infrastructures (FMI Principles) issued in April 2012. The FMI Principles sets the benchmark for the supervision of financial market infrastructures (FMIs) and are expressed as broad principles. In summary, the monograph:

- sets out MAS' supervisory objectives of safety and efficiency. To achieve these objectives, MAS monitors and assesses existing and new FMIs to ensure that FMIs have proper structures, processes and rules in place;
 - introduces the regulatory framework for supervision of FMIs. MAS' powers for supervision of FMIs are derived from the Payment Systems (Oversight) Act and the SFA; and
 - articulates MAS' supervisory approach with respect to FMIs.
- MAS may impose higher or more specific requirements on FMIs, as appropriate, in the context of specific risks, or in the context of wider financial stability. Where relevant and practical, MAS also seeks to participate in the cooperative oversight of cross-border or multi-currency FMIs which may affect the stability of the financial system of Singapore. Presently, the Continuous Linked Settlement (CLS) is subject to cooperative oversight by MAS.

3. SGX releases consultation paper on proposed amendments to SGX-DC clearing rules

- On October 3, 2012, SGX released a consultation paper on the proposed amendments to the SGX-DC clearing rules for client clearing of OTC financial derivative contracts (OTCF contracts) and enhanced customer collateral protection.

Highlights relating to the clearing of OTCF contracts include:

- A minimum capital requirement of SGD50 million for all Clearing Members clearing OTCF Contracts, whether house or client trades;
- Bank Clearing Members (BCMs) (or their parent bank) and parent banks of General Clearing Members (GCMs) clearing both house and client trades will no longer be subject to the minimum SGD1 billion share capital requirement but must instead comply with capital standards prescribed by MAS or their home regulator;
- GCMs clearing client trades only must hold a capital markets services license, be guaranteed by a parent entity licensed and regulated by a financial authority/regulator and such parent entity must comply with capital requirements imposed by its home regulator;
- BCMs (or their parent bank) and parent banks of GCMs clearing both house and client trades must have a long term rating indicating strong creditworthiness and a rating indicating adequate intrinsic safety and soundness (excluding external credit support) instead of the current long term rating of 'A' and financial strength rating of 'C'. The parent entity of a GCM clearing client trades only must have a long term rating indicating strong creditworthiness;
- All Clearing Members must demonstrate to SGX-DC that they have the requisite default management capabilities in place; and
- All Clearing Members will be subject to such further capital and financial requirements as may be prescribed by SGX-DC from time to time.

Highlights relating to enhanced customer collateral protection for OTC commodity contracts (OTC contracts) and OTCF contracts include:

- By virtue of the statutory trust imposed by Section 62 of the SFA, SGX-DC holds customer collateral on trust and separate from its own funds and Clearing Members' collateral. Customer collateral is therefore protected against the risk of insolvency of the Clearing Member and SGX-DC.
- However, customer collateral is not protected against "fellow customer risk" as SGX-DC's Rules permit SGX-DC to have recourse to customer collateral in the case of a "double default" where a Clearing Member defaults due to the default of one of its customers.
- The proposed Enhanced Customer Collateral Protection gives customers the option of electing to ring-fence their collateral from "fellow customer risk" and is based on the US LSOC model.

- SGX-DC's portability arrangements under Rule 7A.02.1.1 will continue to apply to all customers whether or not they opt for the Enhanced Customer Collateral Protection.

4. SGX enhances default management framework

- On July 25, 2012, SGX announced the enhancement of its rules to strengthen its default management framework to protect against systemically destabilizing events, which may include the possibility of multiple member defaults. This enhancement follows a public consultation issued in September 2011. The rule enhancements include:
 - establishing the Clearing Member's liabilities in circumstances of multiple defaults;
 - allowing SGX to apply the Clearing Fund continually, for a fixed period of 90 days, to meet the losses arising from all defaults in that period; and
 - various clarifications and refinements to SGX's powers in managing a default, such as SGX's authority to transfer and manage customer positions and margins from a defaulted Clearing Member to a non-defaulting Clearing Member.
- On November 6, 2013, SGX issued a consultation paper on the Proposed Refinements to the SGX-DC Clearing Fund and OTCF Default Management Procedures. SGX aims to implement the proposed amendments in February 2014. Singapore Exchange Derivatives Clearing Limited (SGX-DC) is proposing refinements to its Clearing Fund structure and improvements in the auction process for managing a default of a member that clears OTC financial derivatives. The proposed rule amendments specify the appointment and sequence of use of resources in the event of a default.

5. Amendments to MAS Act

- On March 15, 2013, the Monetary Authority of Singapore (Amendment) Bill 2013 (MAS(A) Bill) and the Financial Institutions (Miscellaneous Amendments) Bill 2013 were passed (but have not yet come into force). They expand the powers of the MAS to exercise control over and to resolve distressed financial institutions. The new resolution regime will cover more financial institutions (other than banks and insurance companies) including CCPs.

