ISDA® | Safe, Efficient Markets

Asia-Pacific Regulatory Profiles

January 2017

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
- Vietnam

For information about ISDA's work in the APAC region, please visit: http://www2.isda.org/regions/asia-pacific/ or contact Keith Noyes, knoyes@isda.org

©2017 International Swaps and Derivatives Association, Inc.

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
Associations:	Australian Financial Markets Association (AFMA)
	Australian Banking Association (ABA)
Master Agreement:	ISDA
Legal Opinions:	Netting and collateral opinions by King & Wood Mallesons
	Opinion on transactions entered into electronically and electronic records by King & Wood Mallesons
CCP/TR Status:	The Australian Securities Exchange (ASX) offers clearing services for OTC interest rate derivatives, including inter-dealer AUD interest rate swaps (IRS),single-currency basis swaps 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 offers client clearing.
	LCH.Clearnet provides clearing services for OTC interest rate swaps through its SwapClear service. LCH. Clearnet is also licensed to clear for the FEX commodities and energy exchange.
	DTCC Data Repository (Singapore) Pte Ltd (DDRS) and Chicago Mercantile Exchange Inc (CME) are both licensed as Australian Derivative Trade Repositories for all 5 asset classes.
	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 would make derivative transaction rules (DTRs), which would require the Minister’s consent. ASIC would 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 would also be introduced.

- On October 12, 2012, the Corporations Legislation Amendment (Derivative Transactions) Bill 2012 (2012 Bill) was introduced into Parliament. The 2012 Bill would 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. The Bill subsequently passed Parliament and received royal assent on December 6, 2012.

2. Central clearing

- On February 27, 2014, the Treasury issued a proposals paper on the G4 IRD central clearing mandate, using information from previous reports on the Australian OTC derivatives market. This proposals paper was the first 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 was: 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 would be taken until subsequent reviews by the regulators. However, the Government would also be reviewing the licensing arrangement for financial markets. The review would consider whether the framework is adequate to deal with derivatives trading platforms that would be suitable for mandatory trade execution. This review is ongoing.

- On April 3, 2014, the RBA, APRA and ASIC (the Regulators) released a Report on the Australian OTC Derivatives Market – April 2014. The Regulators recommended the government consider a central clearing mandate for trades between internationally-active dealers for Australian dollar-denominated interest rate derivatives. The Regulators did not see a case for implementing a central clearing mandate for North American, European and Japanese referenced credit index derivatives at this time, and also did not believe it was appropriate to mandate central clearing for non-dealers. There was no specific recommendation regarding a mandatory platform trading obligation at that time.

- On July 8, 2014, the Treasury issued a proposals paper on the AUD-IRD central clearing mandate. The Paper built on the version published in February which proposed the mandating of central clearing for US Dollars, Euro, British Pound and Japanese Yen interest rate derivatives (G4 IRD). The Paper proposed to extend the mandatory requirement for central clearing to include interest rate derivatives in Australian dollars as part of the global reforms on OTC derivatives markets in Australia.

  The Paper proposed that the clearing requirement would only apply to large financial institutions and provided two options for defining the class of entities that would be captured:

  Option A:

  1. any domestic financial entity with $100 billion or more gross notional OTC derivatives outstanding;

  2. any foreign financial entity with $100 billion or more gross notional OTC derivatives outstanding booked or entered into in Australia;

  3. any foreign financial institution with $100 billion or more of gross notional OTC derivatives outstanding with domestic and foreign financial entities subject to the clearing mandate in Australia under the first two rules above; or

  4. any entity that opts in to a mandatory clearing obligation in G4-IRD or AUD-IRD.

Option B:

1. any domestic financial entity with $100 billion or more gross notional OTC derivatives outstanding;

2. any foreign financial entity with $100 billion or more gross notional OTC derivatives outstanding booked or entered into in Australia;

3. any entity regulated as a swap dealer in the US; or

4. any entity that opts in to a mandatory clearing obligation in G4-IRD or AUD-IRD.

The threshold would be calculated on a legal entity basis, hence, only outstanding OTC derivatives entered into by the legal entity would be counted. Public entities such as central banks etc., would be out of scope of the central clearing rules.

The Paper also proposed to combine the central clearing mandates for G4 and AUD-IRD in one Ministerial determination with the proposed timetable for implementation: draft Ministerial determination to be released for comments in third quarter 2014; determination and regulations to be made in late 2014; and early 2015 for the clearing mandate to come into force.

- On May 28, 2015, announcements were made by the Treasury and ASIC about the release of exposure drafts of legislative documents, an explanatory guide and a consultation paper to give effect to two proposals, including to introduce mandatory central clearing for certain interest rate derivatives in certain currencies from April 2016 (through the release of a draft Ministerial determination, proposed Treasury amendments to the Corporations Regulations and an ASIC consultation paper).

  The proposals would require certain interest rate derivatives traded between internationally-active dealers in Australian dollars and four global currencies (US dollars, euro, Japanese yen and British pounds) to be cleared through a licensed or prescribed clearing and settlement facility. ASIC consultation paper CP 231 Mandatory central clearing of OTC interest rate derivative transactions (CP 231) set out issues such as the entities which would be subject to the clearing requirements, the cross-border application of the draft DTRs (clearing) and the transactions and asset classes subject to the clearing requirements.

- On September 8, 2015, the Treasury announced that the Corporations Amendment (Central Clearing and Single-Sided Reporting) Regulation 2015 and the Corporations (Derivatives) Amendment Determination 2015 (No. 1) had been finalised. The Determination formally specifies that clearing requirements may be imposed on interest rate derivatives denominated in Australian dollars, US dollars, euro, sterling and Japanese yen.

  The Regulation covers aspects relevant to central clearing obligations and single-sided reporting for Phase 3 reporting entities when certain conditions are met. For central clearing, the regulation sets out definitions of various types of clearing entities, the list of overseas clearing houses that can be used to meet the central clearing obligation, and the circumstances under which, and persons for whom, clearing requirements can and cannot be imposed.

- On October 28, 2015, the RBA released its conclusions paper on potentially requiring the central clearing of repos in Australia, following an industry consultation. A number of themes emerged from the consultation, including:
  - The commercial viability of a repo CCP, given the small size of the Australian repo market;

- Currently well-managed credit risk within the repo market, given the directional nature of participants that may limit netting benefits;
- Potential operational benefits of a repo CCP, particularly through straight-through processing, although it was acknowledged this could also be achieved through increased use of centralised collateral management services;
- The significant effort undertaken by participants to ensure settlement fails are relatively rare; and
- The need for any repo CCP to have access to a large reserve of securities and liquidity to ensure smooth default management.

In light of the significant share of repo market transactions that involves the RBA as counterparty, and the relatively small interdealer market, the RBA noted that the financial stability case for central clearing of repos in Australia is not likely to be as strong as in some other jurisdictions. While repo clearing could be a catalyst for other beneficial changes in market infrastructure, some of these benefits could potentially be pursued by enhancing the existing market infrastructure, even without CCP clearing. However, should the industry proceed with a proposal for the introduction of such a CCP, the RBA would stand ready to engage in the debate and consider participation, subject to pre-conditions around continuity, location and design and terms of access.

- On November 4, 2015, the Regulators released a Report on the Australian OTC Derivatives Market – November 2015. Based on an assessment of activity and practices in the Australian OTC derivatives market and overseas developments, the Regulators did not see a case for extending the product scope of the Australian central clearing mandate at that time. The Regulators noted that they see in-principle benefits from increased use of trading platforms and will continue to consider the case for promoting the use of trading platforms, including by introducing a trading mandate. While the Regulators did not make specific recommendations on a mandatory trading obligation, the Report sets out the details of how the Regulators will assess the case for introducing trading mandates in the future.

  The Report also noted that Australia intends to implement internationally-agreed margin requirements and other risk mitigation requirements for non-centrally cleared derivatives in its regulatory regime. In the first instance, this will be through APRA's prudential standards, given the prominent role of APRA-regulated institutions in the Australian OTC derivatives market. The Regulators will consider their approach for non-APRA regulated institutions in 2016.

- On December 14, 2015, ASIC released rules implementing Australia's mandatory central clearing regime, the ASIC Derivative Transaction Rules (Clearing) 2015. The regime applies to G4 and AUD OTC interest rate derivatives transacted between dealers and provides the basis for substituted compliance or sufficient equivalence determinations by foreign regulators. The clearing obligations commenced in April 2016.

- On March 21, 2016, ISDA and AFMA jointly submitted a request to ASIC for relief from the central clearing requirement for Pre-Mandate Swaptions.

- On April 5, 2016, ASIC made the ASIC Corporations (Derivative Transaction Clearing Exemption) Instrument 2016/258, granting relief from the central clearing requirement for Pre-Mandate Swaptions.

3. Trade reporting

- On March 15, 2013, ASIC released Consultation Paper 201 ‘Derivative trade repositories’ (CP 201). CP 201 set 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 proposed the following:
    - All Australian entities and foreign subsidiaries (if specified) of an Australian entity would be subject to the reporting requirements.
    - All foreign authorized deposit-taking institutions (ADIs) with a branch located in Australia or a foreign company registered under Division 2 of Pt. 5B.2 of the Corporations Act 2001 would be subject to the reporting requirements, but only in respect of transactions booked to the ADI's Australian branch or entered into by the Australian office.
    - The derivative contracts that would 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 would apply to futures and options as well as cleared and uncleared OTC derivatives.
    - Reporting would be phased-in by asset class and reporting entity type. Interest rate derivatives and credit derivatives transactions would be first, followed by foreign exchange derivatives, equity derivatives and commodity derivatives 6 months later. Phase 1 would 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 would consist of major financial institutions below the threshold and Phase 3 would consist of end users. Phase 1 would start on December 31, 2013, Phase 2 would start on June 30, 2014 and Phase 3 would start on December 31, 2014.
    - "Two-sided reporting" would apply.

- On June 5, 2013, the Treasury released the Regulation to Facilitate the Operation of Australia's Derivatives Trade Reporting Regime. The purpose of the Corporations Amendment (Derivatives Transactions) Regulation 2013 was to implement measures that temporarily restricted 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. 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. The regulation commenced the day after it was registered. This regulation ceased to have effect on July 28, 2013.

- On July 10, 2013, ASIC published its final rules, the ASIC Derivative Transaction Rules (Reporting) 2013. An Australian entity is required to report all OTC derivatives contracts to which it is a party, regardless of where the contract is entered into. A foreign 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.

  Australian entities registered as a swap dealer (SD) with the CFTC began reporting all asset classes from October 1, 2013. Australian ADIs, Australian financial services (AFS) licensees, clearing and settlement (CS) facility licensees, exempt foreign licensees and foreign ADIs, which had a total gross notional outstanding position of AUD $50 billion as at December 31, 2013, and were not required to report under Phase 1, began reporting interest rate and credit derivative transactions from April 1, 2014, with transactions in other asset classes to follow 6 months later. Following the granting of relief by ASIC, the commencement of phase 3 was split into 2 sub-phases, with phase 3A (for entities holding

AUD 5 billion or more total gross notional outstanding in reportable OTC positions at at June 30, 2014) commencing on April 13, 2015, with transactions in other asset classes to follow as well as phase 3B reporting entities (in all asset classes) commencing on October 12, 2015. Position reporting in each phase commenced 6 months after the date of the commencement of the relevant reporting obligation in the relevant asset class.

- On September 15, 2014, ASIC granted an ADTR licence to DTCC Data Repository (Singapore) Pte Ltd (DDRS). Phase 1, 2 and 3 reporting entities that are incorporated or formed in Australia were required to report to a licensed trade repository from October 1, 2014. Foreign reporting entities may report to trade repositories prescribed under ASIC Prescribed Trade Repositories Determination [15-0591].

- On February 2, 2015, ASIC published a class order setting out an alternative definition of the 'nexus' concept (referring to a requirement to report trades 'entered into in Australia'), which can be used by phase 2 and 3 reporting entities when reporting. The alternative definition allows reporting entities to utilize a definition more broadly aligned with other Asia-Pacific jurisdictions, and requires these entities to 'tag' their trades as ASIC-reportable from February 25, with an earliest reporting start date of May 25, depending on the phase and asset class. The class order further requires reporting entities to opt in to the relief by asset class, and allows for reporting entities to report under the alternative reporting regime.

- On February 9, 2015, ASIC amended its trade reporting rules following industry consultation and feedback on its consultation paper 221 (CP 221).

  The changes include:

  - introducing 'snapshot' reporting instead of 'lifecycle' reporting as a permanent option (but also allowing for ASIC to determine otherwise in the future),
  - introducing a 'safe harbour' from liability for reporting entities using delegated reporting, if certain conditions are met,
  - expanding the abilities of foreign firms to rely on alternative reporting, while also introducing a requirement for firms to 'tag' these trades, and
  - making a number of technical changes to the reporting rules, reflecting the proposals in CP 221 and/or feedback received.

  ASIC further decided not to proceed with the proposal to require the larger subsidiaries of Australian ADIs and AFS licensees to report OTC trades, after concluding that the regulatory benefit would not outweigh the additional compliance cost.

- On May 28, 2015, announcements were made by the Australian Treasury and ASIC about the release of exposure drafts of legislative documents, an explanatory guide and a consultation paper to give effect to two proposals, including a proposal to enable single-sided reporting by Phase 3B reporting entities under the Australian trade reporting regime from October 2015 (through the release of proposed Treasury amendments to the Corporations Regulations).

  The proposals relating to single-sided reporting related to the Australian Government's announcement in December 2014 that it would provide relief from the trade reporting requirements by allowing 'single-sided reporting' for entities with low levels of OTC derivatives transactions, provided they conclude the transactions with counterparties that are already required or have agreed to report the trade. The relief would be implemented by introducing single-sided reporting for Phase 3B entities as defined in the trade reporting derivative transaction rules made by ASIC. Phase 3B entities as defined in those rules have less than $5 billion gross notional OTC derivatives positions outstanding, calculated on a rolling basis.

- On September 8, 2015, the Australian Treasury announced that the Corporations Amendment (Central Clearing and Single-Sided Reporting) Regulation 2015 and the Corporations (Derivatives) Amendment Determination 2015 (No. 1) had been finalised. The Regulation covers aspects relevant to central clearing obligations and single-sided reporting for Phase 3 reporting entities when certain conditions are met. For single-sided reporting for Phase 3B entities, the regulation sets out the definitions of the various types of reporting entities, the circumstances under which an exemption from double-sided reporting is able to be used, the conditions of single-sided reporting, the dates for determining whether the exemption can continue to be relied upon, and various other provisions in relation to the regime.

- On September 21, 2015, ASIC made the ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844. The Instrument extends relief that already existed under ASIC Instrument 14/0952.

  The changes include:

  - Not requiring transactions entered into on certain listed markets to be reported,
  - Exempting reporting entities from having to report entity and/or name information,
  - Extending relief from reporting identifying information of counterparties, where the counterparty has not provided express consent or if the reporting entity is prohibited from reporting the identifying information by foreign privacy restrictions in certain listed jurisdictions,
  - Creating new relief from having to report identifying information of certain government entities,
  - Extending the relief from being required to provide a universal trade identifier,
  - Extending the relief from being required to report collateral information, and
  - Extending the relief from being required to report FX securities conversion transactions.

- On October 9, 2015, ASIC announced that it had made an amendment to the existing ASIC Class Order 14/0633, embodied in ASIC Corporations (Derivative Transaction Reporting) Amendment 2015/0925, which delays the commencement of Phase 3B transaction reporting until 4 December. This would not prevent Phase 3B reporting entities that were ready for reporting from commencing from an earlier date.

- On October 23, 2015, ASIC granted an Australian derivative trade repository licence to Chicago Mercantile Exchange Inc. (CME) setting out the terms of the ADTR licence and the conditions in which it is granted. On December 8, 2015, the Australian Derivative Trade Repository Licence (Chicago Mercantile Exchange Inc.) Variation Notice 2015 No. 1 [15/1131] was published in the Gazette, adding equity derivatives to the classes of derivatives that CME may provide services for under its ADTR licence.

- On January 29, 2016, ASIC made an amendment to the ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844 to extend the trade identifier reporting relief until 31 January 2017 and to repeal the ASIC Corporations (Amendment) Instrument 2016/0030.

4. CFR developments and financial market infrastructure

- On October 21, 2011, the CFR 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).

- On March 30, 2012, the Deputy Prime Minister and Treasurer released the CFR 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; (iii) 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 CFR 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 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 CS 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 CFR's 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 CFR's 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 license.

- On February 15, 2013, ASIC and RBA issued a joint statement on implementing the FMI Principles in Australia.

- On May 8, 2013, the Regulators published information on how they will assess the case for a clearing mandate under the new regulatory framework for the OTC derivatives markets. 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, the same 3 regulators issued a Report on the Australian OTC Derivatives Market – July 2013. The regulators recommended that the Government consider 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.

- The CFR released a consultation paper on February 11, 2015, as part of its review of competition in clearing Australian cash equities. This follows a similar review of competition in the clearing and settlement of Australian cash equities in 2012, in which the CFR recommended a two-year moratorium on competition in the clearing of cash equities, but promised a review after that. With the two-year period ending in early 2015, the consultation paper sets out the scope of the CFR's review and the issues that will be considered. Following the consultation process, the CFR will consider stakeholder submissions and will advise the government on the findings of its review in due course.

- On March 27, 2015, the CFR released a consultation paper on the licensing regime for overseas CS facilities. The consultation paper sets out a proposal that aims to provide greater clarity on the circumstances in which a CS facility must be either licensed in Australia or exempted from the Australian CS facility licensing regime. It is not expected that the proposed new approach will result in additional CS facilities being within the scope of Australia's CS facility licensing regime, and the rest of the Australian CS facility licensing regime will remain unchanged.

- On November 4, 2015, the CFR released its fourth report on the Australian OTC derivatives market.

  Having assessed current activity and practices in Australia's OTC derivatives market, along with overseas developments, the CFR stated that it does not currently see a case for extending the product scope of Australia's central clearing mandate. The CFR stated it sees in-principle benefits from increased use of trading platforms and will continue to consider the case for promoting their use, including through the introduction of trading mandates. While the CFR did not set out specific recommendations, the report outlined the details of how the CFR will assess the case for introducing trading mandates in the future.

  The report also noted that Australia intends to implement internationally agreed margin requirements and other risk mitigation requirements for non-centrally cleared derivatives. In the first instance, this will be through prudential standards from the APRA, given the prominent role of APRA-regulated institutions in the Australian OTC derivatives market. The CFR will consider its approach for non-APRA regulated institutions in 2016.

- On October 12, 2016, the CFR released two policy statements setting out Regulatory Expectations for Conduct in Operating Cash Equity Clearing and Settlement Services in Australia and Minimum Conditions for Safe and Effective Competition in Cash Equity Clearing in Australia.

  The CFR also recommended that the relevant regulators be granted rule-making powers to impose requirements on ASX's cash equity clearing and settlement (CS) facilities consistent with the Regulatory Expectations and the Minimum Conditions (Clearing). The relevant regulators would be empowered to make such rules if the expectations were either not being met or were not delivering the intended outcomes; and/ or if specific obligations on CS facilities were needed to support the minimum conditions for safe and effective competition in clearing. Further, the CFR recommended that the ACCC be granted the power to arbitrate disputes about price and/or non-price terms and conditions of access to ASX's facilities. The Government has committed to develop and consult on legislative changes in line with these recommendations.

The Regulatory Expectations cover a range of matters relevant to governance, pricing and access, and apply to ASX's engagement with, and provision of services to, users of its monopoly cash equity clearing and settlement services for both ASX-listed and non-ASX-listed securities. The Regulatory Expectations have been prepared in accordance with a set of core elements outlined in the report, with some amendments and clarifications primarily to ensure their auditability.

ASX is expected to immediately publicly commit to acting in accordance with the Regulatory Expectations. ASX is also expected to commit to submitting an annual external audit of its governance, pricing and access arrangements to the relevant regulators and members of the relevant user governance arrangements, benchmarked against the Regulatory Expectations. The findings of such audits may be one input to any decision by the relevant regulators to employ rule-making powers or in an arbitration determination once the supporting legislative framework is in place. Consistent with the recommendations of the review, the Minimum Conditions (Clearing) cover the following: (i) adequate regulatory arrangements; (ii) appropriate safeguards in the settlement process; (iii) access to settlement infrastructure on non-discriminatory, transparent, fair and reasonable terms; and (iv) appropriate interoperability arrangements between competing cash equity central counterparties. The Minimum Conditions (Clearing) clarify that the ASIC and the RBA would not be in a position to recommend the approval of a licence application from a competing clearing provider until the legislative framework underpinning the Minimum Conditions (Clearing) was in place and detailed specific requirements under Minimum Conditions (Clearing) had been developed. The Council of Financial Regulators and the ACCC expect to review the Minimum Conditions periodically, including in the event of material changes to the operating environment or market structure for these services, such as the emergence of a competing settlement facility.

The Minimum Conditions (Clearing) have been developed with reference to the prevailing market structure in settlement – in which there is a sole provider of settlement services. Recent rapid advances in technological developments may increase the prospect of competition emerging in this market. The Council of Financial Regulators and the ACCC will consider the need for specific policy guidance to be issued in respect of settlement facilities.

5. ASX

- On October 25, 2012, ASX issued a market discussion paper on ‘Derivatives Account Segregation and Portability’. The paper sought market feedback on potential changes to the account structures such as levels of segregation that would meet the regulatory requirements of the Australian regulators as well as the FMI Principles. For derivatives clearing, the paper considered 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 would introduce OTC Clearing Services in phases. Phase 1 would be dealer-to-dealer clearing for AUD IRS and OIS, and would be available from July 1, 2013. The consultation paper also stated the product coverage may be extended to include AUD FRAs in Q3 2013. Phase 2 would introduce client clearing and extend product coverage to include NZD IRS, OIS and FRAs.

- On May 1, 2013, ASX released its response to the above consultation paper including, among others:
  - 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 would inject a further AUD 20 million, increasing the "first loss" tranche in the default waterfall to AUD 120 million. All Secondary Commitments would be removed for Futures Clearing Participants.

- 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 was the first of two consultation papers in which ASX sought stakeholders' input on the draft Operating Rules for its Client Clearing Service for ASX 24 Exchange Traded Derivatives and OTC Interest Rate Derivatives. Certain points of the paper are set out below:

  - 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 planned 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 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 clients 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 clients' 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 clients directly. As the 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.

- 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 was the second consultation paper in which ASX sought stakeholders' input on the draft Operating Rules.

Highlights include:

- This Consultation Paper focused exclusively on the default of Clearing Participants. There were 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 IM calculated with respect to each Relevant Account; and if the Relevant Account is a client sub-account, the loss will be deducted from the guaranteed IM value of that client sub-account.
- ASX Clear (Futures) will establish default management groups (DMG) in respect of each OTC transaction type for the purposes of advising and assisting ASX Clear (Futures) for all DMG matters.

- On July 14, 2014, ASX issued a consultation paper to seek input on enhancing account structures for client clearing in both ASX 24 exchange traded derivatives (ASX 24 ETD) and OTC interest rate derivatives – the first of 2 planned consultation papers for client clearing accounts. This paper provided some background to possible enhancements to account structures in order to determine the level of collateral protection favored by stakeholders. Based on feedback from this first consultation paper, a second consultation paper would be released in Q4 2014, presenting ASX’s proposed solution for an enhanced account structure and its supporting rules framework. The consultation paper proposed the following account structures:
  - Individual Client Account (ICA) with Excess – Value Attribution (applies to cash and non-cash collateral)
  - ICA with Excess - Asset Attribution (applies to non-cash collateral)
  - Full Asset Segregation (applies to cash and non-cash collateral)

- On October 2, 2014, ASX issued a consultation paper on CCP recovery, which considered uncovered loss allocation and replenishment tools for CP default. The paper set out proposals to enhance the crisis management capabilities of ASX’s CCPs, including how to address credit losses or liquidity shortfalls and how to replenish the default fund in the event of a CP default.

  Some of the new recovery tools in the ASX Clear (Futures) recovery proposal are:
  - Emergency assessments

- Variation margins gains haircutting
- Partial termination (this is an existing tool; to be amended)
- Complete termination
- Mandatory replenishment

- On December 15, 2014, ASX issued a consultation paper "Enhanced Derivatives Account Segregation and Portability", which sought stakeholders' input on enhancements to ASX's client clearing account structures that will offer derivatives clients the choice of increased collateral protection. ASX sought feedback on the proposed amendments to the operating rules of ASX CCPs, ASX Clear and ASX Clear (Futures), which will enable excess customer collateral for derivatives to be held directly with the ASX CCPs and attributed to an ICA. Introduction of the enhancements is to comply with regulatory guidance from the RBA so that ASX CCPs can gain recognition in the EU.

- On June 3, 2015, the CFTC published a request for public comment on a petition by ASX Clear (Futures) Pty Limited for exemption from registration as a derivatives clearing organisation (DCO).

  The CFTC was considering for the first time a petition for exemption from registration pursuant to its authority under section 5b(h) of the Commodity Exchange Act, which permits the CFTC to exempt a clearing organisation from DCO registration for the clearing of swaps to the extent that the CFTC determines that such clearing organisation is subject to comparable, comprehensive supervision by appropriate government authorities in the clearing organisation's home country.

- On August 18, 2015, the CFTC issued an order of exemption from registration as a DCO to ASX Clear (Futures) Pty Limited (ASX). The order was the first issued by the CFTC based on its authority under Section 5b(h) of the Commodity Exchange Act.

  ASX is able to clear proprietary swap positions for its US clearing members, subject to the terms and conditions of the order, which include the reporting of daily information to the CFTC, a requirement to only clear proprietary positions of US clearing persons, open access, the appointment of a US agent, consent to jurisdiction of the US, inspection of books and records, observance of the CPMI-IOSCO Principles for Financial Market Infrastructures, and record-keeping and reporting requirements, among other things.

- On September 10, 2015, RBA released its annual assessment of ASX's four licenced clearing and settlement facilities, including ASX Clear Pty Limited, ASX Clear (Futures) Pty Limited, ASX Settlement Pty Limited and Austraclear Limited, for the year ended June 30, 2015. The principal focus was the progress made in meeting the recommendations and regulatory priorities identified by the RBA in its 2013/14 assessment. These included recommendations related to CCP model validation – and, in particular, the validation of stress-testing models – and recovery planning across all four facilities.

  RBA also stated that all four facilities had made substantial progress in addressing the regulatory priorities identified in its 2014/15 assessment. Many of these priorities have been fully addressed. As a result, the RBA noted that the four facilities have either observed or broadly observed all relevant requirements under Australia's Financial Stability Standards. The facilities have therefore conducted their affairs in a way that causes or promotes overall stability in the Australian financial system, the RBA said.

  Nevertheless, the assessment made further recommendations on model validation and stress testing, recovery planning, treasury investment policy and cyber resilience.

- On December 4, 2015, the ASX published a consultation paper on exposure draft rules for the interim replenishment of default funds**.** The paper sought feedback on ASX CCP recovery rules to facilitate the rapid replenishment of the default funds of ASX Clear and ASX Clear (Futures) if they are depleted as a result of a participant default loss. The proposed changes included:
  - ASX CCPs must replenish to a minimum fund size of A$100 million (ASX Clear (Futures)) or A$37.5 million (ASX Clear) as soon as practicable after completion of the default management process, including the next business day when that would be reasonably practicable;
  - ASX CCPs (through funding sourced by the ASX Group) will provide the initial interim contribution to replenish the default fund of up to A$100 million (ASX Clear (Futures)) or A$37.5 million (ASX Clear); and
  - ASX CCPs have discretion to call for participants to make interim contributions up to a further A$100 million (ASX Clear (Futures)) or A$37.5 million (ASX Clear) to the default fund during the default period.
  - These changes primarily affect the timing of replenishment of mutualised contributions, rather than the amount that is required to be ultimately replenished. As under the current recovery rules, the default fund would be fully replenished up to A$400 million for ASX Clear (Futures) or A$150 million for ASX Clear after the default period has ended. ASX would continue to rely on additional margin calls where necessary to ensure it maintains the required level of financial cover during the remainder of the default period.

- On August 15, 2016, the ASX published a consultation paper on OTC Rule and Handbook Amendments. The consultation paper proposed to expand the OTC product coverage of the OTC Clearing Service to include:
  - New OTC Interest Rate Derivatives products – Asset Swaps and BBSW vs AONIA Basis Swaps;
  - extended maturities for existing OTC Interest Rate Derivatives products; and
  - Whether ASX should amend its OTC Rules to confirm that OTC Open Contracts are ‘settled to market’ rather than ‘collateralised to market’ by variation margin payments.
  - ASX also proposed to make a number of miscellaneous OTC Rule and Handbook amendments.

6. 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 sought 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 addressed 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 amended a number of statutes, in particular, the PSN Act. The amendments to the PSN Act clarified 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 also clarified that a CCP may enforce security that it holds over any type of assets of a defaulting participant.

- On December 20, 2013, the Treasurer announced the final terms of reference for the Financial System Inquiry (FSI). The FSI was 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 was the first major inquiry into Australia's financial system since the Wallis Report in 1997. The FSI's terms of reference were wide in scope and encompassed a wide range of financial activities. The FSI accepted submissions on the issues raised in the terms of reference until March 31, 2014.

- In July 2014, FSI released an Interim Report. The aim of this Interim Report was to elicit comments from interested stakeholders to inform the Final Report to the Treasurer. The report set out the Committee's views on the objectives of the financial system and discusses the financial system from nine perspectives. For each of these observations, it set out a range of options for change, including the option of no change.

- On October 20, 2015, the Australian Government issued its response to the FSI. The FSI delivered its final report to the government on November 28, 2014. A period of consultation had followed the release of the final report. In its response, the Government sets out an agenda to:
  - strengthen the resilience of the financial system;
  - improve the efficiency of the superannuation system;
  - stimulate innovation in the financial system;
  - support consumers of financial products being treated fairly; and
  - strengthen regulator capabilities and accountability.

  Among the Government actions proposed in the response:
  - With respect to the recommendation to ensure Australia's participation in international derivatives markets, the Government will develop legislative amendments in the second half of 2015 to clarify domestic regulation to support globally coordinated policy efforts and facilitate the ongoing participation of Australian entities in international capital markets.
  - The Government also states that it will develop legislative amendments to improve protections for client monies held in relation to derivatives. These are intended to ensure that investors' monies are adequately protected when held by intermediaries. The Government also intends to develop legislative amendments to the definition of a basic deposit product in the Corporations Act 2001.

- The FSI final report was released on December 7, 2014 and FSI has now concluded. FSI made 44 recommendations relating to the Australian financial system, including (but not limited to):
  - Resilience: Strengthen policy settings that lower the probability of failure, including setting Australian bank capital ratios such that they are unquestionably strong by being in the top quartile of internationally active banks; and reduce the costs of failure, including by ensuring ADIs maintain sufficient loss absorbing and recapitalisation capacity to allow effective resolution with limited risk to taxpayer funds – in line with international practice
  - Regulatory System: Improve the accountability framework governing Australia's financial sector regulators by establishing a new Financial Regulator Assessment Board to review their performance annually; Ensure Australia's regulators have the funding, skills and regulatory tools to deliver their mandates effectively; Rebalance the regulatory focus towards competition by including an explicit requirement to consider competition in ASIC's mandate and conduct three-yearly external reviews of the state of competition; Improve the process for implementing new

financial regulations; and Introduce an industry funding model for ASIC and provide ASIC with stronger regulatory tools.

- Capitalisation: Implement a framework for minimum loss absorbing and recapitalisation capacity in line with emerging international practice, sufficient to facilitate the orderly resolution of Australian authorised deposit-taking institutions and minimise taxpayer support; Develop a reporting template for Australian authorised deposit-taking institution capital ratios that is transparent against the minimum Basel capital framework; and Introduce a leverage ratio that acts as a backstop to authorised deposit-taking institutions' risk-weighted capital positions.

- On May 4, 2016, the Financial System Legislation Amendment (Resilience and Collateral Protection) Bill 2016 was passed by the Australian senate. The Bill enables to entities to provide margin and access international clearing houses. This follows recent legislative work on payment systems and netting and protection of client money.

- The Bill addresses the legal impediments which restrict certain Australian entities from providing margin consistent with international principles. This stemmed from the need to provide initial margin by way of security and not absolute transfer which is commonly used in Australia. Certain provisions in the Banking Act, the Corporations Act and the Property Securities Act were amended to remove these impediments. The Payment Systems and Netting Act, include changes, which, among others, extend the current protection of close-out netting to the enforcement of security over obligations under those contracts. Clarity was also provided with respect to close-out netting and the question of stays. Further, the Bill proposed reforms and changes to the approved real time gross settlement systems, approved multilateral betting arrangements and netting markets.

7. Resolution regime

- On September 12, 2012, the 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.

- On February 20, 2015, the Treasury released a consultation paper on the Resolution Regime for FMIs for public comment. Some of the proposals included:
  - Institutional scope: proposed to cover all CS facilities incorporated in Australia and holding a domestic CS facility licence, and all trade repositories incorporated and licensed in Australia and are identified as being systemically important in Australia. Some of the legislative proposals extended to financial markets that are incorporated in Australia and holding a domestic market licence. The institutional scope of the paper did not extend to overseas-based FMIs. Instead, the paper proposed that Australian authorities should have the capacity to take limited action in support of resolution actions by overseas authorities in respect of overseas-based FMIs and financial markets that are licensed to operate in Australia.
  - Resolution powers: (i) statutory management; (ii) moratorium on payments to general creditors; (iii) transfer of operations to a third-party or bridge institution; and (iv) temporary stay on early termination rights.
  - Matters relating to the funding of resolution actions.
  - Direction powers: enhancements to the direction powers of the regulators and resolution authorities, primarily for the purpose of supporting the successful implementation of recovery and resolution

actions. They would introduce a streamlined process for the timely issuance of directions, and also strengthen the sanctions for a failure to comply, including criminal sanctions.

8. Basel III reforms

- On August 10, 2012, APRA released a discussion and consultation paper on implementing the Basel III counterparty credit risk capital reforms, intending to apply this to ADIs, subsidiaries of foreign banks and clearing members of a CCP. APRA's proposals for counterparty credit risk included, among others, the introduction of the Credit Valuation 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 to apply to ADIs included, 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, including 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 (Discussion paper). The consultation package outlined APRA's proposed amendments to its 2011 proposals on the implementation of the LCR in Australia and addressed the main issues raised in submissions, dialogue with the industry and other interested parties.

  APRA did not make any amendments to its proposed implementation of the NSFR but would ensure that concerns raised in the submissions for the NSFR would be fed to the Basel Committee.

  APRA issued its final Basel III liquidity reforms in 2013. The new prudential standards became effective on January 1, 2014. The LCR commenced on January 1, 2015 and NSFR requirements will commence on January 1, 2018.

  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 proposed 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).

- On August 8, 2013, APRA released a note for ADIs with further details on its approach to the implementation of the Basel III liquidity framework, in particular the CLF. Due to the relatively short supply of Australian-dollar HQLA, the 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 LCR. The note provided details on APRA's role in determining the appropriate size of the CLF for each scenario analysis ADI. The main steps are:

- 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.

- On April 15, 2014, APRA released a letter to inform mutually owned ADIs that they will be able to issue Additional Tier 1 capital (AT1) and Tier 2 capital (T2) instruments that provide for conversion into mutual equity interests in the event that the loss absorption or non-viability provisions in these instruments are triggered. Mutual equity interests that result in such a conversion will qualify to be included in common equity Tier 1 (CET1) capital if they comply with the relevant provisions of APS 111. The final form of APS 111 is now available.

- On May 8, 2015, APRA released a response to submissions and final versions of Prudential Standard APS 110 Capital Adequacy (APS 110) and Prudential Standard APS 330 Public Disclosure (APS 330), which incorporated new disclosure requirements for authorised deposit-taking institutions. These requirements took effect from July 1, 2015, and relate to the leverage ratio, the liquidity coverage ratio and the identification of globally systemically-important banks. These requirements were based on revisions to the Basel Committee on Banking Supervision's disclosure framework, which aims to improve the comparability of banking institutions' risk profiles and facilitate market discipline by providing consistent information about key risk metrics to market participants and other interested parties.

- On July 13, 2015, APRA released the results of a study comparing the capital position of Australia's major banks against a group of international banking peers. The study was conducted by APRA in response to Recommendation 1 of the FSI. The FSI recommended that APRA should "set capital standards such that Australian authorised deposit-taking institution capital ratios are unquestionably strong".

  In its final report, the FSI suggested banks should have capital ratios that position them in the top quartile of internationally-active banks in order for them to be regarded as 'unquestionably strong'. APRA's study, which adjusts for differences in measurement methodology across jurisdictions and uses a number of different measures of capital strength, found that the Australian major banks are well-capitalised, but not in the top quartile of international peers.

  The results of the study would inform, but would not ultimately determine, APRA's approach for setting 'unquestionably strong' capital adequacy requirements. APRA regards the top quartile positioning as a useful indicator of the strength of the Australian framework, but does not intend to tightly tie Australian requirements to a benchmark based on the capital adequacy ratios of international banks.

  A final response to the determination of 'unquestionably strong' capital standards would require further consideration by APRA, taking into account the results of this study, changes arising from the Basel Committee on Banking Supervision's current review of the global capital adequacy framework, and the extent of further strengthening in the capital ratios of peer international banks. Taking all of these factors into account, APRA's current judgement is that the major banks would need to increase their capital adequacy ratios by at least 200 basis points, relative to their position in June 2014, to be comfortably positioned in the top quartile of their international peers over the medium- to long-term.

- On October 6, 2015, APRA released the results of its secured CLF. APRA implemented the LCR on January 1, 2015 to ensure that ADIs have sufficient HQLA to survive a stress scenario lasting for 30 days. The CLF will be sufficient in size to cover any shortfall between the ADI's holdings of HQLA and the requirement to hold such assets under the LCR. ADIs will be required to demonstrate that they have taken 'all reasonable steps' towards meeting their LCR requirements through balance sheet management, before relying on the CLF. Each LCR ADI that requested a CLF was also required to submit a three-year funding plan to APRA that included, amongst other things, a projection of Australian dollar net cash outflows over the CLF approval period.

  All locally-incorporated LCR ADIs were invited to apply for a CLF to take effect on January 1, 2016. Thirteen ADIs applied for CLFs totalling approximately $272 billion. Following APRA's assessment of the applications, the aggregate Australian dollar net cash outflow of the 13 ADIs projected for end-2016 was approximately $402 billion. The RBA determined that the amount of Australian Government Securities and securities issued by state and territory governments that could reasonably be held by locally-incorporated LCR ADIs in 2016 was $195 billion. On this basis, the CLF was determined to be approximately $207 billion and the total CLF granted (including buffers over 100%) was approximately $245 billion.

- On March 31, 2016, APRA released a consultation on its proposed implementation of the Net Stable Funding Ratio (NSFR), proposed to come into effect from 1 January 2018. The discussion paper also proposed options for the future operation of a liquid assets requirement for foreign ADIs, i.e. foreign bank branches, in Australia.

  APRA proposed that the NSFR will only be applied to larger, more complex ADIs. APRA stated that it sees limited value in applying the new standard to smaller ADIs with balance sheets that comprise predominantly mortgage lending portfolios funded by retail deposits.

  The discussion paper also sets out proposals for the future application of a liquid assets requirement for foreign bank branches that are currently subject to a concessionary 40 per cent LCR requirement. APRA consulted on two options: (i) the continuation of the existing regime or (ii) replacing the existing regime with a simple metric that would require foreign bank branches to hold specified liquid assets equal to at least nine per cent of external liabilities.

  Submissions on the proposals in the discussion paper are due by 31 May 2016. APRA announced that it intends to release a draft revised prudential standard, and an associated prudential practice guide, for consultation later in 2016. This will be followed by revised draft reporting requirements during the second half of 2016.

- On July 14, 2016, APRA announced that it has reviewed the range of assets that qualify for the liquidity coverage ratio (LCR) for some authorised deposit-taking institutions (ADIs), and reconfirmed existing arrangements with an addition to eligible Level 1 assets.

  Since January 1, 2015, ADIs subject to the LCR requirement have been required to hold a stock of high quality liquid assets (HQLA) sufficient to survive a severe liquidity stress scenario lasting 30 days. There are two categories of assets that can be included in this stock:

  - Level 1 assets - limited to cash, central bank reserves and highest quality sovereign or quasi sovereign marketable instruments that are of undoubted liquidity, even during stressed market conditions. APRA has reconfirmed the existing definition, which is that the only assets that qualify as Level 1 assets are cash, balances held with the Reserve Bank of Australia, and Australian Government and semi government securities.

- Level 2 assets (which can comprise no more than 40 per cent of the total stock) - limited to certain other sovereign or quasi sovereign marketable instruments, as well as certain types of corporate bonds and covered bonds, that also have a proven record as a reliable source of liquidity even during stressed market conditions. APRA has reconfirmed the existing definition, which is that there are no assets that qualify as Level 2 assets.

However, for the purposes of the LCR requirement, Australian government securities now include debt securities of the Export Finance and Insurance Corporation (EFIC). The debt securities of EFIC are high-quality marketable instruments that have a full guarantee by the Commonwealth of Australia.

The treatment of Level 1 and Level 2 assets for the purposes of the LCR requirement does not affect the set of instruments that the Reserve Bank of Australia (RBA) will accept as qualifying collateral for its committed secured liquidity facility. Qualifying collateral will comprise all assets eligible for repurchase transactions with the RBA under normal market conditions.

- On August 5, 2016, APRA reaffirmed its objective, announced in 2015, to raise Australian residential mortgage risk weights applied by banks using internal models to an average of at least 25%.

  In July 2015, APRA adjusted the risk-weight calculation used by authorised deposit-taking institutions (ADIs) accredited to use the internal ratings-based (IRB) approach to credit risk. The average risk weight on Australian residential mortgage exposures was to be increased from approximately 16% to an average of at least 25%, measured across all IRB ADIs and effective from July 1, 2016.

  Subsequent to the announcement in July 2015, APRA has also required IRB ADIs to make a range of other changes to their models as part of its routine supervisory processes, with a view to improving their comparability, reliability and risk sensitivity. The impact of these changes, when combined with the adjustment proposed in July 2015, would have been an average risk weight that was well in excess of the 25% targeted by APRA in its original announcement.

  APRA has therefore advised the relevant ADIs that it will recalibrate the adjustment advised in July 2015 to ensure the original target of an average risk weight for Australian residential mortgages of at least 25% is achieved, while not significantly exceeding this target. In doing so, APRA has taken into account modelling changes that have been instituted, as well as some that are to be completed over the coming quarters. This adjustment to mortgage risk weights remains an interim measure, pending the outcome of the deliberations of the Basel Committee on Banking Supervision to finalise reforms to the capital adequacy framework, and APRA's subsequent consideration of how those reforms should be applied in Australia.

- On September 29, 2016, APRA released a paper setting out its response to issues raised in submissions to a discussion paper on Basel III's net stable funding ratio (NSFR) and the liquid assets requirement for foreign authorised deposit-taking institutions (ADIs). APRA also released draft revised prudential standards that incorporate the NSFR requirements for ADIs and other changes.

