

APAC Monthly Update

December 2012

APAC Monthly Update summarizes important regulatory developments, meetings, committee activities and conferences in the region.

Regulatory Activities

China:

On December 10, ISDA met with:

- the China Banking Regulatory Commission (CBRC) to discuss the regulatory reforms in respect of OTC derivatives in the US and EU, in particular the clearing and reporting requirements and the BCBS-IOSCO paper on margin for uncleared trades.

- the China Insurance Regulatory Commission (CIRC) to discuss the regulations CIRC recently issued on derivatives trading by domestic insurance companies. ISDA also updated CIRC on the regulatory reforms in respect of OTC derivatives in the US and EU.

On December 11, ISDA met with:

- the China Securities Regulatory Commission (CSRC) to exchange views on various issues relating to OTC commodities transactions. CSRC also introduced to ISDA its plan to develop the onshore OTC equity derivatives market.

- the Securities Association of China (SAC) and several domestic securities companies. SAC explained its role in developing the onshore OTC equity derivatives market and updated ISDA on its recent work in this area. ISDA briefed SAC and its members on ISDA documentation structure and responded to questions relating to the ISDA Master Agreement and Credit Support Documents. ISDA and SAC also discussed ways to strengthen cooperation.

Hong Kong:

On December 3 and 4, ISDA met with the Hong Kong Monetary Authority to exchange views on trade reporting to Hong Kong Trade Repository.

India:

On December 4, ISDA met with RBI's :

- Legal Department to discuss the Financial Sector Legislative Reforms Commission (FSLRC) Approach Paper, ISDA's October 12 submission to the RBI, FSLRC and the Ministry of Finance (MOF) on consistency of netting application in India, the G-20 commitments, the on-boarding of CCIL's FX

forward segment and the global review of financial benchmarks following the Wheatley Review of LIBOR.

- Department of Banking Operations & Development to discuss the G-20 commitments, ISDA's October 12 submission to the RBI, the Financial Sector Legislative Reforms Commission (FSLRC) and the Ministry of Finance (MOF) on consistency of netting application in India, ISDA's October 16 submission on the Draft Guidelines relating to Management of Intra-Group Transactions and exposures, ISDA's October 18 letter to Asia Pacific regulators, the on-boarding of CCIL's FX forward segment, the development of the Indian CDS market and the recent clarification provided by RBI to FEDAI on the use of the Credit Support Annex and the global review of financial benchmarks following the Wheatley Review of LIBOR, FATCA and the Volcker Rule.

- the Foreign Exchange Department of the Reserve Bank of India (RBI) to discuss the G-20 commitments, the recent clarification provided by RBI to FEDAI on the use of the Credit Support Annex and the on-boarding of CCIL's FX forward segment.

- the Internal Debt Management Department to discuss ISDA's October 12 submission to the RBI, the Financial Sector Legislative Reforms Commission (FSLRC) and the Ministry of Finance (MOF) on consistency of netting application in India, the development of the Indian CDS market, the on-boarding of CCIL's FX forward segment, the G-20 commitments, the various letters issued by global regulators to the CFTC relating to the CFTC's Proposed Guidance on Cross-Border Application of Certain Swap Provisions of the Commodity Exchange Act, and in particular the joint regulators letter to the CFTC on August 27.

Singapore:

On December 6, ISDA met with the Energy Market Authority (EMA) to discuss the development of an electricity futures and OTC electricity market in Singapore.

On December 17, ISDA met with MAS to discuss the BCBS-IOSCO margin for non-centrally-cleared derivatives, trade reporting and trade repository in Singapore.

Committee/Working Group Activities

Operations/Market Infrastructure

On December 4, ISDA held its APAC Implementation Group meeting to discuss the development on Hong Kong and Singapore trade reporting.

On December 6, ISDA held its APAC Interest Rates Derivatives Operations Working Group meeting to discuss the addition / amendment of floating rate options / matrices, the electronic confirmation format for CNH IRS product and the confirmation template for compounding and in-arrears Asian NDS.

Member Activities

China:

On December 11, ISDA held its China members' meeting in Beijing. Topics discussed included the CSRC consultation on the revised Provisions on the Investment Scope of the Proprietary Trading Business of Securities Companies and Related Issues, CIRC Interim Measures on Insurance Funds' Participation in Financial Derivatives Trading and CIRC Implementing Rules of the Interim Measures on Overseas Investments by Insurance Companies. ISDA also updated members on recent developments relating to the Dodd-Frank Act and EMIR, including the clarification on Article 25 in the Q&A on EMIR published by the European Commission, Section 5b of the Commodity Exchange Act, the US Treasury's final determination on Foreign Exchange Swaps and Foreign Exchange Forwards and the reporting requirements under the Dodd-Frank Act.