One concern that had arisen from the original MAS(A) Bill was its potentially adverse impact on the enforceability of close-out netting. On January 12, 2013, ISDA made a submission to MAS highlighting its concerns. In its response to feedback received, MAS stated that:

"MAS agree that the legal framework governing contractual netting should be clear and transparent during resolution of regulated entities, and not hamper implementation of resolution measures. In light of the comments, the MAS(A) Bill will be amended to expressly reflect that the exercise of resolution powers is not intended to defeat bilateral netting arrangements. MAS will also provide in the MAS(A) Bill, a general power to prescribe safeguards to the exercise of the resolution powers. This would enable the Minister to expressly provide in subsidiary legislation that bilateral netting arrangements, as well as other similar arrangements warranting carve-out, will not be affected by the exercise of resolution powers under the MAS Act."

The MAS(A) Bill that has been passed has been revised accordingly. In particular, Section 30AAZN has been significantly amended to empower the Minister through subsidiary legislation to create the appropriate safe harbors for bilateral netting arrangements.

6. Basel III commitments

- Banks incorporated in Singapore will be required to meet the Basel III minimum capital adequacy ratio (CAR) standards by January 1, 2013, ahead of Basel's January 1, 2015 timeline. While Basel III requires banks to meet a Common Equity Tier 1 CAR of 4.5% and Tier 1 CAR of 6% by January 1, 2015, MAS will require Singapore-incorporated banks to meet these requirements by January 1, 2013. Further, MAS will require them to meet a higher Common Equity Tier 1 CAR of 6.5% and Tier 1 CAR of 8% by January 1, 2015. MAS' existing requirement for Total CAR of 10% (which is higher than Basel III's 8%) will remain unchanged. Additionally, there will be a capital conservation buffer of 2.5% to be comprised of Common Equity Tier 1. This buffer will be phased in from January 1, 2016 to January 1, 2019. The new eligibility criteria for regulatory capital will also be phased in from January 1, 2014 to January 1, 2018. These requirements will apply to both the bank-group and bank-solo levels.
- On August 16, 2013, MAS issued a consultation paper on Local Implementation of Basel III Liquidity Rules – Liquidity Coverage Ratio. MAS is proposing to replace the existing Minimum Liquid Assets (MLA) with the Liquidity Coverage Ratio (LCR) framework. Locally incorporated banks, foreign bank branches and finance companies in Singapore will be required to comply with the LCR requirement. Additionally, MAS is proposing that merchant banks be subject to the LCR requirement as well.

MAS is proposing to impose an individual LCR requirement on an entity level for financial institutions in Singapore, however, MAS is prepared to consider proposing a collective LCR requirement on an aggregated country level where the related entities in Singapore can justify and demonstrate that their liquidity needs are managed on a country level basis; governed by clear and common liquidity management frameworks, policies and processes. MAS is also prepared to vary the LCR requirement for foreign bank branches under certain conditions and will be assessed on a case-by-case basis.

MAS proposes to impose a SGD LCR requirement of 100%, to be implemented by Jan 1, 2015. MAS proposes to impose a USD LCR requirement and this will be set at 80%. Bank-specific requirements will be imposed on a case-by-case basis if prudential concerns warrant them. The USD LCR will start at 40% on Jan 1, 2015 and rise in equal annual steps to reach 80% on Jan 1, 2019.

High Quality Liquid Assets (HQLA) will comprise mainly of cash, central bank reserves, and certain marketable securities backed by sovereigns and central banks, among others. Residential mortgage-backed securities (RMBS) and non-financial equities will not be allowed. MAS proposes to accept non-financial corporate securities as HQLA but this will be limited to those rated A and above.

MAS is prepared to waive the end-of-day cash balance requirement for banks and finance companies in a liquidity stress situation, to allow them to meet their payment obligation for the day. As such, MAS proposes to allow cash balances held to meet the Minimum Cash Balance (MCB) requirement to be included as HQLA for the computation of LCR. Currently, banks and finance companies are required to maintain a MCB of 2% of their Qualifying Liabilities at the end of each day and a minimum daily average of 3% over each two-week maintenance period. For trade finance, MAS proposes to apply an outflow factor of 3% to trade finance instruments instead of 5%. For intragroup flows, MAS proposes to allow netting of intragroup flows within each day inside the 30 days period.

7. MAS amends MAS Notice 637

- MAS Notice 637 on ‘Risk Based Capital Requirements for Banks Incorporated in Singapore’ has been amended to implement the Basel III capital reforms for bank exposures to central counterparties set out by the Basel Committee on Banking Supervision in its July 2012 paper. The amendments seek to strengthen the capital framework for trade exposures and default fund exposures of banks to CCPs. It also sets out the requirements to be met by a CCP for the purpose of determining the applicable capital requirements for bank exposures to the CCP. The proposed revisions will take effect from July 1, 2013. Other revisions have also been made to MAS Notice 637 (including the implementation of the Basel III composition of capital disclosure requirements) which will take effect from January 1, 2013.

8. EMA develops electricity forward trading

- On May 23, 2013, the Energy Market Authority (EMA) issued a request for interest document for the Forward Sale Contract Scheme (FSC) to facilitate the development of an electricity futures market in Singapore. The aim of the development of the futures market is to support the trading of “forward” electricity products and complement the existing wholesale and retail electricity markets.