  The March discussion paper also set out proposals for the future application of a liquid assets requirement for foreign ADIs (i.e. foreign bank branches). Foreign ADIs are currently subject to a minimum LCR requirement of 40 per cent; the discussion paper proposed an alternative approach. Submissions on this matter raised a number of issues that suggested the alternative to the 40 per cent LCR would not be as simple as APRA intended, or necessarily lend itself to a one-size-fits-all approach.

APRA is therefore proposing to retain the 40 per cent LCR as the default liquid assets requirement for foreign ADIs, but allow foreign ADIs with simpler business activities to apply to use the alternative approach.

Written submissions on the proposals were due by October 28. APRA expects to release its final position on the introduction on the NSFR in late 2016. APRA will shortly consult on revised reporting requirements for ADIs related to the introduction of the NSFR and other amendments. APRA's current intention is for the NSFR to come into effect from January 1, 2018, in line with the internationally agreed timetable.

- On September 30, 2016, APRA sent a letter to all ADIs releasing aggregate results on the committed liquidity facility (CLF) established between the Reserve Bank of Australia (RBA) and certain locally incorporated ADIs that are subject to the liquidity coverage ratio (LCR). APRA implemented the LCR on January 1, 2015.

  The CLF is intended to be sufficient in size to compensate for the lack of sufficient high-quality liquid assets (mainly Australian government and semi-government securities) in Australia for ADIs to meet their LCR requirements. All locally incorporated LCR ADIs were invited to apply for a CLF amount to take effect on January 1, 2017. Fourteen ADIs chose to apply. Following APRA's assessment of the applications, the aggregate Australian dollar net cash outflow of the 14 ADIs projected for end-2017 under the stress scenario was calculated as approximately $400 billion. The total CLF amount allocated for 2017 (including an allowance for buffers over the minimum 100% requirement) is approximately $223 billion.

  Since the formal implementation of the LCR in 2015, the total CLF has decreased each year. The decreases have been primarily driven by the increased availability of Australian government securities and semi-government securities able to be held as high-quality liquid assets.

- On November 10, 2016, APRA released the final revised prudential securitisation standard, accompanied by a draft revised prudential practice guide on the subject. The final revised standard reflects APRA's implementation of the Basel III securitisation framework, and will take effect from January 1, 2018.

  APRA invites written submissions on the draft revised prudential practice guide by December 20, 2016. In the coming months, APRA will separately consult on revised reporting requirements for securitisation that would take effect at the same time as the revised prudential standard.

- On November 16, 2016, APRA published a response to submissions received on its January 6, 2016 discussion paper outlining proposed changes to APRA's Quarterly Authorised Deposit-taking Institutions Performance (QADIP) publication.

  APRA proposed to expand the statistics published in the QADIP to include relevant information on the liquidity of ADIs, introduce liquidity statistics for banks and expand the liquidity statistics published for credit unions and building societies. The feedback received and APRA's response focuses on the following main areas:

  - Alignment of statistics to public disclosure requirements;
  - Confidentiality of additional liquidity statistics; and

- Publication of mutual ADIs segment

  On the basis that submissions were broadly supportive of the proposal to publish additional liquidity statistics, APRA will incorporate the expanded liquidity statistics for the September 2016 edition of QADIP, to be released November 29, 2016. These expanded statistics will promote understanding of the ADI industry and provide users of APRA's statistics with additional information to make well-informed decisions. APRA will also release an explanatory note that explains how the liquidity statistics should be interpreted and used.

- On December 20, 2016, the Australian Prudential Regulation Authority (APRA) released the final revised Prudential Standard APS 210 Liquidity (APS 210) and Prudential Practice Guide APG 210 Liquidity (APG 210), which incorporate the net stable funding ratio (NSFR) requirements for some authorised deposit-taking institutions (ADIs).

  APRA will retain the 40% LCR as the default liquid assets requirement for foreign ADIs, but allow foreign ADIs with simpler business activities to apply to use the alternative minimum liquidity holdings approach.

  The new APS 210 will commence on January 1, 2018, while the new APG 210 replaces the existing APG 210 immediately.

9. APRA – Prudential Standards

- APRA will determine whether an ADI is classified as a 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.

- In January 2014, APRA released its final cross-industry Prudential Standard CPS 220 Risk Management (CPS 220) and a consultation draft Prudential Practice Guide CPD 220 Risk Management (CPG 220). On May 8, APRA published a letter outlining responses to several key issues raised during the consultation period – in particular, APRA's use of the word 'ensure' in the prudential standard, the three lines of defence model and the concept of materiality for the risk management declaration. Accordingly, and notwithstanding that CPS 220 was finalised in January, APRA issued a letter on October 7 to all ADIs, general insurers and life companies to propose further amendments to CPS 220 and CPG 220. For CPS 220, APRA sought feedback on the proposed refinements and whether they give rise to any fundamental concerns. CPS 220 and CPG 220 came into effect on January 1, 2015.

- On September 1, 2014, APRA released for consultation an amended APS 210 Liquidity and amended reporting instructions, relating to the LCR. Some of the proposed amendments are:
  - A proposed amendment to the definition of expected derivatives cash inflows and cash outflows that may be shown on a net basis, and clarifications regarding the reporting instructions relating to this matter. This affects all ADIs classified as 'LCR ADIs'.

- As the process of assessing applications for a CLF from the RBA has raised a number of challenges in applying the LCR to foreign bank branches in the current form, APRA plans to reassess the nature of, and rationale underlying its application of, liquid asset requirements to foreign bank branches in Australia. APRA intends to publish a consultation on this topic in 2015.
- In the interim, APRA proposes to apply an LCR with a 15-calendar-day time horizon to branches (rather than the full 30-calendar-day time horizon applied to locally incorporated ADIs). Branches will also be allowed to meet the liquid asset requirements using both assets defined as HQLA, as listed in Attachment A paragraphs 6-11 of APS 210, and assets listed in APS 210 in Attachment C paragraphs 3(c) – (g), subject to paragraph 4 of Attachment C. For clarity, there is no change to the definition of HQLA. It is proposed that minimum liquidity holdings securities comprise an additional asset that will be deemed to form part of the 'stock of high-quality liquid assets' in the numerator of the formula in APS 210.

• On September 18, 2014, APRA released for consultation a discussion paper and draft amendments to APS 110 and APS 330, which outline APRA's proposed implementation of new disclosure requirements for ADIs.

  Highlights of the proposals:

  - Leverage ratio disclosures: APRA proposes that locally incorporated ADIs, with approval from APRA, use an internal ratings-based approach for credit risk under the risk-based adequacy framework. The ADIs are also required to disclose certain quantitative and qualitative information about their leverage ratios, calculated in accordance with the proposed methodology set out in draft APS 110. At this stage, there is no minimum leverage ratio requirement proposed. Any decision on implementation of a minimum leverage requirement will only be taken by APRA once the BCBS agrees a minimum international standard.
  - LCR disclosures: APRA proposes that ADIs subject to the leverage coverage ratio should disclose certain data in relation to their ratios.
  - Disclosures for the identification of potential global systemically important banks (G-SIBs): APRA proposes that the four major Australian ADIs disclose the 12 indicators used in the G-SIB identification methodology.

• On July 22, 2015, APRA released a revised version of APS 330, which rectified an omission in paragraph 21(b) of the July 2015 version of APS 330. The omission altered the definition of 'material risk-taker' for the purposes of the remuneration disclosure requirements in APS 330. This omission would have imposed quantitative remuneration disclosure requirements on a wider range of persons than APRA intended.

  The revised APS 330 amended paragraph 21(b) to align the definition of 'material risk-taker' with the definition used in the January 2015 version. No other substantive changes were made, although APRA made a number of minor formatting amendments. Revised APS 330 was not subject to public consultation as the correction was in align with APRA's previously consulted upon position. The revised version of APS 330 became effective on August 1, 2015.

• On July 20, 2015, APRA announced an increase in the amount of capital required for Australian residential mortgage exposures by ADIs accredited to use the internal ratings-based (IRB) approach to credit risk. This change would mean that the average risk weight on Australian residential mortgage exposures for ADIs accredited to use the IRB approach would increase from approximately 16% to at least 25%.

  The increase in IRB mortgage risk weights addressed a recommendation of the FSI that APRA "raise the average IRB mortgage risk weight to narrow the difference between average mortgage risk weights for ADIs using IRB risk-weight models and those using standardised risk weights". The increase is also consistent with the work being undertaken by the BCBS on changes to the global capital adequacy framework for banks.

The increased IRB risk weights would apply to all Australian residential mortgages, other than lending to small businesses secured by residential mortgage. The increase is being implemented through an adjustment to the correlation factor used in the IRB mortgage risk-weight function for each affected ADI. In order to provide ADIs sufficient time to prepare for the change, the higher risk weights will come into effect from July 1, 2016.

The increase in IRB mortgage risk weights is an interim measure. APRA has stated it is not possible to settle on the final calibration between IRB and standardised mortgage risk weights until changes arising from the Basel Committee's broader review of this framework are complete. Further changes to IRB mortgage risk weights will be considered by APRA over the medium term in the context of these broader international developments.

- On November 26, 2015, APRA published a discussion paper on its proposals to revise the prudential framework for securitisation for ADIs. APRA also released a draft APS 120.

  APRA's objective in revising the prudential requirements for securitisation is to establish a simplified framework, taking into account global reform initiatives and the lessons learned from the global financial crisis. One of these lessons was that securitisation structures had become excessively complex and opaque and that prudential regulation of securitisation had become similarly complex. APRA first consulted on initiatives to simplify its prudential framework for securitisation in April 2014. APRA's amended proposals include:

  - dispensing with a credit risk retention or 'skin-in-the-game' requirement;
  - allowing for more flexibility in funding-only securitisation; and
  - removing explicit references to warehouse arrangements in the prudential framework.

  These amended proposals are expected to assist ADIs in further strengthening their funding profile and provide clarity to ADIs that undertake securitisation for capital benefits. The proposals incorporate the new Basel III securitisation framework, with appropriate adjustments to reflect the Australian context and APRA's objectives, and will be applicable equally to all ADIs. The discussion paper and draft prudential standard are subject to consultation. APRA proposes to implement these changes inline with the Basel Committee's effective date of January 1, 2018.

  In addition, APRA intends to release a draft prudential practice guide (PPG), reporting standards and reporting forms for consultation in the first half of 2016. APRA expects that these final documents will be released in the second half of 2016.

- On December 17, 2015, APRA announced that the countercyclical capital buffer applying to the Australian exposures of ADIs will be set at 0% from January 1, 2016. The capital framework requires ADIs to hold a buffer of CET1 capital, over and above each ADI's minimum requirement, comprised of three components:

  - a capital conservation buffer, applicable at all times and equal to 2.5% of risk-weighted assets (unless determined otherwise by APRA);
  - an additional capital buffer applicable to any ADI designated by APRA as a D-SIB, currently set to 1.0% of risk-weighted assets; and

- a countercyclical buffer which may vary over time in response to market conditions. This buffer may range between 0-2.5% of risk-weighted assets.

ADIs will generally be required to maintain a minimum CET1 ratio of 4.5%, plus a 2.5% capital conservation buffer (3.5% for D-SIBs) and a buffer for international exposures in jurisdictions that have set a non-zero countercyclical capital buffer rate. For some ADIs, additional capital requirements are also applied via Pillar 2. All Australian ADIs currently report CET1 ratios above these requirements. The aggregate CET1 ratio for the banking system at the end of September 2015 was 10.1%.

In addition to this announcement on the size of the buffer, APRA also released the countercyclical buffer information paper, the draft prudential practice guide on capital buffers, and the revised prudential standard APS 110 on the same day.

- On December 18, 2015, APRA issued a letter to ADIs on classification of retail and qualifying small and medium enterprises (SMEs) deposit for LCR purposes. In early 2015, APRA conducted a consistency review across 14 large ADIs to determine whether they were taking a consistent approach to the interpretation and application of key terms in APS 210 relating to the LCR. The area that demonstrated the greatest level of inconsistency was the assumptions relating to retail and qualifying SME deposits.

  The letter provided APRA's observations of better practice in the approaches taken to determine whether retail deposits are considered stable or less stable. As part of ongoing supervision and the CLF 'all reasonable steps' assessment process in 2016, APRA would consider the extent to which ADI's meet the expectations in this letter. Key elements include:

  - Stable deposits: To qualify as 'stable', a deposit needs to be fully insured by the Financial Claims Scheme (FCS) and meet either the 'established relationship' or 'transactional account' criteria.
  - Less stable deposits: The LCR recognizes that there are certain types of deposit accounts that demonstrate higher levels of liquidity risk than other deposit accounts.

- On January 6, 2016, APRA released a consultation package on the proposed publication of liquidity statistics for ADIs. APRA proposed to expand the current statistics published in the Quarterly ADI Performance publication to include relevant information on the liquidity of ADIs. APRA proposed to introduce liquidity statistics for banks, and expand the existing liquidity statistics published for credit unions and building societies.

- On March 29, 2016, APRA consulted on clarifications to the governance and risk management components of the framework for supervision of conglomerate groups. This includes clarifications to nine prudential standards, intended to become effective on July 1, 2017, and two prudential practice guides. These clarifications are not changes in policy position.

  APRA has also announced that it has deferred the implementation of conglomerate capital requirements until a number of other domestic and international policy initiatives are further progressed.

  While the clarifications to the cross-industry standards of risk management, outsourcing, governance, business continuity management, and fit-and-proper largely relate to their application to conglomerates, these standards also apply to all authorised deposit-taking institutions (ADIs), general insurers and life companies. As such, APRA encourages all entities covered by these standards to review the clarifications.

Responses to the consultation on the nine non-capital prudential standards are due by May 13, while responses to the two prudential practice guidelines are due by May 27.

- On August 5, 2016, APRA reaffirmed its objective, announced in 2015, to raise Australian residential mortgage risk weights applied by banks using internal models to an average of at least 25%.

  In July 2015, APRA adjusted the risk-weight calculation used by authorised deposit-taking institutions (ADIs) accredited to use the internal ratings-based (IRB) approach to credit risk. The average risk weight on Australian residential mortgage exposures was to be increased from approximately 16% to an average of at least 25%, measured across all IRB ADIs and effective from July 1, 2016.

  Subsequent to the announcement in July 2015, APRA has also required IRB ADIs to make a range of other changes to their models as part of its routine supervisory processes, with a view to improving their comparability, reliability and risk sensitivity. The impact of these changes, when combined with the adjustment proposed in July 2015, would have been an average risk weight that was well in excess of the 25% targeted by APRA in its original announcement.

  APRA has therefore advised the relevant ADIs that it will recalibrate the adjustment advised in July 2015 to ensure the original target of an average risk weight for Australian residential mortgages of at least 25% is achieved, while not significantly exceeding this target. In doing so, APRA has taken into account modelling changes that have been instituted, as well as some that are to be completed over the coming quarters. This adjustment to mortgage risk weights remains an interim measure, pending the outcome of the deliberations of the Basel Committee on Banking Supervision to finalise reforms to the capital adequacy framework, and APRA's subsequent consideration of how those reforms should be applied in Australia.

- On August 8, 2016, APRA released final requirements for the governance and risk management components of the framework for supervision of banking and insurance conglomerate groups (Level 3 framework). The new requirements will come into effect from July 1, 2017.

  APRA consulted on these requirements in March 2016, and minor clarifications have been made in response to the feedback provided, with details included in a response letter. APRA previously announced its intention to apply the Level 3 framework to eight conglomerate groups. APRA will formally determine the Level 3 heads and members of each of the eight Level 3 groups between now and July 1, 2017.

  APRA announced in March 2016 that it was deferring capital requirements for conglomerates until a number of other domestic and international policy initiatives are further progressed. APRA does not propose to initiate new consultations on the capital component of the conglomerate framework any earlier than mid-2017.

- On August 30, 2016, APRA released a new prudential practice guide on the operation of capital buffers for authorised deposit-taking institutions (ADIs).

  Prudential Practice Guide APG 110 Capital Buffers (APG 110) provides clarification and guidance for ADIs on the operation of the capital conservation buffer and the countercyclical capital buffer - collectively referred to as the capital buffers.

  APRA released draft APG 110 for consultation in December 2015. In response to feedback received during the consultation period, APRA made amendments to APG 110 to provide some additional clarification on the operation of the capital buffers. Details on these changes can be found in APRA's response to submissions letter, which was also released today.

- On September 15, 2016, APRA released a consultation package on proposed revisions to the counterparty credit risk framework for all authorised deposit-taking institutions (ADIs).

  Specifically, APRA proposes to require all ADIs to use the standardised approach to counterparty credit risk (SA-CCR) methodology to measure counterparty credit risk exposures arising from over-the-counter derivatives, exchange-traded derivatives and long settlement transactions. At this time, APRA does not propose introducing the Basel Committee's internal model method for counterparty credit risk into its framework. APRA also proposes that all ADIs will be required to hold capital for exposures to central counterparties in a manner consistent with the Basel Committee's final standard, and proposes to establish a dedicated ADI prudential standard for counterparty credit risk

  The proposed minor amendments apply to all ADIs, and the consultation period will end on November 11. APRA also proposes that an ADI that meets certain criteria may apply for approval to further extend its implementation date for SA-CCR until January 1, 2019.

- On October 18, 2016, APRA released an information paper on current practice in risk culture in banking, insurance and superannuation businesses.

  While there has been a stronger focus on risk culture in recent years among APRA-regulated institutions, the paper finds that continued effort and ongoing attention is required by institutions to better understand and manage their risk cultures.

  Underpinning much of this work has been APRA's new prudential standards on risk management, which came into effect on January 1, 2015. Among other things, these require each board of an authorised deposit-taking institution (ADI) or insurer to form a view on the risk culture in their institution, identifying any desirable changes to that risk culture, and ensuring the institution takes steps to address those changes. As part of its increased focus in this area, APRA will also commence a review of remuneration policies and practices among its regulated institutions and examine how these interact with risk culture.

10. Financial Benchmarks

- On July 8, 2015, ASIC released a report on financial benchmarks, highlighting the importance of key indices to Australia's markets and the broader economy. It also described the regulatory reforms and other responses that have occurred internationally and in Australia in response to concerns about poor conduct in connection with financial benchmarks.

  ASIC's report made a number of recommendations for market participants, including measures they should adopt to avoid conduct issues. The report confirmed ASIC is investigating financial institutions to test for conduct and other issues relating to financial benchmarks, such as key interest rate and foreign exchange benchmarks. ASIC's enquiries were informed by the types of benchmark-related conduct and oversight issues that have been observed overseas. Its investigations are ongoing and no conclusions have been drawn yet.

- On October 23, 2015, the CFR announced that it is seeking views on the evolution of the methodology for the bank bill swap rate (BBSW) benchmark.

BBSW is a key financial benchmark in Australia and is administered by AFMA. BBSW rates serve as reference rates for pricing many debt securities and lending transactions. They are also used to determine payment obligations on a range of derivatives. Consistent with international standards, the administration of BBSW was reformed in 2013 with the intention of improving its reliability by moving from a submissions-based to a market data-based benchmark.

To ensure that BBSW remains a trusted, reliable and robust financial benchmark going forward, the CFR recommended a consultation on the methodology for BBSW. The consultation paper presented options and invited views on how the BBSW methodology could evolve going forward.

- On February 9, 2016, the CFR released a discussion paper on Evolution of the BBSW Methodology. This document summarised the feedback received from the submissions to the October 2015 consultation, and set out a proposal for the evolution of the BBSW methodology for discussion with the Australian Financial Markets Association (AFMA) and market participants.

- On March 31, 2016, the CFR released its consultation paper on Financial Benchmarks Regulatory Reform. In this consultation, the CFR considered various regulatory reform proposals which relate to the administration of significant benchmarks, submission to significant benchmarks and offences relating to benchmark misconduct and has asked for views on these. The reforms proposed by the CFR have three aspects:
  - Benchmark administration: making administration of a significant benchmark of a financially regulated activity and imposing obligations on the administrators of a significant benchmark that consistent with the IOSCO Principles of July 2013;
  - Benchmark submission: imposing binding requirements, consistent with the IOSCO Principles, on submitters to a significant benchmark calculated based on submissions and creating a legal power to compel submission to a significant benchmark; and
  - Benchmark misconduct: introducing a new specific offence of benchmark manipulation applicable to financial benchmarks. This includes separately expressly expanding the scope of financial products to bank accepted bills (BABs) and negotiable certificates of deposit (NCDs).

  The CFR seeks comments on, among others, the proposed definition and scope of significant financial benchmarks and comments on the proposed mechanism for designating the scope of regulation. This follows the recent consultation process on the evolution of the BBSW benchmark calculation methodology. Comments are due by April 29, 2016.

- On October 4, 2016, the Australian Treasurer released the CFR’s recommendations on the reform of financial benchmarks, following a CFR consultation on the matter in March 2016. The CFR’s recommendations are as follows:

  - Administrators of significant benchmarks are required to hold a new ‘benchmark administration’ licence issued by the Australian Securities and Investments Commission (ASIC) unless granted an exemption;
  - ASIC be empowered to develop enforceable rules for the administrators of significant benchmarks and for entities that make submissions to such benchmarks (including the power to compel submissions to benchmarks in the case that other calculation mechanisms fail); and
  - The manipulation of any financial benchmark (significant or non-significant) or financial product used to determine a financial benchmark used in Australia (such as negotiable certificates of deposit)

be made a specific criminal and civil offence. The government has accepted the CFR's recommendations and will work to implement these critical reforms over the next 18 months.

11. Memoranda of Understanding (MoUs)

- ESMA and the RBA have concluded a MoU that will allow RBA to have access to data held in European trade repositories according to its mandate. The MoU is effective as of February 18, 2015.

- The ESMA-RBA MoU is the second cooperation arrangement established under Article 76 of the European Market Infrastructure Regulation (EMIR). This provision aims at ensuring that third-country authorities that do not have any trade repository in their jurisdiction may access the information on derivatives contracts held in European trade repositories which is relevant for their mandates. The MoU ensures that guarantees of professional secrecy exist. The first MoU of this kind was concluded in November 2014 between ESMA and ASIC.

- On April 13, 2015, the CFTC and APRA announced that their respective chairmen had signed an MoU on cooperation and the exchange of information in the supervision and oversight of regulated firms that operate on a cross-border basis in the US and in Australia. Through the MoU, the CFTC and APRA express their willingness to cooperate and consult regularly in the interests of fulfilling their respective regulatory mandates, particularly in the area of derivatives activities and conduct, but also in other areas of mutual supervisory interest. The scope of the MoU includes swap dealers and major swap participants in the US, as well as authorised deposit-taking institutions in Australia.

12. Fintech

- On June 8, 2016, ASIC released a consultation paper on proposed measures to facilitate innovation in financial services, including a regulatory sandbox licensing exemption. ASIC has identified some barriers faced by new financial technology (fintech) businesses seeking to enter the financial services market. These barriers include speed to market and meeting the organisational competence requirements of a licensee. To address these specific barriers, ASIC is proposing to:
  - Provide examples of how ASIC exercises its discretion under existing policy to assess the organisational competence of a licensee applicant;
  - Modify ASIC's policy on organisational competence of a licensee to allow some limited-in-scale, heavily automated businesses to rely, in part, on compliance sign-off from a professional third party to meet their competence requirements; and
  - Implement a limited industry-wide licensing exemption to allow start-ups to test certain financial services for six months (the 'regulatory sandbox' exemption).

- On June 16, 2016, ASIC and the Monetary Authority of Singapore (MAS) announced cross-border cooperation on financial technology (fintech) that will enable companies in Singapore and Australia to quickly establish initial discussions in each other's market, and receive advice on required licences, therefore helping to reduce regulatory uncertainty and time to market.

  To qualify for the support offered by the agreement, businesses will need to meet the eligibility criteria of their home regulator. Once referred by the regulator, and ahead of applying for a licence to operate in the new market, a dedicated team or contact person will help them to understand the regulatory framework in the market they wish to join, and how it applies to them.

ASIC and the MAS have also committed to exploring joint innovation projects together, and to share information on emerging market trends and their impact on regulation.

- On November 3, 2016, ASIC announced that Innovative fintech companies in Australia and Ontario, Canada will be able to draw on support from the combined resources of their financial regulators as they seek to operate in the others' market, under a new agreement.

  Under the agreement, signed in Toronto, ASIC and the Ontario Securities Commission (OSC) will refer to one another those innovative businesses seeking to enter the others' market. The regulators may provide support to innovative businesses before, during and after authorisation to help reduce regulatory uncertainty and time to market.

  The agreement follows the creation of the Innovation Hub at ASIC in April 2015 and the OSC LaunchPad in October 2016. These initiatives were established to help businesses with innovative ideas navigate financial/securities regulation, support them through the authorisation process and ease their engagement with the regulator.

  To qualify for the support offered by the agreement, innovative businesses will need to meet the eligibility criteria of their home regulator. Once referred by the regulator, and ahead of applying for authorisation to operate in the new market, the business will have access to dedicated staff that will help them to understand the regulatory framework in the market they wish to join, and how it applies to them.

  ASIC and the OSC have also committed to share information on emerging trends in each other's markets and the potential impact on regulation.

- On December 15, 2016, the Australian Securities and Investments Commission (ASIC) released class waivers to allow eligible financial technology (fintech) businesses to test certain specified services without an Australian financial services or credit licence. ASIC has also released a regulatory guide which contains information about Australia's 'regulatory sandbox' framework.

  ASIC's fintech licensing exemption allows eligible businesses to test specified services for up to 12 months with up to 100 retail clients, provided they also meet certain consumer protection conditions and notify ASIC before they commence the business. Businesses that are not eligible for the fintech licensing exemption are able to seek an individual exemption.

13. Agreement with US for tax compliance and FATCA implementation

- On April 28, 2014, the Treasurer, on behalf of the Australian Government, signed an intergovernmental agreement with the United States to improve international tax compliance and implement FATCA. The Government has drafted legislation to give effect to Australia's obligations under this agreement. Effective from July 1, these amendments will require Australian financial institutions to collect information about their customers as necessary.

14. China–Australia Free Trade Agreement finalised

- On November 17, 2014, the Australian Government Department of Foreign Affairs and Trade announced the conclusion of negotiations with China over the China-Australia Free Trade Agreement (ChAFTA), laying a foundation for the next phase of Australia's economic relationship with China.

Both governments have signed a declaration of intent to work towards signing the ChAFTA, after which the agreement will be subject to ratification by parliament. There will also be a process to be followed on the Chinese side.

Once ratified, the key changes include:

- Removal and reduction of tariff barriers;
- Relaxation of Australian regulatory barriers to Chinese investment; and
- Facilitation of Australian investment into China.

15. ASIC consults on additional Chi-X products

- On August 20, 2015, ASIC released a consultation paper setting out proposed changes to ASIC market-integrity rules and various instruments to enable Chi-X Australia Pty Ltd (Chi-X) to commence the quotation and trading of warrants and exchange-traded funds (ETFs) on its market.

  The proposals aim to apply a consistent regulatory framework for the quotation and trading of warrants and ETFs for market participants and investors that may seek to trade these products on the Australian Securities Exchange (ASX) and/or Chi-X markets. ASIC's objective is to maintain existing levels of market integrity and investor protection for these products, irrespective of the market on which they are traded. The consultation paper also proposes some minor changes to ASIC market-integrity rules for the ASX market in response to recent amendments to ASX operating rules, and individual relief instruments for ASX-quoted ETFs and managed-fund products.

- On October 30, 2015, ASIC published amendments to ASIC market integrity rules to ensure warrants and ETFs admitted to quotation on Chi-X's new investment products market are subject to an appropriate regulatory regime. This follows the recent changes to Chi-X's Australian market licence and amendments to Chi-X's operating rules. Chi-X was aiming to launch its investment products market in late 2015, commencing with the quotation and trading of warrants, followed by the launch of ETFs in 2016. In February 2015, Chi-X released a consultation paper outlining its proposals. ASIC then consulted with the industry on changes to the regulatory framework. Feedback from this consultation is set out in Report 453 Response to submissions on CP 235 Proposed amendments to ASIC market integrity rules for the Chi-X investment product market (REP 453). ASIC has also made minor amendments to the ASIC Market Integrity Rules (ASX Market) 2010 to incorporate recent changes to the definitions of 'ETF' and 'managed fund' in the ASX Operating Rules. These changes were also addressed during the consultation.

16. Government review of ASIC's capabilities

- On August 28, 2015, the Treasury released a consultation paper on a potential industry cost-recovery model to fund ASIC, following on from the government's December 7, 2014 release of the Final Report of the FSI, which sets out a blueprint for Australia's financial system over the coming decades. In the case of ASIC, the FSI recommended that the government should move to adopt an industry funding model, similar to that already in place for other Australian regulators, which could provide more funding certainty and enhance the transparency of ASIC's costs and funding.

Submissions on this consultation paper would assist the government's consideration of whether to accept the FSI’s recommendation that ASIC’s regulatory activities should be funded by the industry. Industry roundtables will also be held during the consultation period.

- On September 10, 2015, the Australian government announced that it has commissioned a review into the capabilities of ASIC. The scope and purpose of the review is to examine how efficiently and effectively ASIC operates to achieve its strategic objectives, including:
  - Identification and analysis of immediate and future priorities and risks, including financial system conduct risks;
  - Resource prioritisation and responsiveness to emerging issues;
  - The skills, capabilities and culture of ASIC and its staff, including in respect of internal review and improvement mechanisms; and
  - Organisational governance and accountability arrangements.

  The capability review will be forward-looking, and will assess ASIC’s ability to meet future regulatory challenges. It will also look to ensure it is equipped with the capabilities – the leadership, strategy, people and processes – to deliver on its remit. The capability review will consult extensively with business, peak bodies and consumer groups through a series of meetings and roundtables by invitation.

- On April 20, 2016, the Australian government announced a $127.2 million reform package to strengthen the Australian Securities and Investments Commission (ASIC). The broad reform measures will equip ASIC with stronger powers and funding to enhance surveillance capabilities. The reform measures lead on from the ASIC Capability Review, commissioned in July 2015.

  The five recommendations to government will be immediately implemented. These focus on governance, recruitment, annual performance discussions with the minister and, most importantly, removing ASIC from the Public Service Act. This last measure will allow ASIC to more effectively recruit and retain staff in positions requiring specialist skills.

  The government will invest $61.1 million to enhance ASIC’s data analytics and surveillance capabilities, as well as modernise ASIC’s data management systems. An additional $9.2 million will also be made available to ASIC to ensure it can implement appropriate law and regulatory reform. The government is also providing ASIC with $57 million to enable increased surveillance and enforcement on an ongoing basis in the areas of financial advice, responsible lending, life insurance and breach reporting.

  The government will introduce an industry funding or ‘user-pays’ model for ASIC to commence in the second half of 2017. From 2017-18, ASIC’s costs will be recovered from all industry sectors regulated by ASIC.

- On November 7, 2016, the Treasury announced a consultation on the proposed industry funding model (the model) to recover the regulatory costs of ASIC though annual levies and fees-for-service. It provides an updated proposed model following extensive consultation in 2015. There are two papers; a proposals paper and a supplementary technical paper.

  The proposals paper provides a high-level overview of how the industry funding framework could be applied. It details the proposed implementation and legislative framework. It also details the engagement, transparency and accountability mechanisms built into the model to strengthen ASIC's accountability to consumers and its regulated entities.

The supplementary paper provides details of ASIC's costs of regulating each sector and the metrics for how the levies could be calculated for each sector.

Roundtables will be held during the consultation period to provide stakeholders with the opportunity to share their views collectively. The submission process will close on Friday, 16 December 2016. Additional public consultation will be held on the legislation and related legislative instruments prior to their introduction into the Parliament.

17. ASIC publishes reviews of HFT, dark liquidity

- On October 26, 2015, ASIC released a report (REP 452) examining the impact of high-frequency trading on Australian equity and futures markets and dark liquidity on Australian equity markets, building on ASIC's 2012 analyses in these areas.

  ASIC's updated analysis showed that market users have become better informed and equipped to operate in an electronic and high-speed environment, and negative sentiment about high-frequency trading has reduced. The level of high-frequency trading in Australia's equity markets remained steady (at 27% of total turnover). High-frequency trading grew by 130% in the futures market since December 2013 to 21% of volume traded in the SPI and 14% of bond futures. ASIC did not believe that these levels were currently concerning; however, it would continue to monitor their development. High-frequency traders have become more sophisticated, generating higher gross revenue and trading more aggressively than in 2012. They are also more active in mid-tier securities.

  Dark liquidity remained reasonably constant in recent years at around 25–30% of total equity market turnover. However, its composition continued to change. Since ASIC's 2012 review, there has been a shift back to using dark liquidity for large block trades. Feedback from stakeholders also indicated that there is now less concern with dark liquidity in Australian markets. The concerns that ASIC previously held regarding the transparency and fairness of market participant-operated crossing systems have mostly abated. However, ASIC remained concerned about exchange markets and crossing system operators seeking to preference some users over others. It was also concerned about the methods used by some market participants to manage their conflicts of interest for principal trading and client facilitation.

  To increase accessibility, ASIC published a summary version of the report (INFO 209).

18. CPMI-IOSCO publishes implementation monitoring report

- On December 17, 2015, CPMI-IOSCO released its conclusions drawn from a Level 2 assessment of whether the legal, regulatory and oversight frameworks, including rules and regulations, any relevant policy statements, or other forms of implementation applied to systemically important payment systems (PSs), central securities depositories (CSDs), securities settlement systems (SSSs), CCPs and TRs (FMIs) in Australia, are complete and consistent with the FMI Principles PFMI.

  The Level 2 assessment reflected the status of the Australian legal, regulatory and oversight framework as of May 15, 2015. Overall, the assessment found that Australia has consistently adopted most of the FMI Principles. The RBA and ASIC took different approaches to the adoption of the PFMI. For PSs, the RBA's adoption of the PFMI was assessed to be consistent and complete. For CCPs and CSDs/SSSs, the RBA and ASIC have consistently adopted three areas of the PFMI consistently. For TRs, while

ASIC's rules do not always mirror the language and structure of the PFMI, the relevant requirements were found generally to have been implemented consistently.

19. Legislation and regulations on resilience and collateral protection and enhanced protection of client money

- On December 21, 2015, the Australian Government proposed exposure draft legislation to introduce certain changes to the PSN Act and other Acts, draft regulations to introduce changes to the Superannuation Industry Regulations 1994 and Life Insurance Regulations 1995 and a policy paper on enhanced protection of client money.

  The draft legislation was introduced to amend the PSN Act and certain other acts in order to enable Australian entities to enforce rights in respect of margin provided by way of security in connection with certain derivatives in the manner required by international standards, clarify domestic legislation to support globally coordinated policy efforts and provide certainty on the operation of Australian law in relation to the exercise of termination rights (i.e. close-out rights) under derivatives arrangements and enhance financial system stability by protecting the operation of approved financial market infrastructure.

  The draft regulation was intended to enable trustees of regulated superannuation entities and life companies to grant security in the manner required to access certain international capital markets and liquidity.

  The policy paper provided background information in relation to the enhanced protection of client money in Australia as well as an overview of existing legislation. It detailed proposed reform with respect to “enhancing retail consumer protection for client monies” and considered proposed reform with regards to wholesale clients.

  The government sought to introduce legislation in early 2016.

- On February 29, 2016, the Australian Government released the Corporations Amendment (Client Money) Bill 2016 and Corporations Amendment (Client Money) Regulation 2016 to reform the domestic client money regime. Explanatory statements on the bill and regulation, as well as an explanatory memorandum on the bill, were also released.

  As background, the Government released a policy paper on enhanced protection of client money, which provides proposals on the enhanced protection of client money in Australia, as well as an overview of existing legislation. The bill and regulation were intended to better align the Australian client money regime with international best practice and community expectations of consumer protection.

  Proposals include enabling wholesale clients to contract out of the client money regime, which is aimed at improving the efficiency of the wholesale derivatives markets and ensuring the client money regime does not impose unnecessary limitations on institutional investors. The bill also requires financial services providers to hold all derivative retail client money and property in trust, and only use it to meet obligations incurred by the licensee in connection with dealings in the derivative where the obligation is incurred under market integrity rules or the operating rules of a licensed market or clearing and settlement facility.

- On 8 November, 2016, ASIC announced that it welcomed the Australian Government's decision to proceed with 'client money' reforms in respect of retail OTC derivatives.

  The reforms will remove an exception in the client money regime that allows Australian financial services licensees to withdraw client money provided in relation to retail OTC derivatives from client money trust accounts, and use it for a wide range of purposes including as working capital. Under the reforms, licensees would be required to hold retail derivative client money on trust. A fundamental protection of the trust requirement is that client money can be returned to clients, and not paid to creditors, in the event of the licensee's insolvency.

  ASIC also welcomed the Government's decision to give ASIC the power to write client money reporting and reconciliation rules. The industry has a 12-month transition period in which to implement the reforms.

20. ASIC finds widespread OTC compliance failures

- On June 20, 2016,the Australian Securities and Investments Commission (ASIC) released a report identifying compliance failures in the retail over-the-counter (OTC) derivatives industry.

  Over 70% of licensees reviewed demonstrated issues with three or more of the seven assessed compliance risks. Many of the compliance concerns detected were contraventions of well-established regulatory requirements or non-compliance with fundamental licensing obligations. ASIC also observed a significantly high number of smaller, foreign-owned or foreign-controlled licensees demonstrating either a lack of awareness or understanding of their Australian regulatory obligations, or reluctance to invest resources in meeting compliance obligations for their Australian businesses.

21. ASIC consults on risk management guidance for fund managers

- On July 21, 2016, ASIC released a consultation paper and proposed regulatory guidance on risk management practices for responsible entities in the managed funds sector.

  The proposed guidance does not impose new obligations on responsible entities but gives more detailed guidance on how they may comply with their current obligations under the Corporations Act to maintain adequate risk management systems. It outlines ASIC's expectations for responsible entities to have overarching risk management systems in place, processes for identifying and assessing risks and processes for managing risks.

  The proposals are intended to provide flexibility for responsible entities to develop and maintain risk management systems that are appropriate for the nature, scale and complexity of their operations. They also reflect international standards and developments in risk management. ASIC is seeking to ensure that the risk management systems of responsible entities include minimum procedures and practices, are adaptable to changing market conditions, and remain effective in identifying and managing risks on an ongoing basis.

22. APRA consults on changes to bank reporting requirements

- On July 28, 2016, APRA released a consultation proposing changes to banks' international exposures reporting requirements. These changes are designed to improve monitoring of credit exposures, supply of bank credit and funding risk to particular countries and counterparty sectors.

  The most significant changes to the requirements include a new form for locational data, which combines three existing locational forms and the required new locational data. Two new forms, one each for domestic and foreign banks, will also replace existing consolidated forms and include required new consolidated data. One additional new form will be introduced for domestic banks for balance sheet items. Each bank will be required to report these forms within 28 calendar days after the end of each calendar quarter.

  Other requirements include changes to consolidated reporting, counterparty sector breakdowns, local position reporting, reporting of debt security liabilities in the short-term and long-term, balance sheet totals, and currency breakdowns.

  While incorporating the new requirements for inclusion in international banking statistics, APRA has redesigned the international exposures forms to reduce the reporting burden on institutions. APRA also proposes to determine that the additional data on the proposed international exposures forms are non-confidential.

23. Margin requirements

- On February 25, 2016, APRA released a discussion paper and draft prudential standard on margining and risk mitigation requirements for non-centrally cleared derivatives. The proposed requirements closely follow the Basel Committee on Banking Supervision and IOSCO framework.
  - Posting and collection of variation margin (VM) on a net basis will be required;
  - Exchange of two-way initial margin (IM) on a gross basis will be required;
  - Requirements apply to most APRA-regulated entities when they trade with financial institutions or systemically important non-financial institutions (the latter subject to a qualifying level of AUD 50 billion);
  - Minimum qualifying levels apply to both parties (AUD 3 billion for VM and AUD 12 billion for IM when fully phased in);
  - Intragroup exemptions may be available based on whether the counterparties are within a Level 2 group for capital adequacy purposes;
  - No rehypothecation of IM;
  - Full or partial substituted compliance may be granted;
  - A framework for automatic deference to home regulators may apply to Australian branches or subsidiaries of foreign-incorporated entities; and
  - No margining requirements apply to counterparties in non-netting or non-enforceable collateral jurisdictions.

  In addition to comments on the proposed requirements, APRA invited stakeholders to provide information on the compliance impact and cost assessment associated with the proposals.

- On August 22, 2016, APRA announced a deferral in implementation, and will finalise new standards in the near future, with no commencement date set at this stage.

- On October 17, 2016, APRA released the final rules for the margining of non-cleared derivatives. In response to the main issues raised in submissions during the consultation period, APRA has:

  - Excluded physically settled FX forwards and swaps from its variation margin requirements (those transactions are exempted from initial margin requirements as well);
  - Maintained its proposal to apply the requirements to all Level 2 entities bar non-financial entities, and has exempted certain transactions where the relevant entities operate in a legal environment that prohibits full compliance;
  - Clarified that the requirements only apply to transactions that are booked in the accounts of the Australian branch of a foreign ADI, Category C insurer or an eligible foreign life insurance company (EFLIC);
  - Removed from the definition of 'covered counterparty' non-financial institutions, as well as special purpose vehicles and collective investment vehicles established for the sole purpose of acquiring and holding or investing in real estate or infrastructure assets that enter into derivatives transactions for the sole purpose of hedging;
  - Maintained the approval requirement in respect of a quantitative model for the calculation of initial margin, but emphasised it would conduct a simplified approval process for an APRA covered entity using the ISDA SIMM;
  - Decided to expand the automatic deference provisions in respect of margin requirements to foreign risk mitigation requirements that are substantially similar to the International Organization of Securities Commissions risk mitigation standards.

The final rules were released with no set commencement date. APRA is monitoring the progress of implementation in other jurisdictions and will advise on an implementation date and phase-in timetable in due course.

- On December 6, 2016, APRA announced its implementation timetable for new requirements for the margining of non-centrally cleared derivatives. The requirements are contained in Prudential Standard CPS 226 Margining and risk mitigation for non-centrally cleared derivatives (CPS 226), which was released in its final form on October 17, 2016 without a commencement date. APRA has now announced that CPS 226 will commence on March 1, 2017, subject to the following:

  Variation margin (VM) requirements:

  - In relation to the requirements to exchange VM, CPS 226 incorporates a six-month transition period (until September 1, 2017), during which APRA-covered entities may finalise their implementation and transition to full compliance;
  - During the transition period, APRA-covered entities should comply with the margin requirements on a best-endeavours basis and on-board counterparties in a risk-focused manner;
  - All qualifying transactions entered into from the official commencement date of March 1, 2017 are considered new transactions that are in-scope for the variation margin requirements under CPS 226. An APRA-covered entity must be in full compliance with the variation margin requirements in

CPS 226 for all in-scope transactions by September 1, 2017, following the conclusion of the transition period.

