

APAC Monthly Update

April 2012

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

Regulatory Activities

Hong Kong

On April 12, ISDA met with the Financial Services and the Treasury Bureau of the HKSAR Government to discuss the progress of legislative amendments for clearing and reporting of OTC derivative transactions.

On April 17, ISDA and Data Infrastructure Working Group Chairman Oliver Stuart met with the HKMA and SFC to update on industry progress in designing the Unique Product Identifiers (UPI).

Singapore

On April 12, ISDA met with MAS to discuss the developments of commodity derivatives in Singapore.

On April 19, ISDA and Data Infrastructure Working Group Chair Oliver Stuart met with MAS to discuss trade repositories in the context of Asian and global OTC regulations and provide updates on UPIs.

Taiwan

On April 23, ISDA made a presentation to the Central Bank of the Republic of China on global regulatory developments and discussed the latest regional CCP and TR developments, Basel III impacts on Asia, and EMIR and Dodd Frank Act.

On April 24:

- ISDA was invited by Judicial Personnel Study Institute of the Judicial Yuan in Taiwan to give a seminar on the ISDA Master Agreement and Credit Support Documents. The seminar was attended by more than 80 judges from different courts across Taiwan.

- ISDA met with GreTai Securities to discuss details of the trade reporting platform and the direction of future developments.

On April 25, ISDA made a presentation to the Securities and Futures Bureau and the Banking Bureau of the Financial Supervisory Commission, Executive Yuan on global regulatory developments and discussed the latest regional CCP and TR developments, Basel III impacts on Asia, and EMIR and Dodd Frank Act.

Committee/Working Group Activities

On April 23, ISDA held its Commodities working group meeting to discuss steps if a ship's cargos are arrested and the legal and commercial risks of a commodities off-take contract.

On April 27, ISDA held a meeting with members to discuss the Platts Gasoil change from 5000ppm to 500ppm

North Asia L&R

On April 24, ISDA held its monthly L&R meeting in Hong Kong. At the meeting, ISDA briefed members on the latest regulatory and documentation developments in this region. Topics discussed regarding North Asia included central clearing in China, progress on the regulatory reform in Hong Kong regarding OTC derivatives and ISDA's trip to Seoul in the end of March. In addition, the English Court of Appeals rules on key provisions of the ISDA Master Agreement, Australia's report and consultation paper on Central Clearing of OTC Derivatives in Australia, APRA releases responses to the submissions made for the Draft Prudential Standards on Basel III Capital Reforms, the proposed tax changes announced in the Indian Budget 2012-13 and the actions to be taken, the draft submission on PIDM and BNM's Joint Concept paper on Recordkeeping and Reporting Requirement for Over-the-Counter Derivatives and an update on MAS' Consultation Papers on the Proposed Regulation of OTC Derivatives and the Transfer of Regulatory Oversight of Commodity Derivatives from IE to MAS were also discussed at the meeting.

South Asia L&R

On April 26, ISDA held its monthly L&R meeting in Singapore. At the meeting, ISDA briefed members on the latest regulatory and documentation developments in this region. Topics discussed regarding South Asia included the English Court of Appeals rules on key provisions of the ISDA Master Agreement, Australia's report and consultation paper on Central Clearing of OTC Derivatives in Australia, APRA releases responses to the submissions made for the Draft Prudential Standards on Basel III Capital Reforms, RBI Deputy Governor's speech on "Musings on FEDAI, Forex market and Indian Rupee", the proposed tax changes announced in the Indian Budget 2012-13 and the actions to be taken, Indonesia's draft bill to amend the 2004 Notary Law to restrict notarial deeds to Bahasa Indonesia only, the draft submission on PIDM and BNM's Joint Concept paper on Recordkeeping and Reporting Requirement for Over-the-Counter Derivatives and an update on MAS' Consultation Papers on the Proposed Regulation of OTC Derivatives and the Transfer of Regulatory Oversight of Commodity Derivatives from IE to MAS.

Market Infrastructure

On April 13, ISDA held its APAC Interest Rates Derivatives Operations Working Group meeting to address the electronic confirmation format of onshore CNY swaps, addition / amendment of floating rate options and certain market practices of India swap fixing.