In its public consultation paper released in October 2012, the EMA requested feedback on the FSC scheme, which provides incentives for generators through long term contracts of up to three years (FSCs), in return for them participating as market makers in the electricity futures market. The FSCs are fixed volume indexed price contracts with generators on the sell-side and Market Support Services Licensee (MSSL), i.e. SP Services, on the buy-side. The total volume for the FSC is 8,400GWh over the three year tenure and will be allocated evenly across all time periods in the quarter during the contract duration. The FSC price may be pegged to the prevailing Liquefied Natural Gas Vesting Price (LVP) or Balance Vesting Price (BVP) and generators will not be allowed to switch between the price references during the tenure of the FSC scheme. The expected launch of the Singapore electricity futures market is in the first half of 2014.

9. Financial benchmarks

- On June 14, 2013, the Associations of Banks in Singapore (ABS), in consultation with the Singapore Foreign Exchange Market Committee (SFEMC), announced the following changes to the ABS financial benchmarks:
 - Ceasing publication on July 12, 2013 - USD/VND spot rate, SGD IRS rate, THB SOR rate and IDR SOR rate;
 - Ceasing publication on August 5, 2013 - USD/MYR spot rate. This will be replaced with benchmarks in other jurisdictions;
 - Ceasing publication on September 30, 2013 - SGD SOR rate (1wk, 2mths, 9mths and 12mths) and SGD SIBOR rate (2mths and 9mths);
 - Ceasing publication on December 31, 2013 - USD SIBOR rate. This will be replaced with benchmarks in other jurisdictions.

The USD/VND spot rate benchmark, SGD IRS, IDR SOR and THB SOR rate benchmarks and the SGD SOR and SGD SIBOR rate benchmarks for the discontinued maturities are being discontinued due to the lack of liquidity in the underlying rates.

In order to facilitate a smooth transition to the new benchmarks, SFEMC has made a number of recommendations including:

- Rate swap and other contracts referencing the SGD SOR rate benchmarks for the continuing maturities of overnight, 1 month, 3 months or 6 months that may be entered into on or after October 1, 2013 should apply the corresponding new benchmarks;
 - Parties should mutually agree to amend rate swap and other contracts referencing the existing SGD SOR rate benchmarks for the continuing maturities of overnight, 1 month, 3 months or 6 months that remain outstanding on October 1, 2013 to reference the new SGD SOR rate benchmark for the corresponding maturity;
 - Parties should mutually agree to amend rate swap and other contracts referencing the existing SGD SOR rate benchmark for the discontinued maturities of 1 week and 2 months that remain outstanding on October 1, 2013 to reference a linearly interpolated rate using rates determined by reference to the new SGD SOR rate benchmarks for the maturities of overnight and 1 month, and 1 month and 3 months respectively;
 - Parties should mutually agree to amend rate swap and other contracts referencing the existing SGD SIBOR rate benchmarks for the discontinued maturities of 2 months or 9 months that remain outstanding on October 1, 2013 to reference a linearly interpolated rate using rates determined by reference to the SGD SIBOR rate benchmarks for the continuing maturities of 1 month and 3 months, and 6 months and 12 months respectively;
 - Parties should mutually agree to amend rate swap and other contracts referencing the existing USD SIBOR rate benchmark that remain outstanding on January 1, 2014 to reference the USD LIBOR rate benchmark;
 - NDF and other relevant contracts referencing the USD/SGD, USD/THB or USD/IDR spot rate benchmarks that may be entered into on or after August 6, 2013 should apply the corresponding new benchmarks;
 - NDF and other relevant contracts referencing the USD/MYR spot rate benchmark that may be entered into on or after August 6, 2013 should apply the onshore USD/MYR spot rate benchmark published on Reuters Screen MYRFX2 Page;
 - Parties should mutually agree to amend NDF and other relevant contracts referencing the existing USD/SGD, USD/THB, USD/IDR or USD/MYR spot rate benchmarks that remain outstanding on August 6, 2013 to reference (as applicable) the new spot rate benchmarks for USD/SGD, USD/THB or USD/IDR or to reference the onshore USD/MYR spot rate benchmark published on Reuters Screen MYRFX2 Page.
- On June 14, 2013, MAS released a consultation paper on the Proposed Regulatory Framework for Financial Benchmarks, which aims to deter and penalize attempts to manipulate any financial benchmark, and to safeguard the credibility and reliability of key financial benchmarks in Singapore. MAS proposed to introduce a regulatory framework for the setting of financial benchmarks. The framework will be affected via amendments to the Securities and Futures Act (SFA).

The key elements of the proposed framework include:

- Introduce criminal and civil sanctions for manipulation of any financial benchmark;
- Provide legal powers to designate key financial benchmarks and subject their Administrators and Submitters to regulation;
- Issue best practice guidance for other benchmarks consistent with IOSCO Principles;
- Provide legal powers to compel entities to be Submitters to designated benchmarks.