Initial margin (IM) requirements:

- Requirements for the posting and collection of IM will be subject to a phase-in timetable that is broadly equivalent to the international timetable, starting from March 1, 2017 for covered entities with a month-end average notional amount of non-centrally cleared derivatives calculated on a group basis exceeding A$4.5 trillion.
- The risk mitigation requirements in CPS 226 will take effect from March 1, 2018.

Together with the letter announcing the timetable, APRA has released an updated version of CPS 226 incorporating the implementation arrangements outlined in this letter.

24. APRA publishes an update on regulatory cost savings

- On August 18, 2016, the Australian Prudential Regulation Authority (APRA) published an update on regulatory cost savings since February 2015.

  Over the past year, APRA progressed a number of options to reduce compliance costs and improve regulatory outcomes for the industry, including saving more than A$5 million per annum across APRA-regulated industries. In terms of the upcoming regulatory cost-saving activities, APRA intends to conduct further work to scope and develop regulatory cost-saving options, including in a number of aspects of the prudential framework and the reporting framework.

  The paper also outlines the cost saving suggestions which were not progressed.

25. ASIC extends relief for foreign financial services providers and consults on regime

- On September 28, 2016, ASIC announced it has extended seven class orders for two years giving relief to foreign financial service providers (FFSPs) providing financial services to wholesale clients, with an amended information gathering power. These class orders were due to expire between October 1, 2016 and April 1, 2017. ASIC extended this relief for two years so it can comprehensively review and consult on the policy settings underlying the relief for FFSPs.

  At the same time, ASIC has released a consultation paper on licensing relief for foreign financial services providers with limited connection to Australia. The paper outlines a proposal to repeal a related class order for foreign entities with a limited connection to Australia providing services to wholesale clients. This class order is due to sunset on April 1, 2017, and comments are due by December 2.

- On November 22, 2016, ASIC announced that it has extended its relief for foreign financial service providers (FFSPs) from the requirement to hold an Australian financial services (AFS) licence when providing financial services to Australian wholesale clients by certain Luxembourg fund managers.

  The relief applies until September 28, 2018, and is consistent with the relief extension that ASIC gave to FFSPs in ASIC Corporations (Repeal and Transitional) Instrument 2016/396. This will allow ASIC to consider the policy settings for all FFSPs comprehensively.

26. Treasury consults on Banking Regulation 2016

- On September 30, 2016, the Australian Treasury released a draft of the Banking Regulation 2016 that updates the Banking Regulations 1966, which is due to sunset on April 1, 2017.

  The draft proposes repealing redundant provisions, simplifying language and restructuring provisions that are difficult to navigate. Other minor changes to the regulation have been made, and further details are contained in the explanatory statement.

  Submissions on the exposure draft are due by October 28.

27. RBA releases Financial Stability Review

- On October 14, 2016, the Reserve Bank of Australia released the October 2016 Financial Stability Review. The review contains sections on the global financial environment, recent growth of small- and medium-sized Chinese banks, household and business finances, banks' exposures to inner-city apartment markets, the Australian financial system, recent developments in Australian banks' capital position and return on equity, and developments in the financial system architecture.

28. ASIC consults on repealing class orders on holding client assets

- On November 23, 2016, the Australian Securities and Investments Commission (ASIC) released a consultation paper proposing to repeal three class orders due to expire in 2017. These are:
  - Relief from holding client property on trust;
  - Relief from holding scheme property separately; and
  - Relief from obligation to hold client money on trust.

  ASIC proposes to repeal these class orders as, in its view, they no longer serve any regulatory purpose, and because it has not identified a class of persons relying on the reliefs. ASIC has also stated that where relief may be required, it would be more appropriate to provide relief on a case-by-case basis. However, ASIC said it welcomes feedback in relation to this proposal, including whether repealing these class orders would itself impose a regulatory burden on businesses.

  Submissions to the consultation paper are due by December 21, 2016.

29. APRA decides against intraday liquidity reporting

- On November 24, 2016, APRA sent a letter to all authorised deposit-taking institutions (ADIs) regarding a November 2012 consultation on a proposal for larger ADIs to be positioned to report intraday liquidity data on request. This is part of a broad review of liquidity reporting requirements in preparation for the introduction of the liquidity coverage ratio and the net stable funding ratio.
  A number of submissions to that consultation requested reconsideration of the need for any specific intraday reporting to APRA, given that intraday liquidity management in Australia is already overseen by the Reserve Bank of Australia (RBA). Subsequently, APRA stated in its December 2013 response to submissions that the introduction of intraday liquidity reporting to APRA would be deferred, and that APRA would consult further on this issue.

Having considered this issue further, APRA has now determined that it is not necessary to introduce additional intraday liquidity reporting. APRA may review this position if the nature of intraday liquidity risk changes in the future.

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.
- April 17, 2014: ISDA submission to The Treasury to the proposals paper on the "G4-IRD Central Clearing Mandate"

- June 9, 2014: ISDA submission to The Treasury on Financial Sector Legislation Amendment (Netting Contracts) Bill 2013
- June 23, 2014: ISDA submission to Australian Securities and Investments Commission on Australian Securities and Investments Commission Corporation Act – Paragraph 907D(2)(a) - Exemption
- August 1, 2014: ISDA submission to The Treasury on AUD-IRD Central Clearing Mandate
- August 29, 2014: ISDA submission to Australian Securities and Investments Commission regards to Consultation Paper 221 on OTC Derivatives Reform: Proposed Amendments to ASIC Derivative Transaction Rules (Reporting) 2013
- August 26, 2014: ISDA submission to Financial System Inquiry regards to the Interim Report of the Financial System Inquiry
- November 17, 2014: ISDA submission to Australian Securities Exchange regards to the Consultation Paper on Central Counterparty Recovery – Uncovered Loss Allocation and Replenishment Tools for Clearing Participant Default
- March 27, 2015: ISDA submission to The Treasury regards to the Consultation Paper on the Resolution Regime for Financial Market Infrastructures.
- July 3, 2015: ISDA submission to the Australian Treasury on Phase 3B single-sided reporting proposals.
- July 10, 2015: ISDA submission to Australian Securities and Investments Commission on Consultation Paper 231 Mandatory central clearing of OTC interest rate derivative transactions.
- August 20, 2015: Joint AFMA-ISDA submission to ASIC requesting relief from various provisions of the ASIC Derivative Transaction Rules (Reporting) 2013.
- September 24, 2015: Australian Single-Sided Reporting Letter
- November 18, 2015: ISDA Australian Single-Sided Reporting Multiple Representation Letter
- December 21, 2015: ISDA submission to ASIC, MAS, HKMA and SFC requesting an extension of the 1 February 2016 Asia-Pacific UTI go-live date
- .January 8, 2016: Joint ISDA-AFMA submission to ASIC with cost savings estimates requesting relief from UTI share-and-pair requirements.
- February 4, 2016: ISDA submission to ASX Limited on ASX CCP's consultation on exposure draft rules for the interim replenishment of default funds
- February 5, 2016: ISDA submission to the Australian Treasury on client money reforms.
- March 3, 2016: ISDA Clearing Classification Letter (Australia – ASIC Clearing Classifications)
- March 21, 2016: ISDA submission to ASIC requesting relief from central clearing requirements for Pre-Mandate Swaptions
- March 21, 2016: ISDA submission to the Australian Treasury on client money reforms.
- April 29, 2016: Joint ISDA-FIA-ASIFMA response to CFR on Australian financial benchmarks regulatory reform.
- May 19, 2016: ISDA submission to APRA on consultation on margining and risk mitigation requirements for non-centrally cleared derivatives. This submission is not yet public.
- May 24, 2016: Joint ISDA-AFMA submission to APRA on consultation on NSFR and foreign liquid assets requirement for foreign ADIs.
- September 14, 2016: Joint ISDA-GFMA submission to ASIC requesting an extension of existing relief under Exemption 5 (Foreign Privacy Restrictions) of ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844.

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 supervised by PBOC)
	Securities Association of China (SAC, a self-regulatory organization of securities companies supervised by CSRC)
	China Futures Association (CFA, a self-regulatory organization of futures companies supervised by CSRC)
	Asset Management Association of China (AMAC, a self-regulatory organization that represents the mutual fund industry of China and is 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/CFA/AMAC Master Agreement is mandatory for certain types of domestic OTC derivatives transactions entered into by securities companies, futures companies and asset management companies.
	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
	Collateral memorandum on enforceability of the ISDA credit support documents 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 (including both direct and client clearing) of onshore RMB IRS transactions between financial institutions commenced on July 1, 2014.

Key Regulatory Milestones

1. Associations publish a new master agreement and regulator encourages development of onshore OTC equity and commodity derivatives markets

- 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 were intended to expand the scope of investment products of proprietary trading business of securities companies, and clarified 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 were not qualified to conduct proprietary securities business could 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.

- On August 22, 2014, a new Master Agreement for OTC Derivatives Transactions on China's Securities and Futures Market (the "2014 Master Agreement") were jointly published by SAC, the China Futures Association and the Asset Management Association of China to replace the SAC Master Agreement published in 2013. On the same date, the three associations also published a set of product definitions for onshore OTC equity derivatives transactions. The 2014 Master Agreement has made several improvements to the 2013 SAC Master Agreement, including among others, adding two more Event of Default (i.e., Default under Specified Transaction and Merger without Assumption) and one more Termination Event (i.e., Credit Event upon Merger). The changes bring the new agreement more aligned with the 2002 ISDA Master Agreement.

- On 16 September, 2014, CSRC issued its Opinions on the Further Promotion of Innovative Development of Futures Business Institutions. The Opinions were issued in order to implement the 'Several Opinions of the State Council on Further Promoting the Healthy Development of the Capital Market'. Among other things, the opinions highlight that CSRC will:
  - further expand the pilot program, under which futures companies are allowed to set up companies that focus on providing commodities pricing and risk management services, and that eligible risk management companies will be allowed to trade offshore derivatives;
  - support applications by futures companies for QDII licenses and those QDII license holders may issue asset management products linked to futures and trade offshore derivatives;
  - encourage foreign institutions to invest in onshore futures companies; and
  - support futures companies to engage in OTC derivatives and to this end, the relevant master agreement and rules will be further improved.

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 would 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 would be applied. Additionally, domestic systemically important banks will have to hold an additional 1% of Core Tier 1 capital. A systemically important bank would 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 set 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);
- 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. 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.

- On May 30, 2014, Shanghai Clearing House (SCH) issued a notice regarding client clearing of RMB interest rate swaps. The Notice stated that SCH would launch client clearing for RMB IRS from July 1, 2014 and eligible clearing members may apply to SCH to become a "comprehensive clearing member" in order to provide clearing services to clients. The Notice requires the clearing members to sign the Agency Client Clearing Agreement regarding Central Clearing of RMB IRS and segregate their proprietary and client positions. The Notice also stipulates that SCH would calculate the settlement payments and margin payments of a clearing member's proprietary business and client clearing business separately.

  Also, on June 3, SCH issued the revised Business Guidance on Central Clearing of RMB IRS with added provisions on two-way margining, collateral in securities form and client clearing. On July 1, 2014, SCH started mandatory direct and client central clearing of RMB interest rate swaps (IRS). According to the SCH website, on the first day, SCH cleared 66 transactions with a notional amount of RMB 7.22 billion, among which 13 transactions were trades cleared on behalf of clients.

  On October 11, 2014, SCH made further amendments to its Business Guidance on Central Clearing of RMB IRS to introduce real-time validation of the trades submitted for clearing and real-time contract novation for trades which have been validated. The revised Guidance also allows a clearing member to provide eligible debt securities to satisfy up to 50% of its initial margin requirement.

4. SAFE consolidates and relaxes regulation on RMB/FX transactions and issues 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 May 12, 2014, SAFE issued the Regulations on Foreign Exchange Control over Cross-border Security which came into effect on June 1, 2014. Compared with the consultation draft issued on February 13, 2014 which ISDA commented on, the final regulations include several steps further to deregulate cross-border security.

  In order to improve convertibility of RMB under capital account items and simplify administrative approval procedures, the regulations have made a number of significant changes to the current regulatory regime:

  - Abolishing the prior approval requirement and most of the qualification requirements regarding cross-border security;
  - Providing that FX control requirement (such as foreign security registration requirement) will not affect the validity of cross-border security contract;
  - The case-by-case registration requirement is only triggered where the enforcement of a cross-border security will give rise to debts owed to non-residents by residents and vice versa;
  - Except for the two types of security provided in the regulations, a domestic entity may provide or accept a security on cross-border basis without any registration or filing with SAFE - this would cover most security arrangements in respect of derivative transactions between foreign entities and Chinese entities;
  - Allowing PRC individuals to provide cross-border security.

- On December 25, 2014, SAFE issued implementing rules on renminbi (RMB) FX sale and purchase transactions conducted by banks. The rules simplify and repeal 14 regulations regarding entry and exit requirements in respect of banks' RMB FX spot and derivatives businesses, RMB FX spot transactions conducted for banks' own accounts, management of RMB FX derivatives businesses and position limits on banks' FX businesses. Regarding derivatives businesses, the rules reiterate that banks have an obligation to verify clients are entering into derivatives transactions for hedging purposes. The rules came into effect on January 1, 2015.

5. Shanghai/Shenzhen-Hong Kong Stock Connect

- On November 10, 2014, SFC and CSRC announced they had approved the launch of the Shanghai-Hong Kong Stock Connect pilot scheme following finalization of all the necessary regulatory approvals and relevant regulatory operational arrangements required for its commencement. Under the joint announcement issued by SFC and CSRC, trading through the Shanghai-Hong Kong Stock Connect will commence on November 17. Stock Connect is a pilot programme for establishing mutual stock market access between Hong Kong and mainland China. ISDA published the Additional Provisions for Stock Connect on October 14, which is intended to be used for cash-settled over-the-counter derivatives transactions referencing certain 'A' shares listed on the Shanghai Stock Exchange traded through Stock Connect.

- On August 16, 2016, SFC and CSRC announced the approval, in principle, of the structure of Shenzhen-Hong Kong Stock Connect, which will provide mutual stock market access between Hong Kong and Shenzhen via a northbound trading link and a southbound trading link. There will be no aggregate quota under Shenzhen-Hong Kong Stock Connect.

The joint announcement issued by the SFC and the CSRC also abolishes the aggregate quota under Shanghai-Hong Kong Stock Connect with immediate effect. The Shenzhen- Hong Kong Stock Connect was launched on December 5, 2016.

6. CSRC allows foreign participation in commodity futures trading

- On June 26, 2015, CSRC published the Interim Measures on Trading of Designated Domestic Futures Products by Foreign Persons and Brokerage Firms, which marks an important step in the opening up of the domestic commodity market to foreign investors.

  CSRC would designate the specific futures products available for trading by foreign market participants on a step-by-step basis, taking into consideration the pace of opening up the renminbi capital account, market participation, risk control of the domestic futures market and other factors. The CSRC has designated crude oil futures as the first product available for trading by foreign market participants, expected to start in three months.

  The measures state that a foreign person (i.e., a foreign entity incorporated or organised in a foreign jurisdiction or a foreign natural person) may trade designated futures products in China either via a domestic futures company or a foreign brokerage firm. A foreign person may also directly trade on a domestic futures exchange, subject to approval by the relevant exchange. A foreign brokerage firm entrusted by a foreign person may, on behalf of its client, trade designated futures products via a domestic futures company or trade directly on a domestic futures exchange, subject to approval by the relevant exchange.

  In addition to some prudential requirements, CSRC also requires the foreign regulator in the home jurisdiction of the foreign brokerage firm to enter into a memorandum of understanding with CSRC before the brokerage firm can trade directly on China’s futures exchanges.

  The measures also include detailed provisions on issues regarding account opening, operational requirements, clearing and settlement, margin, large trader reporting, mandatory close-out, default and dispute resolution. The measures came into effect on August 1.

7. SAFE issues new FX regulations applicable to QFIIs and PBOC and SAFE allow more qualified foreign institutions to trade on China’s inter-bank FX market

- On February 3, 2016, SAFE issued the new Provisions on Foreign Exchange Administration of the Domestic Securities Investment by Qualified Foreign Institutional Investors (“New Regulation”), which came into force the same day. The New Regulation loosens certain restrictions of the original provisions in terms of the administration of the investment quota, lock-up period and capital inflow and outflow of the Qualified Foreign Institutional Investors (“QFIIs”) to promote further participation by QFIIs in the domestic securities market. Holders of QFII licences no longer need to seek individual approval for quotas, but will be automatically awarded a quota between USD$20 million and $5 billion depending on the assets under their management (“basic quota”). When a QFII applies for an investment quota below its basic quota, the QFII is only required to file the relevant documents with SAFE and there is no need to seek an approval from SAFE. SAFE approval is still required for an investment quote exceeding the basic quota. Managers of open-ended mutual funds will now be able to redeem their investments on a daily, rather than weekly, basis. However, a separate cap, limiting monthly net repatriation to 20 per cent of the size of their QFII assets as of the end of the previous year, remains.

- On 23 December 2015, PBOC and SAFE announced that more qualified foreign institutions would be allowed to trade all types of products on China's inter-bank FX markets including FX/RMB spot, forwards, swaps, cross currency swaps and options.

8. Shanghai Clearing House granted CFTC no-action relief

- On May 31, 2016, the US Commodity Futures Trading Commission's (CFTC) division of clearing and risk issued a time-limited no-action relief letter stating that it will not recommend enforcement action against Shanghai Clearing House (SHCH) for failing to register as a derivatives clearing organization.

  The no-action relief applies to swaps accepted for clearing by SHCH and subject by the People's Bank of China to mandatory clearing, including certain interest rate swaps denominated in renminbi. It is limited to SHCH's clearing of the proprietary trades of US clearing members and their affiliates and is effective until the earlier of May 31, 2017, or the date on which the CFTC exempts SHCH from registration as a derivatives clearing organisation. SHCH stated that it is committed to petitioning the CFTC for an exemption from this registration requirement no later than six months from the date of the no-action relief.

9. China: Relaunch of credit derivatives market

- On September 23,2016, the Chinese National Association of Financial Market Institutional Investors (NAFMII) issued revised pilot rules (Chinese only) for credit risk mitigation (CRM) tools in the interbank market and four product-related guidelines covering CRM agreements, credit risk mitigation warrants (CRMW), credit default swaps (CDS) and credit-linked notes (CLNs), as well as new credit derivatives definitions.

  China introduced similar instruments to CDS in 2010. Those products are linked to single bonds of issuers and are akin to credit default swaps traded on the international markets. The revised trading rules introduce two new products to the domestic interbank market, CDS and CLNs that are no longer restricted to a single reference obligation. NAFMII also relaxed some of the restrictions under the former rules. For example, under the old rules, there were three tiers of participants – primary dealers, dealers and non-dealers – and there were minimum registered capital requirements in respect of primary dealers and dealers. The new rules simplify the tiered participation to two groups: primary dealers and dealers. They also remove the minimum capital requirements for CRM and CDS products (but retain those for CRMW and CLN issuers) and simplify the review procedures applicable to issuances of CRMW and CLNs.

  Similar to the requirement under the 2010 rules, domestic credit derivatives market participants must join NAFMII as members and have to sign a NAFMII master agreement before trading. The CDS guidelines include a restriction on reference obligations of a reference entity that is not a financial institution (FI). For those non-FIs, a CDS can only be written on debt instruments issued by the non-FI that have been registered with NAFMII and issued on the interbank market. The CDS guidelines also provide that a CDS contract should include at least failure to pay and bankruptcy event of default. The new rules retain the position limits under the 2010 rules: each dealer's net short position must be no more than 100% of its net asset. For a primary dealer, its net short position should not be more than 500% of its net asset.

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 10, 2014, ISDA submission to SAFE on the draft Provisions for Foreign Exchange Control over Cross-border Security
- May 20, 2014, ISDA letter to PBOC on mandatory central clearing. This submission is not public.
- January 30, 2015, ISDA submission to CSRC on the draft Interim Measures on the Trading of Designated Domestic Futures Products by Foreign Persons and Brokerage Firms. This submission is not public.
- September 19, 2015, ISDA letter to PBOC on central clearing, third country CCP recognition, trade reporting, margin for non-centrally cleared OTC derivatives transactions and close-out netting enforceability issues.

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) The Hong Kong Association of Banks (HKAB)
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:	The Securities and Futures (Amendment) Bill which introduces mandatory trade reporting, central clearing and record keeping obligations was approved by the Legislative Council on March 26, 2014. The new mandatory reporting obligations applicable to certain interest rate swaps and non-deliverable forwards came into effect on July 10, 2015. Interim reporting requirements for certain OTC derivatives transactions between licensed banks became effective in August 2013, and have been in full force since February 4, 2014 after expiration of the transitional arrangements. The expanded reporting obligations applicable to all OTC derivatives will become effective on July 1, 2017. Mandatory clearing obligations for certain fixed-to-floating swaps, basis swaps and overnight index swaps in G4 + HKD currencies will also commence on July 1, 2017. Four CCPs in Hong Kong were recognized by ESMA as third country CCPs on April 27, 2015, and thus can provide clearing services to clearing members or trading venues established in the EU. On August 31, 2016, the SFC designated four CCPs for the purposes of the Hong Kong mandatory clearing obligation. The US Commodity Futures Trading Commission (CFTC) issued an order of exemption to OTC Clearing Hong Kong Limited (OTC Clear) from registration as a

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 were the first in a series of consultation papers 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 amended the powers of HKMA, enabling it to make rules prescribing capital and disclosure requirements for AIs incorporated in HK. The notice also prescribed the procedures for remedial action upon contravention of these requirements;
- The Banking (Capital) (Amendment) Rules 2012 introduced the amendments to the Banking (Capital) Rules to implement the first phase of the Basel III requirements. The new rules revised the capital requirements for locally incorporated AIs scheduled to take effect in January 2013. Under the revised framework, a bank will need to maintain a Common Equity Tier 1 (CET1) capital ratio of 4.5%, a Tier 1 ratio of 6% (both Tier 1 and CET1 to be phased in from January 1, 2013 to January 1, 2015) and 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 gazetted on Oct 19, 2012.

- On January 17, 2013, HKMA released a memorandum on the revisions to the LCR. As Basel recently issued its full text with some changes from the original version published in 2010, HKMA would develop, with industry consultation, a framework for local implementation of the revised LCR. Some issues under consideration included:
  - Two-tiered approach: HKMA still maintained 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 would 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 considered the BCBS phase-in arrangement and assessed the need to adhere to the original timetable;
  - Level 2B Assets: HKMA would examine 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 HQLA in times of stress: HKMA would 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 would 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 were updated later in the year.

- On March 4, 2013, HKMA released its consultation paper on draft Banking (Capital) (Amendment) Rules 2013 (B(C)(A)R) together with two letters to the Hong Kong Association of Banks (HKAB) and the Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies (the DTC Association) respectively. The consultation paper sought feedback on the refinements to the Banking (Capital) Rules (B(C)R). The additional refinements included:
  - Sections 226 X and 226ZD of the B(C)R were amended to recognize the credit risk mitigation given to exposures of authorized institutions (AIs) to central counterparties. One of the refinements proposed was 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 addressed 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 came 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 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 PFMIs. 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 PFMIs during 2013, or a CCP regulator has yet to implement the PFMIs (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.

• On April 10, 2014, HKMA released a circular on their intent to implement the final standard that was published by BCBS on March 31, 2014, on the standardized approach for measuring counterparty risk exposures. The new standardized approach (SA-CCR) would replace the existing non-modeled counterparty credit risk (CCR) measurement approaches (i.e., the Current Exposure Method (CEM) and the Standardized Method) in the Basel capital adequacy framework. HKMA's current intent was to implement the SA-CCR in accordance with the BCBS timetable.

• On April 16, 2014, HKMA released a circular on their intent to implement the final standard published by the BCBS on April 10, 2014, Capital requirements for bank exposures to central counterparties. This would be implemented through the amendment of the banking (Capital) Rules in accordance with the BCBS timetable. The industry would be consulted on the implementation proposals in due course.

  HKMA announced that the Banking (Disclosure) (Amendment) Rules 2014 to introduce disclosure requirements associated with the second phase of Basel III requirements for authorised institutions was gazetted on December 24, 2014. The disclosure requirements related primarily to:

  - the capital buffers and the liquidity coverage ratio to be implemented via the Banking (Capital) (Amendment) Rules 2014 and the Banking (Liquidity) Rules, respectively, which came into effect on January 1; and
  - the Basel III leverage ratio, which is required to be disclosed by banks with effect from 2015, according to the Basel Committee on Banking Supervision's Basel III implementation timetable.

• On July 20, 2015, HKMA issued a circular regarding a number of FAQs that the BCBS recently published, which provides technical elaboration and interpretative guidance relating to various areas of the Basel III leverage ratio framework.

In the circular, HKMA noted that for the purpose of completing the HKMA's Quarterly Template on Leverage Ratio (which involves institutions calculating their leverage ratio according to the BCBS methodology under Basel III outlined in Annex 1 of the reporting package released on May 19, 2014), institutions are expected to take into account the guidance set out in the FAQs in calculating their leverage ratio.

- On August 6, 2015, HKMA issued a revised version of the Supervisory Policy Manual module CA-D-1 (Guideline on the Application of the Banking (Disclosure) Rules) to provide guidance on disclosure in connection with the implementation of Basel III in Hong Kong. These include disclosure requirements on the composition of capital, capital ratios and capital buffers, as well as the liquidity coverage ratio. In addition, the revised module updates earlier guidance to align with recent changes made to the local prudential reporting regimes relating to mainland activities and international claims.

- On September 25, 2015, HKMA issued the Supervisory Policy Manual (SPM) module CA-B-3 (Countercyclical Capital Buffer - Geographic Allocation of Private Sector Credit Exposures) as a statutory guideline by notice in the Gazette under section 7(3) of the Banking Ordinance.

  The SPM module CA-B-3 supplements an earlier SPM module CA-B-1 (Countercyclical Capital Buffer - Approach to its Implementation) and provides further guidance to AIs on how to determine the geographic allocation of private-sector credit exposures for the purposes of calculating their AI-specific countercyclical capital buffer ratio under the Banking (Capital) Rules (BCR).

  As set out in section 3O(1) of the BCR, and explained in Section 2 of SPM module CA-B-1, an AI must determine its own specific countercyclical capital buffer rate as the weighted average of the applicable jurisdictional buffer rates in respect of jurisdictions (including Hong Kong) where the AI has private-sector credit exposures. The weight to be attributed to a given jurisdiction's applicable buffer rate is calculated by reference to the ratio of the AI's aggregate risk-weighted amount for its non-bank private-sector credit exposures in a jurisdiction (RWAj) to the sum of the AI's RWAj across all jurisdictions in which the AI has private-sector credit exposure.

  The new SPM module CA-B-3 sets out the HKMA's expectations on how an AI should allocate its non-bank private-sector credit exposures, and the corresponding risk-weighted amount, to different jurisdictions on an ultimate risk basis (as required under section 3O(2) of the BCR), in order to determine RWAj for the AI's non-bank private-sector credit exposures in each jurisdiction.

- On October 23, 2015, the Banking (Capital) (Amendment) Rules 2015 were published to introduce refinements to the Principal Rules.

  The amendments more closely align certain aspects of the Banking (Capital) Rules with the relevant Basel III standards, addressing several technical details noted in an earlier evaluation by the Basel Committee on Banking Supervision (BCBS) on Hong Kong's capital regime. The Banking (Capital) (Amendment) Rules 2015 came into effect on January 1, 2016.

- On December 4, 2015, the HKMA announced it had finalised the return of quarterly reporting on the countercyclical capital buffer (Form MA(BS)25), the revised return on capital adequacy ratio (Form MA(BS)3), and their accompanying completion instructions.

  AIs should make submissions using the countercyclical buffer return and the revised capital adequacy ratio return starting from end-March 2016. The HKMA will inform AIs separately when the electronic files for the returns are available.

- On December 31, 2015, the HKMA announced it has completed its annual assessment of the designation of D-SIBs. The list of authorised institutions designated as D-SIBs remains unchanged compared to the first list published by the HKMA on March 16, 2015, with five entities designated. The HKMA intends to update the list annually.

  Under the D-SIB framework, each of the authorised institutions designated as a D-SIB will be required to include a higher loss-absorbency (HLA) requirement into the calculation of its regulatory capital buffers within 12 months from the formal notification of the designation. In line with the schedule set by the Basel Committee on Banking Supervision for assessing D-SIBs and global systemically important banks, the full amount of the HLA requirement will be phased-in between 2016 and 2019, in parallel with the capital conservation buffer and countercyclical capital buffer. Ultimately, the HLA requirement applicable to a D-SIB (expressed as a ratio of an authorised institution's common equity tier-one capital to its risk-weighted assets, as calculated under the Banking (Capital) Rules) will range between 1% and 3.5% (depending on the assessed level of the D-SIB's systemic importance). Under the phase-in provisions (set out in section 3V(2) of the Banking (Capital) Rules), the levels of HLA for 2017 will be increased to the range of 0.50%-1.75% (from a range of 0.25%-0.875% in 2016).

- On January 14, 2016, the HKMA announced that the countercyclical capital buffer for Hong Kong will increase to 1.25% from the current 0.625%, with effect from January 1, 2017. This increase is consistent with the Basel III phase-in arrangements for the countercyclical buffer.

  In setting the rate for the buffer, the HKMA considered a series of quantitative indicators and qualitative information, including an 'indicative buffer guide' (which is a metric providing a guide for countercyclical buffer rates based on the gap between the ratio of credit to GDP and its long-term trend, and between the ratio of residential property prices to rentals and its long-term trend). The credit and property price gaps remain at elevated levels, and a simple mapping from the indicative buffer guide (calibrated against a range of 0% to 2.5% in the Basel III regulatory capital framework) would signal a countercyclical buffer of 2.5%, at the upper end of the Basel III range.

  The HKMA also reviewed a range of other reference indicators. These included measures of bank, corporate and household leverage, debt-servicing capacity, profitability and funding conditions within the banking sector, and macroeconomic imbalances. The HKMA found the information drawn from these sources consistent with the signal from the indicative buffer guide.

  The power to implement the countercyclical buffer in Hong Kong is provided by the Banking (Capital) Rules, which enable the HKMA to announce a buffer rate for Hong Kong if it believes a period of excessive credit growth in Hong Kong is leading to a build-up of risks in Hong Kong's financial system.

2. Hong Kong consultation/implementation of mandatory reporting and clearing requirements

- 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. 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 was 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) would apply to OTC derivatives. It was 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 would 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" would be defined by reference to the term "structured product" (as defined in the 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 would 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 had a "Hong Kong nexus". HKMA TR was proposed to be the only designated TR although market participants could 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 was 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 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 would not impose a mandatory trading requirement at the outset.

  Capital and margin requirements: The regulators 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) would 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 March 28, 2013, HKMA and SFC jointly announced their commitment to comply with the FMI Principles PFMIs issued by CPSS-IOSCO in April 2012.

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

- On June 28, 2013, HKMA announced requirements for interim trade reporting. Licensed banks are required to report FX NDF and vanilla single currency interest rate swaps (Fixed vs Floating swaps, basis swaps and overnight indexed swaps) to a trade repository operated by HKMA (HKTR). 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 remaining outstanding on August 5 or traded on or after such date are subject to the reporting requirements. A grace period of approximately four months was granted to licensed banks to commence reporting by December 9 and a period of six months was 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 regarding the proposed scope of activities to be regulated under the new OTC derivatives regime, and regulatory oversight of systemically important participants. HKMA and SFC's proposals in relation to these two areas were 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 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 SFO.

- 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 planned to introduce client clearing in 2014 after the new legislation on the Securities and Futures (Amendment) Bill was in place and relevant amendments to OTC Clear rules are approved by the Securities and Futures Commission. In addition, it would expand its clearing services to cover other OTC derivatives when appropriate.

- On December 3, 2013, HKMA published its latest updated AIDG for Reporting Service. The changes made were 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 included the framework for the introduction of mandatory reporting, clearing and trading obligations in line with G20 commitments. Asset management and automated trading services provisions would also be expanded to cover OTC derivative portfolios and transactions. The Bill also provided 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 included, among others, adding a record keeping obligation and some clarificatory language which provided 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 was 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) would be launched in September 2014. In this new phase, 15 products of FX, Rates and Equity would be introduced and institutions could report on a voluntary basis. HKMA also updated the Reference Manual for Reporting Service and the AIDG to accommodate these new products together with some refinements to the existing procedures and technical specifications for reporting. Another batch of products would be added by the end of 2015 to complete the product coverage of the HKTR.

- On July 18, 2014, HKMA and SFC issued a consultation paper on mandatory reporting and recordkeeping obligations under the new OTC derivatives regime. Reporting parties would be required to report certain vanilla interest rate swaps (floating vs. fixed and floating vs. floating) and non-deliverable forward transactions to HKTR. Transactions ‘conducted in’ Hong Kong would also be reportable, subject to certain conditions. Reporting parties include AIs, AMBs, LCs, CCPs that provide clearing services to persons in HK and other persons (subject to a reporting threshold of US$3billion for IRS and US$1billion for NDF) that are based in or operate from Hong Kong (Hong Kong persons). In particular, Hong Kong persons would cover all Hong Kong residents and all entities established under Hong Kong law (including all partnerships, trusts, companies and other entities established under Hong Kong law), and all overseas companies registered or required to be registered under the Companies Ordinance (non-Hong Kong companies).

  The consultation paper also covered provisions of masking of counterparty information, exemptions and relief and other reporting particulars. The commencement date had not been determined but a 3-6 month grace period was proposed conditionally for reporting new transactions and backloading of transactions.

- On November 28, 2014, HKMA and SFC jointly issued consultation conclusions and a further consultation on the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules. According to the consultation conclusions:
  - The first phase of the mandatory reporting requirement would cover certain types of interest rate swap and NDF. The regulators decided to remove precious metal from scope in response to industry feedback;
  - The regulators would prepare FAQs to provide further guidance on the requirements to report transactions ‘conducted in’ Hong Kong;
  - The regulators now proposed to defer the implementation of mandatory reporting and related record-keeping requirements for Hong Kong persons to a later time;
  - The exempt-person relief applicable to small players was amended;

- The concession period for setting up connections to HKTR was extended to six months, and the grace period to backload historical transactions has been extended to a maximum of nine months; and
- Masking relief was extended to cover both historical transactions and new transactions that are entered into within six months after the rules first take effect when counterparty consent is needed;
- The proposed record-retention period was shortened from seven years to five years, and rules on what types of records need to be kept have been clarified.

The regulators asked for further comment regarding: (1) the reporting of valuation-transaction information; (2) the proposed list of jurisdictions to be designated by SFC for the purposes of masking relief; and (3) the proposed list of markets and clearing houses to be prescribed by the Financial Secretary for the purposes of defining 'OTC derivative product'.

- On February 18, 2015, HKMA sent ISDA two additional documents to assist Hong Kong reporting entities in enhancing their systems to prepare for OTC derivatives trade reporting. The two documents were a set of draft FAQs and supplementary reporting instructions. The documents give additional detail on how to report and populate certain data fields, and deal with various trading and clearing scenarios. HKMA also allowed for a 3-4 month systems enhancement window for firms from 18 February. The documents were provided via memo to ISDA members, and the HKMA asked for comments on these draft documents by mid-March.

- On March 27, 2015, HKMA sent a letter to all authorised institutions giving them an extra two months to report the unique trade ID (TID) as required under EMIR for new transactions, and complete the provision of TIDs for existing transactions. The deadline would now be end-May, having been previously postponed from end-December 2014 to end-March 2015.

- On May 15, 2015, HKMA and SFC released an update on trade reporting. This included a conclusions paper on a consultation on mandatory reporting and related record-keeping obligations under the new OTC derivatives regime, and updated FAQs (which remained in draft form, pending enactment of the reporting rules). Proposals on certain aspects of the reporting regime were revised after taking market feedback into account.

  The revised Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules were gazetted on May 15, and were tabled before the Legislative Council on May 20 for negative vetting, along with a package of related ancillary and subsidiary legislation.

- On July 10, 2015, the mandatory reporting and related record-keeping obligations for regulated entities (i.e., authorised institutions, approved money brokers, licensed corporations and central counterparties operating in Hong Kong) set out in the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules came into effect.

- On July 17, 2015, SFC released a consultation paper on proposed changes to the Securities and Futures (Financial Resources) Rules (FRR) relating to capital and other prudential requirements for licenced corporations engaged in OTC derivatives activity. The consultation paper also proposed certain changes to non-OTC derivatives-related FRR requirements. The three-month consultation ended on October 16, 2015. The proposals aimed to ensure that licenced corporations maintain their capital and liquidity at levels that are commensurate with the risks they undertake pertaining to derivatives businesses, as well as to encourage them to adopt more advanced risk management standards. The proposed FRR treatment could be calibrated to permit different capital approaches for different levels of OTC derivatives activity. The SFC proposed a small number of changes to the FRR treatment applicable to licenced corporations that do not engage in OTC derivatives activity. These included lowering the haircut percentages for certain types of shares and funds, and introducing measures to better facilitate third-party clearing by general clearing brokers. The consultation paper's proposals covered seven key areas:

- Minimum capital requirements for licenced corporations engaging in OTC derivatives activity;
- Capital treatment for market risks of OTC derivatives and other proprietary trading positions;
- Capital treatment for counterparty credit risks arising from OTC derivatives transactions;
- Introduction of an internal models approach to calculate the capital requirements for market risk for proprietary investments and counterparty credit risk arising from OTC derivatives transactions;
- Measures to address operational risks of licenced corporations engaging in certain types of regulated OTC derivatives activities or opting into certain capital approaches;
- Notification and reporting requirements related to OTC derivatives activity; and
- Miscellaneous technical changes to other areas of the FRR.

• On September 9, 2015, HKMA issued a letter to all authorised institutions (AIs) regarding the linking and matching of derivatives trades reported under interim reporting requirements since August 2013. The letter highlights that approximately 32,000 trades, or 34% of what was reported to the HKTR, were unlinked. Some of this was due to missing or incorrect information. For linked but unmatched trades because of discrepancies, the letter noted that an AI is required to liaise with its counterparty to resolve the discrepancies within three business days of receiving the discrepancy report from the HKTR. For unlinked trades, AIs should reassess whether they have a reporting obligation for those trades, and report as required. Otherwise, they should use the suppress function by May 9, 2016 for trades where there is no obligation to report.

• On September 30, 2015, HKMA and SFC jointly issued a consultation on introducing the first phase of mandatory clearing and the second phase of mandatory reporting under the OTC derivatives regime. The first phase aimed to mandate the clearing of certain standardised interest rate swaps between major dealers. The proposals identified:

  - The types of transactions that will be subject to mandatory clearing;
  - The persons who will be subject to the clearing obligation and in what circumstances;
  - The exemptions and reliefs that may apply; and
  - The process for designating central counterparties for the purposes of the clearing obligation.

  The second phase of mandatory reporting aims to expand the existing reporting regime. The key proposals include:

  - Requiring the reporting of transactions in all OTC derivative products;
  - Widening the scope of transaction information to be reported, including requiring the reporting of daily valuations; and
  - Identifying the specific data fields to be completed under the expanded reporting regime.

• On November 20, 2015, the SFC issued a consultation paper on proposed amendments to the Guidelines for the Regulation of Automated Trading Services (ATS). The proposals reflected recent regulatory developments relating to derivatives in Hong Kong. The implementation of mandatory clearing meant market participants that currently provide ATS for clearing derivatives transactions, and overseas CCPs that wish to provide services as a designated CCP for the purposes of mandatory clearing obligations, would need to become ATS providers. Accordingly, the SFC proposed amendments to the ATS

Guidelines to provide more specific guidance on the application requirements and procedures applicable to CCPs offering clearing services for derivatives transactions, and to align the requirements with international standards and practices.

- On January 29, 2016, the Hong Kong regulators released a new version of the Supplementary Reporting Instructions, which extended the commencement date of universal transaction identifier (UTI) share-and-pair obligations from 1 February 2016 to 1 February 2017. The commencement was deferred to allow reporting entities within those jurisdictions to await the release of final recommendations governing the UTI from the CPMI-IOSCO.

- On February 5, 2016, the Securities and Futures (OTC Derivative Transactions – Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules and the Securities and Futures (OTC Derivative Transactions - Reporting and Record Keeping Obligations) (Amendment) Rules 2016 were gazetted. On the same day, the HKMA and the SFC published the conclusions of their joint consultation paper on introducing mandatory clearing and expanding mandatory reporting issued in September 2015.

  Rules on mandatory clearing (phase 1 clearing) will come into effect on September 1, 2016. Highlights include:

  - Clearing obligations will commence on July 1, 2017;
  - Financial services providers will be designated by the SFC;
  - A single clearing threshold (US$20 billion) applies to all prescribed persons;
  - An exit threshold (US$14 billion) is available whereby a prescribed person may cease to be subject to the clearing obligations;
  - Transactions have to be cleared within a T+1 timeframe;
  - Exemptions may be available for intragroup transactions, transactions booked in exempt jurisdictions and transactions resulting from multilateral portfolio compression cycle; and
  - Substituted compliance is available based on a “stricter rule” approach (i.e. only if the transaction has been cleared under the comparable jurisdiction).

  Rules on expanded reporting (phase 2 reporting) will come into effect on July 1, 2017. Highlights include:

  - Expanded reporting obligations will commence on July 1, 2017;
  - The backloading requirement does not apply to transactions maturing before July 1, 2018; and
  - Reporting does not apply to FX forwards entered into for security conversions.

- On June 6, 2016, the Hong Kong Trade Repository published version 1.5.1 of its Administration and Interface Development Guide (AIDG).

- On March 1, 2016, the SFC released the conclusions to its consultation paper on proposed amendments to the guidelines for the regulation of ATS issued in November 2015. The SFC made some drafting revisions to the guidelines to reflect the comments and suggestions received. The revised guidelines will become effective upon implementation of the Hong Kong clearing regime, which is expected to be September 1, 2016. CCPs that are interested in obtaining ATS authorisation or CCP designation in time for implementation of the clearing regime should ensure their applications reach the SFC by April 29, 2016.

- On June 27, 2016, the Hong Kong Trade Repository (HKTR) issued a half-year reminder for the TR members to review and update the identifiers reported for parties that are not TR Members at the HKTR. TR members are required to review:-

  - all the transactions carrying internal customer/counterparty reference code whether any of the third party-assigned identifiers specified in the AIDG have become available and replace the codes by the available third party-assigned identifier of the highest level of priority; and
  - all the transactions carrying third party-assigned identifiers whether those identifiers have become invalid, e.g. the reporting or transacting party no longer possesses an identifier; or an identifier of a higher level of priority has become available for the reporting or transacting party. The TR Member should obtain valid identifiers form the relevant parties and update the records at the HKTR.

  In addition, TR Members who are connecting to the HKTR system through Internet with SSL certificates were reminded to renew their certificates before expiration, so as to avoid unexpected interruption. The DN information of renewed SSL certificates was required to input into the affected user accounts.

  The HKTR also reminded participants when inputting the UTI-TID value in trades reporting to the HKTR, to not include a pipe character (i.e. "|") between the prefix and the value of the TID. Doing so may have led to mismatch of trade information with counterparties or failure in trade linking process.

