

APAC Monthly Update

October 2011

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

Regulatory Activities

Asia Pacific:

ISDA hosted its annual Australia Conference and annual Asia Pacific Conference on October 20 and 25 respectively. This year's conferences focused on what changes were on the horizon, assessing their impact and the key issues that the regulators and the industry faced as the legislation was defined and implemented.

At these conferences, Stephen O'Connor, ISDA Chairman and Keith Noyes, Regional Director, Asia Pacific, met with the keynote speakers, the Honorable Malcolm Edey, Assistant Governor (Financial System), Reserve Bank of Australia, and the Honorable Edmond Lau, Executive Director, Monetary Management, Hong Kong Monetary Authority to discuss the CCP and regulatory developments in Australia and Hong Kong.

Australia:

On Oct 19, ISDA met with RBA, ASIC and APRA to discuss the latest updates to EMIR and Dodd-Frank, its potential impacts, the CCP issue in Australia, the amendments to section 2(iii)(a), the trade repositories and LEI project and ISDA's submission on the netting legislation.

Committee/Working Group Activities

Asia Pacific:

On Oct 11, ISDA held its L&R Advisory group meeting to discuss Hong Kong's CCP and trade repository; documentation for offshore deliverable CNY transactions; Korea's CCP and ISDA's submission; the developments in the Indian CDS market and MCAs; the Indonesian new Commodities Futures Trading Law; India's Financial sector legislative Reforms Commission and ISDA's submissions to New Zealand Ministry of Economic Development on the Financial Markets Conduct Bill, RBA's paper on Central Clearing of OTC Derivatives in Australia, Malaysia's Capital Markets and Services (Amendment) Act 2011 and PIDM's paper on the criteria for Qualified Third Party.

On Oct 24, ISDA held its biannual Asian Steering Committee Meeting. The discussions focused on the draft “Volker” Rules and their potential impact on Asian financial institutions. Regional issues, including CNH market disruption event language, Indian CDS, and Malaysian CMSA legislation, were also discussed.

India:

On Oct 4, ISDA, together with FIMMDA, Juris Corp, A&O and industry members held a call to discuss the finer points on the market maker and user MCAs, margining arrangements, DC rules and the standard agreement for the Indian CDS market.

On Oct 10, ISDA held another call with members to discuss the issues to be highlighted in the submission paper to India’s Financial Sector Legislative Reforms Commission.

L&R South Asia

On October 27, ISDA held its monthly L&R meeting in Singapore. Topics covered were the CFR CP on Review of FMIR and Covered Bond Bill in Australia, the delayed launch of onshore CDS in India, ISDA’s plan to write to RBI on close-out netting enforceability and bilateral margining, the SEBI Structured Products Guidelines, and Malaysia’s CMSA Amendment Act.

Market Infrastructure

On Oct 6, ISDA held its APAC Interest Rates Derivatives Operations Working Group meeting to address a number of floating rate options draft for KRW, INR, AUD, CNY and the interest payment adjustment for INR and HKD.

On Oct 12, ISDA held its APAC Credit Derivatives Operations Working Group meeting to address the latest operations development in India and also the renaming treatment of a Korean entity.

On Oct 13, ISDA held its APAC Equity Derivatives Operations Working Group meeting to address the counterparty on-boarding issue, the documentation of local taxes in China H-stock, MSCI swap and Pan-Asia interdealer swap.

On Oct 10, ISDA attended a meeting hosted by the Treasury Markets Association in Hong Kong, Hong Kong Monetary Authority shared the feedback on the Consultation on Logistical and Technical Arrangements for Reporting to HK Trade Repository

Regulatory Developments

China:

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The China Banking Regulatory Commission (CBRC) recently posted Regulations on the Sale of Wealth Management Products by Commercial Banks on its website. The Regulations, which will come into effect on January 1, 2012, apply to the sale by commercial banks of in-house designed

wealth management products to both individual clients (include private banking clients and high-net worth individuals) and institutional clients. They set out detailed rules concerning the marketing activities and reporting requirements applicable to those products, covering:

- General principles applicable to commercial banks' sales activities, and guidelines on marketing materials and sales documentation;
- Management of sales activities and staff, and internal control of sales activities;
- Product risk ratings and assessment of client risk profile;
- Supervision by the CBRC;
- Liabilities.