MAS proposes that the Singapore Interbank Offered Rate (SIBOR) and the Swap Offer rate (SOR), administered by the Association of Banks in Singapore (ABS), be designated as financial benchmarks. As ABS also administers foreign exchange spot benchmarks (FX Benchmarks), which are largely used in the Non-Deliverable Foreign Exchange Forwards (NDFs) market, MAS is also proposing to include FX Benchmarks as designated benchmarks.

- On July 5, 2013 ISDA, together with EMTA, published the 2013 Multilateral Amendment Agreement for Certain Asian Currency Non-Deliverable FX and Currency Option Transactions with Non-Deliverable Swap Transactions Supplement and Other Transactions Supplement Thereto (FX-MAA) to assist parties wishing to make the amendments referred to above. The closing date for signing up to the FX-MAA was August 2, 2013.
- On August 29, 2013 ISDA published the 2013 Multilateral Amendment Agreement for Certain Rate Swap and Other Transactions (Rates-MAA) to assist parties wishing to make the amendments referred to above. The Rates-MAA will apply to OTC derivatives and other financial transactions such as repos. In addition, the Rates-MAA will apply to the ISDA English or New York law governed Credit Support Documents. As between any two parties to the Rates-MAA, the relevant transactions or Credit Support Documents between them will be amended only if and to the extent that such transactions or Credit Support Documents have a fixing of an affected rate that is to take place (i) on or after October 1, 2013 and (ii) after the date of discontinuation of the affected rate (i.e. September 30, 2013 for the SGD-SOR and SGD SIBOR rate benchmarks and December 31, 2013 for the USD SIBOR rate benchmark. The closing date for signing up to the Rates-MAA was September 26, 2013.
- On August 29, 2013, ISDA also published Supplement Nos. 35 and 36 to the 2006 ISDA Definitions. Supplement No. 35 provides for the deletion of “IDR-SOR-Reuters”, “SGD-SOR-Reuters”, “SGD-SOR Reference Banks”, “SGD-SONAR-OIS-COMPOUND” and “THB-SOR-Reuters” and the addition of “SGD-SOR-VWAP”, “SGD-SOR-VWAP-Reference Banks” and “SGD-SONAR-OIS-VWAP-COMPOUND” under Section 7.1(j), (t) and (aa) and for consequential amendments to Section 6.2 (g). Supplement No. 36 provides for the deletion of “USD-SIBOR-SIBO” under Section 7.1 (ab).
- On February 18, 2014, ABS Benchmarks Administration Co Pte. Ltd. (ABS Co), in consultation with SFEMC, that it will discontinue the USD/IDR spot rate benchmark (denoted as “IDR VWAP” or “IDR03” in the 1998 FX and Currency Option Definitions). The last day of publication of IDR VWAP (IDR03) will be 27 March 2014. ABS Co, together with the SFEMC, has decided that it is no longer necessary to continue IDR VWAP (IDR03) given the development of an onshore USD/IDR spot rate benchmark. The onshore USD/IDR spot rate benchmark is reported by Bank Indonesia and published on its website and will be denoted as “IDR JISDOR” or “IDR04” in the 1998 FX and Currency Option Definitions. The SFEMC has recommended that market participants apply IDR JISDOR (IDR04) to NDF and other relevant contracts that have trade dates on or after 28 March 2014. The SFEMC has also recommended that parties mutually agree to amend legacy outstanding contracts that reference IDR VWAP (IDR03) to instead reference IDR JISDOR (IDR04).
- To facilitate such amendments, on 4 March 2014, ISDA published the 2014 Multilateral Amendment Agreement for IDR Non-Deliverable FX and Currency Option Transactions, Non-Deliverable Swap Transactions and Certain Other Transactions (IDR-MAA). The closing date for signing up to the IDR-MAA was March 26, 2014.

10. MAS releases Consultation Papers on Draft Regulations effecting policy proposals in relation to retail investors

- On September 17, 2013, MAS released the Consultation Paper on Draft Regulations pursuant to the Securities and Futures Act (“SFA”) and Financial Advisers Act (“FAA”) to effect certain policy proposals arising from the review of the regulatory regime governing the sale and marketing of listed and unlisted investment products as set out in MAS’ consultation papers dated 12 March 2009 and 28 January 2010. In order to strengthen safeguards for retail investors, the Securities and Futures

(Amendment) Act 2012 empowers MAS to prescribe Regulations in relation to requirements relating to:

- A Products Highlights Sheet to be issued in a prescribed format for certain offers of securities under Part XIII of the SFA;
- Issuers of unlisted debentures to provide timely and ongoing disclosures to investors; and
- Advertisements of certain offers of securities to give it a fair and balanced view of the product and comply with certain restrictions.

MAS is also proposing to remove exemptions available to Financial Advisers (“FAs”) from complying with certain business conduct requirements under the FAA when providing financial advisory services to overseas investors. Also, in order to ensure accountability for advertisements published, MAS intends to require senior management of financial institutions (“FIs”) and other persons who are subject to these requirements to approve advertisements before they are made public.