- On July 15, 2016, the HKMA and SFC published further consultation conclusions on introducing mandatory clearing and expanded mandatory reporting, for the second stage of the OTC derivatives regulatory regime. The further conclusions paper sets out the revised proposals on various technical aspects of the next stage of the regime in light of market feedback and comments. Highlights included:
  - removal of the requirement to submit PDF files when reporting transactions;
  - further clarification and guidance on completing specific data fields; and
  - acceptance of internal code references (in place of other counterparty identifying particulars) when reporting transactions involving individuals.

  The paper also included a revised version of the specific data fields to be completed under the expanded reporting regime, and a revised list of entities that will be regarded as financial services providers for the purpose of mandatory clearing.

- On August 31, 2016, the SFC announced that it has designated four central counterparties (CCPs) for the purposes of the mandatory clearing obligation of certain derivatives transactions. The designation of one local CCP and three major overseas CCPs will provide a variety of choices for market participants that are subject to mandatory clearing under Hong Kong law, which came into effect on September 1, 2016.

  The four designated CCPs are Chicago Mercantile Exchange, Japan Securities Clearing Corporation, LCH.Clearnet and OTC Clearing Hong Kong Limited. Each of these designations has been granted subject to conditions, the full texts of which have been posted on the SFC's website.

- On August 31, 2016, the HKMA sent a letter to all regulated entities informing them that a revised Administration and Interface Development Guide (AIDG 1.5.2) would be published in October 2016.

The guide would update the technical specifications in response to the Further Consultation Conclusions on Introducing Mandatory Clearing and Expanding Mandatory Reporting and a Gazette (Government Notice Number. 3912), published by the HKMA and the SFC on July 15, 2016. Reporting entities were reminded to read the revised AIDG carefully to ensure they are fully aware of the changes (from version 1.5.1 published on June 6, 2016).

- Although Phase 2 reporting will not come into effect immediately, the existing reporting standards and technical specifications found in all the previous versions of the AIDG would be phased out and no longer able to support the mandatory reporting requirements under Phase 2 reporting. The testing environment for the updates made in the revised AIDG would be available in the fourth quarter of 2016.

- On September 1, 2016, a set of frequently asked questions (FAQs) prepared by the SFC and the HKMA was published to provide clarifications with regard to the mandatory clearing regime.

- On October 28, 2016, the Hong Kong Trade Repository (HKTR) published a revised Administration and Interface Development Guide (AIDG 1.5.2).

- On November 11, 2016, a revised set of frequently asked questions (FAQs) prepared by the SFC and the HKMA was published to provide clarifications with regard to the mandatory clearing regime.

- On November 25, 2016, 2 sets of Supplementary Reporting Instructions (SRIs) were published, with the first updating the existing SRIs and the second providing new intructions in preparation for the commencement of Phase 2 reporting on July 1, 2017.

3. 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 sought 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 proposed 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 proposed 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 proposed that amendments be made to the client agreement requirements in the Code. SFC proposed, 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.

- On September 25, 2014, the SFC released consultation conclusions on proposed amendments to the professional investor regime and launched a further consultation on client agreement requirements. Having reviewed all of the comments received during the consultation launched in May 2013, SFC decided to proceed with the proposal not to allow intermediaries when serving individual professional investors to be exempt from the suitability requirement and other fundamental requirements that have a significant bearing on investor protection under the Code of Conduct for Persons Licensed by or Registered with the SFC Code. Other features of the revised professional investor regime include:

- individual professional investors and corporate professional investors would continue to be allowed to participate in private placement activities;
- the minimum monetary threshold for qualifying as individual professional investors and corporate professional investors would be maintained at the current levels; and
- a principles-based criteria would replace the specific tests now used to assess whether exemptions to the Code requirements apply when intermediaries serve corporate professional investors.

The amendments relating to the professional investors regime would become effective on 25 March 2016. In response to market feedback, SFC modified its proposals on client agreement requirements and sought to further consult the public on the wording of a proposed new clause to be incorporated into all client agreements as a contractual term. The comment period ended on December 24, 2014 in relation to the proposed new clause.

- On December 8, 2015, the SFC released consultation conclusions on its Further Consultation on the Client Agreement Requirements. The SFC decided to proceed with requiring the incorporation of a new clause into client agreements, enabling an investor to claim for damages under the client agreement where the regulated intermediary solicits the sale of or recommends a financial product which is not reasonably suitable.

  All intermediaries' client agreements must comply with the new Code of Conduct requirements, including incorporation of the new clause and observance of the new paragraph 6.5 of the Code of Conduct discussed in the Further Consultation, on or before June 9, 2017. The SFC also emphasises that the 18-month transitional period is mainly to cater for circumstances where intermediaries, despite their best efforts, encounter practical difficulties when re-executing agreements with existing clients. However, it is expected that intermediaries should be able to comply well before the end of the transitional period.

4. 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 included:

  - 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 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 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 were 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 was proposed and a case was 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 were 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.

- On June 20, 2014, HKMA issued a new Supervisory Policy Manual (SPM) entitled Module RE-1: Recovery Planning (RE-1), as statutory guidance. RE-I provides guidance to Authorized Institutions (AIs) on key elements of the effective recovery planning and sets out HKMA's approach and expectations in reviewing an AI's recovery plan.

  Some of the key sections of the SPM:

  - require all AIs to undertake some degree of recovery planning which will be proportionate to the nature, scale and complexity of their operations;
  - explain the need for the involvement of the Board and senior management in developing, reviewing, approving and maintaining an AI's recovery plan;
  - outline key requirements on the menu of recovery options which should be included in an AI's recovery plan;
  - set out aspects to be considered in identifying triggers for escalation of concerns and activation of the recovery plan;
  - provide guidance on how the impact of a recovery action should be assessed;
  - provide minimum requirements for stress scenarios; and
  - outline the minimum requirements for a communication plan should the recovery plan be activated.

- On January 21, 2015, FSTB, HKMA, SFC and IA launched the second stage of public consultation on establishing an effective resolution regime for financial institutions (FIs), including FMIs in Hong Kong. The consultation ended on April 20, 2015. The second stage of consultation sought views on specific aspects of the regime including: further details on the resolution options and powers proposed in the first consultation paper; the governance arrangements and especially the approach to designating resolution authorities; as well as safeguards including a 'no creditor worse off than in liquidation' compensation mechanism. With regard to derivatives transactions, the consultation paper sought public views on the proposed approach to bail-in of liabilities arising from derivatives as outlined in paragraph 111 of the paper (see question 17). The consultation paper also asked for comment on scope, timing and conditions proposed for temporary stays on early termination rights in financial contracts and on how best to implement a temporary stay of early termination rights in respect of FMIs.

- On October 9, 2015, the FSTB, HKMA, SFC and the IA released a consultation response to the second stage of public consultation on proposals to establish a cross-sector resolution regime for FIs, including FMI, in Hong Kong. The consultation response summarises the respondents' views on the proposals and sets out the government's responses along with its refined policy positions on certain aspects of the proposed resolution regime. At the end of the consultation period (January to April 2015), around 30 submissions had been received from a variety of industry associations, FIs, professional bodies and firms.

  The consultation response contains further information regarding certain aspects of the proposed regime, including pre-resolution powers; loss absorbing capacity requirements to facilitate bail-in; resolution funding arrangements; the recognition of cross-border resolution actions; and safeguards for those affected by resolution action, including appeal mechanisms. The government and the financial regulators will continue their dialogue with stakeholders throughout the legislative process and thereafter when rules, codes of practice and guidance are developed and issued.

- On November 20, 2015, the Financial Institutions (Resolution) Bill was gazetted. The bill sought to establish a cross-sector resolution regime for financial institutions in Hong Kong, in order to be in line with the key attributes published by the FSB.

  The resolution regime covers a wide range of regulated financial institutions. Existing regulators will act as the relevant resolution authorities for their respective sectors. Five resolution options have been included: transfer to a purchaser; transfer to a bridge institution; transfer to an asset management vehicle; bail-in; and transfer to a company wholly owned by the government. The bill also provides further rules and guidance on the bail-in mechanism and safeguards given to certain protected arrangements (such as netting or title transfer arrangements). Two tribunals will be established to review decisions of the resolution authority on resolvability and compensation.

  The bill has a statutory recognition framework for recognising foreign resolution actions, to the extent that such actions would not have an adverse effect on financial stability in Hong Kong. The bill also provides for a resolution authority to make rules to require the contractual recognition of bail-in actions and the imposition of temporary stays on early termination rights.

  The bill was introduced to the Legislative Council for a first reading on December 2, 2015 and a Bills Committee was formed on December 4, 2015 to scrutinize the bill.

- On June 30, 2016, the Hong Kong Government published in the gazette the Financial Institutions (Resolution) Ordinance (the "Ordinance") which establishes a resolution regime in Hong Kong. Under the Ordinance, the HKMA, the Insurance Authority (IA) and the SFC are designated as resolution authorities. They are vested with a range of necessary powers to effect orderly resolution of a failed systemically important financial institution, which means maintaining continuity of access to the essential financial services it provides by imposing losses on creditors, whilst minimising the risks posed to public funds.

  The Ordinance was passed by the Legislative Council on June 22, 2016. It will commence operation on a date to be appointed by the Secretary for Financial Services and the Treasury pending the Legislative Council's passing of certain of the regulations to be made as subsidiary legislation under the Ordinance.

- On November 22, 2016, the Financial Services and the Treasury Bureau, together with the HKMA, the Securities and Futures Commission and the Insurance Authority, launched a consultation on the regulations on protected arrangements under the Financial Institutions (Resolution) Ordinance (FIRO).

  The consultation invites views on the scope and the degree of protection for the different classes of protected arrangements, including necessary carve-outs from the protections in order not to overly restrict a resolution authority from achieving orderly resolution. Views are also sought on remedial actions to be taken if a resolution authority has inadvertently not acted in accordance with the regulations.

  Subject to the outcome of the public consultation, the regulators target introducing the regulations as subsidiary legislation under the FIRO into the Legislative Council for negative vetting in the first half of 2017.

  The deadline for submission is January 21, 2017.

5. OTC Clear ESMA recognition and CFTC registration exemption

- On January 16, 2015, SFC and ESMA announced they had signed an MoU on December 15, 2014 on cooperation arrangements for Hong Kong-established CCPs applying for ESMA recognition in the EU. The MOU is a precondition for those CCPs being able to offer clearing services to clearing members and trading platforms in the EU. The MOU provides for consultation, cooperation and the exchange of information between the authorities on CCP matters and any other areas of mutual interest (but does not cover EU-based CCP supervision). It follows the EC's decision that the legal and supervisory arrangements of Hong Kong ensure that the relevant CCPs comply with requirements that are equivalent to those under the European Market Infrastructure Regulation.

- On April 29, 2015, ESMA announced that it has recognized ten third-country CCPs established in Australia, Hong Kong, Japan and Singapore, including HKFE Clearing Corporation Limited, Hong Kong Securities Clearing Company Limited, OTC Clearing Hong Kong Limited and SEHK Options Clearing House Limited. The recognition allows these CCPs to provide clearing services to clearing members or trading venues established in the EU. Hong Kong has already been assessed as equivalent by the European Commission with regard to its legal and supervisory arrangements for CCPs. Several other steps led to the recognition of the third-country CCPs, including the conclusion of cooperation agreements with the relevant third-country authorities, as well as the consultation of certain European competent authorities and central banks, as foreseen by EMIR.

- On July 9, 2015, the CFTC published a request for public comment on a petition by OTC Clearing Hong Kong Limited for exemption from registration as a derivatives clearing organization (DCO) pursuant to section 5b(h) of the Commodity Exchange Act, which permits the CFTC to grant such exemption if it determines that the applicant is subject to comparable, comprehensive supervision by appropriate government authorities in its home country.

- On November 26, 2015, the SFC announced that it has signed an MoU that will allow the exchange of information on derivative contracts held in trade repositories. The MoU, which became effective on November 19, 2015, allows ESMA and the SFC to have indirect access to trade repositories established in the European Union and Hong Kong respectively.

The ESMA-SFC MoU is the first cooperation arrangement among authorities to establish an indirect access to TRs through the exchange of information. This follows the recommendation of the FSB to enter into this type of agreement to overcome legal barriers to accessing data on derivatives trades, for example when direct access by foreign authorities to TR data is not possible.

- On December 22, 2015, the CFTC issued an order of exemption to OTC Clearing Hong Kong Limited (OTC Clear) from registration as a DCO.

  The CFTC may to exempt a clearing organization from DCO registration for the clearing of swaps if it determines that such clearing organization is subject to comparable, comprehensive supervision by appropriate government authorities in the clearing organization's home country. Subject to the terms and conditions of the order, OTC Clear is permitted to clear proprietary swap positions for its US clearing members or affiliates of such clearing members.

- On December 23, 2015, the SFC announced it has entered into an MoU with the CFTC. The MoU covers the cooperation and exchange of information on the supervision and oversight of regulated entities that operate on a cross-border basis in Hong Kong and the US.

  Through the MoU, which covers regulated markets and organised trading platforms, central counterparties, intermediaries, dealers and other market participants, the SFC and the CFTC express their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates.

6. Margining of non-cleared derivatives

- On December 3, 2015, the HKMA issued a consultation paper on the margining of non-cleared derivatives, which includes the relevant provisions in the draft Supervisory Policy Manual of the HKMA.

  Subject to phase-in arrangements, the HKMA proposes to implement the margin requirements published by BCBS-IOSCO and IOSCO's risk mitigation standards (RMS) starting on September 1, 2016. The proposed margin framework covers guaranteed transactions, partial and substituted compliance for cross-border trades, an outcomes-based approach for comparability assessments, and the operation of two-way margin requirements in non-netting and no-margin jurisdictions. The proposed RMS covers documentation requirements, portfolio reconciliation, portfolio compression and dispute resolution.

- On August 22, 2016, the HKMA released conclusions to its consultation and announced that it would issue final rules in the coming months. Some of the key changes include:

  - FX security conversion transactions (settled within T+7) excluded;
  - Single-stock options and equity index options subject to a three-year phase-in period;
  - Concept of partial compliance removed; and
  - Exemptions for trading with non-netting counterparties or non-enforceable collateral counterparties, subject to independent legal advice that netting is not likely to be effective and protection arrangements for collateral are questionable (no threshold).

- On December 6, 2016, the HKMA announced the implementation timetable for margin and risk mitigation standards for non-centrally cleared derivatives. The HKMA also released conclusions to its second consultation and revised rules, indicating that the final rules will be issued later this month. Some key points to note:

- The phase-in of initial margin (IM) requirements for phase-one institutions, and variation margin (VM) requirements for all covered entities, will commence from March 1, 2017;
- There will be a six-month transitional period from March 1, 2017 to August 31, 2017, with no retrospective application of margining requirements in respect of transactions entered into during this period;
- Margin requirements do not apply to physically settled FX forwards and swaps;
- Margin requirements will apply to equity options from March 1, 2020;
- Margin standards of certain countries (including Australia, the European Union (EU), Japan, Singapore and the US) are deemed to be comparable from the relevant phase-in dates until the HKMA completes a comparability assessment using an outcome-based approach;
- Margin requirements do not apply if there is reasonable doubt as to the enforceability of the netting agreement against a counterparty; and
- IM requirements do not apply if collateral arrangements are questionable or not legally enforceable.

- On December 30, 2016, the HKMA issued final draft of the margin and risk mitigation standards for non-centrally cleared derivatives. It indicated that such final draft and its Chinese version will be gazette in January 2017.

7. Hong Kong Stock Connect

- On November 10, 2014, SFC and CSRC announced they had approved the launch of the Shanghai-Hong Kong Stock Connect pilot scheme following finalization of all the necessary regulatory approvals and relevant regulatory operational arrangements required for its commencement. Under the joint announcement issued by SFC and CSRC, trading through the Shanghai-Hong Kong Stock Connect will commence on November 17. Stock Connect is a pilot programme for establishing mutual stock market access between Hong Kong and mainland China. ISDA published the Additional Provisions for Stock Connect on October 14, which is intended to be used for cash-settled over-the-counter derivatives transactions referencing certain 'A' shares listed on the Shanghai Stock Exchange traded through Stock Connect.

- On August 16, 2016, the SFC and the CSRC announced the approval, in principle, of the structure of Shenzhen-Hong Kong Stock Connect, which will provide mutual stock market access between Hong Kong and Shenzhen via a northbound trading link and a southbound trading link. There will be no aggregate quota under Shenzhen-Hong Kong Stock Connect.

  The joint announcement issued by the SFC and the CSRC also abolished the aggregate quota under Shanghai-Hong Kong Stock Connect with immediate effect.

  The launch of Shenzhen-Hong Kong Stock Connect is subject to the finalisation of all necessary regulatory approvals, market readiness and relevant operational arrangements.

8. Mainland-Hong Kong Mutual Recognition of Funds

- On December 18, 2015, the SFC granted authorization for the first batch of four Mainland funds under the Mainland-Hong Kong Mutual Recognition of Funds (MRF) initiative for public offering in Hong

Kong. The SFC also welcomed the approval by the China Securities Regulatory Commission (CSRC) of the first batch of three Hong Kong funds for public offering on the Mainland market.

The MRF initiative is intended to open up the Mainland's funds market to offshore funds. It will open up a new frontier for the Mainland and Hong Kong asset management industries and make a wider selection of fund products available to investors in both markets. The SFC and the CSRC have been accepting MRF applications since July 1, 2015.

9. Protection of Client Assets

- On February 15, 2016, the HKMA issued a circular to registered institutions to draw their attention to a previous document issued by the SFC on protecting client assets against internal misconduct. The HKMA circular refers to the weak internal controls and lax management supervision of some licensed corporations that make them susceptible to the threat of internal misconduct. Registered institutions should refer to the SFC circular when designing and implementing operating and internal control procedures, and the HKMA will continue to monitor their compliance with the relevant requirements.

10. Fintech

- On September 6, 2016, the HKMA launched a Fintech Supervisory Sandbox (FSS) to facilitate the pilot trials of Fintech and other technology initiatives of authorized institutions (AIs) before they are launched on a fuller scale. The HKMA sees the need for a supervisory arrangement with greater flexibility to enable AIs to conduct more timely live tests of these initiatives before their formal launch. This will enable AIs to gather real-life data and user feedback on their new Fintech products or services more easily in a controlled environment, so that they can make refinements to them as appropriate. The FSS is intended for this purpose, and the HKMA will adopt the following principles in operating the FSS:
    - The FSS is available to Fintech as well as other technology initiatives intended to be launched in Hong Kong by AIs;
    - Within the FSS, an AI is allowed to conduct a pilot trial of its initiatives involving actual banking services and a limited number of participating customers (such as staff members or focus groups of selected customers) without the need to achieve full compliance with the HKMA's usual supervisory requirements during the trial period. This is however predicated on the understanding that the management of the AI will ensure that certain provisions around boundaries, customer protection measures, risk management controls and readiness and monitoring; and
    - The FSS should not be used by AIs as a means to bypass applicable supervisory requirements.

  As the FSS is a new supervisory arrangement, the HKMA will refine the arrangement over time in the light of implementation experience and industry development.

- On November 7, 2016, the Securities and Futures Commission (SFC) hosted the SFC Regtech and Fintech Contact Day 2016 to enhance understanding of emerging regulatory and financial technologies and how they intersect with securities regulation.

  The event featured presentations by financial and regulatory technology providers on topics including cybersecurity, business-to-business Fintech, Know Your Client and suitability requirements. A panel comprising representatives of the SFC, Hong Kong Monetary Authority, Hong Kong Exchanges and

Clearing Limited and the Office of the Privacy Commissioner for Personal Data discussed the regulatory implications of new technologies. More than 150 senior delegates from financial institutions, brokers and asset managers attended the full-day event.

- On December 7, 2016, the HKMA and the UK Financial Conduct Authority (FCA) announced that they have entered into an agreement to foster collaboration between the two regulatory authorities in promoting financial innovation.

  The HKMA and the FCA will closely collaborate on a number of initiatives such as referrals of fintech firms, joint innovation projects, information exchange and experience sharing. For Hong Kong, the agreement is a key initiative for the Fintech Facilitation Office (FFO) of the HKMA and presents significant opportunities for financial and fintech companies to enhance their services and extend their global footprint.

  For the UK, this represents the fifth co-operation agreement that the FCA has signed with international authorities after Australia, Singapore, South Korea and China. The agreement will reduce the barriers for authorised firms looking to grow to scale overseas and assist non-UK innovators interested in entering the market the FCA oversees.

11. HKMA publishes reports

- On April 29, 2016, the Hong Kong Monetary Authority (HKMA) released its annual report for 2015. The report discusses the economic and financial environment, monetary stability, banking stability, participation in regional and international forums and reserves management. The report also discusses the HKMA's progress in implementing various reforms and regulations, including the countercyclical capital buffer, domestic systemically important banks, recovery and resolution schemes and Basel-related reforms.

- On September 27, 2016, the Hong Kong Monetary Authority (HKMA) published the September 2016 issue of its Quarterly Bulletin and Half-Yearly Monetary and Financial Stability Report.

  The Quarterly Bulletin features two articles, entitled 'Capacity Building in the Hong Kong Banking Industry', and 'Implementation of the Stored Value Facilities Regulatory Regime'. The report provides detailed analyses of the global and local economy, as well as the monetary and financial conditions in Hong Kong. It also examines the recent performance and risks of the local banking sector.

12. SFC inks MOU with FINRA

- On May 20, 2016, the Hong Kong Securities and Futures Commission (SFC) announced it has entered into a memorandum of understanding (MOU) with the US Financial Industry Regulatory Authority (FINRA) concerning mutual assistance in the supervision and oversight of regulated entities that operate on a cross-border basis in the two jurisdictions. The MOU covers financial market participants or other entities that are regulated by the SFC or FINRA, and came into effect on May 9.

13. HKMA launches cybersecurity initiative

- On May 18, 2016, the HKMA announced the launch of a Cybersecurity Fortification Initiative (CFI) at the Cyber Security Summit 2016. The CFI aims to raise the level of cybersecurity of banks in Hong Kong through a three-pronged approach:

  - A central element of the CFI is a cyber-resilience assessment framework, which seeks to establish a common risk-based framework for banks to assess their own risk profiles and determine the level of defence and resilience required;
  - There will be a new professional development programme for training and certification, which aims to increase the supply of qualified professionals in cyber security; and
  - A cyber intelligence sharing platform will be developed to allow sharing of cyber-threat intelligence between banks in order to enhance collaboration and improve cyber resilience.
  - To implement the CFI as quickly as possible, the HKMA will issue a formal circular to all banks next week, which will set out that it is a supervisory requirement for them to implement the CFI. Concurrently, the HKMA will conduct a three-month consultation with the banking industry on the proposed cyber-resilience assessment framework. The HKMA will also work with the Hong Kong Institute of Bankers and the Hong Kong Applied Science and Technology Research Institute (ASTRI) to roll out the first training courses for cyber security practitioners by the end of 2016. In addition, the HKMA will work with the Hong Kong Association of Banks and ASTRI to establish the cyber intelligence sharing platform by the end of 2016.

14. HKEX receives SFC approval to clear USD/CNH cross currency swaps

- On July 21, 2016, OTC Clearing Hong Kong Limited (OTC Clear), a subsidiary of Hong Kong Exchanges and Clearing Limited (HKEX), announced that the Securities and Futures Commission has granted approval of its clearing services for cross currency swaps. OTC Clear will initially provide clearing for swaps in the USD/CNH currency pair, which is expected to launch in August.

  OTC Clear will be the first international clearing house to provide clearing for USD/CNH cross currency swaps. OTC Clear provides a payment versus payment settlement solution through the real-time gross settlement system operated by the Hong Kong Monetary Authority, which eliminates settlement risk.

15. SFC hosts IOSCO Board meeting in Hong Kong

- On October 20-21, 2016, a meeting of the Board of the International Organization of Securities Commissions (IOSCO) was hosted by the Securities and Futures Commission (SFC) in Hong Kong, focused on key issues facing securities regulators and global financial markets.
- The IOSCO Board discussed ways to advance the organisation's agenda for financial regulatory reform and also reviewed the progress of IOSCO's work on margin requirements, central counterparties, asset management and market conduct.
- Nearly 100 securities regulators from more than 30 member jurisdictions attended the meeting, which was the first chaired by the new IOSCO Board Chairman, Mr Ashley Alder, SFC Chief Executive Officer.

16. HKMA Designates Nine CNH Primary Liquidity Providers

- On October 27, 2016, the Hong Kong Monetary Authority (HKMA) announced that it has designated the following nine banks as Primary Liquidity Providers (PLPs) for offshore renminbi (RMB) market in Hong Kong (i.e. CNH market) with effect from today, following the expiry of the first term of designation to seven PLPs.

  The nine PLPs were selected through a competitive process among the former PLPs and the contributing banks for CNH HIBOR fixing, which are all active participants in the CNH market. The selection was based on a wide range of criteria, including the institution's capability in providing CNH funding and making market for CNH instruments, and commitment to using Hong Kong as a global hub for offshore RMB business. The HKMA provides each of the PLPs with a dedicated RMB repo facility of RMB2 billion, so as to facilitate their liquidity management when they carry out market-making activities and provide liquidity in the CNH market.

  To enhance the transparency of the RMB market liquidity, starting from 1 November 2016 the HKMA will publish information on the usages of intraday and overnight RMB Liquidity Facility (RLF) as well as the usages of the PLP facility as at 9:00 a.m., 11:00 a.m., 2:00 p.m and 4:00 p.m. Hong Kong time from Monday to Friday, except public holidays. The information will be shown in a new HKMA page on the Reuters (page name: HKMAOOF) within fifteen minutes of the respective points of time.

  The designation is for a term of two years, with effect from 27 October 2016. The HKMA will regularly review the experience in operating the scheme and its effectiveness, and consider the need for any refinements, including the number of PLPs and the modalities of the repo facility.

17. SFC proposes enhancement to position limits regime

- On September 20, 2016, the Hong Kong Securities and Futures Commission (SFC) published a consultation paper proposing enhancements to the position limit regime to expand its scope and make it more responsive to financial market developments.

  Under the proposals, the cap on the excess position limit that may be authorised by the SFC would increase from 50% to 300% of the statutory position limit. It is also proposed that the statutory position limit for stock options contracts will triple to 150,000. This will facilitate the implementation of the proposals in Hong Kong Exchanges and Clearing Limited's market consultation that concluded in June 2016. In addition, new excess position limits are proposed for index arbitrage activities, asset managers and market-makers of exchange-traded funds.

  Submissions to the consultation are due by November 21.

18. SFC issues reminder on short position reporting

- On September 30, 2016, the Hong Kong Securities and Futures Commission (SFC) issued a reminder to all relevant market participants that on March 15, 2017, reporting will be required for reportable short positions in all designated securities eligible for short selling specified by the Hong Kong Stock Exchange.

The SFC further reminded market participants to ensure they have systems and procedures in place to comply with the new requirements. For more details, market participants can refer to the latest frequently asked questions published on the SFC website. The SFC will provide a pilot testing environment in early 2017 to facilitate market participants' preparations for the new requirements. Further details will be available by the end of 2016.

19. HKMA releases consultation on NSFR

- On November 4, 2016, the Hong Kong Monetary Authority (HKMA) released a consultation paper on the net stable funding ratio (NSFR). The proposals are as follows:

  - The NSFR will be applicable to banks that have been designated as category 1 institutions by the HKMA. Category 2 members will be subject to a modified form of the NSFR;
  - The NSFR will be applied on a Hong Kong office basis for all institutions. In addition, institutions having one or more overseas branches must apply the NSFR on an unconsolidated basis. If an institution has one or more associated entities, the HKMA may also require the NSFR to be applied on a consolidated basis;
  - A category 1 institution will be required to maintain an NSFR of not less than 100%. In case of a temporary immaterial shortfall, a category 1 institution will be given a brief opportunity to restore its NSFR position before significant supervisory action is taken;
  - A category 2 institution will be required to maintain a modified NSFR of not less than 75% on average in each calendar month, with no allowance for rectification of shortfalls;
  - Locally incorporated category 2 institutions with total assets amounting to less than HK$20 billion and category 2 institutions operating as foreign bank branches with total assets amounting to less than HK$50 billion will be exempted from NSFR requirements; and,
  - NSFR and modified NSFR requirements will become applicable from January 1, 2018.

  The deadline for comments is December 23, 2016.

20. New HKTR documentation published

- On November 25, 2016, the Hong Kong Trade Repository (HKTR) published a revised version of the existing supplementary reporting instructions (SRI I), and additional supplementary reporting instructions focusing on the phase-two reporting requirements that will come into effect in July 2017 (SRI II).

  The SRI I has been revised to address questions received from the industry, and describe the reporting requirements in a more concise manner. Where new or altered reporting requirements are introduced, grace periods have been provided for their implementation. A tracked-changes version of the SRI I has also been published.

  The guidance in the SRI II should enable reporting institutions to complete their preparation for compliance with the phase-two reporting requirements.

21. New SFC measures to heighten senior management accountability

- On December 16, 2016, the Hong Kong Securities and Futures Commission (SFC) issued a circular to all licensed corporations to heighten the accountability of senior management and promote awareness of senior management obligations under the current regulatory regime.

  The circular aims to provide more guidance on who should be regarded as the senior management of a licensed corporation. It identifies eight core functions which are instrumental to the operations of licensed corporations. Licensed corporations are expected to designate fit and proper individuals to be managers-in-charge of each of these functions. Those who have overall management oversight of the licensed corporations and those in charge of key business line functions are also expected to seek the SFC's approval as responsible officers.

  Commencing April 18, 2017, corporate licence applicants and existing licensed corporations will have to submit up-to-date management structure information and organisational charts to the SFC. All existing licensed corporations should submit the required information by July 17, 2017. In addition, their managers-in-charge of the overall management oversight and key business line functions who are not already responsible officers should have applied for approval to become responsible officers by October 16, 2017.

  The SFC has also published over 40 frequently asked questions to provide more guidance on the measures and will organise a series of industry workshops in the first quarter of 2017 to help the industry further understand the measures.

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
- April 15, 2013: ISDA submission to HKMA regards to HKMA Consultation on reporting requirement for OTC derivatives transactions
- May 16, 2013: ISDA submission to HKMA regarding HKMA Consultation on reporting requirement for OTC derivatives transactions
- June 4, 2013: ISDA submission to HKMA regarding the reporting logic for historical records amendment
- July 5, 2013: ISDA submissions to HKMA on the Reporting Service Agreement.

- July 16, 2013: ISDA submission to Hong Kong Monetary Authority and Securities and Futures Commission on the "originated or executed" definitions under the trade reporting regime
- July 26, 2013: ISDA submissions to HKMA on the Reporting Service Agreement – Follow up letter
- August 30, 2013: ISDA submission to HKMA and SFC on the "originate or execute" definition under the trade reporting regime
- April 4, 2014: ISDA response to the consultation paper on "An Effective Resolution Regime for Financial Institutions in Hong Kong"
- August 18, 2014: ISDA submission to Hong Kong Monetary Authority and Securities and Futures Commission on the Consultation paper on the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping) Rules
- August 30, 2014: ISDA submission to Hong Kong Monetary Authority and Securities and Futures Commission on the "originate or execute" definitions under the trade reporting regime
- September 4, 2014: ISDA submission to HKMA on the mandatory reporting of unique transaction identifiers
- December 23, 2014: ISDA submission to HKMA and SFC on further consultation on the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules
- March 20, 2015: ISDA submission to HKMA on draft additional trade reporting documentation (draft FAQs and Supplementary Reporting Instructions)
- April 13, 2015: ISDA submission to Financial Services and the Treasury Bureau on an Effective Resolution Regime for Financial Institutions in Hong Kong
- October 16, 2015: ISDA submission to SFC on consultation on changes to the Securities and Futures (Financial Resources) Rules.
- November 5, 2015: ISDA/ASIFMA joint submission to HKMA and SFC on introducing mandatory clearing and expanding mandatory reporting for OTC derivatives transactions.
- November 30, 2015: ISDA submission to HKMA and SFC on question 39 of consultation on introducing mandatory clearing and expanding mandatory reporting for OTC derivatives transactions.
- December 30, 2015: ISDA/FIA/ASIFMA joint submission to SFC on consultation on proposed amendments to the Guidelines for the Regulation of Automated Trading Services (ATS).
- January 29, 2016: ISDA/ASIFMA join submission to HKMA on consultation on proposed margining and risk mitigation standards for non-centrally cleared OTC derivatives
- September 14, 2016: ISDA submission to HKMA on key comments on proposed margin and risk mitigation standards for non-centrally cleared derivatives. 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. FX forwards mandatory clearing began in June 2014. 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 noted that while India was fully committed to achieving the G-20 reform agenda for OTC derivatives, the pace and nature of such reforms depended 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 might be dependable on variables such as an improvement in liquidity, there was a possibility that timelines might be revisited or revised based on developments in the OTC derivatives market.

2. Margin

- On May 2, 2016, the Reserve Bank of India (RBI) published a discussion paper on margin requirements for non-centrally cleared derivatives. The paper proposes a framework for the exchange of initial and variation margin for all non-cleared derivatives, in line with Basel Committee on Banking Supervision and International Organization of Securities Commissions guidelines. The discussion paper outlines the scope of coverage, types of margin to be exchanged, eligible collateral, treatment of collected margin, treatment of cross-border transactions and implementation schedule.

- On September 1, 2016, the RBI announced that it has decided to postpone the implementation of margining requirements. This delay will help avoid cross-border implementation issues, and will also provide market participants with adequate time to plan and prepare for the new requirements, it said. The RBI intends to release the final guidelines on margin requirements in due course.

3. 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 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 should be reported on the CCIL platform, subject to a mutually agreed upon confidentiality protocol.

  CCIL has 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 would be operationalized from Dec 30, 2013 for the above OTC derivative transactions.

4. Clearing & CCIL matters

- 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 limit 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 would prescribe the terms regarding minimum notional principal amount, tenors, trading hours, settlement calculations etc., in consultation with market participants. Standardization would 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 would 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 would 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 would receive all trades of the indirect participants through their CMs for settlement. These trades would have identifiers to denote those as trades of individual participants. CMs would have the option to allow indirect participants to report their trades through CMs or even directly to CCIL within certain pre-specified limits. CMs would 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 would have the option to select fully segregated collateral model or otherwise. If any indirect participant selects fully segregated collateral, it would have full visibility through CCIL system of margins deposited on its behalf by their CMs. This information would 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 covered and sought 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) would be kept outside the exposure ceiling of 25% of its net owned funds applicable to a single borrower/counterparty.

- On March 27, 2014, RBI issued a circular on the Exposure Norms for Standalone PDs. Effective April 1, 2014, as an interim measure, a standalone primary dealer's clearing exposure to a Qualifying Central Counterparty (QCCP) would be kept outside the exposure ceiling of 25% of its net owned funds applicable to a single borrower/counterparty.

- On June 2, 2014, mandatory clearing through CCIL Forex Forward Guaranteed Segment commenced.

- On December 8, 2014, the Risk Management Department of CCIL released its Consultation Paper on the Default Handling: Auction of Trades & Positions of Defaulter etc.

  The Consultation Paper proposed the following:

  1. Auction for close-out of Defaulter's positions: CCIL is considering introducing the possibility of auctioning trades of the defaulter.
  2. Default classification: CCIL will categorize the event of default into large and small default depending on the impact to other clearing market participants. The classification may be based on the amount involved at a netted position level as compared to the aggregate net outstanding positions being cleared in the institutional segment of the market. Based on a pre-decided scale, a default may be classified based on such ratio and a subsequent course of action be adopted.
  3. Committee of Clearing Participations for Default Handling: For large-sized defaults, CCIL is proposing to form a Committee of Clearing Participants. This committee will advise CCIL on handling large-sized defaults and will assist CCIL on close-out positions either through direct sale or auction.
  4. Segment-wise approach: The default handling in each segment is different as the default of a market participant for each segment should be handled separately. However, a clearing participant may default in more than one segment. CCIL is proposing to handle such defaults at a consolidated level instead of through a segment-based approach.
  5. Compression of Portfolio of defaulter or of all (including non-defaulters): CCIL is proposing a mandatory compression of trades of all clearing participants before the default process begins.
  6. Sale of positions in the market: In the instance of a small-sized and medium-sized default, CCIL may choose to close-out such positions through a sale in the market either through its anonymous trading systems or through a private sale by inviting quotes from at least three of the large non-defaulting clearing participants. The residual positions may be closed out following the approach as described in paragraph 2.5.5 of the Consultation Paper. In the instance of a large-sized default, the Default Management Committee of clearing participants may be shown the portfolio of the defaulted clearing participant. This Committee, in consultation with CCIL, may be required to decide on the auction size of the defaulter's portfolio. This Committee may also decide to sell the defaulter's portfolio in the market based on pre-determined rules and via the anonymous trading systems of CCIL.
  7. Auction Model: All non-defaulting clearing participants will have an obligation to bid in the auction and buy positions up to a portion of the auctioned position that is equal to the ratio of their contributions to the default fund for the segment to the total contributions of non-defaulting clearing participants to the same default fund. For each tranche, CCIL will declare a minimum price based on its MTM price.
  8. Positions carried forward: If some positions of the defaulter could not be immediately closed-out in the market or through the auction, such positions will be carried forward.
  9. Residual Loss from Default: Any loss not recovered from the handling of a default will be met in terms of the Default Waterfall described in the respective segment.

- On July 17, 2015, CCIL issued a Consultation Paper on Integrated Risk Information System (CCIL IRIS): Additional Functionalities. This Consultation Paper considers additional functionalities to be included in CCIL's web based real time application called CCIL IRIS which provides information ot members related to among others, their liquidity exposures, margin and collateral related information, contributions to default fund, imposition of margin and settlement status of trades in different segments.

- On July 24, 2015, CCIL issued a Consultation Paper on the integration of Forex Forward and Forex Settlement Segment. This Consultation Paper covers considers the process of integration of these two segments. CCIL has considered that the risks to CCIL for both segments are the same and the clearing participants to these segments are more or less the same. The Consultation Paper also considers that the integration will bring significant benefits to the clearing participants.

- On July 31, 2015, CCIL issued a Consultation Paper on CCP Recovery and Resolution Mechanism (Consultation Paper). In this Consultation Paper, CCIL considered the Principles for Financial Market Infrastructures (PFMI) developed by the Committee on Payment and Settlement Systems and the International Organization of Securities Commissions (CPSS-IOSCO) in April 2012 and carried out an analysis of the PFMI in relation to the development and maintenance of a viable recovery or orderly wind-down plan for CCIL.

  <u>Critical Services</u>
  CCIL is of the view that the critical services which it offers in the clearing space relate to it being a CCP in securities, CBLO, Foreign Exchange (Rupee/US Dollars), Forward Foreign Exchange (Rupee/US Dollars) and Rupee Derivatives segments. It is to be noted that CCIL also offers non-CCP clearing and settlement of daily cashflows in rupee derivatives segment and in the CLS segment. CCIL has also considered that it is the only CCP offering the clearing services as described above; therefore, these may be considered to constitute critical services for the financial market participants in the Indian market.

  <u>Principal Risks</u>
  Aside from defaults by participants, CCIL has identified and described the following major risks to the clearing risks run by CCIL in the Consultation Paper:
  (a) Settlement Bank Risk;
  (b) Investment Risk;
  (c) Operations Risk;
  (d) Legal Risk; and
  (e) Reputation Risk

  <u>Liquidity Risk</u>
  CCIL highlights that in order to manage liquidity risk on a day to day basis, maximum liquidity limits are proposed to be set across segments for members. This has presently been imposed in the Forex Settlement Segment in both INR and in USD. CCIL is of the view that this will ensure that the liquidity shortfall will not be faced with the first default, even by the largest participant with its affiliates. CCIL also considers that liquidity risks from settlement bank failures, if any, would have to be shared by the clearing participants which settles through such bank and is required to share the credit loss as stipulated.

  <u>Allocation of Losses</u>
  With respect to allocation of losses, CCIL has considered and proposes to follow the PFMIs and as well as the report on the *Recovery of Financial Market Infrastructures* issued by the Committee on Payments and Market Infrastructures and IOSCO (CPMI-IOSCO) in October 2014.

Losses not caused by participant default

CCIL sets out its considerations with respect to losses not caused by participant default. In this regard, CCIL considers its approach as follows: to combine managing these risks in a manner which is optimum and transparent to the participants and having loss sharing principles where appropriate incentives are available for the participants to manage and minimize this risk. CCIL also states that initial losses up to a threshold could be borne out of CCIL's own resources clearly earmarked for this purpose.

- On March 1, 2016, CCIL issued a Consultation Paper on the end of day incremental MTM deposit deadline being brought forward from 11:00 AM after the day of trade to either 7:30 PM the day of trade or 9:00 AM the day after trade.

- On May 5, the Reserve Bank of India (RBI) released a circular permitting any entity regulated by the RBI, SEBI, the Insurance Regulatory and Development Authority of India (IRDAI), the Pension Fund Regulatory and Development Authority of India (PFRDA), and the National Housing Bank (NHB) to trade in interest rate swaps (IRS) on electronic platforms.

  The RBI has designated the Clearing Corporation of India (CCIL) as an approved counterparty for transactions executed on electronic trading platforms where CCIL is the central counterparty. Regulated institutional entities may apply for membership of electronic trading platforms in IRS that have CCIL as the central counterparty, subject to the approval of their respective sectoral regulators.|

- On July 4, 2016, CCIL issued a notification amending its by-laws and the regulations governing the securities segment. The amendments include provisions regarding the introduction of a default fund and outlines the default waterfall, as detailed below;

  Default fund: CCIL will maintain a default fund for its securities segment, with a view to meeting risks arising from any default by the members of this segment. The size of the fund will be determined as per the guidelines set out in the regulations, and will be reviewed at the end of every month.
  - The member's contribution to the fund will be determined with reference to the total size of the fund, and shall be based on the average outstanding gross trade volume of the member and the average initial margin contribution during the previous month, with equal weights assigned to each. The minimum contribution of a member will be INR 1 million.
  - The individual contributions towards the fund may be in the form of cash and/or eligible government securities.
  - The securities contributed by the members towards the fund will be valued at the end of each day. If the value of the securities net of haircuts falls below a threshold level as notified by CCIL, members will be required to contribute such additional sums to the fund as may be necessary. To start with, the threshold level will be set at 95%.
  - The administration of collateral deposited, as well as withdrawals, substitutions and payment of interest will be governed by the relevant clauses in the regulations.
  - The utilisation of the default fund and the events triggering the replenishment of a member's contribution will be governed by the relevant clauses in the regulations.

  Default waterfall: The loss on account of a participant default shall be met by CCIL by recourse to funds in the following order. First, by appropriation of the margin contribution of the defaulting member. Second, by applying the set-off from the defaulter's own contribution to the default fund. Third, by payment from CCIL's settlement reserve fund, capped at 10% of the balance available. Last, by allocation of the residual loss to the default fund accounts of other members in proportion to their contributions at the time of default.