The Regulations are the most comprehensive rules that CBRC has ever issued regarding distribution of wealth management products, and will prevail over other rules issued previously.

Hong Kong:

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The Hong Kong Monetary Authority (HKMA) and Securities and Futures Commission (SFC) issued a joint consultation paper on the proposed regulatory regime for Hong Kong's over-the-counter (OTC) derivatives market on October 17.

The joint consultation paper sets out the HKMA's and SFC's current thinking on how the regime might be cast given the present status of the global reform efforts. In brief, the main proposals in the consultation paper are as follows:

- The proposed regime will be set out in the Securities and Futures Ordinance (SFO), and will be jointly overseen and regulated by the HKMA and SFC.
- OTC derivatives transactions will have to be reported to the trade repository, which is being set up by the HKMA. This reporting obligation will initially apply only to certain interest rate swaps (IRS) and non-deliverable forwards (NDF), but will subsequently be extended to other product classes (such as equity derivatives and other types of interest rate derivatives) after further market consultation;
- Standardized OTC derivatives transactions will have to be centrally cleared through a designated CCP. This mandatory clearing obligation will also initially be limited to only certain IRS and NDF, and subsequently extended to other product classes after further market consultation;
- Non-AI entities that engage in OTC derivatives activities (other than as end-users) will be required to be licensed for a new Type 11 regulated activity under the SFO;
- Large players who are not regulated by the HKMA or the SFC may be subject to certain obligations and requirements, such as producing information regarding their OTC derivatives activities, and reducing their OTC derivatives positions, if so requested by the SFC in extreme situations.

The consultation period will end on November 30, 2011.

Malaysia:

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The Malaysian Capital Markets and Services (Amendment) Act 2011 (CMSA Amendment Act) was gazetted on September 15 and came into effect on October 3 for all provisions except paragraph 25(a), which relates to Section 92 of the Capital Markets and Services Act 2007 (CMSA). Additionally, schedules 1 to 4 of the CMSA have been amended by the Capital Markets and Services (Amendment of Schedules 1, 2, 3 and 4) Order 2011 that came into operation on October 4.

Part 2 of Schedule 2 of the CMSA defines “dealing in derivatives” as making, offering to make, induce or attempt to induce, solicit or accepting any order, whether as principal or agent, or entering into or taking assignment of a derivative or any action that closes out a derivative. “Dealing in derivatives” means initiating, originating, or issuing over-the-counter (OTC) derivatives. For an option, “dealing in derivatives” either as a principal or agent means exercising any right under an option; or allowing one’s right to lapse under an option.

Under Section 58 of the CMSA, a person is exempted from obtaining a Capital Markets Services License (CMSL) if he is specified in Schedule 3. Under Schedule 3, any person who deals in derivatives (a) on the person’s own account or for his related corporation; or (b) where such person is a non-resident acting as principal or agent through the holder of a Capital Markets Services license who carries on the business of dealing in Derivatives. Also under Schedule 3, a holder of a Capital Markets Services License who carries on the business of dealing in derivatives whose dealing in securities is (a) a direct consequence of dealing in a derivative; (b) is in connection with the delivery of a security within a class of securities which is the subject of a class of derivatives; or (c) is in connection with the transfer of securities as collateral or security, or in realization of any collateral or security, for obligation under a derivatives.

A person is exempted from obtaining a CMSL if he is a registered person as specified in Schedule 4. In Schedule 4, a registered person and regulated activity includes: licensed institutions, Islamic banks, insurance companies and *takaful* operators dealing in derivatives in the money market as well as dealing in OTC derivatives. However, under Section 76(6)(c) of the CMSA, a registered person as specified in Schedule 4 carrying on a regulated activity would be required to comply with certain requirements including Sections 91, 92, 93 and 97 of the CMSA to ensure that its employees meet the prescribed “fit and proper” criteria and to maintain a register of such individuals.