- On March 14, 2014, the Monetary Authority of Singapore (“MAS”) issued its Consultation Paper on Draft Regulations to Enhance the Regulatory Framework for Unlisted Margined Derivatives Offered to Retail Investors (the “2014 Paper”). In the 2014 Paper, MAS is consulting on the Draft Regulations pursuant to the Securities and Futures Act Chapter 289 of Singapore (SFA) which will effect the policy proposals set out in the 2012 Consultation Paper as well as the MAS Response to the 2012 Consultation Paper .

Highlights of some proposed amendments are:

- Presently, banks which are licensed under the Banking Act are not caught under the SFA for the regulated activity of LFX trading. MAS proposes certain amendments to the Second Schedule to the SFA to remove the regulatory carve-out in order to effect the proposals set out in the 2012 Policy Paper in relation to banks carrying on LFX trading with retail customers.
- MAS also proposes certain amendments to the Securities and Futures (Licensing and Conduct of Business) Regulations to require Capital Markets Services License holders (“CMSL holders”) and entities exempted under section 99(1)(a), (b) and (c) of the SFA (collectively the “derivative holders”) who offer CFDs and/or LFX to:
 - (a) maintain separate trust accounts for retail customers’ transactions in listed and unlisted products;
 - (b) maintain retail customer moneys in trust accounts with a bank in Singapore;
 - (c) not use retail customer moneys/assets in trust/custody accounts for meeting other obligations incurred by the derivative dealer in connection with the retail customer’s unlisted margined derivative transactions;
 - (d) perform daily computation of all retail and non-retail customer money/assets which are deposited in a trust/custody account; and
 - (e) act as a principal to the trade when dealing in unlisted margined derivatives with retail customers.
- MAS proposes certain amendments to the Securities and Futures (Financing and Margin Requirements for Holders of Capital Markets Services Licences) Regulations to:
 - (a) Impose minimum margin requirement of 5 % on CMSL holders dealing in CFDs on FX and other LFX contracts with retail customers; and
 - (b) Require a base capital requirement of S\$5 million for CMSL holders dealing in unlisted derivatives with retail customers.
- MAS also proposes to introduce a new set of regulations being the Securities and Futures (Margin Requirements for Exempt Financial Institutions) Regulations which will prescribe margin

requirements for exempt financial institutions as set out under Section 99(1)(a), (b) and (c) of the SFA.

Deadline for submission is April 14.

11. MAS releases Consultation Paper on Amendments to Corporate Governance Regulations

- On September 20, 2013, MAS released the Consultation Paper on Amendments to Corporate Governance Regulations. By way of background, the Securities and Futures (Corporate Governance of Approved Exchanges, Designated Clearing Houses and Approved Holding Companies) Regulations 2005 (the “2005 Regulations”) were introduced in 2005 and are applicable to approved exchanges, approved clearing houses and approved holding companies regulated under the Securities and Futures Act (SFA). In this consultation paper, MAS proposes amendments to the 2005 Regulations, taking into account developments in the corporate governance requirements as well as recent amendments to the SFA. The proposals in this consultation paper cover the following areas:
 - Director independence;
 - Board and board committees;
 - Appointment of key management officers

MAS also proposes to extend the 2005 Regulations to licensed trade repositories (“LTRS”) in view of their status as systematically important financial market infrastructure. The proposed Securities and Futures (Corporate Governance of Approved Exchanges, Approved Clearing Houses, Licensed Trade Repositories and Approved Holding Companies) Regulations 2013 is intended to replace the 2005 Regulations. Compliance by approved exchanges, approved clearing houses, approved holding companies and licensed trade repositories with the regulations will be reviewed by MAS as part of its ongoing supervisory programme. The deadline for submission is October 21, 2013.

12. Review on bankruptcy, insolvency regimes

- On October 4, 2013, the Insolvency Law Review Committee submitted its report reviewing the existing bankruptcy and corporate insolvency regimes in Singapore to the Ministry of Law, which has invited comments through December 2. The aims of the review were to:
 - unify the bankruptcy and corporate insolvency regimes into a single piece of legislation;
 - modernize the law of bankruptcy and corporate insolvency as well as adopt practices best suited to Singapore;
 - make the attendant processes user-friendly and accessible for individuals and corporations alike;
 - where appropriate, take into account the relevant recommendations made by the Companies Regulation Framework Steering Committee in 2002.

The main recommendation in the report is for the enactment of a new Insolvency Act. This new act will consolidate and update the core areas of Singapore’s personal and corporate insolvency regime, as well as set out common principles and procedures. This is intended to provide greater consistency certainty on various concepts that are common to the various insolvency regimes; and better support the transition and coordination between these regimes.

The report also considers the various corporate insolvency regimes in Singapore including private receivership, liquidation, judicial management and schemes of arrangement.

13. SGX-DC registration as a DCO

- On October 25, 2013, SGX issued a consultation paper on the proposed SGX-DC Remote Membership and Derivatives Clearing Organization Rules. The Singapore Exchange Derivatives Clearing Limited (SGX-DC) has applied for registration with the CFTC as a derivatives clearing organization (DCO). Consequently, SGX-DC will be required to comply with the applicable US laws and regulations as well as the US Commodity Futures trading Commission (CFTC) Commodity Exchange Act (CEA) requirements for a DCO.