- On August 12, 2016, CCIL issued a notification amending the regulations to the Collateralized Borrowing and Lending Obligation (CBLO) segment. The amendments include:
  - The revised CBLO shortage handling process;
  - Pre-order check for availability of initial margin and borrowing limits for members;
  - Step-up in haircut rates on securities collateral following the imposition of volatility margin in the securities segment;
  - The introduction of a default fund

- On November 9, 2016, CCIL issued a proposal to resize their 'Skin in the Game' (SIG) and restructure the default waterfall for all clearing segments. CCIL's current SIG is a fixed percentage of the Settlement Reserve Fund (SRF), which is between 5% to 25% depending on the clearing segment. In order to make the SIG more risk-sensitive and calibrate it to the likely losses in a business segment under stress conditions, CCIL proposes to resize their SIG to 25percent of the member contributed default fund of a segment. In addition, CCIL will also ensure that its SIG is at least equal to the highest amount contributed by any member in each segmental default fund.

  CCIL also proposes to restructure the default waterfall, so that the SIG is split into two tranches. Tranche 1 will be equal to 15 percent and is to be used before default fund contributions of surviving members are used, while tranche 2 will be equal to 10 percent which will be used after default fund contributions of surviving members are used but before calling for further contributions from them.

- On December 2, 2016, the Clearing Corporation of India Limited (CCIL) announced a change in the timing for the collection of incremental mark-to-market margin for the rupee derivatives segment. This change also applies to the FX forwards, FX, collateralised lending and borrowing obligations, and securities segments. It has been decided to advance the stipulated time by which margin becomes payable to 9am Indian standard time (IST) on the next working day (including Saturdays), from the current 11am IST on weekdays and 10:30am IST on Saturdays. Failure to replenish the margin shortfall by 9am IST on the next business day will attract a penalty.

- On December 16, the European Commission determined that India, Brazil, New Zealand, Japan Commodities, United Arab Emirates and Dubai International Financial Centre have equivalent regulatory regimes for central counterparties (CCPs) to the European Union.

5. Onshore CDS and Corporate Bond market development

- 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 AIFIs, 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.

- On August 18, 2016, a working group from the RBI published a report on the development of Indian corporate bond market. The working group was formed by the Financial Stability and Development Council Sub-Committee (FSDC-SC), and has representation from the Reserve Bank of India, Ministry of Finance, Securities and Exchange Board of India, Insurance Regulatory and Development Authority, and the Pension Fund Regulatory and Development Authority.
  The report examines different initiatives to develop the corporate bond market in India, and analyses the success of these measures. It looks at the structural limitations of the corporate bond market in India, and makes recommendations for relevant regulators to implement, including:
  - Developing an electronic dealing platform with a central counterparty to make corporate bond repo operations more transparent;
  - Allowing debt market traders to act as market-makers, as a means of improving liquidity;
  - Easing norms for foreign portfolio investors;
  - Encouraging large corporates to access the market for their working capital needs; and
  - Developing a corporate bond index.

  It provides recommendation on ways to develop the credit default swap market in order to complement the corporate bond market, but notes the restriction on netting for capital adequacy and exposure norms. If needed, amendments can be made to the RBI Act.

6. Financial Sector Legislative Reforms Commission

- The Financial Sector Legislative Reforms Commission (FSLRC) issued its final report in March 2013. 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, 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.

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

- On July 23, 2015, the FSLRC released its Revised Draft Indian Financial Code. The modifications mainly relate to the strengthening of the regulatory accountability of financial agencies, removing the provision empowering the Financial Sector Appellate Tribunal (FSAT) to review Regulations, rulemaking and operational aspects of capital controls, monetary policy framework and composition of the Monetary Policy Committee, regulation of, for instance, systematically important payment systems. The Revised Draft Indian Financial Code also considers the enactments made subsequent to the submission of the FSLRC report; namely The Pension Fund Regulatory and Development Authority Act, 2013 (PFRDA Act) and Securities Laws (Amendment) Act, 2014. However, the FSLRC states that the modifications in the revised Draft Indian Financial Code remain consistent with the overall structure and philosophy of the FSLRC Report.

7. Implementation of Basel III

- On February 21, 2012, RBI released the draft guidelines on Liquidity Management and Basel III Framework on Liquidity Standards. RBI would 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 would begin from the end of the second quarter, 2012. The LCR and NSFR would 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 would 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, would be applied. Banks would be required to hold a total of 11.5% of capital. The transitional arrangements would begin on January 1, 2013, in a phased manner and be fully implemented by March 31, 2018.

- On September 1, 2014, RBI issued guidelines on amendments to the implementation of Basel III. These guidelines refer to certain specific eligibility criteria of non-equity regulatory capital instruments by banks under the Basel III framework and become applicable with immediate effect.

  - Non-equity regulatory capital instruments (additional Tier 1 and Tier 2) – loss absorption mechanism

    - Banks may now issue additional Tier 1 capital instruments with the principal loss absorption through either: (1) conversion into common shares; or (2) write-down mechanism (temporary or permanent) that allocates losses to the instruments.

    - The terms and conditions of all non-equity capital instruments (both additional Tier 1 and Tier 2) issues by banks must have a provision that requires such instruments, at the option of RBI, to either be permanently written off or converted into common shares upon the occurrence of a ‘point of non-viability’ trigger event.

  - Banks need to ensure that all non-common equity capital instruments issued by them meet all the eligibility criteria, such as legal, accounting and operational, for such instruments to be recognised as regulatory capital instruments.

- Additional Tier 1 capital instruments – exercise of call option
  - The call option on additional Tier 1 instruments (perpetual non-cumulative preference shares and perpetual debt instruments (PDIs)) will be permissible at the initiative of the issuer after the instrument has run for at least five years.

- Tier 2 capital instruments – maturity period
  - Banks are allowed to issue redeemable non-cumulative preference shares and redeemable cumulative preference shares as part of Tier 2 capital with a minimum original maturity of at least five years. All other criteria relating to maturity period of Tier 2 instruments remain unchanged.

- Non-equity regulatory capital instruments (additional Tier 1 and Tier 2) – issuance to retail investors
  - Banks may issue other forms of Tier 2 capital instruments to retail investors, such as perpetual cumulative preference shares/redeemable non-cumulative preference shares/redeemable cumulative preference shares. Such issuances should be subject to the approval of the Board and conditions as required under paragraph 1.17 of Annex 5 of the master circular.
  - Banks may now issue additional Tier 1 capital instruments to retail investors, subject to Board approval. However, banks should adhere to the investor protection requirements analogous to those contained in paragraph 1.17 of Annex 5 of the master circular.

- Coupon discretion on additional Tier 1 debt capital instruments
  - Paragraph 1.8(e) of Annex 4 of the master circular has been amended, such as payment of coupons on PDIs, which must be paid out of current year profits. If current year profits are not sufficient, then the balance amount of the coupon may be paid out of revenue reserves and/or credit balance in the profit and loss account, if any. However, the payment of coupons on PDIs from revenue reserves is subject to the bank meeting the minimum regulatory requirement for core equity Tier 1, Tier 1 and total capital ratios at all times and subject to the requirements of the capital buffer frameworks (capital conservation buffer, countercyclical capital buffer and domestic systemically important banks).

- On January 8, 2015, RBI issued revised guidelines on the leverage ratio framework and attendant disclosure requirements, as per paragraph 20 of the fourth bi-monthly monetary policy statement 2014-15, which was announced on September 30, 2014. This replaces the 'Part E: Leverage Ratio Framework' in the Master Circular DBOD.No.BP.BC.6/ 21.06.201/2014-15, dated July 1, 2014, on Basel III capital requirements. These guidelines would come into effect from April 1, 2015.

- On May 28, 2015, RBI released its draft guidelines on the net stable funding ratio (NSFR) under Basel III. These draft guidelines are based on the final NSFR rules published by the Basel Committee on Banking Supervision in October 2014, and take into account Indian conditions. The deadline for comments is June 26. RBI proposes to impose these requirements on banks in India from January 1, 2018.

- On June 15, 2015, BCBS published a report assessing the implementation of the Basel risk-based capital framework and the Liquidity Coverage Ratio (LCR) for India. This is part of a series of reports on the Basel Committee members' implementation of Basel standards under the Committee's

Regulatory Consistency Assessment Programme (RCAP). A key component of the RCAP is to assess the consistency and completeness of a jurisdiction's adopted standards and the significance of any deviations from the regulatory framework. The RCAP does not take into account a jurisdiction's bank supervision practices, nor does it evaluate the adequacy of regulatory capital and high-quality liquid assets for individual banks or a banking system as a whole.

Overall, the assessment outcome for India is highly positive and reflects various amendments to the risk-based capital and LCR rules undertaken by the authorities. Domestic implementation of the risk-based capital framework is found to be "compliant" with the Basel standards as all 14 components are assessed as "compliant". Regarding the LCR, India is overall assessed as "largely compliant", reflecting the fact that most but not all provisions of the Basel standards were satisfied. In addition, the implementation of the LCR regulation's component is assessed as "largely compliant" and the implementation of the LCR disclosure standards' component is assessed as "compliant".

The Basel Committee further noted that several aspects of the domestic rules in India are more rigorous than required under the Basel framework.

- On March 23, 2016, RBI released an Annex to the Liquidity Risk Management & Basel III Framework on Liquidity Standards. The Annex amends certain provisions of the guidelines issued under "Liquidity Risk Management by Banks" (November 7, 2012), "Basel III Framework on Liquidity Standards – Liquidity Coverage Ratio (LCR), Liquidity Risk Monitoring Tools and LCR Disclosure Standards" (June 9, 2014 and November 28, 2014), and "Prudential Guidelines on Capital Adequacy and Liquidity Standards – Amendments" (March 31, 2015). Certain amendments are set out below:
    - Effective February 1, 2016, the time buckets for Statements of Structural Liquidity and Statement of Short-Term Dynamic Liquidity have been aligned with the Liquidity Coverage Ratio monitoring requirements.
    - Effective February 1, 2016, corporate debt securities (including commercial paper) can also be considered as level 2B HQLA's, subject to a 50% haircut and the securities meeting certain liquidity and credit conditions.
    - Effective March 23, 2016, branches of foreign banks are no longer required to report LCR by Significant Currency as these branches do not hold any foreign currency HQLA's.
    - HQLA-eligible assets received as a component of a pool of collateral for a secured transaction can be included in the stock of HQLA (with associated haircuts) to the extent that they can be monetized separately.

  The amount of outflow for funds raised under a Secured Funding Transaction (SFT) is calculated based on the amount of funds raised through the transaction, and not the value of the underlying collateral.

  The Annex also discusses the run-off factor for retail term deposits, the outflow factor for contingent funding liabilities, the outflow factor for deposits against which a loan has been allowed, and the outflow factor for funding from other legal entity customers.

- On June 22, 2016, the RBI issued draft guidelines on the standardised approach for measuring counterparty credit risk exposures (SA-CCR), which will replace the current exposure method. This approach will apply to over-the-counter derivatives, cleared derivatives, exchange-traded derivatives, and long settlement transactions. Exposures will be calculated separately for each netting set. Where bilateral netting is not permitted, each netting set will be considered a netting set of its own.

- On July 21, 2016, the Reserve Bank of India (RBI) issued a circular reviewing the Basel III framework on liquidity standards. The assets currently allowed as the level 1 high quality liquid assets (HQLA) for the purpose of calculating the liquidity coverage ratio (LCR) of banks include:

  - Government securities in excess of the minimum statutory liquidity ratio (SLR) requirement and within the mandatory SLR requirement;
  - Government securities to the extent allowed by the RBI under the marginal standing facility (MSF), presently 2% of the bank's net demand and time liabilities (NDTL); and
  - Government securities to the extent allowed by the RBI under the facility to avail liquidity for liquidity coverage ratio (FALLCR), presently 8% of the bank's NDTL.

  In addition to the assets above, banks will now be allowed to use government securities held by them up to another 1% of their NDTL under FALLCR within the mandatory SLR requirement as level 1 HQLA for the purpose of computing their LCR.

  Therefore, the total carve-out from SLR available to banks will be 11% of their NDTL. For this purpose, banks should continue to value such government securities within the mandatory SLR requirement at an amount no greater than their current market value, irrespective of the category in which the security is held.

- On November 10, 2016 the RBI issued final guidelines on the standardised approach for measuring counterparty credit risk exposures (SA-CCR) in line with the draft guidelines issued on June 22, which will replace the current exposure method (CEM). This approach will apply to over-the-counter derivatives, cleared derivatives, exchange-traded derivatives, and long settlement transactions. Exposures will be calculated separately for each netting set. Where bilateral netting is not permitted, or if the RBI is not satisfied about netting enforceability, each trade will be considered a netting set of its own. The final guidelines will be effective April 1, 2018.

8. 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 stated 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.

9. 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).

- On June 22, the RBI issued draft guidelines for the capital treatment of bank exposures to central counterparties (CCPs). Under this framework, counterparty credit risk treatment will apply to exposures to CCPs arising from OTC derivatives, exchange-traded derivatives, securities financing transactions and long settlement transactions. Cash transactions are not subject to this treatment. Capital requirements will be vary depending on the status of a clearing house as a qualifying or non-qualifying

CCP.

- On November 10, 2016, the RBI issued final guidelines for the capital treatment of bank exposures to central counterparties (CCPs), in line with the draft guidelines that were issued on June 22. Under this framework, counterparty credit risk treatment will apply to exposures to CCPs arising from OTC derivatives, exchange-traded derivatives, securities financing transactions and long settlement transactions. Cash transactions are not subject to this treatment. Capital requirements will vary depending on the status of a clearing house as a qualifying CCP (QCCP) or non-qualifying CCP. The final guidelines will be effective April 1, 2018.

10. 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.

11. 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 proposed 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 would apply.

12. 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 referred to its earlier circular issued on June 26 which provided 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 clarified 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.

13. 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.

14. 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 would 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 would facilitate the setting up of the National Company Law Tribunals (NCLTs). In parallel, the draft rules of the Bill would 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.

15. 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 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 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).

16. Financial Benchmarks

- On January 3, 2014, RBI released its Draft Report of the Committee on Financial Benchmarks. The Report considered different measures recommended by various international bodies/committees and reforms which were already underway in key benchmarks, and provided 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 reviewed the existing regulatory powers of RBI over the financial benchmarks. It recommended, 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 recommended 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.

- RBI complied and published on a daily basis reference rates for spot USD/INR and spot EUR/INR. On August 7, 2014, RBI announced the following changes in the existing methodology:
  - The rate for spot US dollar against Indian rupee will be polled from the select list of contributing banks at a randomly chosen five minute window between 11.30 a.m. and 12.30 p.m. every week day (excluding Saturdays, Sundays and Bank Holidays in Mumbai).
  - The other three rates, viz. EUR/INR, GBP/INR and JPY/INR would be computed by crossing the USD/INR reference rate with the ruling EUR/USD, GBP/USD and USD/JPY rates.
  - The daily press release on RBI reference rate for US dollar will be issued every week-day (excluding Saturdays, Sundays and bank holidays in Mumbai) at around 1.30 p.m.

  These changes shall be effective from September 1, 2014.

Under the existing methodology, the rates are arrived at by averaging the mean of the bid/offer rates polled from a few select banks at a randomly chosen five minute window between 11.45 am and 12.15 pm every week day (excluding Saturdays, Sundays and bank holidays in Mumbai). The contributing banks are randomly selected from a large panel of banks, identified on the basis of their standing, market-share in the domestic foreign exchange market and representative character.

- By way of background, on June 28 2013, RBI constituted a committee on Financial Benchmarks to consider various issues relating to financial benchmarks in India. Apart from other existing benchmarks, the committee also reviewed the process of computation and dissemination of Rupee reference rate published by RBI and made some recommendations in this regard.

- On April 21, 2016, the Reserve Bank of India (RBI) announced a change to the methodology for the computation and dissemination of the reference rate for spot USD/INR. Under the existing methodology, the reference rate is calculated from USD/INR rates polled from certain banks. Based on the recommendations of the Committee on Financial Benchmarks, the reference rate will now be derived from actual market transactions in order to better represent the prevailing spot USD/INR rate. The revised changes are:

    - The reference rate for spot USD/INR will be derived from the volume-weighted average of actual market transactions that have taken place during a randomly selected 15-minute window between 11:30am local time and 12:30pm local time during trading days.
    - The other reference rates (EUR/INR, GBP/INR and JPY/INR) will continue to be derived by crossing the USD/INR reference rate with the relevant EUR/USD, GBP/USD and USD/JPY rates.
    - The default window of 15 minutes will be increased over a period of time.
    - The daily press release of the RBI reference rate will be issued at around 1:30pm local time on trading days.

17. 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 would 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 became 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.

18. CCIL amends its bye-laws and regulations of voluntary winding-up

- On April 23, 2014, CCIL made certain amendments to its Bye-Laws and Regulations. A new Chapter XV was inserted in the Bye-Laws providing for, among others, that in the event of CCIL filing for voluntary winding-up or if any insolvency proceeding is admitted against CCIL before any court or tribunal, all outstanding trades with CCIL under all segments shall be terminated by way of close-out at a predetermined price as may be notified. A new Bye-Law 16 was also inserted to provide that in the event of any default or insolvency of CCIL, a non-defaulting member shall have the right of set-off of the net payables or net receivables across all segments of CCIL that have become due and payable resulting in a net pay-in or net pay-out position.

  The Forex Forward Regulations of CCIL were also amended to provide that on receipt of a notice seeking termination and close out, CCIL shall at its discretion, not later than two business days thereafter, by notifying all members of this segment to effect close-out of outstanding trades of such member or to close-out all outstanding trades in the segment.

- On August 14, 2015, certain amendments to Chapter XV Bankruptcy of Clearing Corporations of CCIL's Bye-Laws and Regulations were made to reflect that in the event of CCIL filing for voluntary winding-up or if any insolvency proceeding is admitted against CCIL before any court or tribunal, all outstanding trades with CCIL under all segments shall be terminated forthwith by way of close-out at the mark to market prices of CCIL as at the end of the previous business day. On such close-out, the member-wise mark-to-market loss or gain (as the case may be) in respect of the trades shall be determined and notified to each member.

19. IRDA issues new guidelines on IR derivatives

- On June 11, 2014, the Insurance Regulatory and Development Authority (IRDA) in India issued its Guidelines on Interest Rate Derivatives, replacing earlier IRDA guidelines on the same subject. These guidelines set out that insurers are allowed to deal as users with forward rate agreements (FRAs), interest rate swaps (IRS) and exchange traded interest rate futures.

  Participants can also undertake different types of plain vanilla FRAs and IRS transactions; however it should be noted that IRS having explicit /implicit option features are prohibited. Participants must also meet requirements relating to, among others, the permitted purpose of dealing in interest rate derivatives and regulatory exposure and prudential limits. Of interest is the requirement that insurers are advised to ensure documentation requirements are met and completed in all aspects as per relevant guidelines of the Reserve Bank of India and using ISDA documentation.

The guidelines further state that in order to settle the mark to market profits/losses and maintenance of collateral, counterparties should enter into suitable two-way Credit Support Annex in order to mitigate counterparty risk. The guidelines also note that derivative contracts shall be subject to Indian law and the jurisdiction of the Indian courts and be consistent with relevant guidelines and regulations.

20. India and US sign FATCA agreement

- On June 27, 2014, RBI issued a circular on the inter-governmental agreement (IGA) with the United States for the implementation of FATCA. India and the US have reached an agreement in substance and India is now treated as having an IGA with effect from April 11.

  The IGA would only be signed however after the approval of Cabinet. Indian financial institutions would have until December 31, 2014 to register with the US authorities and obtain a Global intermediary Identification Number (GIIN). Indian financial institutions having overseas branches in Model 1 jurisdictions, including those jurisdictions where an agreement under Model 1 has been reached in substance would have up to December 31 to register with US authorities and obtain a GIIN. Overseas branches of Indian financial institutions in a jurisdiction having an IGA under Model 2 or in a jurisdiction that does not have an IGA in place but permits financial institutions to register and agree to an FFI agreement may register with US authorities and obtain a GIIN before July 1 to avoid potential withholding under FATCA.

21. RBI designates domestic systemically important banks

- On July 22, 2014, RBI released its Framework for dealing with Domestic Systemically Important Banks (D-SIBs). The Framework considers the methodology to be adopted by RBI in identifying D-SIBs as well as promulgating additional regulatory or supervisory policies which D-SIBs will be subject to.

  RBI has based its assessment methodology primarily on the Basel Committee on Banking Supervision (BCBS) methodology for identifying Global Systemically Important Banks (G-SIBs). Indicators which would be used for assessment include size, interconnectedness, substitutability and complexity. Based on the sample of banks chosen for computation of their systemic importance, a relative composite systemic importance score of the banks will be computed. RBI will then determine a cut-off score beyond which banks will be considered as D-SIBs.
  RBI noted that based on data as at March 31, 2013, it was expected that about four to six banks may be designated as D-SIBs under various buckets. D-SIBs would be subject to differentiated supervisory requirements and higher intensity of supervision, taking into account the risks they pose to the system. The computation of systemic important scores would be carried out at yearly intervals. The names of the banks classified as D-SIBs would be disclosed in August of every year starting from 2015.

- On August 31, 2015, RBI announced the designation of State Bank of India and ICICI Bank Ltd as D-SIBs.

  RBI issued the framework for dealing with D-SIBs on July 22, 2014, which requires the RBI to disclose the names of banks designated as D-SIBs every August, starting from August 2015. The framework also requires D-SIBs to be placed in four buckets depending upon their systemic importance scores. Based on the bucket in which a D-SIB is placed, an additional common equity tier 1 (CET1) requirement has to be applied to it. ICICI Bank Ltd has been placed in the first bucket (additional CET1 of 0.2%), while State Bank of India has been placed in the third bucket (additional CET1 of 0.6%).

The additional CET1 requirements for D-SIBs would be applicable from April 1, 2016 in a phased manner, and would become fully effective from April 1, 2019. The additional CET1 requirement would be in addition to the capital conservation buffer.

22. RBI and ECB sign MOU on cooperation

- On January 14, 2014, RBI and ECB signed a MoU on cooperation in the field of central banking. The MoU provides a framework for regular exchange of information, policy dialogue and technical cooperation between the two institutions. Technical cooperation may take the form of joint seminars and workshops in areas of mutual interest in the field of central banking.

23. Guidelines for Implementation of Countercyclical Capital Buffer

- On February 5, 2015, RBI issued its guidelines for implementation of Countercyclical Capital Buffer (CCCB). The CCCB may be maintained in the form of Common Equity Tier 1 (CET1) capital or other fully loss absorbing capital only and may vary from 0-2.5% of total risk weighted assets (RWA) of the banks. The CCCB decision would normally be pre-announced with a lead of four quarters. However, depending on the CCCB indicators, the banks may be advised to build up requisite buffer in a shorter span of time.

  The credit-to-GDP gap will be the main indicator in the CCCB framework in India and will be used in conjunction with GNPA growth. The CCCB framework will have two thresholds, a lower and an upper threshold, with respect to the credit-to-GDP gap. The lower threshold of the credit-to-GDP gap where the CCCB is activated shall be set at 3%. The upper threshold where CCCB reaches its maximum shall be kept at 15% of the credit-to-GDP gap. In between the 3- 15% of the credit-to-GDP gap, the CCCB shall increase gradually from 0-2.5% of RWA of the bank but the rate of increase would be different based on the level/position of credit-to-GDP gap.

24. RBI issues draft guidelines on covered options

- On June 25, 2015, RBI issued its draft guidelines on the writing of covered options by resident exporters and importers against their contracted exposures. Persons resident in India are currently permitted to buy plain vanilla European call or put options to hedge foreign currency exposures. The RBI now intends to permit resident exporters and importers of goods and services to sell standalone plain vanilla European call or put options against their contracted export or import exposures to any AD Cat-I bank in India, subject to certain operational guidelines and prescribed terms and conditions as set out in the draft guidelines.

25. SEBI Developments

- On September 1, 2015, the Securities And Exchange Board of India (SEBI) announced that its Committee on Clearing Corporations had tabled a report. The committee was established in November 2012 with the following broad terms of reference:

- The viability of introducing a single clearing corporation (CC) or interoperability between different CCs;
- Investment by a recognised CC and the manner of utilisation of CC profits;
- To examine and review the existing regulation of transfer of profits every year by recognised stock exchanges to the fund of a recognised CC;
- To define 'the liquid assets' of CCs for the purpose of calculating the net worth of a CC; and
- Any other matter that the committee considers relevant or incidental to this. The issue of transfer of depositories' profits to their investor protection fund (IPF) was referred to the committee.

SEBI also announced it would seek public comments on the recommendations of the committee. These include:

- On the interoperability/viability of a single CC, the committee recommended that maintaining separate CCs for each exchange would be prudent at this stage. However, the SEBI may keep the interoperability option open and consider the proposal for implementation when conditions are met, which include clear intent of the participants coming together and having a suitable framework in place to the satisfaction of the SEBI.
- On investments by CCs, the committee recommended that CCs be permitted to invest in fixed deposits and central government securities. However, CCs may not invest in instruments like non-convertible debentures (NCDs), commercial paper (CP) and money-market mutual funds, as these instruments carry credit/liquidity risks.
- As the requirement of a core settlement guarantee fund (SGF) has already been met, it was recommended that the requirement to transfer 25% of every recognised stock exchange's profits to the fund of the recognised clearing corporation may no longer be required. However, the risk management review committee of the SEBI may review the stress-test model used to determine the minimum required corpus of the core SGF before making such a departure.
- The 'liquid assets' of CCs for the purpose of calculating net worth shall comprise fixed deposits/central government securities. Other instruments like NCDs, CP and money-market mutual funds carry credit/liquidity risks and so cannot be considered in the calculation.
- With regards to the transfer of profits by depositories, it was recommended they may transfer 5%, or such percentage as may be prescribed by the SEBI, of their profits from depository operations every year to the IPF since the date of amendment of the SEBI (Depositories and Participants) (Amendment) Regulations 2012 requiring transfer of profits.

- On September 8, 2015, SEBI issued the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) (Amendment) Regulations, 2015. The regulations impose requirements on clearing members, including self-clearing members, such as:
  - Prohibiting a stock broker carrying on the activity of buying, selling or dealing in securities (other than commodity derivatives) from the activity of buying, selling or dealing in commodity derivatives unless permitted by SEBI, and vice-versa;
  - Imposing fees on members dealing in securities, other than commodity derivatives;
  - Imposing non-refundable fees for applications made under the regulations;
  - Imposing new net-worth and deposit requirements for members dealing in securities other than commodity derivatives and members dealing in commodity derivatives.

- On September 28, 2015, SEBI commenced regulating the Indian commodity derivatives market; taking over from the Forward Markets Commission (FMC). The SEBI created a number of new departments to fulfil this additional responsibility and has named 12 commodity exchanges as recognised stock exchanges. The SEBI also released a circular to regional commodity exchanges on risk management. The circular sets out a number of requirements that must be met by April 1, 2016 at the latest, including in the areas of:

- Member deposits;
- Ordinary margins;
- Other margins;
- Additional ad-hoc margins;
- Margin computation at client level;
- Margin collection and enforcement;
- Collateral types to cover margin/deposit requirements; and
- Mark-to-market settlement.

- On October 6, 2015, SEBI released a circular announcing a medium term framework for Foreign Portfolio Investor (FPI) limits in Government securities in consultation with the Government of India.

  Key notable changes include:

  - limits for FPI investment in debt securities shall henceforth be announced/fixed in rupee terms;
  - limits for FPIs in Central Government securities (Government debt, Long-term Government debt and State Development Loans (SDLs)) will be increased in 2 stages, on 12 October 2015 and 1 January 2016;
  - a security-wise limit of 20% of the amount outstanding under each Central Government security. Existing investments in the Central Government securities where aggregate FPI investment is over 20% may continue. However, fresh purchases by FPIs in these securities shall not be permitted until the corresponding security-wise investments fall below 20%;
  - all future investments by Long Term FPIs shall be required to be made in Central Government securities and SDLs which have a minimum residual maturity of 3 years;
  - investment of coupons received by FPIs on their existing investments in Central Government securities as well as SDLs shall continue to be outside the applicable limits; and
  - depositories shall put in place the necessary systems for the daily reporting by the custodians of the FPIs and shall also disseminate on their websites the negative investment list, the aggregate security-wise holdings by FPIs and the coupon investment data along with the daily debt utilization data.

- On January 11, 2016, the SEBI published a circular to commodity derivatives exchanges, setting out the circumstances under which a commodity derivatives exchange would be liable to exit. This builds on an existing circular of May 19, 2015. In the new circular, SEBI stipulates that if there is no trading operation on the platform of any commodity derivatives exchange for more than 12 months, then the exchange shall be liable to exit. In addition, all national commodity derivatives exchanges must continuously meet the turnover criteria of Rs1000 crores per annum. Regional commodity exchanges must ensure they have at least 5% of the nation-wide market share of the commodity principally traded on their platform. In case the national and regional commodity exchanges fail to meet these criteria for two consecutive years, then they shall be liable to exit.

In the event a recognised commodity derivatives exchange, for any reason, suspends its trading operations, it may only resume trading after ensuring that adequate and effective trading systems, clearing and settlement systems, monitoring and surveillance mechanisms, and risk management systems are put in place. They must also comply with all other regulatory requirements stipulated by SEBI. In addition, these recognised commodity derivatives exchanges can only resume trading operations after obtaining prior approval from SEBI.

The circular also sets out requirements for commodity derivatives exchanges that want to voluntarily surrender their recognition.

- On January 15, 2016, the Securities and Exchange Board of India (SEBI) announced it has decided to make a number of regulatory changes with regards to the trading of agricultural commodities to curb speculation and volatility in agricultural commodity prices. These include:

  - Reducing position limits for near-month contracts for both the member and client level from 50% to 25% of the overall position limits for all contracts expiring in the month of March 2016 and onwards; and

  - Reducing the daily price limits from 6% to 4%.

  SEBI has reviewed the performance and operation of forward contracts being traded on commodity derivatives exchanges, and decided to stop participants entering into new forwards contracts until further notice. However, existing contracts will be allowed to be settled as per the terms of the contracts.

- On January 15, 2016, SEBI announced it has decided to enhance the gross open position limits for bank stock brokers as authorised by the RBI with respect to USD-INR.

  Gross open positions across all contracts shall not exceed 15% of the total open interest or $100 million, whichever is higher. For bank stock brokers, as authorised by the RBI, the gross open position across all contracts shall not exceed 15% of the total open interest or $1 billion, whichever is higher.

  The RBI will keep SEBI and the stock exchanges informed about the bank stock brokers that are authorised to have enhanced position limits.

- On March 9, 2016, the Securities and Exchange Board of India (SEBI) announced it will permit recognised stock exchanges to introduce cross-currency futures and options contracts on EUR-USD, GBP-INR and USD-JPY, and currency options on EUR-INR, GBP-INR and JPY-INR currency pairs. The existing limits applicable to USD-INR contracts and non-USD-INR will remain unchanged.

  Before launching these products, the stock exchange/clearing corporation must submit a proposal to the SEBI for approval, containing information on contract specifications, the risk management framework, surveillance systems and compliance. Stock exchanges are also required to implement dynamic price bands, so as to prevent acceptance of orders placed beyond the price limits set by the stock exchanges.

  It has also been decided, in consultation with the Reserve Bank of India, to allow trading in cross-currency derivatives contracts between 9:00am and 7:30pm. Accordingly, stock exchanges are permitted to set their trading hours for cross-currency derivatives contracts subject to the fulfillment of certain conditions.

- On April 25, 2016, the Securities and Exchange Board of India (SEBI) released a circular announcing the alignment of provisions relating to proprietary trading carried out by stock brokers of commodity derivatives exchanges with those for the securities market. Provisions of previous circulars applicable to commodity derivatives brokers, requiring disclosure of whether they trade on a proprietary basis, are now applicable to all commodity derivatives exchanges. Similarly, all commodity derivatives exchanges are now required to ensure compliance with the SEBI provisions on pro-account trading terminals.

- On May 4, 2016, the Securities and Exchange Board of India (SEBI) published a circular setting out new requirements for clearing corporations in the areas of investment policy, transfer of profits and liquid assets calculations, as recommended by a committee formed to examine these issues. Accordingly, clearing corporations will now be required to:

  - Consider principles stipulated by SEBI, and align their investment policies for utilisation of profits and investments to these principles;
  - Calculate their net worth according to a set of eligible investment instruments specified by SEBI; and
  - Transfer 25% of profits to the core settlement guarantee fund, refund any contributions made by clearing members and top up any shortfall in the fund at any time.

- On May 19, 2016, the Securities and Exchange Board of India (SEBI) issued a release detailing the minutes of its board meeting. The focus of the meeting was on eligibility and investment norms for offshore derivative instruments (ODIs). The board approved the following measures on the issuance of ODIs:

  - In order to ensure uniformity, Indian know-your-customer (KYC) and anti-money laundering norms will now be applicable to all ODI issuers, in line with those for domestic investors. ODI issuers will be required to identify and verify the beneficial owners in the subscriber entities that hold in excess of the threshold defined under Rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005. This is currently 25% for a company and 15% for partnership firms/trusts/unincorporated bodies. In such cases, the ODI issuers will be required to identify and verify the persons who control the operations of these entities.
  - The KYC review will have to be conducted on the basis of risk criteria, as determined by the ODI issuers. This will be at the time of on-boarding and once every three years for low-risk clients, and at the time of on-boarding and every year for other clients.
  - ODI subscribers will have to seek prior permission of the original ODI issuer for the transfer of ODIs.
  - In addition to the mandatory monthly reporting of ODI holders' details, ODI issuers will also have to include all intermediate transfers during the month.
  - ODI issuers will be required to file suspicious transaction reports with the Indian Financial Intelligence Unit in relation to the ODIs issued by it.
  - ODI issuers will be required to carry out reconfirmation of ODI positions on a semiannual basis.
  - ODI issuers will be required to put in place the necessary systems and carry out a periodical review and evaluation of its controls, systems and procedures with respect to ODIs.

Amendments to the relevant regulations and circulars will be made to bring these measures into effect.

- On June 10, 2016, SEBI issued a circular detailing the revised eligibility and investment norms for offshore derivative instruments (ODIs). This circular brings into effect the measures that were approved at the SEBI board meeting on May 19 and will come into effect on July 1. The reporting of the ODI in the revised format will be applicable for the month of July, to be submitted on or before August 10.

- On June 29, 2016, SEBI issued a circular clarifying the following points with respect to foreign portfolio investors (FPIs) issuing offshore derivative instruments (ODIs):

  - ODI subscribers under foreign institutional investor (FII) regulations can continue to subscribe to ODIs under the FPI regime, subject to complying with regulation 22 of SEBI FPI Regulations, 2014, and meeting with other eligibility criteria. Those ODI subscribers that do not meet these criteria can continue to hold their positions until expiry or December 31, 2020, whichever is earlier. These subscribers cannot take fresh positions or renew the old positions.
  - Fresh ODIs can be issued to entities that comply with Regulation 22 of SEBI FPI Regulations, 2014, along with other conditions and circulars that may be notified by SEBI.

- On June 30, 2016, SEBI released a set of frequently asked questions (FAQs) on the SEBI (Foreign Portfolio Investors) Regulations 2014. The FAQs give guidance on the following areas of those regulations:

  - Transition from the foreign institutional investors (FII) regime to the foreign portfolio investors (FPI) regime;
  - Transition from the qualified foreign investors (QFI) regime to the FPI regime;
  - Eligibility of FPIs;
  - Roles and responsibilities of designated depositary participants (DDPs);
  - Generation of an FPI registration certificate and fees;
  - Clubbing of investment limits;
  - FPI investments in debt securities;
  - Offshore derivative instruments (ODIs); and
  - Replies to additional queries received from DDPs.

- On July 15, 2016, SEBI issued a circular advising clearing corporations not to accept fixed deposit receipts (FDRs) from trading/clearing members as collateral if these are issued by the trading/clearing member themselves, or banks who are associates of the trading/clearing member. Trading/clearing members who have deposited such collateral are required to replace these with other eligible collateral within a period of six months from the date of the circular.

  Clearing corporations are also required to take the necessary steps to put in place systems for the implementation of the circular, including necessary amendments to the relevant bye-laws, rules and regulations. They are also required to bring the provisions of this circular to the notice of their members, implement the provisions of this circular, and communicate to SEBI the status of implementation.

  These guidelines are in line with the Principles for Financial Market Infrastructures published by the International Organization of Securities Commissions.

- On August 19, 2016, SEBI issued a circular reviewing the position limits for hedgers in the commodity derivatives market. SEBI has instructed commodity derivatives exchanges to stipulate a hedge policy for granting hedge limits to their members and clients. The exchanges should adhere to the following broad guidelines while granting hedge limit exemptions to their members and clients:

  - The hedge limit to be granted by the exchanges shall be in addition to the normal position limit. The hedge limit is non-transferrable and shall be utilised only by the hedger to whom the limit has been granted;
  - This hedge limit granted for a commodity derivative shall not be available for the near month contracts;
  - Hedge limits for a commodity shall be determined on a case-to-case basis, depending on the applicant's hedging requirement in the underlying physical market based upon certain guidelines and other factors as the exchanges may deem appropriate;
  - The exchanges shall undertake proper due diligence by verifying documentary evidence of the underlying exposure and ensuring that the hedge limit granted is genuine;
  - At any point of time during the hedge period, hedging positions taken in derivatives contracts by the hedger across multiple exchanges/contracts should not exceed its actual or anticipated ;exposure in the physical market, even if there is a usable hedge limit available as per allocation made by the exchanges to the hedger;
  - A hedger having availed of hedge limits shall preserve relevant records for a period of minimum three years for inspection by SEBI or the exchange;
  - The exchanges shall disclose on their website the hedge position allocated to various hedgers, indicating the period for which approval is valid, in an anonymous manner and in a fixed format.

  These guidelines come into effect from September 29, in supersession of all earlier directives issued by the Forward Markets Commission.

  On September 1, 2016, SEBI issued a circular outlining additional risk management measures to be implemented by national commodity derivatives exchanges. The risk management measures relate to initial margin, procedures for regaining a matched book, minimum capital levels for clearing members, and default waterfall requirements, as well as several other risk management issues.

- On September 28, 2016, SEBI announced that commodity derivatives exchanges will introduce trading in options. Commodity derivatives exchanges will need to take approval from SEBI prior to the trading of options, for which detailed guidelines will be introduced in due course.

  Commodity derivatives exchanges are required to make the necessary amendments to the relevant by-laws, rules and regulations for the implementation of trading in options.

- On December 16, 2016, SEBI announced that the following commodity derivatives exchanges will be designated as systemically important financial market infrastructures (FMIs), and will be required to comply with the Principles for Financial Market Infrastructures published by the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions:

  - National Commodity & Derivatives Exchange Ltd
  - Multi Commodity Exchange of India Ltd

Commodity derivatives exchanges that are currently providing in-house clearing services and that had an annual turnover above a certain level in the previous financial year shall be deemed to be systemically important FMIs. This criteria may be reviewed by SEBI from time to time.

26. RBI Developments & Circulars

- On October 8, 2015, RBI announced the liberalisation of the Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000 for Authorised Dealers Category-I (AD Cat-I) banks, regarding Booking of Forward Contracts – Liberalisation, in terms of which resident individuals, firms and companies, to manage / hedge their foreign exchange exposures arising out of actual or anticipated remittances, both inward and outward, are allowed to book forward contracts, without production of underlying documents, up to a limit of USD 250,000 based on self-declaration. The RBI has decided to allow all resident individuals, firms and companies, who have actual or anticipated foreign exchange exposures, to book foreign exchange forward and FCY-INR options contracts up to USD 1,000,000 without any requirement of documentation on the basis of a simple declaration. While the contracts booked under this facility would normally be on a deliverable basis, cancellation and rebooking of contracts are permitted. Based on the track record of the entity, the concerned AD Cat-I bank may, however, call for underlying documents, if considered necessary, at the time of rebooking of cancelled contracts.

- On February 8, 2016, the Reserve Bank of India (RBI) released a report from the working group on the introduction of interest rate options. In 2015, the RBI's technical advisory committee on financial markets had constituted a working group to consider and provide recommendations on the framework for the introduction of interest rate options in India. The working group was to make specific recommendations on the product design (including appropriate tenor and benchmarks), suggest a feasible market microstructure, and recommend appropriate guidelines for valuation and capital requirements. In its report, the working group made the following key recommendations:

  - As a start, to consider permitting simple call and put options, caps, floors, collars and swaptions. Complex structures may be considered subsequently.
  - Both over-the-counter (OTC) and exchange-traded options may be introduced. However, for the OTC segment, only European options may be permitted. For exchanges, both US and European structures may be permitted.
  - The Fixed Income Money Market and Derivatives Association of India and the Financial Benchmark India Private Limited may provide a list of eligible domestic money or debt market rates.
  - Subject to the approval of the relevant regulators, banks, primary dealers and other regulated entities that have sound financials and prudent risk management may be allowed as market markers. All domestic entities that have an underlying interest rate risk may be permitted as users.

  No documentation relating to underlying exposures is required for exposures up to Rs 5 crores. Large corporates may be allowed to take hedging positions for their anticipated interest rate exposures.

- On February 25, 2016, the Reserve Bank of India (RBI) issued the master direction on Know Your Customer (KYC), anti-money laundering and combating of financing of terrorism. The master direction consolidates all relevant instructions issued by different departments of the RBI on the subject, and will be applicable to all its regulated entities.

RBI master directions consolidate instructions on rules and regulations framed by the central bank under various acts, including banking issues and foreign exchange transactions. The process of issuing master directions involves issuing one master direction for each subject matter, covering all instructions on that subject. Any change in the rules, regulation or policy is communicated during the year by way of circulars or press releases. The master directions will be updated whenever there is a change in the rules/regulations or there is a change in the policy. Explanations of rules and regulations will be issued after the release of master directions in easy to understand language wherever necessary. The existing set of master circulars issued on various subjects will stand withdrawn with the issue of the master direction on the subject.

- On April 5, 2016, the Reserve Bank of India (RBI) Governor announced the First Bi-monthly Policy Statement for 2016-2017. This statement reviews the progress on various monetary, development, and regulatory policy measures announced by the RBI in recent policy statements. The statement also sets out new measures to be implemented for:
    - Margin requirements for non-centrally cleared OTC derivatives. A consultation paper will be issued by end-April 2016, with the target of a final framework by end-July 2016.
    - Revising the regulatory framework for measuring counterparty credit risk (SA-CCR), the capital treatment of bank exposures to CCPs, and Pillar 3 disclosure requirements. Draft guidelines will be issued by May 31, 2016. There will also be a revision to the securitization framework, for which draft guidelines will be issued by June 2016.
    - The introduction of money market futures. Specifics will be decided in conjunction with the Securities and Exchange Board of India (SEBI) by end-September 2016.
    - A policy framework for the introduction of trading platforms for OTC derivatives. The draft framework will be released by end-September 2016. There will also be a review of the existing guidelines on OTC derivatives by end-May 2016.
    - The easing of restrictions on plain vanilla currency options. Draft guidelines will be issued by end-September 2016.
    - Changes in the methodology for the RBI Indian Rupee reference rates effective May 2, 2016, and
    - Allowing Non-Resident Indians (NRI's) to participate in the Exchange Traded Currency Derivatives (ETCD) market. Guidelines will be issued in consultation with SEBI by end-June 2016.