Singapore:

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On September 13, the Singapore Exchange (SGX) issued a consultation paper on the Enhanced Default Management Framework for SGX-DC. The amendment to the SGX-DC rules will be subject to approval by MAS. The limits apply to the liabilities of a resigning Clearing Member (CM) and the continual draw down of the Clearing Fund where more than one default occurs.

For a CM to resign, it will be subject to a minimum 30 day period before its resignation comes into effect. During this time, a CM is fully liable for all defaults. Also, during this period, the CM’s liabilities in relation to defaults will be capped at a pre-determined limit, as long as, it does not increase its positions during the period. For OTCF contracts, this period may be extended if it

is awarded or compulsorily assigned positions due to a default that occurs in this period. The resigning CM will have to close out all its existing positions before the 30 day period ends and will be given the extension of this time period to close out any positions it has been awarded or compulsorily assigned from another CM's default. Aggregate Clearing Fund assessments for all defaults which occur during this period will not exceed an amount equivalent to 2 times its required Clearing Fund contribution (i.e. Security Deposit + Further Assessment Amount). The CM will also not be compulsorily assigned OTCF portfolios for more than 2 defaults. Once a resigning CM's limits on Clearing Fund assessment have been reached, it will be removed from the calculation of the remaining non-defaulting CM's liabilities.

For existing limit on individual defaults for Clearing Fund Assessment – the assessment on a CM will not exceed its Security Deposit requirement and Further Assessment Amount at the time of default. This will include CMs who have resigned. The positions assigned to a CM will not increase its risk margin requirement by more than 100% of its average day-end risk margin requirement for OTCF contracts over 30 days preceding the default.

In the event of multiple defaults, the Clearing Fund will be continually drawn down. There will be a fixed period of 90 days and the start of this period will be announced by SGX. The waterfall will be as follows: the monies of the defaulting CM will be used first, if this is insufficient, then other CM's monies within the same contract class then CM's monies of other contract classes. If the Clearing Fund has been fully used once, SGX-DC will meet outstanding losses by applying the replenished Clearing Fund monies, commencing with the first layer of fresh Clearing Fund. SGX-DC's contribution will be an amount equivalent to 25% of the clearing fund size, with an amount not less than 15% of the clearing fund size in the first layer. This will be repeated as necessary till the Clearing Fund runs dry.

SGX has the right to suspend a CM without prior notice if a) its parent company or related company of a CM becomes insolvent or deemed insolvent; b) the CM is suspended or expelled from membership of any relevant market or its clearing house; c) CM fails to comply with or settle any of its financial obligations of any exchange or clearing house of which it is a member; and d) CM is in breach of provision of the rules, any directive or any agreement with SGX. A CM will also be deemed to be automatically suspended if it becomes insolvent/ deemed insolvent or ceases to hold a valid capital markets services license, unless exempted. SGX may liquidate any non-cash assets deposited with it by a defaulting CM. The consultation period ended on October 3.

Upcoming committee and working group meetings/conferences

Meetings:

L&R Meeting – Hong Kong	Nov 1
APAC IRD Operation Working Group Meeting	Nov 3
APAC Commodity Meeting - Singapore	Nov 11
Meeting on SFEMC Synthetic Asian Bond Taskforce – Singapore	Nov 11
APAC Equity Operation Working Group Meeting – Singapore	Nov 17
APAC Implementation Group – Hong Kong & Singapore	Nov 18
L&R South Asia Meeting – Singapore	Nov 24

L&R North Asia Meeting – Hong Kong

Nov 29

Conferences:

Understanding the ISDA Master Agreements Conference – Singapore

Nov 14

Understanding Collateral Arrangements and the ISDA Credit Support

Documents Conference – Singapore

Nov 15

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Please direct comments and questions about APAC Monthly Update to Donna Chan, dchan@isda.org

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