Under Section 4d(f)(1) of the CEA, an intermediary accepting collateral from a US person for a swaps contract cleared through a DCO must be a futures commission merchant (FCM) registered with the CFTC. SGX-DC proposes to allow remote clearing members (RCMs). FCMs based in the US or otherwise may apply to become members of SGX-DC as a RCM in order to clear swap contracts for their US customers through SGX-DC. A RCM must be regulated and licensed by a recognized regulator and governed by the laws of a jurisdiction acceptable to SGX-DC. SGX-DC will consider the comparability of laws of the foreign jurisdiction and the regulatory standards with Singapore laws and regulations; the licensing and supervision of OTC activities by an independent statutory regulator; and the existence of information sharing arrangement between MAS and the statutory foreign regulator or between SGX-DC and any foreign self-regulatory organization responsible for the supervision of the RCM.

A RCM clearing Non-Relevant market contracts and/or customers OTCF contracts is required to have, or have a parent entity who has a long term credit rating indicating strong overall creditworthiness supporting fulfillment of its financial obligations. RCMs will have reporting, access to records, appointment of management personnel, segregation of positions and collateral and default management requirements that are similar to those of the General Clearing Members (GCMs). There will be additional membership criteria, for example: RCMs must have the ability to conduct its clearing activities during SGX-DC's business hours and maintain adequate contactable staff and RCMs should not have a business presence in Singapore related to the provision of financial services or serve Singapore-domiciled customers.

- On December 27, 2013, CFTC issued an Order granting Singapore Exchange Derivatives Clearing Limited (SGX-DC) registration as a derivatives clearing organization (DCO) pursuant to Section 5b of the Commodity Act. SGX-DC, which is a subsidiary of Singapore Exchange Limited and is organized under the laws of Singapore, is also regulated by the MAS. Subject to the terms and conditions of the Order, SGX-DC is authorized to provide clearing services for swaps that SGX-DC currently clears and such other swaps that CFTC determines SGX-DC is eligible to clear. This Order was effective on December 31, 2013.

14. MAS requirements for assessing systemically important banks

- On October 4, 2013, MAS issued the Proposed Amendments to MAS Notice 637 on Disclosure and Submission Requirements for Assessing Global Systemically Important Banks and Point of Non-Viability Requirements. The proposed disclosure and submission requirements in the Consultation Paper aim to allow the BCBS to assess the systemic importance of Singapore-incorporated banks. The methodology is based on the BCBS' framework "Global systemically important banks: updated assessment methodology and the higher loss absorbency requirement".

The Consultation Paper will require Singapore-incorporated banks to make publicly available the 12 indicators used in the BCBS assessment methodology for identifying "G-SIBs"; and submit to MAS the full set of data required by the BCBS' data collection exercise. The Consultation Paper also

proposes requirements to ensure loss absorbency at the point of non-viability, for example: whether the assets of a Bank, in MAS's opinion, are sufficient to provide adequate protection to the bank's depositors and creditors. The proposed amendments will be effective from Jan 1, 2014.

15. MAS review of the Banking Act

- On November 28, 2013, MAS released a Consultation Paper on the Review of the Banking Act. MAS proposes several changes to the Banking Act (BA) to strengthen its supervisory oversight over banks and codify its expectations regarding the risk management practices that banks should implement. Key proposed amendments include:

Duty to inform MAS of material developments:

- MAS proposes that banks be required to notify MAS as soon as they become aware of any material adverse developments affecting the bank (including the head office and branches) or any entity in its group.
- Material adverse developments include, at a minimum, the breach (or possible breach) of any laws or regulations, business rules or codes of conduct in Singapore or elsewhere.
- Locally incorporated banks are currently required to obtain MAS' prior approval for the appointment of directors, chief executive officers, deputy chief executive officers, chief financial officers and chief risk officers. MAS proposes banks to notify them when they become aware of any material information which may negatively affect the fitness and propriety of any officer whose appointment was approved by MAS.
- Sections 15A and 15B of the BA require the Minister's approval before any person becomes a substantial shareholder of a bank incorporated in Singapore. MAS proposes to require banks incorporated in Singapore to notify them when they become aware of persons who have become shareholders or controllers without obtaining approval. MAS also proposes that banks be required to notify MAS as soon as they become aware of any material information that may negatively affect the suitability of their substantial shareholders and controllers.

MAS' control over key officers and auditors:

- Currently, under section 54(2) of the BA, MAS may direct the removal of a director of a locally incorporated bank or an executive officer of any bank in Singapore if the director or officer has (a) willfully contravened or willfully caused the bank to contravene any provisions of the BA; (b) without reasonable excuse, failed to secure the bank's compliance with the BA or the MAS Act; or (c) failed to discharge any duties of his office where MAS thinks such removal is necessary in the public interest or for the protection of the depositors of the bank.
- MAS proposes replacing the current grounds for removal in section 54(2) with a single criterion of the director or the executive officer ceasing to be fit and proper.
- MAS further proposes to include "interest of the Singapore financial system" as an additional premise for the removal of a bank director or executive officer. This will allow MAS to consider the reputation of and stakeholder confidence in the financial system when determining whether to exercise its power of removal.
- MAS will give prior notice of any intention to remove a bank director/executive officer in accordance with section 54(4) of the BA to afford them an opportunity to show cause against the removal. Any bank or director/executive officer may appeal in writing to the Minister within 30 days after receiving the notice.
- Bank auditors are required to discharge statutory duties to MAS as prescribed in section 58 of the BA. These include reporting the following: a serious breach or non-observance of BA provisions; a criminal offence involving fraud or dishonesty; losses that reduce the capital funds of the bank by 50%; and serious irregularities, including ones that jeopardize the security of creditors.