- On April 7, 2016, the Reserve Bank of India (RBI) issued a release calling for public comments on the draft operational guidelines for the hedging of currency risk arising out of trade transactions by residents under the contracted exposure route.

    The draft proposal introduces a more liberalised framework for exporters and importers by reducing the documentary requirements for hedging under the contracted exposure route. Under the proposed framework, clients will be able to book foreign exchange derivatives contracts for hedging trade transactions based on underlying exposure on the basis of self-declaration, subject to the operational guidelines, terms and conditions outlined in the draft proposal.

- On April 28, 2016, the Reserve Bank of India (RBI) released a circular permitting the waiver of physical confirmations of OTC trades on the Financial Market Trade Reporting and Confirmation Platform (F-TRAC). The RBI had issued an earlier circular in 2014 that allowed the waiver of physical confirmations of trades subject to participants entering into a bilateral agreement.

- On June 23, 2016, the Reserve Bank of India (RBI) issued a circular permitting resident exporters and importers of goods and services to write standalone, plain vanilla European options against their contracted exposure to any authorised dealer bank in India. These guidelines will be reviewed after one year, if needed.

- On September 14, 2016, the RBI announced the formation of a working group to review the guidelines for the hedging of commodity price risk by residents in overseas markets. The working group is constituted of members from the RBI, the Securities and Exchange Board of India (SEBI), commercial banks and corporates. The working group may also invite representatives from any sector relevant to its terms of reference, and interested parties may also email their suggestions and comments. The working group will submit its report by February 28, 2017.

- On September 21, 2016, the Reserve Bank of India (RBI) announced that Legal Entity Identifier India Limited (LEIL) will be the designated issuer of legal entity identifiers under the amended Payment and Settlement Systems Act of 2007.

- On November 7, 2016, the Reserve Bank of India (RBI) issued clarifications on hedging practices in the External Commercial Borrowing (ECB), market with a view to provide clarity and bring uniformity in hedging practices in the market so as to effectively address currency risk at a systemic level. The RBI issued the following clarifications:

  1. Coverage

  Wherever hedging has been mandated by the RBI, the ECB borrower will be required to cover principal as well as coupon through financial hedges. The financial hedge for all exposures on account of ECB should start from the time of each such exposure (i.e. the day liability is created in the books of the borrower).
  2. Tenor and rollover

  A minimum tenor of one year of financial hedge would be required, with periodic rollover ensuring that the exposure on account of ECB is not unhedged at any point during the currency of the ECB.
  3. Natural Hedge

  A natural hedge, in lieu of financial hedge, will be considered only to the extent of offsetting projected cash flows or revenues in a matching currency, net of all other projected outflows. For this purpose, an ECB may be considered naturally hedged if the offsetting exposure has the maturity or cash flow within the same accounting year. Any other arrangements or structures where revenues are indexed to foreign currency will not be considered as natural hedge.

  The designated AD Category-I bank will have the responsibility of verifying that the 100 percent hedging requirement is complied with. All other aspects of the ECB policy shall remain unchanged.

- On November 4, 2016, RBI released draft operational guidelines to provide greater flexibility for hedging the currency risk arising from current account transactions of Indian subsidiaries of multinational companies by the parent or any non-resident group entity. The draft guidelines apply to all OTC or exchange-traded currency derivatives that the Indian subsidiary is eligible to undertake.

  Terms and conditions of the draft guidelines include:

- Non-resident entity should be incorporated in a country that is member of the Financial Action Task Force (FATF) or member of a FATF-style regional body;
- The non-resident entity may approach an authorised bank that handles the foreign exchange transactions of its subsidiary for hedging the currency risk of and on the latter's behalf, either directly or through its banker overseas;
- The Indian subsidiary shall be responsible for compliance with the rules, regulations and directions issued under the Foreign Exchange Management Act (FEMA) and any other laws or regulations applicable to these transactions in India;
- The transactions under this facility will be covered under a multiple party agreement involving the Indian subsidiary, the non-resident entity and the authorised bank;
- The concerned authorised bank shall be responsible for monitoring all hedge transactions booked by the non-resident entity, and also responsible for ensuring that the Indian subsidiary has the necessary underlying exposure for the hedge transactions;
- Authorised banks should report hedge contracts booked under this facility by the non-resident related entity to CCIL's trade repository with a special identification tag.

Comments on the draft guidelines are due by November 11, 2016.

- On December 1, 2016, RBI published the final large exposures framework (LEF) in line with the draft guidelines published on August 25, as summarized below:

  - Banks will have to comply with the LEF at the consolidated (group) level, as well as at the solo (branch) level;
  - A bank's exposure to all its counterparties and groups of connected counterparties will be considered for exposure limits, with certain defined exceptions;
  - The sum of all exposure values of a bank to a counterparty or a group of connected counterparties is defined as a large exposure (LE) if it is equal to or above 10% of the bank's eligible capital base;
  - The sum of all the exposure values of a bank to a single counterparty must not be higher than 20% of the bank's available eligible capital base at all times; and
  - The sum of all the exposure values of a bank to a group of connected counterparties must not be higher than 25% of the bank's available eligible capital base at all times.

  The LEF will be effective from April 1, 2019.

27. Bankruptcy and Bank Resolution and Recovery

- On April 28, 2016, the joint committee on insolvency and bankruptcy code submitted its report to parliament. The committee was constituted in December 2015 to examine the code and propose recommendations. The report included proposed modifications to various clauses of the code, including time frames for insolvency resolution and liquidation, requirement of creditor consent, and the inclusion of public financial institutions in the definition of financial institutions.

- On September 29, 2016, an Indian Ministry of Finance committee submitted a draft of the Financial Resolution and Deposit Insurance Bill 2016. Some key provisions of the draft bill are:
    - Establishment and structure of a resolution corporation;
    - Funds and accounts of the resolution corporation;
    - Designation of systemically important financial institutions (SIFIs);
    - Classification of institutions based on their risk to viability;
    - Resolution and restoration plans;
    - Stay on termination rights;
    - Tools of resolution;
    - Receivership and liquidation; and
    - Cross-border insolvency

28. Fintech

- On July 14, 2016, the Reserve Bank of India (RBI) announced the formation of a 13-member inter-regulatory working group to study regulatory issues related to financial technology and digital banking in India. The working group was formed based on the recommendation of the sub-committee of the Financial Stability and Development Council (FSDC), in view of the growing significance of fintech innovations and their interactions with the financial sector as well as financial sector entities. The working group will be chaired by RBI executive director Shri Sudarshan Sen and will focus on:

    - Gaining a general understanding of the major fintech innovations and developments, counterparties and entities, technology platforms involved, and how markets and the financial sector are adopting new delivery channels, products and technologies.
    - Assessing the opportunities and risks arising for the financial system from digitisation and use of financial technology, and how these can be utilised for optimising financial product innovation and delivery to the benefit of end users and other stakeholders.
    - Assessing the implications and challenges for the various financial sector functions, such as intermediation, clearing, and payments, being adopted by non-financial entities.
    - Examining cross-country practices and studying global models of successful regulatory responses to disruption.
    - Drafting appropriate regulatory responses with a view to re-aligning and re-orienting regulatory guidelines and statutory provisions for enhancing fintech and digital banking associated opportunities, while simultaneously managing the evolving challenges and risk dimensions.

29. RBI permits trading in money market futures

- On October 28, 2016, the Reserve Bank of India (RBI) issued a circular permitting cash-settled interest rate futures based on money-market benchmarks. This is in addition to futures based on the 91-day Treasury Bill, which are already permitted. Exchanges are free to select the underlying money-market benchmark and structure the other details of the contracts. However, RBI approval of the contract specifications is required before any new or modified futures contract is introduced for trading on the exchanges.

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
- March 14, 2014: ISDA submission to CCIL on Intra-day Mark-to-Market Margin Collection in CCIL's CCP Cleared Segments
- March 21, 2014: ISDA submission to CCIL on Segregation and Portability Related Changes & Clearing member Structure
- June 6, 2014: ISDA submission to Reserve Bank of India regards to the Report of the Working Group on Resolution Regimes for Financial Institutions
- January 19, 2015: ISDA submission to The Clearing Corporation of India Ltd. regards to the Consultation Paper on Default Handling: Auction of Trades & Positions of Defaulter.
- September 25, 2015: ISDA submission to The Clearing Corporation of India Limited with regards to the Consultation Paper on CCP Recovery and Resolution Mechanism.
- March 31, 2016: ISDA submission to The Clearing Corporation of India Limited with regards to the Consultation Paper on the collection of end of day incremental MTM margin.
- April 29, 2016: ISDA letter to RBI on Industry Associations Recommend Global Adoption of Entity-Based Reporting.
- June 8, 2016: ISDA submission to RBI's discussion paper eon margin requirements for non-centrally cleared derivatives.
- July 22, 2016: ISDA submission to RBI on Draft Guidelines for computing exposure for counterparty credit risk arising from derivative transactions.
- October 14, 2016: ISDA preliminary submission to Ministry of Finance on Consultation on the draft Financial Resolution and Deposit Insurance Bill, 2016 and the Report of the Committee to Draft Code on Resolution of Financial Firms. This submission is not yet public.

- November 4, 2016: ISDA submission to Ministry of Finance on Consultation on the draft Financial Resolution and Deposit Insurance Bill, 2016 and the Report of the Committee to Draft Code on Resolution of Financial Firms. 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:	Looking to set up a CCP. No announced plans for TR.

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.

- On December 13, 2016, the Otoritas Jasa Keuangan (OJK) announced that the Basel Committee on Banking Supervision (BCBS) completed its review of Indonesia's implementation of the risk-based capital framework. The country's liquidity coverage ratio (LCR) regulations are assessed as compliant, the highest of the four possible grades. The country's capital framework is assessed as largely compliant, one notch below the highest grade.

  The Indonesian authorities amended their regulations during 2016 to address differences identified between the Indonesian rules and the Basel framework. This reflects the commitment of the Indonesian authorities to adopt global prudential standards, both now and as forthcoming standards come into effect.

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 would 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.

- In August 2015, the Indonesian Supreme Court announced that it had rejected an appeal filed by Nine AM Ltd in connection with the annulment of the loan agreement described above. The announcement indicates that previous judgments handed down by the West Jakarta District Court and subsequently by the Jakarta High Court, have been upheld by the Indonesian Supreme Court.

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.

On September 18, 2014, Bank Indonesia organized socialization activities to announce amendments to Bank Indonesia regulations concerning foreign currency transactions in order to deepen financial markets. Bank Indonesia would promulgate several provisions that summarize and elaborate upon a number of existing regulations regarding foreign exchange transactions amended to provide increased flexibility and a more precise explanation to market participants when conducting foreign exchange transactions. The amendment covers, amongst others, relaxing and clarifying underlying assets, clarifying netting to settle a transaction, as well as restrictions on extending credit or financing in a foreign currency and/or the rupiah for derivative transactions. The amended regulation officially supersedes the following six Bank Indonesia Regulations:

- PBI 10/28/PBI/2008 concerning the Purchase of Foreign Exchange against the Rupiah.
- PBI 10/37/PBI/2008 and PBI 11/14/PBI/2009 concerning Foreign Exchange Transactions against the Rupiah.
- PBI No.7/14/PBI/2005; PBI No.14/10/PBI/2012; and PBI No.16/9/PBI/2014 concerning Restrictions on Rupiah Transactions and the Extension of Foreign Currency Credit by a Bank.

Bank Indonesia would also issue an amended regulation concerning hedging transactions between a bank and Bank Indonesia, representing efforts to augment hedging liquidity on the domestic foreign exchange market through the expansion of underlying assets, increase flexibility and assurance for market participants by allowing the extension of hedging contracts, as well as provide flexibility over swap transaction tenor extensions.

- In May 2015, Bank Indonesia announced that it together with State Institutions and fund-related agencies will continue to coordinate and cooperate to support the application of hedging transactions in order to provide optimal contribution in maintaining the stability of the Indonesian rupiah exchange.

5. Bank Indonesia amended regulation on FX transactions

- On September 18, 2014, Bank Indonesia announced certain amendments to existing Bank Indonesia regulations relating to foreign currency transactions against the Indonesia rupiah. These amendments were made in relation to foreign exchange transactions against the rupiah that are settled between banks and their domestic customers, banks and a foreign party, as well as banks and Bank Indonesia. These amendments are intended to deepen the financial markets, bolster economic activity and minimise speculative transactions against the rupiah. The amendments cover certain key elements including clarifying netting for the purposes of settling a foreign exchange transaction against the rupiah.

6. Bank Indonesia clarified foreign currency hedging regulations

- Bank Indonesia issued a revised Regulation (No.16/21/PBI/2014)(in Bahasa only) and Circular Letter (16/24/DKEM/2014)(in Bahasa only) in January to clarify requirements and address concerns raised in the original rules. The new regulation and circular letter would supersede the previous regulation in their entirety.

From January 1, 2017, the hedging requirements set out in the revised regulation and circular letter must be fulfilled with an Indonesian bank, including Indonesian branches of foreign banks. Bank Indonesia has the ability to specify minimum hedging requirements and thresholds, and has confirmed that the long introduction period is meant to assist Indonesian banks prepare for the anticipated increase in demand for hedging transactions.

The definition of 'foreign currency asset' and 'foreign currency liabilities' are specified in detail in the circular letter. For example, 'foreign currency asset' now includes cash, giros, bank deposits, receivables, inventories, marketable securities and payables under forward, swap and option contracts, counted on the basis of the quarterly balance sheet. There is also a new minimum threshold that means net foreign currency liabilities do not need to be hedged if they are less than $100,000.

The new rules also provide an exemption from certain hedging requirements for non-bank companies that have (a) export revenues exceeding 50% of their total revenues in the preceding calendar year and (b) have permission from the Ministry of Finance to report financial statements in US dollars.

7. Bank Indonesia introduces regulation on obligation to use Rupiah in Indonesia

- On March 31, 2015, Bank Indonesia issued Regulation No. 17/3/PBI/2015 on the Obligation to use Rupiah in the Territory of Indonesia. This regulation contains certain provisions which require, among others, that the Indonesian rupiah be used to settle certain financial obligations and other payment transactions taking place in the Territory of Indonesia (unless exemptions apply). These requirements would apply to both cash and non-cash transactions. This new regulation appears aimed at supporting the stability of the Indonesian rupiah and is also intended to assist in effectively implementing the provisions in Law No. 7 of 2011 on Currency. Law No. 7 of 2011 had imposed the general requirement to use the Indonesian Rupiah for certain transactions in Indonesia.

- On June 5, 2015, Bank Indonesia issued SE No17/11/DKSP regarding the Obligation to Use Rupiah in the Territory of the Unitary State of the Republic of Indonesia. The regulation contains technical guidance in implementing Bank Indonesia Regulation (PBI) Number 17/3/PBI/2015 concerning the Obligation to Use Rupiah in the Territory of the Unitary State of the Republic of Indonesia (NKRI) which was issued on March 31, 2015. SE No17/11/DKSP governs the Obligation to specify the prices of goods and/or services in rupiah, the Implementation of obligation to use rupiah for strategic infrastructure projects agreed in writing, the implementation of obligation to use Rupiah for non-cash transactions for business actors with certain characteristics, reports related to the use of Rupiah in the territory of Indonesia and sanctions for violators of the obligation to use Rupiah.

- On July 1, 2015, the mandatory use of the Indonesian rupiah came into force in the Territory of Indonesia.

8. Bank Indonesia holds CCB at 0%

- On May 23,2016, Bank Indonesia issued a press release announcing the decision to hold the countercyclical capital buffer (CCB) unchanged at 0%. The goal of the CCB is to prevent a build-up of systemic risk due to excessive credit growth, while simultaneously absorbing potential bank losses through the application of a buffer. Bank Indonesia performs an assessment of the CCB at least once every six months. The credit-to-GDP gap, as the main CCB indicator, has not shown any signs of excessive credit growth that could prompt systemic risk, the central bank said.

9. Bank Indonesia issues regulations on FX transactions

- On 14 December 2016, Bank Indonesia released two circulars No. 18/34/DPKK (Circular No.34) and No. 18/35/DPKK (Circular No.35). Both Circulars are released in Bahasa Indonesia only. Circular No. 34 deals with foreign exchange transactions entered into between a bank and a domestic party whereas Circular No. 35 deals with foreign exchange transactions entered into between a bank and a foreign party. FAQs on these circulars were released on 22 December 2016.

  Paragraph I.6 of Circular 35 provides that the contract used by a market participant to document a derivative transaction must be a derivative contract. An example of such a contract is attached in Schedule A of Circular No. 35. The attached Schedule A contract is the form of derivatives master agreement developed by Bank Indonesia. Circular No. 35 does not make the use of this Schedule A form mandatory and there does not appear to be any clauses which stipulate the mandatory use of Indonesian law in derivative transactions.

  Paragraph 2 of Circular 34 provides that a bank is obligated to provide education regarding derivative transactions to its customers. This may be done by way of a seminar, workshop, focus group discussion, and other similar events.

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

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 & Ko
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 commenced on June 30, 2014.
	The US Commodity Futures Trading Commission (CFTC) issued an order of exemption from registration as a derivatives clearing organization (DCO) to KRX on October 26, 2015. The European Securities and Markets Authority (ESMA) granted KRX the third-country (non-EU) CCP recognition on April 22, 2016.
	On August 17, 2015, the FSC announced that KRX had been designated as a TR.

Key Regulatory Milestones

1. Korea plans to impose mandatory clearing requirements

- 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 would 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 "OTC derivatives whose default could deliver significant impact to the market would be mandatorily cleared through a CCP."

- On May 15, 2013, the 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 FSC decided to postpone the enforcement date of mandatory clearing obligations under the amended FSCMA from October 2013 to June 30, 2014.

- On September 11, 2013, KRX received authorization on OTC derivatives clearing business from the FSC. KRX would be the central counterparty for both exchange traded and OTC market products. The mandatory clearing of KRW-denominated interest rate swaps would 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 would be cleared through KRX on a mandatory basis.

- On June 3, 2014, KRX published the amended rules of OTC Derivatives Clearing and Settlement Business Regulation. With these rules, KRX intends to:

  - revise clearing member admission criteria to reflect the capital regulations under Basel III and the Net Capital Ratio (NCR) revised by the FSC;

  - improve clearing efficiency and align with international standards in view of the demands generated from its voluntary clearing service.

  Key amendments include:

  - Change of the capital ratio criteria for clearing member admission under Article 11 to correspond to the capital ratio criteria pursuant to both Article 3-26(1) of the Financial Investment Business Regulation and Article 34(1) of the Regulation on Supervision of Banking Business;

  - Change of hours for requesting and accepting the assumption of obligation under Article 49 and 98;

    - To extend by 30 minutes the hours for requesting and accepting the assumption of obligation from current hours of 9:00 - 15:50 to become 9:00 - 16:20

    - To extend by 20 minutes the hours for requesting the cancellation of assumption of obligation from current hours of 9:00- 16:00 to become 9:00 to 16:20

    - To reduce by 20 minutes the period for requesting the change of contracts of cleared transactions from current hours of 16:00 to 17:00 to become 16:20 to 17:00

  - Additional reasons for close-out are added including KRX's default, its suspension of payment, its request for commencement of rehabilitation procedures and its filing of bankruptcy under Article 111 on the Commencement of Close-out Netting Procedures;

- Deletion of Article 123 in relation to the designation of an employee that is responsible for the clearing operation, and an employee that performs the tasks related to the clearing operation;
- Other, less material, amendments were made to Articles 2, 29, 31, 35, 58 and 122.

The revised rules came into effect on June 30, 2014.

- On June 13, 2014, KRX announced the revised provisions of Enforcement Rules of OTC Derivatives Clearing and Settlement Business Regulation.

  Key amendments include:

  - The period for clearing membership reapplication under Article 4(2) is deleted;
  - A new provision is added to Article 7 stating that when there is a change of major stakeholders, the review of clearing membership application would be suspended;
  - The criteria for settlement banks and custodian banks under Article 15 and 43 respectively are revised;
  - Period of Registration of Assumption of Obligation under Article 27 is shortened from 5 business days currently to 2 business days;
  - A new provision is added to Article 32 stating that KRX can claim necessary expenses and remuneration from clearing members in relation to task delegation;
  - Requirements for the committee member of Default Management Group under Article 78 are relaxed;
  - The bid price is defined under Article 84 and the Article 84(3) which relates to bid abort price is deleted;
  - Article 86(1) which relates to the allocation and early termination of a cleared transaction of a default clearing member is deleted;
  - A new provision stating that eligible margin securities, foreign currency or foreign currency securities deposited by a clearing member in KRX are subject to close-out netting is added to Article 88;
  - Article 88-2 is newly added to define the method of the close-out netting notification;
  - Article 93(3) in relation to the Cap Period is deleted;
  - Articles 97, 98 and 99, which relate to the designation of an employee that is responsible for the clearing operation and an employee that performs the tasks related to the clearing operation, are deleted;
  - The interest rate for the calculation of late payment penalty is stipulated under Article 101;
  - Other, less material, amendments were made to Articles 35, 50-54, 56, 60-62, 77 and 85.

  The revised rules came into effect on June 30, 2014.

- Effective from June 30, 2014, KRX started to provide a mandatory clearing service for Korea Won–denominated IRS contracts to meet the G20 mandate on OTC derivatives clearing. KRX's clearing service was previously offered to 35 members on a voluntary basis from March 3. During this period, the accumulated number of cleared transactions was 427 and accumulated notional amount was $11.5 billion (KRW 11.8 trillion as of June 26, 2014). As of June 27, 24 securities firms and 28 banks (12 domestic banks and 16 foreign banks) have submitted their applications for this mandatory clearing service and only two securities firms among these clearing members are general clearing members able to offer client clearing service. Going forward, all KRW-IRS contracts would be cleared through the KRX-CCP on a mandatory basis.

- On September 30, 2014, FSS announced revised regulations on supervision of banking business to implement the Basel Committee on Banking Supervision's rule on capital requirements for bank exposures to CCPs (BCBS 282).

  Key amendments include:

  - Introduction of the internal models method (IMM) to calculate counterparty credit risk and credit valuation adjustment, alongside the current method of calculation (Basel II's current exposure method and standardised method).
  - Revision of capital requirements for CCP exposures:
    - Qualifying CCP (QCCP): the FSS plans to grant QCCP status to KRX, and stipulates that banks must calculate and distribute data required to calculate capital requirements against CCP default fund contributions.
  - Calculation method of risk weight: OTC derivatives transactions cleared through QCCPs would receive a preferential capital treatment. In particular, trade exposures would receive a risk weight of 2%. Foreign bank branches in Korea should calculate counterparty risk based on Basel II standards in the same manner as domestic banks.

  Implementation date for domestic banks is September 30, 2014. For foreign banks with their financial year ending on December 31, the implementation would start on October 1, 2014. Otherwise, it would start on November 1, 2014.

- On October 6, 2014, KRX established a default management committee (DMC) in order to enhance the stability and efficiency of CCP clearing services. The DMC consists of a chairman from KRX and six committee members from clearing members of the CCP. These six members include Korea Development Bank, Standard Chartered Bank Korea, Deutsche Bank, BNP Paribas, Daewoo Securities and Samsung Securities, which were appointed based on positions and volumes of OTC derivatives transactions. The DMC would mainly provide advice on hedging and the auction of remaining positions following the default of a clearing member.

- On November 11, 2014, KRX announced standards for the calculation and distribution of data required to compute bank capital requirements for CCP default-fund contributions. These were issued as subsidiary rules of the Enforcement Rules of OTC Derivatives Clearing and Settlement Business Regulation. KRX aims to incorporate this key requirement for a CCP to be considered a qualifying CCP following the amendment of Detailed Regulations on Supervision of Banking Business, which FSS announced on September 30, 2014.

  Key points include:

  - Based on the last business day of every month, the CCP should calculate capital-requirements factors, such as the hypothetical capital requirement of the CCP, the aggregate capital requirement for all clearing members and the c-factor. These factors should be provided to clearing members through OTC derivatives clearing terminals within seven business days from the base date;
  - The CCP should examine the adequacy of capital-requirements factors, recalculate them depending on the results of its analysis, and inform clearing members of them every month;
  - The CCP should report details of the calculation/recalculation to the FSS. The regulators of a foreign clearing member may also request this information

The standards became effective from November 12, 2014.

- On November 13, 2014, KRX announced an amendment of the enforcement rules of the OTC Derivatives Clearing and Settlement Business Regulation.

  Key issues include:

  - KRX would prevent deposit of the cash and foreign-currency contribution to the OTC derivatives joint compensation fund and members' margin in a particular financial institution;
  - KRX would let independent and qualified external institutions examine the adequacy of its calculation methods and the management systems of members' margin if necessary. As such, it intends to be accordance with international standards, such as the Principles for Financial Market Infrastructures and relevant rules in EU and US;
  - KRX would conduct crisis response training and the Risk Management Committee would be notified of the results.

  The amendment were effective from November 17, 2014.

- On February 11, 2015, KRX announced its revised OTC Derivatives Clearing and Settlement Business Regulation.

  Key contents include:

  - In terms of capital ratio among the admission criteria of a clearing member, the net capital ratio would be applied to investment traders and investment brokers, and the net operating capital ratio would be applied to the remaining financial investment business entities under Article 11(1):
    - The net capital ratio = (net operating capital – gross risks)/sum of equity capital required to maintain each business unit's license
    - The net operating capital ratio = net operating capital/gross risks
  - In the event that clearing members transfer the net cash settlement amount from their bank accounts to the settlement bank account of KRX, clearing members shall be prohibited from cancelling under Article 62-2.
  - In case of receiving the notification on member assessment from KRX, the clearing member shall deliver the concerned amount in cash by 12:00PM of the next business day under Article 114.
  - To compensate quick losses incurred as a result of a clearing member's non-fulfillment of settlement, KRX shall enforce its pledge provided as collateral from the defaulting member without a legal procedure (the method of execution as provided for in the Civil Execution Act) under Article 123.

  The revised Article 11(1) would be implemented on January 1, 2016 and other revisions became effective on February 26, 2015.

- On June 30, 2015, KRX published a brief report analysing the performance of the KRX-CCP over one year. Since the launch of mandatory clearing, the total cleared notional amount and volume have reached KRW 404 trillion ($354 billion) and 14,674, respectively, as of June 26.

  As of June 2015, 55 financial institutions (32 banks and 23 securities companies) had participated in the CCP as clearing members. Forty-four per cent of interest rate swaps trading took place between banks and securities firms, 40% was between banks, and 16% was between securities firms.

KRX also revealed that the scope of OTC derivatives clearing would be expanded to include longer maturities (from 10 years to 20 years). In addition, clearing services for non-deliverable forwards would be promoted to strengthen the transparency of the OTC derivatives market.

- On August 18, 2015, the CFTC published a request for public comment on a petition by KRX for an exemption from registration as a DCO pursuant to section 5b(h) of the Commodity Exchange Act, which permits the CFTC to grant such exemption if it determines that the applicant is subject to comparable, comprehensive supervision by appropriate government authorities in its home country.

- In October 2015, KRX amended its OTC Derivatives Clearing and Settlement Business Regulation and Enforcement Rules in order to expand the range of clearing eligible transactions for the KRW IRS as a part of follow-up measures to the 'Development Plan of Derivative Products Market', which was announced by the FSC on June 17, 2014.

  The amendment was enforced on November 23, 2015 after the notice period. Therefore, starting on November 23, financial investment companies (domestic financial investment companies or foreign financial investment companies that have made trades with domestic financial investment companies) must clear KRW IRS trades subject to extended range of clearing eligible transactions through KRX in accordance with the FSCMA.

2. South Korea implements Basel III

- On May 30, 2013, the FSC issued a press release to announce Korea's plan to implement Basel III rules as of December 1.

- On July 31, 2013, the 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 would 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 11, 2016.

- On November 25, 2013, the FSC issued a press release announcing the capital regulations under Basel III, which would be phased in for domestic banks from December 1, 2013. The Tier 1 Capital Ratio would increase from 4.5% to 6% from December 2013 to December 2015. CET1 would increase from 3.5% to 4.5% from December 2013 to December 2015. 90% of non-qualifying instruments as contingent capital already issued would be recognized as regulatory capital under Basel III from December 1, 2013. This percentage would be gradually reduced by 10% per year. Capital Conservation Buffer would 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 would be 10%.

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

- On August 26, 2014, the FSC announced its plan to introduce the liquidity coverage ratio under Basel III to banks operating in the country. Key points include:
  - Domestic banks are required to meet the minimum ratio of 100%, starting from January 2015.

- For domestic branches of foreign banks, the minimum ratio starts at 20% in 2015, and would gradually increase by 10 percentage points a year to reach 60% in 2019.
- For specialised banks or policy banks, the minimum ratio begins at 60% in 2015, and would rise by 10 percentage points a year to reach 100% in 2019.

Institutions have until October 6, 2014, to prepare for implementation of the revisions to the regulation on the supervision of banking business. Revisions to the regulation would take effect following approval by Korea's Regulatory Reform Committee and the FSC.

- On December 24, 2014, the FSC approved revisions to the Regulation on Supervision of Banking Business, which includes the introduction of the LCR. The minimum ratio for commercial banks would begin at 80%, which is higher than the Basel III requirement of 60%, given the current liquidity ratio of domestic banks. The ratio would be raised by 5 percentage points per year over the next four years to meet 100% in 2019. The LCR rules became effective on January 1, 2015.

- On June 5, 2015, the FSS announced that regulatory measures are set to be taken for full implementation of Basel Pillars II and III in 2016. Under the proposals for Pillar II, the current dual system of CAMEL-R and RADARS used for supervisory assessment and rating is to be integrated into CAMEL-R, and the risk items under each of the CAMEL-R components are to be aggregated and rated on a scale of one to five for use as a Pillar II rating. Supervisory action, including a capital surcharge for unsatisfactory Pillar II ratings, is expected. The application of the Pillar II rating is set to cover 18 banks and eight bank holding companies (BHC).

  For Pillar III implementation, the FSS noted that the key elements of Pillar III standards have already been incorporated into the Common Banking Disclosure Standards (CBDS) that are set by the Korea Federation of Banks.

  The FSS would revise the CBDS in order to ensure the inclusion of disclosures that currently fall short of the Basel requirements, particularly disclosures with respect to credit risk, securitisation and credit risk mitigation.

- On June 4, 2015, FSS announced its plan to implement domestic systematically important banks (D-SIBs) regulation for the domestic banking community, starting January 2016. FSS would require D-SIBs to increase loss absorbency by a quarter of 1% every year over the four-year period, from 2016 to 2019.

  To identify D-SIBs, the FSS would assess five banks, eight BHCs and 21 foreign bank branches for their degree of systemic importance, except the Export-Import Bank of Korea, which does not take deposits, and small foreign branches with less than KRW5 trillion in assets.

  The assessment would be based on available year-end data. According to the implementation schedule, the first group of D-SIBs would be identified and announced later this year.

  The methodology would involve: i) scoring a bank or BHC for its degree of systemic importance based on weighted averages for each of five assessment categories, including size, interconnectedness, substitutability, complexity and country-specific factors; and ii) identifying those that score above a cut-off point as a D-SIB. This methodology would be reviewed every three years to capture developments in the banking sector.

- On December 16, 2015, the FSC approved amendments to the regulation on supervision of banking business and the supervisory regulation on financial holding companies. The amendments are intended to implement the Basel Committee recommendations such as D-SIBs and a countercyclical capital buffer and ease capital requirements for Internet-only banks in their early years. Key amendments include:

- The FSC should select D-SIBs considering their systemic importance to the financial system. Those identified as D-SIBs are to be required to set aside an additional capital of 1% if deemed necessary, by 0.25% per year in the next four years from 2016 to 2019;
- Considering domestic economic conditions, the FSC should decide on a quarterly basis whether to impose a countercyclical capital buffer and, if so, it will be imposed based on levels of such capital requirements (ranged from 0% to 2.5%);
- The FSC may require banks falling behind the evaluation of risk management by the FSS to hold an additional capital under the Basel II; and
- Internet-only banks are to be subject to the Basel I rules by 2019, while the Basel III rules are to be phase in for them from 2020 to full implementation in January 1, 2023. The LCR applied to Internet-only banks are to be raised by 10 percent points ever year from 70% for 2016 to 100% for 2019.

Additional capital requirements for D-SIBs and for a countercyclical capital buffer will be effective from January 1, 2016 and capital rules for Internet-only banks will be effective immediately.

- On March 30, 2016, the FSC set the counter-cyclical capital buffer to 0% for banks and bank holding companies, effective March 31. Korea joins 19 other countries that have set the buffer at 0%. The FSC states that it will review whether to impose a counter-cyclical buffer on a quarterly basis.

- On July 19, 2016, the FSC announced draft amendments to the Financial Holding Companies Act to provide legal grounds for bank holding companies to issue contingent convertible capital securities (CoCos) in line with the Basel III framework. Currently bank holding companies can only issue CoCos based on Article 165-11 of the FSCMA. This created a number of issues because the FSCMA is only applicable to listed companies and the FSCMA does not provide for issuance of perpetual bonds, which the Basel III framework requires.

  The draft amendments were open for public comments until August 29 and planned to be submitted to the National Assembly in October 2016.

3. FSC

- On January 15, 2014, the FSC together with the 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. The FSC would 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 included:

  - The FSC would encourage securities firms to strengthen the standard of their internal control systems related to excessive orders, and supervision thereof by FSS and KRX would be enhanced;
  - Currently, KRX runs the price limits and circuit breakers (CBs) as safety mechanisms, which are inadequate for controlling excessive price fluctuations. In the future, KRX would 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 would 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.

- On April 8, 2014, the FSC announced its plan to amend the net capital ratio (NCR) rules for securities companies as part of its effort to revitalize the country's capital markets. Key changes include a modification to the NCR formula:

  - Current NCR(%) = (net operating capital/gross risks)*100
  - Revised NCR(%)=[(net operating capital -gross risks)/sum of equity capital required to maintain each business unit's license]*100

  Until the end of 2015 securities firms can use either the current or revised NCR formula. From 2016 onwards, all securities should apply the revised NCR formula.

  The FSC would also introduce consolidated computations of NCR for all securities firms with subsidiaries under the K-IFRS in 2016. Prior to the full implementation, the consolidated NCR rule would be applied to large securities companies in 2015 as a pilot scheme. In addition, securities companies' corporate loans would be reflected into credit risks, instead of being subtracted from net operating capital. This adjustment would be implemented as soon as relevant regulations were revised in the third quarter of 2014.

- On April 29, 2014, the FSC announced its plan to establish rules for the implementation of FATCA. This followed the signing of the intergovernmental agreement on March 17 between the Ministry of Strategy and Finance and the United States, which aimed at improving the international tax compliance and implementing FATCA.

  The FSC would set out further details of the agreement such as the confirmation procedure and the relevant form of clients' account information in order to help financial institutions and their clients in reporting.

- On June 17, 2014, the FSC announced its roadmap for further development of Korea's derivatives market.

  For the Exchange-Traded Derivatives Markets:

  - Greater autonomy in market operation with the condition that stable operation of the markets and investor protection would not be undermined;
  - Introduction of new derivatives markets in high demand such as V-KOSPI 200 futures, sector index futures and night time trading of US dollar futures, which would provide professional investors with risk hedging instruments;
  - Introduction of qualified retail investors with two entry barriers to prevent retail investors from reckless investments and huge losses;
  - Expanding the participation of professional investors by allowing banks to directly trade treasury bond and currency derivatives on KRX;

- Enhancing settlement stability by giving KRX greater authority to monitor and supervise default risks of security firms, and by considering the revision of the default waterfall in accordance with the PFMI;
- Enhancing transaction stability by introducing price banding limits on futures and options trading to mitigate excessive price fluctuation, and allowing KRX to take remedies for huge losses incurred by erroneous transactions;
- Strengthening the regulations and tightening the monitoring of high-frequency trading to prevent market manipulation and unfair trading.

For the OTC Derivatives Market:

- The scope of derivatives contracts subject to the CCP clearing would be gradually expanded from IRS to NDF to CDS and other derivatives.
- Trade Repository (TR) would be introduced in accordance to the G20 after considering domestic conditions and international standards.

For the Derivatives-Linked Securities (DLS) Market:

- Exchange-trade note (ETN) would be introduced to be listed and traded on KRX.
- Issuance structure of equity-inked securities (ELS) would be diversified.
- Public disclosure and sales method of ELS and DLS would be improved to make it easier for investors to compare and choose products.
- Issuance terms of equity linked warrant (ELW) would be standardized.

• On June 18, 2014, the FSC approved the Implementation Rules for Korea-U.S. Tax Information Exchange of Agreement, which would be effective from July 1, 2014.

  Key rules include:

  - Financial institutions which include depository institutions, custodial institutions, investment entities and insurers and, financial accounts which include depository account, custodial account, fund account, insurance contract and annuity contract, are subject to FATCA reporting obligation;
  - Implementation: A financial institution is required to identify U.S.-related financial accounts through reviewing the electronic records of financial accounts; If a financial account is identified as U.S.-related, the financial institution is required to report the NTS information about the financial account including account holder's name, account number, account balance, and interest payments.

• On July 10, 2014, the FSC announced its plan for financial regulatory reform to create new opportunities and growth drivers for Korea's financial industry and economy.

  Key points with regards to new business opportunities for the financial industry included:

  - If a financial company is granted a business license for financial investment business, the company would be allowed to add a new business within the licensed category with registration only;
  - For banks, the FSC would allow sales of OTC derivatives of currency, interest rate, commodity and credit as part of efforts to integrate different sectors of the financial industry to boost efficiency;
  - Domestic financial companies would be permitted to operate overseas businesses which are not allowed under the Korean law in a foreign country as long as such businesses are permitted under the country's law;

  - Non-banking financial institutions such as insurers and brokerage firms would be allowed to own overseas banks.

- On July 15, 2014, the FSC announced its plan to ease regulations on license system for financial investment business, which includes integrating business units for license, currently overly subdivided, and simplifying license process. A draft bill to revise relevant laws and supervision regulations would be submitted to the National Assembly by the end of this year. Measures that can be taken without law revision would be implemented in September.

- On September 4, 2014, the FSC announced its plan to revise the regulations on financial investment business, and the issuance and public disclosure, etc. of securities, in order to support its roadmap for the development of Korea's derivatives market (announced on June 17) and financial regulatory reform (announced on July 10).

  On derivatives, the FSC stated that financial investment business entities would have to establish internal control standards that limit maximum losses by derivatives proprietary trading to 50 percent of net working capital to avoid risk by excessive derivatives proprietary trading.

  Institutions had until October 14 to prepare for implementation of the revisions, which would take effect following approval by Korea's Regulatory Reform Committee and the FSC.

- On September 25, 2014, the FSC set out its plan to improve prudential regulations for the asset management industry. The plan includes the abolishment of the NCR rules and management evaluation, and reform of the prompt corrective action scheme.

  The plan includes:

  - A plan to replace the NCR rules with a minimum capital requirement. Asset management companies would be required to hold equity capital that exceeds the minimum capital requirement, which is the sum of the regulatory capital requirement, the capital requirement for client asset management and the capital requirement for proprietary investments.
  - The current management evaluation system would be abolished for the asset management industry. Instead, operational risk evaluation would be introduced to evaluate asset management companies' internal controls and risk management.

  A public hearing session would be held in October to discuss the details. A preliminary announcement on the revision to the related acts would be made in November. The plan would come into force in April 2015.

- On November 26, 2014, the FSC announced its plan to revitalise South Korea's stock market. On derivatives, the FSC would allow the listing of new derivatives products such as mini futures and RMB futures in one to two years. The listing of V-index options or ETF futures would be also considered, depending on the commodity market situation.

- On March 20, 2015, FSC released business guidelines for financial market infrastructures (FMIs), which adopt the principles for financial market infrastructures (PFMIs), published by the Committee on Payment and Settlement Systems and International Organization of Securities Commissions in 2012. The guidelines have immediate effect.

  The guidelines reorganize provisions related to financial market infrastructures, which were scattered through the FSCMA. The 24 key principles of the PFMIs are reorganized into 14 principles in accordance with domestic circumstances, and provide detailed standards for implementation.

FMIs need to self-evaluate on a regular basis whether their internal rules and business operations are in compliance with international standards and disclose the results of self-evaluation. The FSS would adopt the guidelines as supervisory principles in its supervision on FMIs. The guidelines would serve as guiding principles for new FMI entrants when devising internal rules.

- On April 23, 2015, the FSC announced its policy direction for capital market reform, which contains several measures to enhance the country's derivatives market. The measures include:
  - Mini KOSPI 200 futures and options: Trading units for KOSPI 200 derivatives products would be downsized and the trading units of Mini products would be cut to one-fifth of the level of KOSPI 200 futures and options. For example, if KOSPI 200 futures are KRW130 million per unit, then Mini KOSPI 200 futures would be KRW26 million per unit. If KOSPI 200 options are KRW30 million, then Mini options would be KRW6 million.
  - KOSDAQ individual equity futures: New futures products would be developed with individual stocks listed on KOSDAQ as the underlying.
  - Dividend index futures: New futures products would be developed and introduced with a dividend index as the underlying in response to a growing demand for dividend investments.
  - RMB currency futures: Chinese renminbi (RMB) futures would be introduced.

  A tentative listing schedule for the above products is: July for Mini KOSPI 200 products and KOSDAQ futures; August for dividend index futures; and September for RMB futures.

- On June 9, 2015, the FSC announced a 20-day notice period (June 10 – July 1) for the revision of the regulation on financial institutions' outsourcing of data processing and IT facilities, with the aim of complying with global standards. Korea established the regulation in June 2013 to allow for the outsourcing of data processing.

  Key contents include:
  - Streamline regulatory system: the requirement for approval in regards to IT facilities outsourcing would be abolished. Under the revised regulation, financial firms would be required to report the outsourcing of their data processing business to the FSS.
  - 'Ex post' reporting of data outsourcing: financial institutions would be allowed to outsource their data processing business with the principle of 'ex post customers' financial transaction information. This information would be required to be reported to the FSS prior to the outsourcing of data processing.
  - Abolish restrictions on offshore outsourcing: the provision that restricts offshore outsourcing to a financial firm's head office, branch and affiliates would be eliminated to allow outsourcing to a third party, including a professional IT company.
  - Abolish the obligatory use of standard contract form: the obligatory use of a standard contract form would be abolished to allow financial institutions to reflect sector-specific conditions as long as the contract form includes basic requirements such as obligations to receive the regulator's supervision and inspection or responsibility for a customer's loss.

- On July 2, 2015, the FSC outlined its plan to strengthen the competitiveness of Korea's exchange market and boost capital markets. Key elements include:
  - The structure of KRX would be converted into a holding company, and KOSPI, KOSDAQ and derivatives markets would be spun off;
  - The spun-off KOSDAQ would compete with KOSPI by attracting listings of innovative companies and introducing new products and services;

- KRX holding company (tentatively named ‘KRX Holding Company’) would pursue an IPO;
- Relevant regulations would be eased to facilitate the establishment of an alternative trading system.