On April 18, ISDA held its APAC Credit Derivatives Operations Working Group meeting to discuss the trade reporting requirement, Novation electronic confirmation practice, the treatment of a name change event and the operational issues of Sino-Forest credit event.

On April 19, ISDA held its APAC Equity Derivatives Operations Working Group meeting to address the documentation of MSCI swap and AEJ Variance Swap, the group also discussed the AEJ reference price source matrix.

Country Working Group

On April 23, ISDA held its Taiwan Working Group meeting to update members on global regulatory developments and discuss the progress of trade reporting in Taiwan.

Regulatory Developments

Australia:

Council letter on Financial Market Regulation

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On March 30, the Deputy Prime Minister and Treasurer released the Council of Financial Regulators Working Group's (the Council) letter of advice on the Financial Market Regulation. Key Council recommendations include:

- Australian Securities and Investments Commission (ASIC) and the Reserve Bank have appropriate powers to ensure financial market infrastructures (FMIs) manage their risks effectively. An FMI will be dealt with in a manner consistent with continued financial stability;
- ASIC and the Reserve Bank have explicit power to impose location requirements in key areas such as financial and risk management. In the case of an overseas-based FMI, this power should extend, where appropriate, to the establishment of oversight arrangements that would give Australian regulators sufficient influence. In certain instances, Australian regulators may insist on a legal presence in Australia, or seek assurance of compatibility of the FMI's rules with Australian law. The Council recommends basic power be given to ASIC and the Reserve Bank, through legislative via an amendment to the Corporations Act;
- Reserve Bank power to issue directions to Clearing and Settlement Facility Licensees (CSFLs) in matters affecting financial stability. The range of sanctions, where licensees fail to comply with directions and licence conditions, will be broadened to include criminal sanctions, fines, and civil and administrative penalties;
- ASIC and the Reserve Bank be given power to appoint a statutory manager, where appropriate and in consultation with the Minister, to any domestically licensed FMI in certain defined circumstances.

Consultation Paper on framework for G20 commitments

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On April 18, the Australia Treasury published Consultation Paper on Implementation of a framework for Australia's G20 over-the-counter derivatives commitments. The paper proposes the legislative framework as follows:

- The Minister for Financial Services and Superannuation will prescribe a certain class of derivatives as being subject to one or more mandatory obligations in respect of trade reporting, central clearing and trade execution;
- Australian Securities and Investments Commission (ASIC) will make derivatives transaction rules (DTRs), which will require the Minister's consent and may apply across-the-board to all derivative classes or be tailored for particular derivative classes. ASIC will also have regulation-making power to narrow the persons and transactions to which the obligations will apply. 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. However, the framework will also allow for a DTR to be made expeditiously where circumstances warrant it;

- ASIC will also make rules regarding the obligations of trade repositories, clearing facilities and trading platforms;
- In conjunction with any proposed prescription by the Minister and any DTR by ASIC, a report on derivatives markets including a regulation impact statement (RIS) must be prepared.

A new trade repository licensing (TRL) regime will be introduced that will be modeled on the existing licensing regimes for market license holders (AML) and clearing and settlement facility license holders (CSFL). The regime will provide alternative licensing criteria for overseas operators who are subject to sufficiently equivalent regulation in their home jurisdiction. Where mandated reporting obliges a person to utilize the services of a trade repository, the relevant trade repository will be obligated to provide non-discriminatory access. ASIC will also be empowered to make rules governing the operation of trade repositories in addition to its powers to impose conditions on individual TRL holders.

The Consultation Paper also seeks views on removing some entities and transactions from the scope of the rule-making power, defining required jurisdictional nexus, other regulations for framework and prescribing derivatives classes for mandates.

The Consultation Paper specifically proposes:

- Trade reporting – A broad range of derivative classes to be mandated later this year, with the obligation to apply to a broad range of entities and transactions, but with requirements being phased-in.
- Central clearing - Conduct ongoing assessment of the suitability of derivative classes in Australia for central clearing, with the identification of systemically important derivatives classes (such as AUD-denominated IRS) as priorities for mandating, subject to further assessment of the market and monitoring of the impact of capital and other initiatives in driving the move towards central clearing within a timeframe consistent with international implementation of the G20 commitments.
- Trade execution – Conduct further analysis on the volume and liquidity characteristics of markets for particular derivative classes and the emergence of suitable trading platforms. There may be a need to reform the market licensing regime to better accommodate wholesale professional markets that may emerge to facilitate the execution of derivatives on trading platforms.