- To ensure auditors are not held liable for breach of their duties of confidentiality or defamation, MAS proposes to introduce a safe harbor provision into the BA to protect auditors which disclose information to MAS in good faith. MAS also proposes to prescribe the failure of auditors to discharge their statutory duties as an offence. Additionally, MAS proposes to direct the removal of an auditor who has not satisfactorily discharged its statutory functions.

Duty to implement adequate risk management systems and controls:

- MAS proposes to codify its expectation that all banks institute and maintain adequate risk management systems and controls in the BA. Banks will be required to establish a comprehensive risk management framework and internal controls. MAS will determine whether the risk management systems and controls are adequate.

16. MAS consults on transaction requirements for banks

- In December 2013, MAS released a consultation paper on Related Party Transaction Requirements for Banks. The consultation paper sets out the proposed changes to MAS' requirements on banks' transactions with their related parties (RPTs) as set out in MAS Notice 643 "Transactions with Related Parties" and in the Banking Act (BA). Key highlights include:
 - Exemption of RPTs below SGD \$100,000. Exemption of all other staff transactions, besides staff loans, from the requirements that RPTs be conducted on no more favorable terms, provided that these transactions are granted as part of the officer or employee's overall remuneration package, in accordance with the staff remuneration policy that has been approved by the board;
 - Views on whether a bank's majority-owned subsidiaries should be excluded from the bank's list of related parties and the scope of MAS Notice 643. The paper consults on the level of majority shareholding in subsidiaries for the subsidiaries to qualify for the exclusion;
 - For a bank incorporated outside Singapore, the consultation paper seeks views on whether the definition of "senior management" should be confined to the senior management of the bank in Singapore;
 - For the list of banks' related parties, the consultation paper seeks comments on whether this list should be expanded to include firms, LLPs and companies of which banks are directors, partners, executive officers, agents, guarantors or sureties;
 - For substantial shareholder group (SSG), the consultation paper seeks comments on whether it would be appropriate to amend the definition of SSG to include the substantial shareholders of all the holding companies (both ultimate and intermediate holding companies) of a bank incorporated in Singapore (and their respective affiliates);
 - Seeking views on aligning the shareholding threshold, for determining the substantial shareholders of a bank incorporated in Singapore, with the 5% shareholding threshold in the Companies Act;
 - Seeking views on the materiality thresholds for prior approval requirement: (a) an aggregate threshold of 2% for the bank's Common Equity Tier 1 (CET1) or capital funds for exposures to any related party group; and (b) a per-transaction threshold of 0.05% of the bank's CET1 or capital funds, or \$2 million, whichever is lower, for any non-exposure transaction with a related party.

17. CFTC, MAS sign MoU on supervision of cross-border entities

- On December 27, 2013, CFTC and MAS signed a Memorandum of Understanding (MoU) regarding the cooperation and the exchange of information in the supervision and oversight of regulated entities that operate on a cross-border basis in the United States and Singapore. The MoU was signed by

former CFTC Chairman Gary Gensler and MAS Deputy Managing Director, Financial Supervision, Ong Chong Tee.

The CFTC and MAS expressed their willingness through this MoU to cooperate in the interest of fulfilling their respective regulatory mandates regarding derivatives markets, particularly in the areas of protecting investors and customers, fostering integrity of and maintaining confidence in financial markets and reducing systemic risk. The scope of the MoU includes markets and organized trading platforms, central counterparties, trade repositories, and intermediaries, dealers and other market participants.

18. MAS opens applications for RQFII

- On January 24, 2014, MAS announced that eligible financial institutions may submit applications for the Renminbi (RMB) Qualified Foreign Institutional Investor (RQFII) license. The RQFII license will allow these institutions to offer RMB investment products and invest offshore RMB into China's securities markets. The applications are made to the China Securities Regulatory Commission (CSRC) via approved custodian banks. All Singapore-incorporated financial institutions that are approved by MAS to conduct fund management activities may apply for the license. Singapore was allocated an aggregate quota of RMB 50 billion under China's RQFII programme.