Mumbai:

On December 3, ISDA held its members' meeting in Mumbai. Topics discussed included the on-boarding of CCIL's FX forward segment, an update on the FEDAI clarification on CSAs, the finalization of FIMMDA's Bilateral Agreement for discontinuation of exchange of interbank confirmations for IRS and FRA trades settled through CCIL, ISDA's submission dated October 12 on netting to the RBI, FSLRC and Ministry of Finance, the FSLRC Approach Paper dated October 5, participation by mutual funds as users in the credit default swaps market as well as IRDA's guidelines issued on November 27 on investments by insurers in credit default swaps. ISDA updated members on recent developments relating to the Dodd-Frank Act and EMIR, including the clarification on Article 25 in the Q&A on EMIR published by the European Commission, Section 5b of the Commodity Exchange Act, the US Treasury's final determination on Foreign Exchange Swaps and Foreign Exchange Forwards and the reporting requirements under the Dodd-Frank Act. ISDA also updated members on the November 19 meeting in Singapore of the BIS committee set up to review LIBOR as well as recent developments relating to review of LIBOR and financial market benchmarks.

Regulatory Developments

Australia:

Treasury seeks views on implementing G-20 commitments

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On December 12, the Australian Treasury released Implementation of Australia's G-20 Over-the-Counter Derivatives Commitments, a proposal paper seeking comments on trade reporting as well as central clearing and trade execution. The submission deadline is February 15, 2013.

For trade reporting, a determination is to be made in the first quarter of 2013 that will require all five derivative classes (interest rates, foreign exchange, credit, equity and commodity) to be reported to a licensed trade repository where one is available. It is expected that the trade reporting regime will be in place by mid-2013. The trade reporting obligation will be phased in over two years with the obligation commencing by end-2013 for major financial institutions in the first phase, domestically-focused financial institutions in the second phase and end-users in the third phase. The report also requests the costs and benefits of complying with the trade reporting obligations.

For central clearing, the paper proposes that no decision be taken on any mandatory clearing obligation until the regulators have conducted further review or otherwise provided further advice. However, should substantial industry progress towards central clearing not be evident in the near future, the regulators may revisit this recommendation.

For trade execution, the paper proposes no decision be taken on any mandatory trade execution requirements until subsequent reviews by the regulators. Future recommendations for trade execution will be developed separately from recommendations on central clearing.

ASIC amended clearing and settlement facilities guidance

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

On December 18, Australian Securities and Investments Commission (ASIC) published its amended regulatory guidance for clearing and settlement facilities (CS facilities), which takes into account updated international standards and recent Council of Financial Regulators policy.

These changes ensure continuing access by Australian-based CS facilities to overseas participants and provide an appropriate degree of regulatory influence over foreign-based facilities that wish to offer services in Australia. The amended regulatory guidance:

- provides clarity for overseas CS facilities operating in Australia and domestic CS facilities seeking to move or outsource some operations overseas. It clarifies the circumstances under which a systemically important overseas CS facility with a strong domestic connection may need to hold a domestic licence;
- sets out examples of when ASIC may advise the Minister to impose conditions on cross-border CS facilities, for example an overseas CS facility wishing to offer services in Australia or a domestic CS facility operating overseas, to ensure appropriate influence for Australian regulators. ASIC intends to take a graduated and proportionate approach to advising the Minister to impose conditions which may vary depending on the characteristics of a CS facility and how it changes over time;
- provides examples of the types of conditions ASIC may advise the Minister to impose, including requiring an overseas CS facility to establish a domestic operational presence and requiring a domestic CS facility to set controls around how it deals with outsourcing of critical functions.

China: CBRC provides guidance on innovative capital instruments

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On November 29, CBRC released its guidance on innovative capital instruments of commercial banks (in Chinese only). 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 be made 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 is 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.

Hong Kong: HKMA finalized trade reporting technical arrangements

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

On December 10, Hong Kong Monetary Authority published its latest 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. As the regulations for mandating TR reporting are targeted to take effect in Q3 2013, the HKMA aims to launch the TR by July 2013. 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.

Singapore: MAS issues response on capital requirements implementation

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On November 29, MAS released their Response to Feedback Received – Consultation on Proposed Amendments to MAS Notice 637 to Implement Capital Requirements for Bank Exposures to Central Counterparties. In its response paper, MAS provided some clarifications such as: MAS will not publish a list of qualifying CCPs. It will be the responsibility of the Reporting Bank to determine whether a CCP meets the criteria to be treated as a qualifying CCP and must be able to provide an evaluation of whether the CCP meets the relevant criteria upon request by MAS. MAS also provided clarity on the capital treatment for trade exposures to a non-qualifying CCP will be applicable to the Reporting Bank acting as a clearing member and to the Reporting Bank that is a client of the clearing member.

Submissions

On December 14, ISDA made submissions to:

- the Australian Treasury regards to Strengthening APRA's Crisis Management Powers
- the Australian Securities Exchange regards to Derivatives Account Segregation and Portability.

Upcoming committee and working group meetings/conferences

Meetings:

APAC IRD Operations Meeting	Jan 10
Call on CFTC Final Exemptive Order	Jan 11
APAC Portfolio Reconciliations Meeting	Jan 17
APAC Equity Ops Meeting	Jan 17
APAC Implementation Meeting	Jan 18
Korea Members' Meeting - Seoul	Jan 21
Forum Update - Developments in Clearing, Regulation & Trade Repositories (Singapore)	Jan 23
North Asia L&R Meeting	Jan 29
South Asia L&R Meeting	Jan 31

Conferences:

Advanced OTC Derivatives Clearing – Hong Kong

Jan 23

ISDA APAC Monthly Update

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