Although entities based outside Australia may become licensed and thus eligible as a trade repository, CCP or trading platform to meet any mandated trade reporting, central clearing or trade execution mandate (as applicable), foreign trade repositories, CCPs or trading platforms that deal with derivative classes that are of systemic importance to Australia may be subject to the proposals for Financial Market Infrastructures (FMI) set out in the Council's Working Group Report on Financial Market Infrastructure Regulation of March 2012.

ISDA plans to make a submission to the Treasury by the June 15 deadline.

Hong Kong: Legislative Council joint paper on OTC derivatives regulation progress

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On March 27, the Legislative Council Secretariat published a joint paper from the Financial Services and the Treasury Bureau (FSTB), the Hong Kong Monetary Authority (HKMA) and the Securities and Futures Commission (SFC) called Progress in the Regulation of Over-the-counter Derivatives Market.

In response to the industry's comments, the 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. Regulators have proposed exercising the power for the Financial Secretary under section 392 of the Securities and Futures Ordinance (SFO) to declare (by publishing a notice in the Gazette) certain OTC derivatives transactions to be "futures contracts" for the purposes of particular provisions of the SFO, giving them insolvency override protection. The regulators aim to table the relevant Gazette Notice on the interim measure at the Legislative Council for negative vetting in May.

India:

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New tax changes caused concern on OTC trades

The Finance Bill 2012 has proposed three tax changes that have caused industry concern as to their potential adverse impact on Foreign Institutional Investors (FIIs), offshore derivative instruments or participatory notes and on OTC derivative transactions. The proposed changes are:

- **General Anti-Avoidance Rule (GAAR):** GAAR permits revenue authorities to disregard the form of a transaction on the ground that it represents an "impermissible avoidance arrangement" (section 40 of the Finance Bill 2012, introducing Chapter X-A, in particular section 96, of the Income Tax Act). The application of this provision may impact the investment activities of FIIs;
- **Indirect transfer tax:** The transfer of a foreign asset may be regarded as the transfer of an Indian asset if it is "an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India... if the share or interest derives, directly or indirectly, its value substantially from the assets located in India" (section 4(a) of the Finance Bill 2012, amending section 9(1) of the Income Tax Act). The application of this provision may affect investors in offshore derivative instruments or participatory notes issued by the FIIs;
- **Services tax:** Instead of a list of taxable services, services tax will be levied in respect of all services except the ones specified in a negative list. The proposed changes to the services tax regime may subject OTC derivative transactions (FX and non-FX) to services tax.

ISDA will submit comments to the relevant Indian authorities on the above issues.

RBI released guidelines on CDS for corporate bonds

On April 23, RBI released a circular on the Guidelines on Credit Default Swaps (CDS) for Corporate Bonds – Permitting All India Financial Institutions. RBI has permitted all India financial institutions, in particular, 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) to participate in the CDS market as users. All other terms and conditions remain unchanged.

Submission

On April 26, ISDA made its submission to India's Ministry of Finance on two provisions proposed in its Finance Bill 2012. The first provision relates to the introduction of the General Anti-Avoidance Rule ("GAAR"), and the second provision relates to the power to retroactively tax the indirect transfer of assets.

On April 30, ISDA made its submission to Perbadanan Insurans Deposit Malaysia in response to their Concept Paper on Recordkeeping and Reporting Requirements for Over-the-Counter Derivatives.

Upcoming committee and working group meetings/conferences

Meetings:

Sydney Members Meeting	May 14
Jakarta Members Meeting	May 22
L&R North Asia Meeting	May 29
L&R South Asia Meeting	May 31

Conferences:

Legal Aspects of Clearing Conference – Sydney	May 15
ISDA Symposium How to Read ISDA Netting and Collateral Opinions – Sydney	May 16
Understanding the ISDA Master Agreement and Credit Support Documents Conference – Melbourne	May 18
Legal Aspects of Clearing Conference – Singapore	May 29
Operations Training Workshop – Singapore	May 30

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