The revision to the FSCMA to convert KRX into a holding company would be discussed at the National Assembly’s regular session in the second half of 2015.

- On October 30, 2015, the FSC announced the basic direction for improving recovery and resolution regimes. Key issues include:
  - A recovery plan will be drafted by each systemically important financial institution. This will be assessed by the FSS and reported to the FSC. A resolution plan will be drafted by the Korea Deposit Insurance Corporation and assessed by the FSC. The aim is to minimise the negative impact on the financial system from the failure of a troubled financial institution.
  - The FSC plans to provide a legal basis for ordering insolvent financial institution to convert debt to equity and/or write off debt when deemed necessary.
  - The FSC will have the power to impose temporary stays on the termination of derivatives, repos and other contracts.

  Relevant laws was planned to be amended in 2016.

- On January 20, 2016, the FSC posted proposed amendments to the Enforcement Decree on Financial Investment Business and Capital Markets Act, Regulations on Financial Investment Business, Regulations on Issuance, Public Disclosure, etc of Securities.

  These amendments cover a variety of policy areas, including boosting the financial investment and exchange-traded fund (ETF) markets and improving corporate disclosure. These policy directions follow those indicated in the first and second round of reports to the president and the findings by the Financial Reform Committee. Major changes include:
  - Strengthening the function of comprehensive investment business entities;
  - Expanding the definition of ‘professional investors’ and encouraging the private capital market;
  - Easing the restriction on information exchange between business lines;
  - Encouraging the ETF market;
  - Amending credit extension regulations;
  - Strengthening internal controls on ELS, ELB, DLS, etc;
  - Allowing uncollateralized lending of securities for the purposes of posting collateral;
  - Amending corporate disclosure requirements.

  The notice for amendment was open for comments for 40 days, until February 29, 2016. The final amendments are planned for end-March or beginning of April 2016.

- On February 1, 2016, the FSC announced its plan to introduce an 'omnibus account' in an effort to make it easier for foreign investors to trade locally-listed stocks in the Korean stock market. The new system is intended to reduce transaction costs for global asset management companies and make foreign investors’ trading of locally-listed stocks through global securities firms more convenient.

  The omnibus account will be a single account established by a global asset management company or securities company for the purpose of consolidating trading orders and settlements from multiple clients. The account is held under the name of the global asset management company or securities company. A qualified global asset management company and securities company will have to register with the FSS in order to process trading orders and settlements on behalf of the end clients, and securities companies or custodian banks are required to report to the FSS (T+2) the details of end clients' investments that they received from the account holder.

It is expected that the Regulations on Financial Investment Business will be amended and the electronic system of Foreign Investment Management System will be reformed by April 2016 for the introduction of the omnibus account system. The omnibus account will be fully introduced in 2017 following a test operation starting in May 2016.

- On March 15, 2016, the FSC published the draft enforcement decree and subsequent FSC regulation to the Corporate Restructuring Promotion Act (CRPA). After passing the National Assembly on March 3, the CRPA was promulgated on March 18. The draft rules clarify the corporations exempt from the CRPA (financial institutions prescribed in Article 61(2) of the enforcement decree of the Corporate Tax Act, small corporations with less than 3 billion KRW credit offered, etc), the definition of 'credit offering', and the process of designating the principal creditor bank. The draft rules were open for comments until March 25. The FSC has indicated it plans to enact the rules in April.

- On June 16, 2016, the FSC announced that it will introduce a heightened foreign currency liquidity coverage ratio (LCR) rule in 2017, which will require commercial banks to hold 60% of their foreign exchange debt in high-quality liquid assets to withstand a 30-day period of market stress. Banks will be required to calculate their foreign currency LCR each business day and maintain the ratio at a monthly average above the minimum requirement.

  The foreign currency LCR for commercial banks will be increased to 70% in 2018 and 80% in 2019. A foreign currency LCR of 40% in 2017, 60% in 2018 and 80% in 2019 will be applied to certain specialised banks. Korea Development Bank, in recognition of its special role as a state lender, will be subject to 40% foreign currency LCR in 2017, 50% in 2018, and 60% in 2019.

- On November 11, 2016, the FSC outlined its plans to improve its short-selling rules to strengthen investor protection. Under the plan:

  - Short sellers shorting during a period of a paid-in capital increase will be barred from buying the newly-issued stocks;
  - Sanctions against violation of short-selling rules will be strengthened; and
  - The deadlines for reporting and disclosing short positions in large amounts or by shares will be shortened from the current T+3 days to T+2 days.

  Relevant regulations will be implemented in the fourth quarter of 2016, and an amendment to the Financial Investment Services and Capital Markets Act will be submitted to the National Assembly in the first quarter of 2017.

  KRX will designate 'overheated short-selling stocks' at the close for stocks showing extraordinary increases in short selling and sharp falls in prices during trading hours to prohibit short selling for those stocks on the following day. The new rule will be implemented in early 2017, after the revision of relevant regulations by KRX.

- On November 22, 2016, the FSC announced a set of measures to improve the Korean derivatives market:

  Exchange-traded derivatives:

  - Simplify derivatives listing procedures and diversify the types of listed derivatives (Q4 2016); and,

- Introduce flexible requirements for retail investors, and 'omnibus account' for exchange-traded derivatives for foreign investors (Q2 2017)

OTC derivatives:

- Introduce additional clearing eligible products, such as US dollar interest rate swaps (Q4 2016), non-deliverable forwards (2017), interest rate swaps in other currencies and credit default swaps (2018);
- Implement guidelines on margin requirements for non-centrally cleared derivatives (Q1 2017); and,
- Consider introduction of electronic trading platforms (Q3 2017).

Derivatives-linked securities:

- Require stress tests for equity-linked security (ELS) and derivatives-linked security markets (Q3 2017), and segregation of ELS-related assets from proprietary assets (Q1 2017);
- Introduce tougher 'know-your-product' rules (Q4 2016) and a 'cooling-off period' for investors (Q1 2017); and,
- Promote alternative derivatives-linked products such as exchange-traded notes (Q1 2017) and derivatives investment funds (Q4 2016).

• On November 30, 2016, the FSC announced that it has approved amendments to the Regulations on Supervision of Banking Business adopting a foreign currency LCR. This follows a policy announcement made on June 16, and requires commercial banks to hold 60% of their foreign exchange debt in high-quality liquid assets (HQLA) to withstand a 30-day net cash outflow in systemic risks starting from 2017. This level will be increased gradually to 70% in 2018 and 80% in 2019. This regulation is not applicable to commercial banks with foreign exchange debt of less than $500 million and 5% of their total debt, and branches of foreign banks operating in Korea.

  However, to streamline foreign currency regulations, it removes monitoring of certain foreign currency ratios in all entities, such as the liquidity ratio for less than a seven-day maturity mismatch between assets and liabilities in foreign currency, and the ratio of 'riskless assets' denominated in foreign currency.

  The amended rules are effective from January 1, 2017.

• On December 16, 2016, the FSC released draft amendments to the Regulations on Financial Investment Business to allow securities lending and borrowing for collateral purposes, and the re-use of such collateral. The draft amendments include the following requirements:

  - Securities lending must be for the purposes for posting collateral for transactions under a Master Agreement;
  - Eligible securities: Korean Treasury Bonds and Monetary Stabilization Bonds;
  - Re-use is permitted only for the purpose of repurchase agreements or for posting collateral or margin;
  - Counterparty must consent to the re-use of collateral upon entry into the relevant collateral agreement;
  - Re-use of collateral must be notified to the collateral provider;
  - Collateral must be returned to the provider except for an occurrence of event of default under the Master Agreement; and

- If the Master Agreement is for OTC derivatives transactions, securities lending for the purposes of posting initial margin is prohibited.

Comment period on the draft runs until January 25, 2017.

4. FSS

- On June 17, 2013, the FSS issued the Best Practices for Managing Settlement Risk in Foreign Exchange Transactions.

  Key recommendations included:

  - 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 eliminated 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 August 18, 2014, FSS set forth a comprehensive plan to prepare for the Regulatory Consistency Assessment Programme (RCAP) of the Basel Committee on Banking Supervision (BCBS). In this plan, the FSS stated that they would complete a self-assessment and preparation of relevant documents in English until the first half of 2015. The FSS had been running a task force team which consists of staff from relevant departments in the FSS in order to get ready for RCAP.

- On September 1, 2014, the FSS announced its measures to ensure effective compliance at financial companies. The FSS stated that compliance should be considered a profit centre with a high level of confidence, not a cost centre, and compliance would be included in the performance measurement of the financial company.

  Key contents of the measures include:

  - The chief compliance officer would be given the appropriate standing, authority and independence within the organisation;
  - the bank's senior management and internal auditor would take more responsibility for the effective compliance function;
  - compliance would be connected to performance measurement of the financial company;
  - the government would step up infrastructure for preventing financial incidents;

- efforts to reduce the cost of compliance would be stepped up.
- Measures requiring amendments to the current laws and regulations to incorporate changes would be implemented this year, while changes that can be made through amendments to best practices for the compliance function would come first.

- On December 15, 2014, the FSS announced its revised risk management standards on FX derivatives transactions. The FSS inspected the compliance of domestic banks and foreign bank branches with the risk management standards on FX derivatives transactions that were established in January 2010 to restrict over-hedging and encourage sound FX risk management practices. The findings of the inspection pointed to the need to further fine-tune and reinforce the standards, including the calculation methods used to determine the maximum transaction amount permitted for an FX derivatives transaction.

  The revised standards would take effect on January 1, 2015 following an inter-agency review and assessment of the proposed enhancements to the standards by Regulatory Reform Committee.

- On December 29, 2014, the FSS announced a complete revision of the manual for licensing requirements and procedures for financial investment services business, which was first published in March 2009. The revised manual provides detailed licensing criteria for regulatory approval, and FSS believes it would contribute to the transparency of the licensing procedure. Specifically, the new manual provides explanations on requirements to be satisfied by an applicant for a business licence, such as a sound business plan, the availability of business assets including human resources and physical facilities, and arrangements for the prevention of conflicts of interest. It also provides various application forms that must be filed as part of the licensing process

- On June 24, 2015, the FSS announced it has developed best practices for the management of country risk to strengthen the management of external risks by domestic banks and financial holding companies, and to bring domestic supervisory rules in line with global standards.

  The best practices reflect Principle 21 (Country and Transfer Risks) of the Core Principles for Effective Banking Supervision established by the BCBS, and present detailed guidelines to enable financial companies to file comprehensive reports on their risk exposure and profile.

  The best practices apply to 18 domestic banks and eight bank holding companies, except for local branches of foreign banks. The key recommendations involve detailed guidelines for analysing country risk, assigning credit ratings and setting exposure limits.

  Financial company risk management units, such as the board of directors and risk management committee, should permit and review exposure limits on a regular basis. Financial companies should assign credit ratings to each country on the basis of risk analysis, and use the ratings to set exposure limits. They should also monitor their compliance with country-specific exposure limits, conduct stress tests and have relevant internal control and audit procedures in place.

  The best practices are set to be implemented on October 1, 2015, to allow financial companies time to establish internal standards and relevant IT systems. The FSS is scheduled to monitor how the best practices are being reflected in companies' risk management during the fourth quarter of the year.

- On September 16, 2015, the FSS published new guidelines on bank internal control and compliance functions. The FSC and the FSS will implement the new guidelines on September 17, 2015 to ensure the effectiveness of internal controls in the banking sector. This is a follow-up to the "measures to ensure effective compliance at financial companies" that the FSS introduced in August 2014 to restore public confidence in the financial sector in the wake of a series of financial incidents.

5. Bank of Korea

- On August 26, 2015, BOK published the English version of an annual report on its payment and settlement systems, following publication of the Korean version on April 15, 2015. Key elements include:
  - Payment and settlement trends and settlement risk management;
  - Payment and settlement system oversight and policy responses; and
  - Future policy directions.

6. MOSF, National Assembly, and other government offices

- On November 11, 2013, the MOSF issued a press release announcing the easing of regulations by the Korean government in regard to foreign exchange transactions. The revised regulations would 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 would take effect in 2014 and include:
  - Foreign exchange transactions between securities brokerages would be allowed;
  - Investment banks would 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 would 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 would 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 would be made easier with transactions through domestic banks' accounts to be allowed.

- 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 would 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 would be preparing their opinions on this plan after analyzing the background of this consensus and gleaning market participant views. FSC would also announce a plan to revitalize the Korean derivatives market in March and it is unknown how FSC would be dealing with this capital gains tax in their plan.

- On April 8, 2014, the Enforcement Decree of the Covered Bond Act was approved by the Korea cabinet and would come into force starting from April 15, 2014.

  Key contents include:

  - Eligible Issuers: financial institutions are required to meet both institutional and eligibility requirements to issue covered bonds and institutions are designated by Enforcement Decree;
  - Cover Pool: the minimum ratio of collateralization is 105%. Underlying assets in a cover pool need to be evaluated by market prices if there are credible market prices as a reference price. In the absence of market prices, the assets can be evaluated by book value or acquisition prices;
  - Issuance Cap: covered bond issuance is limited to 4% of the issuer's total assets.

- On August 12, 2014, the MOSF announced 'Measures to Stimulate Investment: Fostering Promising Service Industries,' at the 6th Trade Investment Promotion Meeting chaired by President Park.

  To promote the listing of enterprises with strong growth potential, the government plans to double the daily price movement limit on stocks listed from between ± 15 percent to ± 30 percent. In responding to excessive price fluctuations, such transactions would be stopped for a certain period of time in order to maintain price stability.

- On December 2, 2014, an amendment to the Income Tax Law, which would impose a capital gains tax on profits from certain derivatives transactions, was passed in the plenary session of the National Assembly of the Republic of Korea.

  Key points include:

  - Basic tax rate: 20% (+/- 10% is flexible);
  - An exemption for the first Won 2.5 million of annual capital gains;
  - Gains from the transfer of derivatives products are not to be aggregated with other capital gains but computed separately;
  - The scope of derivatives products subject to capital gains tax would be stipulated under Presidential Decree.

  The amendment was effective from January 1, 2016.

7. KRX

- On June 3, 2014, KRX announced the revised rules of Derivatives Market Business Regulation. KRX intends to:

  - improve the stability of derivatives transactions by preventing huge losses to investors and excessive price fluctuations through the implementation of real-time quotation price limit as well as improving the methodology for error trade adjustments;

- improve the stability of settlement by stipulating that once KRX issues payment instructions, trades can no longer be amended.

Key amendments include:

- Implementation of real-time quotation price limit under Article 70-2(new),74,and 82-8
    - o the real-time upper limit price is equal to the most recent execution price plus a specified range of change in price, or the real-time lower limit price is equal to the most recent execution price minus a specified range of change in price
    - o Where deemed executions prices deviate from the band of the real-time limit prices while connecting to trading system, the real-time upper limit price(bid) and the real-time lower limit price(ask) shall be converted into the limit quotation.
- Improvement of the method for adjusting trading errors
    - o Introduction of Ex-officio Adjustment of Erroneous Transactions under Article 81-2
    - o Introduction of cancellation of transaction by KRX under Article 81-3(new)
    - o Adjustment of settlement amount by Ex-officio Adjustment of Erroneous Transactions under Article 103 and 149
- Stipulating the completion time of settlement in the Derivatives Market under Article 104-2
- Other, less material, amendments were made to Articles 2(1)4, 2(1)5, 60 and 104-3

The revised rules were effective from June 13, 2014.

- On June 26, 2014, the CFTC Division of Clearing and Risk (DCR) issued a time-limited no-action letter stating that it would not recommend that the Commission take enforcement action against KRX for failing to register as a derivatives clearing organization (DCO) pursuant to Section 5b(a) of the Commodity Exchange Act (CEA).

  The no-action relief is limited to KRX's clearing of the proprietary Korean Won-denominated interest rate swaps trades of US clearing members, and is effective until the earlier of December 31, 2014, or the date upon which the CFTC either registers KRX as a DCO under Section 5b(a) of the CEA or exempts KRX from registration under Section 5b(h) of the CEA. This no-action letter is consistent with earlier no-action letters granting relief with respect to the clearing of proprietary trades of US clearing members.

- On September 1, 2014, KRX introduced real-time price-band and modified error-trade policies for settlement stability of the derivatives market. The real-time price band was introduced to prevent market fluctuations resulting from sudden price changes during trading sessions caused by error trades of investors or members. In addition, KRX would introduce improved policies on error trades to minimize the negative impact of large-scale error trades.

  Key contents of the plan:

  - Real-time price band: when a quotation that deviates from the upper or lower limit of the real-time price band is received, the quotation would be rejected.
  - Improved policies on error trades: when a loss exceeding a certain amount occurs due to consecutive erroneous orders despite the real-time price band, KRX would amend the matched price of the relevant transactions into a notation price that represents the upper or lower limit of resolution range of error trades. A party responsible for the error trade would have 30 minutes after the trade execution of the first error trade to request error-trade treatment.

- On September 22, 2014, the Ministry of Environment (MOE) and KRX announced they would start a mock emission trading system from September 29, 2014, ahead of the opening of an official emission trading market in January 2015. The mock market would be operated in two phases until December 24, based on an emission trading system to be developed by KRX.

- On November 13, 2014, KRX announced an amendment of the Enforcement Rules of Derivatives Market Business Regulation.

  Key issues include:

  - KRX would let independent and qualified external institutions examine the adequacy of its calculation methods and the management systems of members' margin if necessary. As such, it intends to be in accordance with international standards, such as the Principles for Financial Market Infrastructures (Principle 6: Margin) and relevant rules in the EU and US;
  - KRX would prevent deposit of the cash and foreign-currency contribution to members' margin in a particular bank or securities finance company;
  - KRX would conduct crisis response training to ensure immediate and appropriate actions, such as suspension of trading and suspension of delivery, are performed if a settlement failure occurs. The risk management committee would be notified of the results.

- On November 14, 2014, KRX announced an amendment of the Enforcement Rules of Membership Regulation.

  Key issues include:

  - KRX would conduct stress testing of its management system for calculating and monitoring the amount of the CCP's contributed capital and the joint compensation fund for the listed derivatives market required to make up for losses caused by settlement failure. The risk management committee would be notified of the results.
  - KRX would prevent deposit of cash to the joint compensation fund in a particular bank or securities finance company.

  The amendment came into effect from November 14.

- On December 10, 2014, MOE announced that Korea's emission trading market would officially launch on January 12, 2015. The opening date was decided through consultation with relevant agencies, including the Greenhouse Gas Inventory & Research Center of Korea (GIR) and KRX. MOE designated KRX as the official emission permits exchange in January 2014, and KRX subsequently announced the Emission Trading Market Business Regulation on December 2, 2014.

  Key highlights include:

  - Member requirement: 525 business entities eligible for allocation and three government-owned financial institutions (Korea Development Bank, Industrial Bank of Korea, Korea Exim Bank);
  - Trading items: emissions allocation permit and emissions offset permit;
  - Trading hours: 10:00am – 12:00pm;
  - Price limit: base price +/- 10%;
  - Trading unit: one emission permit (= 1tCO2-eq);
  - CCP: KRX.

Before the official opening day, user registration of business entities eligible for allocation and OTC transactions of emission permits commenced on January 2, 2015.

- On January 6, 2015, KRX announced the launch of a carbon emission rights (CERs) market, which commenced on January 12, 2015. Key details include:
  - Eligibility of market participants: companies that are allocated with emission allowances and public financial institutions, such as Korea Development Bank, Industrial Bank of Korea and Export-Import Bank of Korea.
  - Trading products: Korean carbon allowance unit (KAU) and offset CERs in each phase.
  - Trading period: from the first day of the planned period to the end of June of the year following the year of implementation.
  - Trading hours: 10:00am to 12:00pm (two hours).
  - The Greenhouse Gas Inventory & Research Center of Korea would conduct the delivery of KAUs upon KRX's settlement instruction.

- On January 6, 2015, KRX announced major institutional changes in its securities and derivatives markets in 2015.

  On derivatives, key highlights include:
  - The opening of new derivatives markets to strengthen capital market dynamics: this would include dividend index futures, Chinese yuan futures and short-term interest futures.
  - The provision of risk management levers for the capital market: KRX would open the KOSDAQ single-stock futures and KOSDAQ index futures markets, as well as introduce exchange-traded fund futures.
  - Improvement in price stability: KRX would take a phased approach to expand the price limit of stocks and index-based derivatives.
  - A change in the tick size of KOSPI 200 options and VI futures: the tick size of KOSPI 200 options would be set at 0.01 points and the tick size of volatility index futures would be reduced to 0.01 points.
  - Exemption of the Securities Transaction Tax for derivatives market makers: the target taxpayer would be financial investment companies that have concluded market-making contracts with KRX, and target trading would be stock sales trading that is conducted for the purpose of avoiding risks that may occur in the process of market-making for derivatives products with underlying assets of stocks. The target period is the first half 2015 to December 31, 2017.
  - Reprioritisation of financial resources for resolving settlement failure: KRX would appropriate its partial reserve first before tapping into the joint clearing fund.

- On January 30, 2015, KRX announced that the Committee for Management of Public Institutions under the Ministry of Strategy and Finance had decided to terminate its designation as a public institution. The reason cited for the change was to ensure KRX is best placed to develop the capital market. KRX was designated as a public institution in January 2009.

- On February 11, 2015, KRX announced its revised Derivatives Business Market Regulation. KRX intended to provide a legal basis for disposing the underlying asset balance or securities held under the payment suspension according to the method set forth by KRX. Without a legal procedure, this is necessary to compensate quickly losses incurred as a result of a clearing member's non-fulfillment of settlement. The revised regulation became effective on February 26, 2015.

- On March 12, 2015, KRX amended its Enforcement Rules of the Derivatives Market Business Regulation. Key contents include:
  - Delta for market-makers of single-stock futures and options amended to implement the securities transaction tax exemption (Article 90-3 and Annex 27, with effective date on March 13):
  - Single-stock futures: (buying) 1; (selling) -1
  - Single-stock options: set based on arrival of the last trading day, type of call and put options, etc (specified in Annex 27)
  - Change of institution for calculating the final settlement price of mini-gold futures (Article 30 and 32-2, with effective date on March 20)
  - (Current) The London Gold Market Fixing Ltd
  - (Revised) InterContinental Exchange Benchmark Administration Ltd (IBA)

- On March 13, 2015, KRX announced its implementation of the securities transaction tax exemption for market-makers of single-stock futures and options based on the amended Restriction of Special Taxation Act.

  Going forward, the securities transaction tax (0.3%) would not apply to the portion of underlying stocks that are sold for the purpose of hedging against the risk of price fluctuations that may occur in the course of market-making for single-stock futures and options by the market-makers concerned. The tax exemption was implemented for KOSPI single-stock futures and options market-makers from March 13, and would be expanded to include KOSDAQ's single-stock futures, which would be listed by the end of 2015.

- On April 23, 2015, KRX published an updated version of its disclosure framework on the PFMIs, which is a self-assessment report on the PFMIs. This report, in line with the CPMI-IOSCO disclosure template, contains major changes since the last update of the disclosure framework in July 2013, including OTC clearing services.

  In this report, KRX also announced it would establish a technological platform for disclosure in 2015, and would start disclosing quantitative information (including the C-factors for both exchange-traded and OTC products) in 2016, in accordance with the public quantitative disclosure standards for CCPs published by CPMI-IOSCO.

- On April 29, 2015, KRX announced its revised business regulations for securities and derivatives markets to improve market stabilisation facilities and expand daily price limits in these markets.

  For the derivatives markets, key elements include:
  - Improved price stabilisation safeguards: In line with circuit breakers that have been strengthened with interval-based triggering in the stock markets, the trading of derivatives products would also be suspended by intervals accordingly.
  - Expansion of daily price limits: An interval-based price limit would be introduced for equity-related derivatives products in line with the expansion of daily price limits in the stock markets.
  - Introduction of intraday additional customer margin: As a result of the expanded range of price limits for underlying assets, intraday additional customer margin would be introduced to ensure proactive risk management. In cases where underlying assets change beyond a certain level, additional customer margin must be demanded by a clearing member to customers when their total deposit amount falls short of the intraday customer maintenance margin. When a call for intraday

additional customer margin has been made, clearing members should reject orders placed by the customer until they check the deposit of the requested margin, but allow the customer to send offsetting orders for reducing requested margin deposit amounts (or relevant risk).

KRX plans to revise relevant enforcement rules including details and timeline for the implementation of the revised regulations.

- On May 26, 2015, KRX announced revised Enforcement Rules of the Derivatives Market Business Regulation to introduce intraday additional member margin and intraday additional customer margin.

  Key elements are:

  - Intraday additional member margin is equal to the intraday member margin, which is calculated at noon during trading hours or when it is deemed necessary for market management (both are called ‘time t’), minus the total amount of deposit, which is calculated at time t or time t plus one hour. This intraday additional member margin would be imposed if: i) the price rate of change ([the underlying asset price at time t – the base price of the underlying asset on previous day] / the base price of the underlying asset on previous day) of the KOSPI 200 is greater than or equal to 0.5 times the member margin rate of KOSPI 200 futures; and ii) intraday member margin is greater than or equal to 1.2 times the total amount of deposit at time t.
  - KRX would determine one hour from time t whether to impose the intraday additional member margin and would notify members immediately. Members need to deposit their intraday additional member margin within two hours of being notified by KRX. However, this intraday additional member margin would be cancelled if the intraday member margin calculated 30 minutes after being imposed is less than or equal to the total amount of deposit calculated one hour after being imposed.
  - Members shall impose intraday additional customer margin on their clients when the underlying-asset change is greater than or equal to 80% of the intraday customer maintenance margin rate of KOSPI 200 futures.

  The revised rules are effective from June 15, 2015.

- On June 24, 2015, KRX announced an amended Derivatives Market Business Regulation in order to launch mini KOSPI 200 futures and options and renminbi (RMB) currency futures, following the FSC’s announcement on policy direction for capital markets reform on April 23.

  Key highlights include:

  - Mini KOSPI 200 futures and options: underlying asset (KOSPI 200), multiplier (100,000), contract months (the four non-quarterly months plus two quarterly months), position limit (10,000 contracts for institutions and 5,000 contracts for individuals);
  - RMB currency futures: underlying asset (RMB), contract size (100,000 yuan) and multiplier (100,000);
  - Article 154(1)2 of the Derivatives Market Business Regulation regarding position limits of 10-year KTB futures would be abolished.

  The amendment is effective on July 20, 2015.

- On June 29, 2015, KRX announced it had selected 10 KOSDAQ-listed stocks as underlying assets for single-stock futures, which would be listed on August 3. In addition, KRX selected new underlying assets through the regular change of existing single-stock futures and options based on stocks listed on the KOSPI market. The number of underlying stocks for single-stock futures was expanded to 10 KOSDAQ stocks and 80 KOSPI stocks.

KRX noted that the listing of KOSDAQ single-stock futures would enable investors to risk manage KOSDAQ blue-chip stocks. It would also promote the participation of institutional and foreign investors in the KOSDAQ market, the exchange said.

- On July 3, 2015, KRX announced its amended enforcement rules of the Derivatives Market Business Regulation, with additional details on mini KOPSI 200 futures and options. Key contents include:
  - Mini KOSPI 200 futures and options: tick size (0.02P), final settlement price (the closing value of KOSPI 200), strike price interval (mini KOSPI 200 option only, 25 strike prices with 2.5P interval);
  - Article 111 was amended to restrict designation of settlement banks to banks that satisfy the condition of a minimum liquidity coverage ratio of 110%.

  The amendment is to be implemented on July 20, 2015, when mini KOSPI 200 futures and options are launched.

- KRX announced its plan to launch mini KOSPI 200 futures and options starting from July 20, 2015. Key details of the product specifications include:

  Mini KOSPI 200 futures
  - Underlying assets: KOSPI 200;
  - Multiplier: 100,000;
  - Tick size: 0.02 point;
  - Type of order: limit order but real-time price banding is not applicable;
  - Delivery months: designed to have consecutive six delivery months with maturity of six months, so a delivery month arrives every month;
  - Settlement price: the closing contract price. In the case where a KOSPI 200 futures contract and a mini KOSPI 200 futures contract have been listed simultaneously, the settlement price of KOSPI 200 futures is applied;
  - Base price: the settlement price on previous day. In the case where a KOSPI 200 futures contract and a mini KOSPI 200 futures contract have been listed simultaneously, the quotation price unit shall be adjusted after the settlement price of KOSPI 200 futures is applied;
  - Last trading day: the second Thursday of each delivery month;
  - Last settlement day: next trading day of the last trading day.

  Mini KOSPI 200 options
  - Underlying assets: KOSPI 200;
  - Multiplier: 100,000;
  - Tick size: 0.02 points for order price less than 10 points and 0.10 points for order price of 10 points or more;
  - Type of order: limit order but real-time price banding is not applicable
  - Expiration months: consecutive four non-quarterly months and two quarterly months;
  - Strike price interval: 25 strike prices with 2.5p interval;

- Base price for member margin: borrowing base price for member margin of KOSPI 200 options;
- Base price: base price of KOSPI 200 options is applied. If it is not consistent with the quotation price unit (tick size), the nearest price to the tick size would be applied;
- Last trading day: the second Thursday of each expiration month;
- Last settlement day: next trading day of the last trading day.

- On July 6, 2015, the FSC announced that the revision bill on the amendment of the FSCMA, including changes to KRX's default waterfall, was passed at the plenary session of the National Assembly of Korea. Going forward, KRX would use its own allocated settlement reserve prior to the default fund contributions of non-defaulting clearing members – commonly referred as skin-in-the-game. The FSC also noted it would modify other regulations such as the Enforcement Decree and the Enforcement Rule of the FSCMA in July in order to implement this amendment smoothly. In addition, the KRX Membership Regulation specifying the details of the revised default waterfall is expected to be amended accordingly.

- On August 7, 2015, KRX amended its guidelines on the connection to member systems to ease concerns about maximum capacity and the application for additional communication lines that may be allocated to members for the derivatives market. Key elements include:
  - The number of communication lines that may be allocated to members in case of requests for additional main, back-up and disaster recovery lines would be expanded to five, respectively. The implementation date would be announced later.
  - In a case where a member system has changed due to office relocation, as well as a merger or split, the member may request KRX to allocate additional communication lines. The implementation date is August 17.

- On August 17, 2015, the FSC announced that KRX had been designated as a trade repository. For this designation, a task-force was set up comprising FSC, FSS and experts from the industry in the second half of 2014, in order to study global standards and current trends of TRs, operational cases of overseas TRs and TR requirements. Based on this study, FSC subsequently formed a committee for the designation of TRs, and established specific standards for TR designation in July.

  FSC expects the TR to centrally collect and efficiently manage large amounts of data and information regarding over-the-counter derivatives trades, improving derivatives market monitoring and transparency. Specific action plans, including details on the transaction information that would be centrally collected and the development of an IT system, would be set out by KRX.

- On August 20, 2015, KRX released a new fee schedule regarding trading and clearing and settlement (stock, bond, futures and options), and a processor user fee. The new fee schedule is effective from June 26, 2015.

- On September 2, 2015, KRX amended its Membership Regulation in response to a FSC decision to allow banks to obtain a licence to engage in the trading of exchange-traded derivatives based on currency or interest rate. Key elements include:
  - Definition of currency/interest rate derivatives member: a member that is entitled to take part in trading of exchange-traded derivatives based on currency or interest rate in the derivatives market.
  - The amount that a clearing member that is a currency/interest rate derivatives member contributes to the joint compensation fund: basic contribution (KRW 0.5 billion) plus intermittent contribution. The intermittent contribution is calculated by multiplying the ratio of a clearing member's average

daily margin relative to that of all clearing members obliged to contribute to the fund for a retroactive one-year period from the end of the previous quarter, by the difference obtained by subtracting the total basic contribution from the total amount of the joint compensation fund.

- The rules for postponement or cancellation of the measures imposed due to unsatisfactory financial conditions shall be stipulated in the enforcement rules.

• On September 10, 2015, KRX amended the Enforcement Rules of the Disclosure Regulations of the KOSPI and KOSDAQ markets as a follow-up measure after the Regulatory Reform for the Corporate Disclosure System (FSC, June 1, 2015), which became effective on September 7, 2015.

  Summary of the amendment;

  - Enhancement of autonomy of corporate disclosure;
  - Reinforcement of disclosure responsibility of listed corporations;
  - Reinforcement of incentives for the outstanding disclosure companies, etc.

• On September 22, 2015, KRX released a revised fee schedule regarding trading and clearing and settlement (stocks, bonds, futures and options), and a processor user fee. The revised fee schedule is effective from October 5.

• On September 25, 2015, the CFTC announced that the CFTC chairman Timothy Massad signed a memorandum of understanding (MoU) with chairman Yim Jong-Yong of FSC and governor Zhin Woong-Seob of FSS regarding cooperation and the exchange of information in the supervision and oversight of clearing organisations that operate on a cross-border basis in the US and Korea.

• On October 26, 2015, the CFTC issued an order of exemption from registration as a DCO to KRX. The CFTC issued this order based on its authority under Section 5b(h) of the Commodity Exchange Act.

  This provision permits the CFTC to exempt a clearing organization from DCO registration for the clearing of swaps as long as the CFTC determines that such clearing organization is subject to comparable, comprehensive supervision by appropriate government authorities in the clearing organization's home country. The order permits KRX to clear proprietary interest rate swap positions of US persons that are clearing members of KRX or affiliates of such clearing members.

• On November 13, 2015, the European Commission determined that the Republic of Korea has the equivalent regulatory regimes for central counterparties as the European Union.

• On February 8, 2016, KRX was granted an exemption by the CFTC that will allow some of its members to accept funds from and trade derivatives with US customers without registering as futures commission merchants. The order also permits these designated KRX members to engage in marketing conduct in the US for a period not to exceed 30 days.

  KRX has indicated it will soon start administrative procedures for qualified member firms. KRX has also stated it plans for its index options product to become legally accessible to US investors through relief by the Securities Exchange Commission.

• On March 22, 2016, European Securities and Markets Authority (ESMA) established a MoU under EMIR with the South Korean FSC and FSS respectively. The MoU establishes cooperation arrangements, including the exchange of information, regarding CCPs which are established and authorised or recognised in South Korea, and which have applied for EU recognition under EMIR.

The MoU is effective as of 15 March 2016.

- On April 7, 2016, KRX signed a MoU with the Depository Trust and Clearing Corporation (DTCC) to facilitate cooperation in developing its trade repository (TR) services. KRX stated that it expects to develop an implementation plan fitting the global standards through this cooperation with DTCC.

  KRX stated that the purposes of this MoU are to:
  - Devise a reporting scheme suitable to local and foreign market participants;
  - Enhance global cooperation through standardization of required data;
  - Support advisory and education in the implementation of TRs.

  KRX indicated that the FSC is currently reviewing the draft amendments to the Financial Investment Services and Capital Markets Act to implement trade reporting in Korea. KRX announced that it expects to commence TR services in the second half of next year, after testing.

- On April 22, 2016, KRX was granted a third-country (non-EU) CCP recognition by the ESMA. This comes after the EC adopted the implementing act determining the legal and supervisory framework of Korea is equivalent to the EU in October 2015, and the March 2016 memorandum of understanding signed between European and Korean authorities.

  KRX stated that 10 over-the-counter clearing members and three exchange-traded derivatives clearing members currently fall under the scope of the European regulations. Members will be able to benefit from the lower risk weight applied to the exposure value to qualifying CCPs under European capital rules.

- On June 14, 2016, KRX announced plans to offer voluntary clearing of US dollar interest rate swaps from November 2016. KRX estimates that such trades make up as much as 12% of the total onshore interest rate swaps trades.

  KRX also indicated its plans to offer non-deliverable Korean won interest rate swaps and Korean won/US dollar non-deliverable forwards in 2017, and to possibly expand its clearing services to credit default swaps in the medium-to-long term.

8. KOFIA

- On March 18, 2014, KOFIA amended the “Financial Investment Company Model Rules for Preventing Financial Accidents” 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 would take immediate effect.

9. Korea Securities Depository

- On October 9, 2014, FSC announced that the Regulatory Oversight Committee endorsed the Korea Securities Depository (KSD) as a pre-local operating unit under the sponsorship of the FSC. Accordingly, domestic companies and financial institutions that previously received legal entity identifiers (LEIs) from authorised issuers in the US or Germany for their over-the-counter derivatives transactions in overseas markets would be able to obtain LEIs from the KSD from January 2015, once its system for issuing LEIs is ready.

10. International Organizations

- On May 20, 2014, IMF issued its report, Financial System Stability Assessment of the Republic of Korea, based on the work of the Financial Sector Assessment Program (FSAP) mission conducted in 2013. The FSAPs are designed to assess the stability of the financial system as a whole and to help countries identify and remedy weakness in their structure in order to enhance their resilience to macroeconomic shocks and cross-border contagion.

  In this report, IMF used six core assessment parameters: soundness of the financial sector and potential risks; macroprudential framework; financial sector supervision; sectoral regulation and supervision; systemic liquidity; and crisis management and resolution framework.

  On the same day, IMF also published the Report of the Observance of Standards and Codes on the Republic of Korea as a background document to this Financial System Stability Assessment report. The analysis was based on core principles such as Basel core principles for effective banking supervision (BCP) and CPSS-IOSCO principles for financial market infrastructures (PFMI).

- On September 21, 2016, the Basel Committee on Banking Supervision (BCBS) published a report assessing the implementation of the risk-based capital framework and the LCR for South Korea.

  Overall, the domestic implementation of the risk-based capital framework is found to be "largely compliant" with the Basel standards, reflecting the fact that most but not all of the provisions in the Basel standards are satisfied. Specifically, 12 of the 14 components of the framework are assessed as compliant, while two components (the definition of capital and the transitional arrangements) are assessed as largely compliant and "materially non-compliant", respectively. In regards to LCR, South Korea is assessed as "compliant".

11. Margin requirements for non-centrally cleared derivatives

- On December 14, 2016, the FSS published the draft guidelines on margin requirements for non-centrally cleared derivatives. It includes requirements for initial and variation margin to be exchanged between banks, financial investment companies, insurance companies, asset managers and collective investment businesses (including off-shore collective investment businesses transacting on-shore) for all non-centrally cleared over-the-counter (OTC) derivatives transactions, excluding physically settled FX forwards/swaps and the principal exchange portion of currency swaps.

  Initial margin shall be phased-in starting from September 2017 for institutions with aggregate month-end average notional amount (AANA) over three quadrillion KRW and variation margin shall be phased-in from March 2017 for institutions with AANA over 10 trillion KRW. Variation margin requirements shall apply to all entities from September 2017. There shall be a three month transitional relief for each variation margin phase-in.

Comments on the consultation were due by January 2, 2017.

12. Fintech

- On July 22, 2016, a new fintech bridge was established between the UK and the Republic of Korea by the signing of a regulatory co-operation agreement between the UK Financial Conduct Authority (FCA) and the FSC. This will enable the regulators to share information about financial services innovations in their respective markets, including emerging trends and regulatory issues. By strengthening links between the regulators and governments, it is hoped the agreement will reduce the barriers to entry in a new jurisdiction and further encourage innovation in both countries' financial services sectors.

- On August 30, 2016, the FSC announced the launch of a fintech open platform aimed at helping fintech firms in developing innovative financial services. The fintech open platform is a combination of an open application programming interface (API) system, where fintech firms can download program commands used in the development of fintech services, and a physical test-bed where they can run test operations of the programs they develop. The open API system provides program commands needed in programming fintech services with banking functions, including money transfer and balance check, in the form of standardised API.

  The Korea Financial Telecommunications & Clearings Institute and Koscom will provide virtual data and simulation environments for fintech firms to run test operations of their fintech services, and offer technology consulting services. The Financial Security Institute will ensure stability of fintech services and financial consumer safety before the launch of the services.

- On October 24, 2016, the Monetary Authority of Singapore (MAS) and the FSC signed a cooperation agreement to foster greater cooperation in fintech. Under the agreement, the MAS and the KFSC will explore potential joint innovation projects on technologies such as big data and mobile payments. The agencies will also discuss issues of common interest, and share information on fintech trends and how it may impact existing regulations.

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.
- September 30, 2014: ISDA submission to FSC/FSS on QCCP status of KRX
- November 17, 2014: ISDA submission to Financial Services Commission ("FSC") with regards to amendments of Article 399 of the Financial Investment Services and Capital Markets Act ("FISCMA").
- November 18, 2015: ISDA submission to The National Assembly of the Republic of Korea with regards to the Proposed Bill of the Corporate Restructuring Promotion Act as a Permanent Statute

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. As of 2016, TR has not come into force.

Key Regulatory Milestones

1. 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 would be made to existing laws and Bank Negara Malaysia would 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."

- On September 9, 2014, BNM released its consultation paper on the Netting of Financial Agreements Bill. The initiative follows the 2014 budget speech given by the Prime Minister in October 2013.

  The Bill introduces a definition of 'netting provision' under certain 'qualified financial agreements' in order to address close-out netting mechanisms that are typically embedded in financial contracts. The scope of the Bill would extend to certain 'qualified financial transactions' which include OTC derivatives, Islamic financial instruments such as Islamic derivatives, repurchase transactions and a securities borrowing and lending of unlisted debt securities under the real time electronic transfer of funds and securities systems. The consultation paper also provides an overview of the key concerns relating to close-out netting in Malaysia. BNM envisages that the legislation would provide legal assurance for the enforceability of close-out netting mechanisms under certain types of financial agreements by removing legal impediments or uncertainties to netting in existing legislation.

- On January 8, 2015, BNM issued its response to feedback received from the consultation paper on the Netting of Financial Agreements Bill on September 9, 2014, which proposed to enact a legislation to provide legal certainty for the enforcement of close-out netting arrangements.

- The Netting of Financial Agreements Act came into force on March 30, 2015. BNM, Perbadanan Insurans Deposit Malaysia and Pengurusan Danaharta Malaysia Berhad also announced that a stay period of two business days under the Act became effective on March 30, 2015. Subsequently, ISDA published an updated netting opinion for Malaysia on 30 July, 2015.

2. 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 came into operation in October 2013 (and may be deferred for up to another year).

- On March 26, 2012, 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 had decided not to proceed with the proposals set out in the March 26, 2012 joint concept paper. Instead, they would work with the SC on the implementation of the trade repository. The detailed requirements for the trade repository were expected to be substantially similar to the transaction-level data requirements set out in the joint concept paper. Although an appropriate transitional arrangement would be considered, PIDM and BNM note that it was 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 noted that the readiness of reporting institutions to report the required data would 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, 2013, 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 would 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 would 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 would 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 Capital Markets Services Licence (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 would be implemented in three phases. Phase 1 would involve the investment banks licensed by the SC and BNM. Phase 2 would include the CMSL holders other than those captured in Phase 1. Phase 3 would 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 would 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 CMSL under the CMSA. These include derivatives brokers, stockholding companies and fund management companies;
- Institutions licensed by the Bank under the FSA and the 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 would further define the scope of these entities and consult the industry before prescribing any person for this purpose.

3. Regulation of OTC derivatives activity

- The CMSA 2011 (except the provision amending Section 92 of the 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 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.