ISDA Submissions (since 2010)

- March 12, 2010: [ISDA submission to MAS on the Consultation Paper on 'Review of the Regulatory Regime Governing the Sale and Marketing of Unlisted Investment Products'](#)
- March 26, 2012: [ISDA submission to MAS on the Consultation Paper on 'Proposed Regulation of OTC Derivatives'](#)
- March 26, 2012: [ISDA submission to MAS on the Consultation Paper on 'Transfer of Regulatory Oversight of Commodity Derivatives from IE to MAS'](#)
- June 22, 2012: [ISDA submission to MAS on the Consultation Paper I on 'Proposed Amendments to the Securities and Futures Act on Regulation of OTC Derivatives'](#)
- August 31, 2012: [ISDA submission to MAS on the Consultation Paper II on 'Proposed Amendments to the Securities and Futures Act on Regulation of OTC Derivatives'](#)
- November 7, 2012: [ISDA submission to SSGX with regard to the Consultation Paper on 'Client Clearing in OTCF Contracts and Enhanced Customer Collateral Protection for OTC Contracts and OTCF Contracts'](#)
- January 12, 2013: [ISDA submission to MAS on the Consultation Paper on 'Proposed Amendments to the MAS Act regarding the resolution of Financial Institutions'](#)
- February 8, 2013: [ISDA submission to MAS on the Consultation Paper on 'Draft Regulations pursuant to the Securities and Futures Act for Trade Repositories and Clearing Facilities'](#)
- July 24, 2013: [ISDA submission to Monetary Authority of Singapore regards to the Consultation Paper on Draft Regulations Pursuant to the Securities and Futures Act for Reporting of Derivatives Contracts.](#)
- August 7, 2013: ISDA submission to Monetary Authority of Singapore on [Feedback](#) on the [data fields](#) in Schedule 2 of the Consultation Paper on Draft Regulations Pursuant to the Securities and Futures Act for Reporting of Derivatives Contracts.
- November 5, 2013: [ISDA letter to MAS on Over-the-Counter Derivatives Trade Reporting in Singapore](#)

- November 15, 2013: [ISDA submission to Singapore Exchange Limited on Proposed Amendments to SGX-DC Remote Clearing Membership and Derivatives Clearing Organization Rules.](#)

TAIWAN

AT A GLANCE

Central Bank:	Central Bank of China (CBC) http://www.cbc.gov.tw
Bank Regulator:	Banking Bureau of the Financial Supervisory Commission (FSC) http://www.banking.gov.tw
Securities Regulator:	Securities and Futures Bureau of the FSC http://www.sfb.gov.tw
Other Regulators:	Insurance Bureau of the FSC http://www.ib.gov.tw GreTai Securities is a GSE that monitors trading volumes and advises Taiwan's authorities http://www.otc.org.tw
Associations:	Trust Association of the Republic of Taiwan (TAROC) Taiwan Financial Services Roundtable (TFSR)
Legal Opinions:	Netting and collateral opinions by Russin & Vecchi
Master Agreement:	ISDA
CCP/TR Status:	FSC mandated Gretai Securities Market to establish a local trade repository. Taiwan has not proposed any mandatory clearing requirement in respect of OTC derivatives.

Key Regulatory Milestones

- Taiwan's FSC has mandated Gretai Securities Market to establish a local trade repository. Financial institutions are required to report their trades to a local trade repository under a phased approach. Effective on April 1, 2012 (Phase 1), NDF, FX swap, vanilla IRS, TWD equity, and structured deposit are required to be reported. Effective on January 02, 2013 (Phase 2), FX options and forwards must be reported. Reporting of all other derivatives started from July 1, 2013 onwards (Phase 3). The local trade repository settings are bespoke in terms of reporting format (e.g. MTM, PVBP and Delta are required to be reported monthly, on a transaction-by-transaction basis) and connectivity (it does not support connection from global TR or any confirmation matching platform). Effective on January 2, 2013, reporting firms are required to separately confirm the uploaded details of the single-sided deals (trades to which uploaded by one party only) by T+1 and Gretai started to perform sample checking for those confirmed single-sided deals from March 18, 2013.

ISDA Submissions (since January 2010)

- August 23, 2011: [ISDA submission jointly with ECCT/AmCham Joint Banking Committee to Taiwan Financial Supervisory Commission on trade repository development in Taiwan](#)

THAILAND

AT A GLANCE

Central Bank:	Bank of Thailand (BOT) http://www.bot.or.th/english/Pages/BOTDefault.aspx
Bank Regulator:	BOT
Securities Regulator:	Securities and Exchange Commission http://www.sec.or.th/view/view.jsp?lang=en
Associations:	The Thai Bankers' Association Foreign Banks' Association
Legal Opinions:	Netting and collateral opinions by Baker & McKenzie
Master Agreement:	ISDA
CCP/TR Status:	No announced plans

Key Regulatory Milestones

1. Basel III commitments

- On December 14, 2012, BOT issued a notification on capital adequacy framework under Basel III. Thai banks will be required to maintain a minimum Common Equity Tier 1 (CET1) ratio of 4.5%, Tier 1 capital ratio of 6% and Total capital ratio of 8.5%, the latter of which remains unchanged from the Basel II ratio. Under the new Basel III capital framework, foreign bank branches will now be required to maintain a Total capital ratio of 8.5%, which is in line with the Thai banks. The new requirement became effective on January 1, 2013. BOT will assess the developments and impact studies on the Leverage ratio and Liquidity risk framework before adoption in Thailand.