4. Offer of unlisted capital market products

- The CMSA 2012 which came 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 sukuks) 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 would apply to all retail investors and high net-worth individuals. These requirements would also apply to high net-worth entities, unless they opt out. They would not however apply to accredited investors. The principles on treating investors fairly would 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.

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 would 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 would 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).

8. BNM consults on liquidity coverage ratio

- On September 30, 2014, BNM released a concept paper on the liquidity coverage ratio (LCR). The concept paper outlined BNM's approach to implementing the LCR, specifically covering areas such as the scope and level of application of the LCR, the implementation timeline and the relevant transition arrangements, the eligible stock of high-quality liquid assets, and the treatment for cashflow items for the purposes of LCR calculation.

9. SC announced amendments to securities laws come into force

- On September 22, 2015, SC announced the coming into force of the Capital Markets and Services (Amendment) Act 2015 (CMSA) and Securities Commission (Amendment) Act 2015 (SCMA) on September 15. The amendments to the securities laws were made to facilitate new fundraising structures, enhance investor protection, clarify responsibilities of issuers and advisers, and expand the scope of the SC's supervisory powers.

  The CMSA Amendment introduced a new recognised market framework to facilitate the establishment of alternative trading platforms, including equity crowd-funding (ECF) platforms. Under this framework, private companies that are hosted on a registered ECF platform are provided a safe harbour from provisions in the Companies Act 1965, which prohibit private companies from offering shares to members of the public. The introduction of ECF is in line with the SC's objective to promote capital-market inclusion and widen avenues for capital-raising.

  To promote a more conducive environment for the issuance and subscription of corporate bonds, the CMSA Amendment has clarified the roles and responsibilities of persons in charge of preparing disclosure documents. Minority shareholder protection in relation to takeovers and mergers transactions is also strengthened, with the SC now empowered to appoint an independent adviser where the offeree fails to do so. The CMSA Amendment also seeks to preserve netting provisions of market contracts and strengthen crisis management of market institutions, such as exchanges and clearing houses.

  The SCMA Amendments were amended to align securities laws with International Organization of Securities Commissions principles. To elevate the standards of auditors and quality of financial statements, the Audit Oversight Board's regulatory reach is extended to capital market institutions, scheduled funds and reporting accountants. The SC's examination powers have also been expanded to include persons performing outsourced functions for regulated entities, including branches and subsidiaries.

10. Capital Adequacy Framework

- On July 15, 2015, Bank Negara Malaysia released its concept paper which sets out its proposals on the computation of the weighted average Countercyclical Capital Buffer requirements for private credit exposures held in jurisdictions where the national authority has announced the Countercyclical Capital Buffer rate for that jurisdiction, in line with the requirements set out under Basel III.
  On the same day, it also released its concept paper on the same topic for Islamic banks.

- On October 13, 2015, Bank Negara Malaysia finalized the revisions to the Capital Adequacy Framework (Capital Components and Basel II – Risk-Weighted Assets) and the Capital Adequacy Framework for Islamic Banks (Capital Components and Risk-Weighted Assets).

  The revised policy documents:

  - Extend the capital adequacy requirements to financial holding companies which are engaged predominately in banking business; and
  - Detail the formula to incorporate the countercyclical capital buffer requirements into the calculation of the capital adequacy ratios.

11. Bank Negara reduces reserve ratio

- On January 21, 2016, Bank Negara Malaysia announced a decrease in the statutory reserve requirement (SRR) ratio from 4.00% to 3.50%, effective from February 1.

  The decision was taken as part of an initiative by Bank Negara Malaysia to ensure sufficient liquidity in the domestic financial system. Since early 2015, Bank Negara Malaysia has relied on its monetary operations, including the reverse repo facility, to provide liquidity to the banking system as net external outflows reduced the amount of liquidity in the system. As of January 21, this amounted to RM40 billion.

12. IOSCO establishes APAC hub in Kuala Lumpur

- On February 22, 2016, the Securities Commission Malaysia announced that the International Organization of Securities Commissions (IOSCO) has approved the establishment of its first ever regional office, to be set up in Kuala Lumpur.

  The Asia-Pacific regional hub will play a key role for IOSCO initiatives within the Asia-Pacific region, which covers both developed and emerging markets. The hub will also facilitate cross-border regulatory cooperation and contribute to the development of the region’s capital markets through its initiatives. It is expected to be in operation by the end of 2016.

13. Renminbi investment licence open for application

- On March 8, 2016, the Securities Commission Malaysia (SCM) and BNM jointly issued a guidance note to facilitate applications to the China Securities Regulatory Commission (CSRC) for a renminbi qualified foreign institutional investor (RQFII) licence. The guidance note outlines the criteria and eligible entities that may apply for the licence, as well as additional requirements by the SCM and/or BNM prior to any application submission to the CSRC.

  On November 23, 2015, the People's Bank of China (PBOC) recognised Malaysia as an RQFII jurisdiction, with an aggregate quota of RMB50 billion. With this, Malaysia-based institutions are now able to invest directly into the Chinese capital market using renminbi funds. The RQFII programme creates opportunity for qualified Malaysian institutions to offer a wider range of renminbi investment products and will serve as an avenue for greater utilisation of offshore renminbi funds.

14. Deposit insurance Insurance (Amendment) Act comes into force

- The Malaysia Deposit Insurance Corporation (Amendment) Act 2016 received royal assent on March 2, and came into force on March 8, 2016. The amendment act introduces a new subsection 2(IA) to the Malaysia Deposit Insurance Corporation Act, which seeks to re-define qualified financial agreements (QFAs) under the act and align this to the equivalent definition as used in the Financial Services Act 2013 (FSA) and the Central Bank of Malaysia Act 2009 (CBMA). Subsection 2(IA)(g) also introduces the definition of a qualified financial transaction (QFT), which is largely similar to the equivalent definition used in the FSA and CBMA. It should also be noted that the requirement of 'recurrent dealings' under the act no longer applies under the new definitions of QFAs and QFTs as now set out in subsection of 2(IA).

15. BNM establishes Financial Markets Committee

- On May 13, Bank Negara Malaysia (BNM) announced the establishment of a Financial Markets Committee. The committee has been established with the objective of broadening industry engagement, with a focus on reviewing and formulating strategies for the wholesale financial markets to meet the demands of a more developed and internationally integrated economy.

  The committee will comprise representatives from Bank Negara Malaysia, financial institutions, corporations, financial service providers and other institutions or stakeholders that have a prominent role or level of participation in the financial markets.

  The committee also aims to provide a senior-level forum for market participants to discuss potential issues and risks relating to the development of the Malaysian financial market.

16. Fintech

- On April 13, 2016, Securities Commission Malaysia (SC) announced the regulatory framework for peer-to-peer financing (P2P), setting out requirements for the registration of a P2P platform as provided in the amended Guidelines on Recognized Markets. The introduction of the new Chapter 13 in the Guidelines provides for the duty and responsibility of a P2P operator, type of issuer and investor who can participate in P2P.

- On June 2, 2016, Bank Negara Malaysia announced the establishment of a financial technology enabler group, which will be responsible for formulating and enhancing regulatory policies to facilitate the adoption of technology innovations in the Malaysian financial services industry.

- On July 29, 2016, Bank Negara Malaysia released a consultation paper on proposed guidelines for a "regulatory sandbox" in order to facilitate the development and adoption of fintech solutions in the financial sector. The proposed regulatory sandbox framework will grant certain regulatory flexibilities to financial institutions and fintech companies to experiment with fintech solutions in a production environment and will be accompanied by appropriate safeguards and regulatory requirements. The discussion paper sets out the eligibility criteria, minimum standards and requirements, as well as a proposed operational approach.

  The public consultation period ended on August 30.

- On September 23, 2016, Bank Negara Malaysia hosted a conference with financial institutions themed future finance in Sasana Kijang, Kuala Lumpur. The Conference adopted an innovative and more participative approach in discussing the future direction of finance in Malaysia. The Conference was attended by Chief Executive Officers and Chairmen of financial institutions, financial technology companies, as well as several important ancillary entities within the financial sector.

  This Conference was convened at the midpoint of the ten-year Financial Sector Blueprint to reflect progress and reaffirm commitments for continued development of the financial sector, as well as recalibrate new strategies to accelerate momentum towards the envisioned outcomes amidst the constantly evolving domestic and global environment.

  Financial technology (fintech) was also featured as a main theme, showcasing a host of fintech solutions as well as facilitating exchange of perspectives on key developments in the fintech space and its resulting implications to the industry.

- On October 18, 2016, Bank Negara Malaysia (BNM) issued the Financial Technology Regulatory Sandbox Framework, following the consultation on the proposed framework that was released on July 29. Based on the consultation, BNM has expanded the eligibility criteria to clarify the focus of innovations that the sandbox aims to support. Innovations should have clear potential to:

  - Improve the accessibility, efficiency, security and quality of financial services;
  - Enhance the efficiency and effectiveness of Malaysian financial institutions' management of risks; or
  - Address gaps in or open up new opportunities for financing or investments in the Malaysian economy.

  The framework will be effective immediately and is now open for application. BNM will inform applicants of their eligibility to participate in the sandbox within 15 working days of receiving a complete application. This will be followed by preparatory engagements between BNM and the applicant prior to testing.

- On October 30, 2016, Securities Commission Malaysia (SC) announced that in its on-going efforts to lead the conversation in digitalisation of the capital market space, SC is organising "SCxSC Digital Finance Conference 2016" (SCxSC), with the theme "Capitalising Entrepreneurship". The two-day conference would be held on 3 and 4 November at the SC building in Bukit Kiara, Kuala Lumpur.

This year's conference would also broaden the focus of discussions on digital investment services (which include robo-advisory services) and distributed ledger technology. These new digital finance capabilities will change the complexion of capital markets and bring new potential growth to the industry.

17. Financial Benchmarks

- On June 15, 2016, Bank Negara Malaysia (BNM) and the Financial Markets Association of Malaysia (FMA) announced the following changes as part of their effort to adopt global best practices for the domestic financial market:
  - Adoption of a new methodology in USD/MYR spot fixing based on market transaction data. Under the new methodology, the reference rate will be known as the Kuala Lumpur USD/MYR Reference Rate, and will be computed based on the weighted average volume of the interbank USD/MYR spot rate transacted by domestic financial institutions between 8:00am to 3:00pm. It will be published daily at 3:30pm.
  - An expanded official closing hour for the onshore ringgit market from 5:00pm to 6:00pm to give businesses additional time to complete their foreign exchange transactions. Onshore market participants can continue to transact after the official closing hour.
  - Both these changes are effective from July 18. The new Kuala Lumpur USD/MYR Reference Rate will be published in parallel with the current reference rate starting from June 20 to allow for the market to transition.

18. BNM revokes derivatives amendments

- On August 1, 2016, Bank Negara Malaysia announced that the following policy documents have been revoked:
  - Guidelines on Regulatory Treatment for Credit Derivatives Transactions (issued in 2005)
  - Guidelines on Offering of Investment Linked to Derivatives Products (issued in 2006)

The capital treatment for credit derivatives transactions in the trading book is now included in the Capital Adequacy Framework. Other requirements relevant to the risk management of credit derivatives and offering of investment linked derivatives have already been provided for in existing policy documents.

19. Cybersecurity

- On March 21, 2016, the Securities Commission Malaysia (SC) published a consultation paper seeking public feedback on the proposed regulatory framework relating to the management of cyber security risk by capital market participants.

  The SC views sound management of cyber security risk as a key priority to further strengthen the resilience of the Malaysian capital markets. This includes setting the direction for effective management of risks by the company's board of directors and establishing internal cyber security policies and procedures.

  Interested parties and the public were invited to submit their comments and feedback before the closing date of 29 April 2016.

- On October 31, 2016, SC issued new guidelines to enhance cyber resilience of the capital market by requiring capital market entities to establish and implement effective governance measures to counter cyber risk and protect investors.

  The Guidelines on Management of Cyber Risk (Guidelines), among other requirements, clearly stipulate the roles and responsibilities of the board and senior management in building cyber resilience of a capital market entity. The guidelines have also mandated the entity to identify a responsible person to be accountable for the effective management of cyber risk. These measures aim to ensure that cyber risk is managed in an optimised manner, in light of the changing landscape in the market.

  These Guidelines require regulated entities to have in place a risk management framework to minimise cyber threats, implement adequate measures to identify potential vulnerabilities in their operating environment and ensure timely response and recovery in the event of a cyber-breach. In this regard, regulated entities are required to implement adequate physical and systems security arrangements.

  The involvement of the board and senior management is important to ensure that the capital market entity puts adequate focus on cyber risk issues, determines risk tolerance and priorities, and allocates sufficient resources to cyber risk. As such, these Guidelines require the entity to outline the roles and responsibilities of the board, responsible person and key personnel in critical functions with a role in managing cyber risk.

  In order to enable SC to engage effectively with capital market entities and to share information on cyber breaches and potential cyber threats, regulated entities are required to report cyber incidents to the SC. This engagement will enhance industry's awareness on, and preparedness in dealing with, cyber risk. It will also provide a platform for SC to collaborate with market entities and stakeholders to enhance cyber resilience on an ongoing basis.

  These Guidelines will be implemented in phases. Entities will be selected for the different phases based on, among others, size, nature of activities and market share. The Guidelines took effect on 31 October 2016.

20. BNM and OJK to cooperate on banking

- On August 1, 2016, Bank Negara Malaysia signed a bilateral agreement with Otoritas Jasa Keuangan, the Indonesian financial services authority, under the Association of Southeast Asian Nations (ASEAN) Banking Integration Framework.

  The agreement will provide greater access and operational flexibility for Malaysian and Indonesian qualified ASEAN banks operating in the respective jurisdictions. The commitments in the agreement form part of the ASEAN Framework Agreement on Services. Under the agreement, it is envisaged that both Malaysian and Indonesian banks will have a greater role in facilitating cross-border trade and investment between both countries.

  To promote adequate safeguards in a more integrated environment, Bank Negara Malaysia and Otoritas Jasa Keuangan also signed a memorandum of understanding (MoU) in April 2016 to further enhance supervisory cooperation. The MoU covers areas of supervisory cooperation and coordination, including exchange of information, facilitation of consolidated and cross-border on-site supervision, financial crime, and crisis management. The agreement and the MoU signify the commitment of both Bank

Negara Malaysia and Otoritas Jasa Keuangan towards promoting greater regulatory cooperation as the region moves forward in pursuit of deeper regional financial integration.

21. BNM consults on regulatory framework for trustees and custodians

- On October 12, Securities Commission Malaysia (SC) published a consultation paper seeking public feedback on a proposed regulatory framework for trustees and custodians in the Malaysian capital market.

  Currently, there are 90 custodians and trustees safekeeping approximately RM1.7 trillion worth of assets on behalf of investors. The SC recognised the significant role played by trustees and custodians in maintaining investors' trust in the capital market by safeguarding investors' assets and interest.

  In view of the important functions undertaken by these entities, the SC proposed to revise the regulatory framework that included streamlining entry standards and on-going conduct obligations that would create a level playing field among trustees and custodians. To enhance efficiency, the SC also proposed a one-time registration to enable trustees to provide services for all capital market products instead of the current product-based registration.

  This framework is consistent with SC's efforts in realigning its regulatory approach from product-focused to intermediary/activity-focused. This framework would focus on conduct regulation to ensure that trustees and custodians prioritise investors in all of their decision-making process. In addition, it would place greater emphasis on board and management responsibilities by holding them accountable for the conduct of the registered entity and their representatives. The SC would also enhance the supervision of trustees and custodians to ensure that these registered entities continue to remain fit and proper when carrying out their obligations and responsibilities in protecting investors' rights and assets.

  Interested parties and the public were invited to submit their comments and feedback before the closing date of 12 November 2016.

22. BNM releases concept paper on stress testing

- On October 14, 2016, BNM released a paper on stress testing for banking institutions. The concept paper outlines the following:
  - BNM's supervisory expectations and requirements with regards to the governance, coverage of risks, design, and implementation of a banking institutions stress testing programme;
  - The basis for BNM's supervisory assessment on the safety and soundness of banking institutions, monitoring of risks in the financial system, and pre-emptive policy actions; and
  - Reporting requirements on stress-testing results to BNM.

  Comments are due by December 14. The policy is effective on June 1, 2017, with the exception of the reverse stress-testing requirements, which are effective on June 1, 2018.

23. Initiative to develop the onshore financial market

- On December 2, 2016, the Financial Markets Committee (FMC), in collaboration with Bank Negara Malaysia (BNM), announced measures intended to enhance the liquidity of the FX market and liberalise and deregulate the onshore ringgit hedging market. These took effect from December 5, and are as follows:

- Market participants have greater flexibility to manage FX risk. Residents, including resident fund managers, may freely and actively hedge their US dollar and CNH exposures up to a limit of RM6 million per client, per bank. A one-time declaration of non-speculative activity would suffice;
- Residents and non-resident fund managers can manage their FX exposure up to 25% of their invested assets; and
- Offshore non-resident financial institutions may participate in the Appointed Overseas Office (AOO) framework, which provides for FX hedging (for own account or on behalf of a client) for current and financial accounts based on commitment, opening of ringgit accounts and extension of ringgit trade financing.

Resident entities with domestic ringgit borrowing are free to invest in foreign currency assets both onshore and abroad up to the prudential limit of RM50 million. Exporters can retain up to 25% of export proceeds in foreign currency.

On December 6, 2016, the FMC announced more details of the expanded AOO framework, which allows non-resident traders and investors greater ability to settle trade or investment in ringgit through an approved channel. The framework is now expanded to include additional transactions, such as foreign exchange hedging (own account or on behalf of a client) for current and financial accounts based on commitment, opening of ringgit accounts (book keeping), and extension of ringgit trade financing.

- On December 9, 2016, the Financial Markets Committee (FMC), in collaboration with Bank Negara Malaysia (BNM), released an updated FAQ on the initiative to develop the onshore financial market that was previously released on December 2. The FAQ has updated questions on:
  - Hedging flexibilities for institutional investors;
  - Hedging without documentary evidence;
  - Appointed overseas offices;
  - Export proceeds and foreign currency accounts;
  - Special deposit facility for resident exporters;
  - Payment in foreign currency between residents; and
  - Investment in foreign currency assets.

24. PIDM signs MoUs with US, Korean deposit insurers

- On December 8, 2016, Perbadanan Insurans Deposit Malaysia (PIDM) announced that it signed two separate memoranda of understanding (MoUs) with the Federal Deposit Insurance Corporation (FDIC) of the United States and the Korea Deposit Insurance Corporation (KDIC) to extend mutual cooperation and collaboration with its international counterparts.

  The MoUs will facilitate the sharing and exchange of information and the mutual collaboration between the KDIC and its US and Korean counterparts respectively. Besides seeking to enhance the working relationship, the MoUs will also provide opportunities for sharing of knowledge, expertise and experiences through study visits, secondments, trainings and seminars. The MoU with the KDIC is a renewal of that previously signed by the two parties in 2013.

To date, PIDM has established bilateral cooperation with several other deposit insurers, which include the Philippines Deposit Insurance Corporation (PDIC) and the Central Deposit Insurance Corporation (CDIC) Taiwan. PIDM also has a tripartite arrangement with the Deposit Protection Agency (DPA), Thailand and the Indonesia Deposit Insurance Corporation (IDIC).

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

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 Associations:	New Zealand Bankers Association (NZBA)
	New Zealand Financial Markets Association (NZFMA)
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 would, for the first time, become a regulated financial product. However, dealings between wholesale market participants would largely be exempted. The new Act would be brought into force progressively from April 2014. Much of the detail would 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 proposed 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 introduced a framework for implementing the Countercyclical Buffer which would 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.

3. Derivatives regime overhaul with FMCA implementation

- New Zealand's derivatives regime would be overhauled from 2015 by the full implementation of the Financial Markets Conduct Act 2013 (FMCA), with major implications for participants that transact OTC derivatives in New Zealand. The last stage before the new regime came into effect would be the publication of the FMC regulations. A near-final draft was published on September 26, 2014.

The FMCA would replace the Securities Markets Act 1988 (SMA), along with several other pieces of legislation, including New Zealand's outdated ‘futures contract’ and ‘futures dealers’ regime. Derivatives would be one of a number of classes of financial products under the FMCA. In a move away from the current approach, the regulation of disclosure for derivatives offered to retail investors would be substantially aligned with securities regulation. The FMCA definition of derivatives would cover most generally recognized market categories of cash-settled derivatives. The legislation gives New Zealand's financial markets regulator, the Financial Markets Authority, the authority to rule on the status of particular agreements.

The FMCA sets out a disclosure regime that would apply when derivatives are offered to retail investors (termed a ‘regulated offer’ under the legislation). The most important component of the new disclosure regime is a product disclosure statement (PDS), and specific requirements for the PDS have recently been published through regulation (it should be noted that this is not the same as the PDS currently used by New Zealand-registered banks). In addition to the disclosure regime, the new legislation imposes general ‘fair-dealing’ obligations that would apply to all dealings in derivatives in New Zealand, whether with retail or wholesale counterparties.

The FMCA also creates a regime for licensing derivatives ‘issuers’ that make regulated offers to enter into derivatives, with the FMA acting as licensing authority and the supervisor of licensed derivatives issuers. While dealings with wholesale counterparties and most dealings in exchange-traded derivatives would be excluded from being deemed regulated offers, any market participant that is in the business of offering derivatives to retail investors would need to consider whether it requires a licence. Transitional provisions in the FMCA provide an interim licence for persons who are authorised or approved as futures dealers under the SMA and who would require a licence under the new regime. The licensing regime under the FMCA would cover prudential and systems and controls matters, as well as conduct of business (with a carve-out for registered banks and other entities subject to Reserve Bank oversight). In addition to these requirements for licensed derivatives issuers, the FMCA regime also sets out new rules for dealing with client funds that would apply to all derivatives issuers, whether or not they hold a licence from the FMA.

The transition process would be complex, and a recently announced delay to its implementation (other categories of financial product would come under the new regime from December 1, 2014) meant this would be a major concern for participants in New Zealand's OTC markets for some time to come. Derivatives issuers would need to assess whether they need a licence under the new legislation and apply for one as soon as possible if they would not have a transitional licence. Those derivatives issuers that would have a transitional licence would have more time to obtain a licence (until December 2016), but would need to prepare new offering documentation during 2015.

4. RBNZ consults on outsourcing

- On August 26, 2015, the RBNZ released a consultation paper with proposals for an updated outsourcing policy for banks. The current outsourcing requirements date back to 2006, and apply to all locally incorporated banks with New Zealand liabilities exceeding $10 billion. The current policy is mainly focused on underpinning the provision of liquidity to the financial system in the event of stress or the failure of a bank or a service provider to a bank. The main proposals (subject to the outcome of consultation) are:
  - An explicit requirement for a separation plan for subsidiaries of foreign-owned banking groups;
  - A list of functions that are not relevant for the outsourcing policy;
  - A list of functions that cannot be outsourced;

- A clearer process for obtaining non-objection from the RBNZ for outsourcing proposals;
- A compendium of outsourced functions; and
- A possible alignment of the threshold used for deciding which banks the outsourcing policy should apply to, with the threshold used for the RBNZ's open bank resolution (OBR) policy.

RBNZ further notes that outsourcing can produce efficiency benefits for banks, and provides access to state-of-the-art technology and practices that are not necessarily available internally or within New Zealand. The proposed new policy does not prevent banks from realising those benefits. The policy also does not prohibit the use of outsourcing arrangements. Comments on the consultation paper are due by November 4, 2015.

5. RBNZ publishes new rules for banks, NBDTs

- On December 18, 2015, the RBNZ published the conclusions of its stocktake of the prudential regulations that apply to banks and non-bank deposit takers (NBDTs). The stocktake aims to enhance the efficiency, clarity and consistency of the rules for banks and NBDTs.

  Changes were proposed to the current requirement that banks must prepare "off-quarter" disclosure statements, with the RBNZ looking into the possibility of a new 'dashboard' mechanism for providing these off-quarter disclosures after a more detailed discussion with banks and other interested parties.

  The consultation found broad support for most of the RBNZ's specific proposals such as improving the drafting and layout of the documents that set out prudential requirements for banks and a number of technical changes that were proposed in specific prudential requirements. The RBNZ also received useful feedback on several matters relating to the prudential requirements for NBDTs.

6. RBNZ to retain NZClear

- On March 11, 2016, the RBNZ announced it has decided to retain the NZClear business. After a strategic review in 2014, the RBNZ sought interest from potential operators of securities settlement services. It has now concluded the search without attracting suitable bids that met service requirements and commercial terms.

  NZClear is a real-time settlement system and depository, owned by the RBNZ, which provides financial markets with clearing and settlement services for high-value debt securities and equities. The RBNZ is now planning to invest in a new platform to provide these services. The new platform will be separate from the exchange settlement account system, which the RBNZ is also replacing.

7. RBNZ consults on crisis management regime for FMIs

- On March 24, 2016, RBNZ commenced a public consultation on a crisis management regime for systemically important financial market infrastructures (SIFMIs). The proposed regime forms the final part of proposals the RBNZ published in December 2015 for a new oversight regime for SIFMIs. The proposed crisis management regime has two parts. First, SIFMIs would be required to maintain business continuity plans and recovery and wind-down plans. Second, the RBNZ and the Financial Markets Authority (FMA) (joint regulators) could call on proposed new statutory powers when these plans are inadequate to manage a crisis. Submissions are due by May 20, 2016.

8. RBNZ reviews Insurance (Prudential Supervision) Act

- On April 12, 2016, RBNZ announced that it is planning a review of the Insurance (Prudential Supervision) Act (IPSA). IPSA provided the first comprehensive framework for the prudential regulation and supervision of insurers in New Zealand.

  The review seeks to ensure that IPSA provides for a supervisory regime that is cost effective, risk-based and that promotes the soundness and efficiency of the insurance sector. RBNZ plans to publish an issues paper in late 2016 and seek feedback from the public and stakeholders.

9. RBNZ seeks submissions on proposed outsourcing rules

- On May 23, 2016, RBNZ announced that it is seeking submissions on proposed amendments to rules about outsourcing of services by registered banks.

  If implemented, the rules would give the RBNZ better assurance about the provision of basic ongoing banking services in the event of service disruption, while allowing banks to capture the efficiency benefits of robust outsourcing arrangements. The current rules state a range of outcomes that banks must be able to deliver on an on-going basis, and apply to locally incorporated banks with New Zealand liabilities of more than $10 billion. After an initial round of consultation last year, the RBNZ is now proposing revised rules based on feedback it has received.

  The revised proposals allow banks greater flexibility in achieving the desired policy outcome. Changes to the proposed policies include:

  - maintaining the existing $10 billion threshold for the outsourcing rules;
  - a more detailed definition of basic banking services;
  - an outcomes based policy where the outsourcing of critical functions is not prohibited, provided there is robust back-up capability;
  - a more comprehensive list of functions that will not be captured by the outsourcing rules; and
  - a five year transition path to compliance.

  Submissions closed on 12 August 2016. The RBNZ started reviewing the outsourcing rules in 2015, due to inconsistent application of the existing outsourcing policy by banks over a number of years.

10. FMA reports on NZX's regulatory framework

- On June 23, 2016, the Financial Markets Authority released its latest annual review of NZX and reports that it is meeting its statutory obligations as a market operator and frontline regulator of those markets.

  The review is just one of the ways that the FMA engages with NZX. A Memorandum of Understanding signed in 2015 reflects the two regulators' shared responsibilities for the regulation of New Zealand's capital markets. This has enabled many levels of regular engagement, discussion and co-ordination between NZX and the FMA. Over the year the FMA saw clearer regulatory messages being given to issuers and more instances of potential non-compliance being referred to the FMA for investigation.

Complementing the regular interactions and coordination with NZX throughout the year, the FMA also performed an end-of-year review of the market operator. The FMA paid particular attention to how NZX regulates the compliance of participant firms, and how it responded to new developments in its business and the markets, focussing on:

- The launch of the NXT market and the purchase of SuperLife;
- Whether governance, operational infrastructure, compliance policies and procedures took into account the changes to NZX's business; and
- Reviewing the effectiveness of the participant compliance function to ensure the maintenance of fair, orderly and transparent markets.

11. RBNZ consults on dual registration for non-systemic banks

- On June 17, 2016, RBNZ published a consultation paper on its approach to the registration of foreign-owned banks that have a small, non-systemic, locally incorporated presence in New Zealand.

  The consultation proposes a way to assess whether these banks may be permitted to 'dual-register', simultaneously operating a local branch alongside a subsidiary, and notes that permitting banks to operate branches alongside their existing subsidiaries could potentially open up more diversified funding channels in New Zealand and encourage greater competition for the incumbent banks. The consultation paper does not address the RBNZ's process for assessing standalone branch applications.

12. FMA releases conduct guide for feedback

- On July 28, 2016, the New Zealand Financial Markets Association (FMA) released a guide to how it will examine whether financial services providers are demonstrating good conduct under the Financial Markets Conduct Act (FMC Act).

  The guide describes how conduct will be the 'lens' through which the FMA will examine what providers do, how they do it, and how that translates to what their customers experience. A mandate to focus on conduct shifts the FMA's emphasis from compliance with regulations to assessing whether providers can show that they consistently and purposely deliver good outcomes to their customers.

  The FMA is seeking feedback from licensed providers under the FMC Act and welcomes submissions from others in the financial services industry. Given the importance of the subject matter, the FMA has decided a longer consultation period is appropriate so submissions will be accepted until October 31.

- On December 13, 2016, the New Zealand Financial Markets Association (FMA) announced that following an earlier consultation in 2016 on a guide on good conduct, the final version of the guidance and a report on the submissions received will be published in 2017. The guidance will signal to New Zealand financial services providers what to expect from interaction and engagement with the conduct regulator.

  The FMA recognised that the Financial Markets Conduct Act does not contain broad conduct obligations for providers, beyond prohibiting mis-selling and misrepresentation under its fair dealing provisions. A number of responses to the consultation had focused on the legal status of the FMA's expectations as to conduct set out in the draft guide.

The FMA also stated that as it moves into operational mode, staff will refer to the guide as they assess how sectors and firms have designed their systems, processes and culture to generate consistently good conduct. Likewise, when confronted with issues, complaints or alleged breaches of the law, the relevant firm's approach to conduct will be a factor and the guide will be a reference point for the FMA teams.

13. LVR start date deferred until 1 October 2016

- On August 12, 2016, the RBNZ announced that it is deferring the start of the proposed changes to investor loan-to-value restrictions (LVRs) nationwide from 1 September to 1 October 2016, based on feedback from the banking industry from its recent consultation on the proposals. Under the proposed new restrictions:
  - No more than 5% of bank lending to residential property investors across New Zealand would be permitted with an LVR of greater than 60% (i.e. a deposit of less than 40%).
  - No more than 10% of lending to owner-occupiers across New Zealand would be permitted with an LVR of greater than 80% (i.e. a deposit of less than 20%).
  - Loans that are exempt from the existing LVR restrictions, including loans to construct new dwellings, would continue to be exempt.

14. RBNZ consults on new dashboard for local banks

- On September 23, 2016, the Reserve Bank of New Zealand (RBNZ) released a consultation document on a proposed new 'dashboard' approach to quarterly disclosures for locally incorporated banks.

  The dashboard proposal involves publishing quarterly information from locally incorporated banks on the RBNZ website in a standardised and easily comparable manner, replacing the requirement for locally incorporated banks to prepare off-quarter disclosure statements. However, banks will continue to produce full-year and half-year disclosure statements.

  The consultation document includes an alternative to the dashboard in the form of an amended off-quarter disclosure statement. The paper discusses issues arising from the dashboard proposal and the potential alternative, and from the RBNZ's separate proposal to remove the requirement for registered bank branches to prepare off-quarter disclosure statements.

  Submissions on the consultation close on December 1, 2016.

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) would be 6% and the Tier 1 ratio would be at a minimum of 7.5%. The new guidelines also introduce a capital conservation buffer of 2.5%, which would be comprised of CET1 capital. Banks that have issued capital instruments from 2011 would be allowed to count these instruments as Basel III-eligible until end-2015.

- On June 9, 2015, the BSP announced its implementing guidelines on the Basel III leverage ratio framework. The leverage ratio shall not be less than 5%, computed on both a solo (head office plus branches) and consolidated (parent bank plus subsidiary financial allied undertakings but excluding insurance companies) basis.

  The guidelines implementing the leverage ratio are provided in Appendix 111 of the Manual of Regulations for Banks (MORB) and in Appendix Q-65 of the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI), respectively. The guidelines would apply to universal banks and commercial banks and their subsidiary banks/quasi-banks (QBs).

  Specific guidelines on the mode and manner of submission of the leverage ratio reporting and disclosure templates would be covered by a separate memorandum issuance. During the monitoring period, BSP would continue to assess the calibration and treatment of the components of the leverage ratio. Final guidelines would be issued in view of the changes to the framework, as well as migration from monitoring of the leverage ratio to a Pillar I requirement from January 1, 2017.

  Public disclosure of information on the leverage ratio would not be required during the monitoring period (i.e., December 31, 2014 to December 31, 2016).

  Banks (or QBs) would not be penalised for any breach of the 5% minimum leverage ratio during the monitoring period. However, late and/or erroneous reports would be subject to penalties provided under Subsection XL92.2 of the MORB and Subsection 4192Q.2 of the MORNBFI.

- On July 16, 2015, BSP published guidelines on the electronic submission of the Basel III leverage ratio (BLR) report. Further to the guidelines on the Basel III leverage ratio framework published on June 9, 2015, the submission guidelines would be observed for the BLR report starting with the reporting period ending December 31, 2014 and every quarter thereafter until December 31, 2016. The submission guidelines include: 1) a link to where the prescribed data entry template (DET) and the corresponding control prooflist (CP) of the BLR report can be downloaded; 2) prescribed reporting periods and corresponding submission deadlines; 3) formatting for electronic submission; and 4) the mailing address in case banks are unable to submit electronically.

- On March 1, 2016, BSP approved its liquidity coverage ratio (LCR) framework aimed at strengthening the liquidity position of universal and commercial banks (U/KBs). This is part of the Basel III reform package issued by the Basel Committee.

  Under the new rule, U/KBs, including foreign bank branches, must hold sufficient high-quality liquid assets that can be easily converted into cash to service liquidity requirements over a 30-day stress period. This provides banks with a minimum liquidity buffer to be able to take corrective action to address a liquidity stress event. The net stable funding ratio is being finalised and the exposure draft may be issued within the year.

  The approval of the monetary board provides for an observation period from July 1, 2016 to end-2017, during which banks will start reporting their LCR to the BSP. Beginning January 1, 2018, the LCR threshold that banks will be required to meet will be 90%, which will then be increased to 100% beginning January 1, 2019.

- On March 10, 2016, the BSP issued a circular on the implementation of the LCR and related disclosure standards consistent with the Basel III capital framework. Provisions have been inserted into the MORB to impose requirements for compliance with the LCR, LCR disclosure requirements, sanctions, transitional arrangements and related matters. Compliance with the LCR will be required from January 1, 2018 at a level of 90%, with movement to 100% one year later.

- On June 27, 2016, the BSP approved new guidelines on the electronic submission of the Basel III Liquidity Coverage Ratio for the observation period of the LCR report from measurement date 30 June 2016 to 30 September 2017. The guidelines are mainly procedural and technical in nature.

- On December 29, 2016, the Monetary Board deferred by one year the full adoption of the Basel III leverage ratio in view of recent revisions by the Basel Committee on Banking Supervision (BCBS). Universal and commercial banks and their subsidiaries had been scheduled to wind-up the monitoring period and begin adhering to the 5% minimum leverage ratio by January 1, 2017.

  In relation to this, the Monetary Board also extended the monitoring period for the leverage ratio until December 31, 2017.

2. 2015 SRC Rules

- On August 6, 2015, the Philippines Securities and Exchange Commission (SEC) announced that it had approved the 2015 Implementing Rules and Regulations of the Securities Regulation Code (2015 SRC Rules). The 2015 SRC Rules enhance existing requirements, including the ability of companies to raise funds in the domestic market. It also addresses regulatory gaps, strengthens market and regulatory structures, and adopts global best practices to ensure participants are able to meet the challenges posed by increasing market sophistication and regional integration.

The initial draft of the proposed amendments was opened for public comment in 2011. Following that, SEC conducted a series of consultations with market participants and various stakeholders. The final draft of the rules was adopted after reviewing and considering responses. Some key features of the rules are:

- An expansion of shelf registration;
- A new definition for commercial paper;
- A new category of exempt security;
- A registration exemption for public offerings that have a limited character;
- Loosening of underwriting requirements;
- Relaxed requirements for qualified buyers; and
- A facelift of the mandatory tender offer rules.

• On October 8, 2015, the SEC issued a series of corrections to the 2015 SRC Rules.

3. BSP issues client asset guidelines

• On August 11, 2015, the Monetary Board of BSP approved new guidelines for segregating customer funds received by banks under a securities brokering arrangement from the deposit-taking activities of these banks. The segregation is undertaken by introducing a new account in the books of the banks, called 'broker customer accounts'. Under prior practice, banks would book as deposits the money they receive from clients that wish to purchase securities. The bank is acting as a securities broker for the client under this transaction.

The broker customer account makes clear that funds recorded under this item are not to be classified as deposits. They are transactional in nature because there is an instruction to use them to purchase securities. In this context, the broker customer account would not be subject to bank reserve requirements and would not be covered by the Philippine Deposit Insurance Corporation.

Broker banks are required to submit a monthly report of their weekly balances of securities and cash they receive from their customers, starting from October 2015.

As a step towards the segregation of banking activities from other business activities, the current Financial Reporting Package of the BSP was also amended to introduce reporting of the amount of securities broking transactions of its supervised financial institutions.

4. BSP approves amendments to regulations manual

• On November 2, 2015, the Monetary Board of the BSP published Circular No.890 approving amendments to the MORB and MORNBFI. Key elements include:

Section 10 Circular No. 827 deleted Section X116, Subsections X116.1 to X116.7, and Appendix 63a of the MORB. The following subsections/appendices of the MORB contain references pertaining to the deleted section/subsections/appendix. References to the deleted section/subsections/appendix are changed to "under applicable and existing capital adequacy framework”. With respect to derivatives:

- App.46b: Instructions for Accomplishing the Report on Computation of the Adjusted Risk-Based Capital Adequacy Ratio Covering Combined Credit Risk and Market Risk (For Universal Banks and Commercial Banks With Expanded Derivatives Authority);
- App.46c: Instructions for Accomplishing the Report on Computation of the Adjusted Risk-Based Capital Adequacy Ratio Covering Combined Credit Risk and Market Risk (For Universal Banks and Commercial Banks with Expanded Derivatives Authority but Without Options Transactions);
- App.46d: Instructions for Accomplishing the Report on Computation of the Adjusted Risk-Based Capital Adequacy Ratio Covering Combined Credit Risk and Market Risk (For Universal Banks and Commercial Banks Without Expanded Derivatives Authority).

5. BSP Further Liberalizes FX Rules

- On December 2, 2015, the BSP approved further liberalization of rules governing foreign exchange (FX) transactions in the Philippines. The policy amendments are as follows:

  - Prior BSP approval is no longer required for the borrowings from offshore sources/FCDUs of banks of the following resident entities:
    - Purely private sector loans (i.e., without guarantee from the public sector or banks) that are intended to finance energy-/power-related projects. The policy is in support of the country’s growing economy and increasing need for infrastructure.
    - Private non-bank financial institutions engaged in microfinance activities where loan proceeds will be used for microfinance lending. This will help promote financing of microfinance activities in line with the BSP’s flagship program for financial inclusion and poverty alleviation.
  - Conversion to FX of pesos arising from disapproved subscriptions of non-resident investors to stock rights offering of companies listed at the Philippine Stock Exchange is now allowed. The measure will facilitate outward remittance of excess funds arising from such cases and in the process encourage more foreign investors in investing in the Philippines.

  Other procedural/clarificatory amendments to the Manual of Regulations on Foreign Exchange Transactions were also approved for better guidance of users. The implementing circular will be issued shortly.

- On September 13, 2016, the BSP released a circular revising provisions to the regulation of FX transactions. The revised provisions consist of six parts:

  - Rules on FX transactions, including general provisions and resident to resident transactions;
  - Current account transactions, including non-trade foreign FX exchange receipts and disbursements, cross-border transfer of local and foreign currencies, gold transactions, and foreign merchandise trade transactions;
  - Capital account transactions, including loans and guarantees and foreign investments;
  - Offshore banking units, representative offices and foreign currency deposit units;
  - FX forward and swaps and open FX position of banks; and
  - General provisions setting out reporting requirements.

The circular takes effect on September 15, 2016.

6. BSP releases guidelines on recovery plan of a D-SIB

- On March 10, 2016, the BSP approved new guidelines on the recovery plan which is required to be submitted by D-SIBs. A circular sets out the guidelines that D-SIBs should follow in drawing up and maintaining a recovery plan that prepares them for future destabilising events and/or crises, and will form an integral part of the internal capital adequacy assessment process document to be submitted on March 31 of each year.

7. BSP Implements Interest Rate Corridor (IRC) System in Q2 2016

- On May 16, 2016, the BSP announced the formal shift in its monetary operations to an interest rate corridor (IRC) system starting 3 June 2016. The IRC is a system for guiding short-term market rates towards the BSP policy interest rate which is the overnight reverse repurchase (RRP) rate.

  The IRC system consists of the following instruments: standing liquidity facilities, namely, the overnight lending facility (OLF) and the overnight deposit facility (ODF); the overnight RRP facility; and a term deposit auction facility (TDF). The interest rates for the standing liquidity facilities form the upper and lower bound of the corridor while the overnight RRP rate is set at the middle of the corridor. The repurchase (RP) and Special Deposit Account (SDA) windows will be replaced by standing overnight lending and overnight deposit facilities, respectively. Meanwhile, the reverse repurchase (RRP) facility will be modified to a purely overnight RRP. In addition, the term deposit facility (TDF) will serve as the main tool for absorbing liquidity.

  The shift to the IRC system does not represent a change in the BSP's stance of monetary policy. In particular, the new Term Deposit Auction Facility is expected to have a rate between that of the RRP and overnight deposit facility such that the weighted rate for monetary operations will remain broadly the same. Moreover, the interest rate at the floor of the corridor, where the bulk of the BSP's liquidity absorption with the market currently takes place, is being kept steady at the launch of the IRC system. At the same time, short-term liquidity conditions are expected to remain broadly unchanged as funds will continue to be absorbed through monetary operations under the new IRC system. In conducting monetary operations, the BSP will calibrate carefully the volume of the TDF offerings to achieve a smooth transition to the new system.

8. BSP and BOJ cross-border liquidity arrangement takes effect

- On August 26, 2016, BSP announced that the guidelines governing the cross-border liquidity arrangement (CBLA) between the BSP and the Bank of Japan (BOJ) have taken effect. The BOJ and the BSP agreed to establish the CBLA in February 2015 to enhance financial stability in the Philippines.

  The establishment of the facility allows banks operating in the Philippines, including Japanese banks, to access Philippine peso liquidity against their Japanese yen holdings during emergency situations.

9. BSP announces new requirement on repo reporting

- On August 31, 2016, the BSP announced new requirements for reporting on repurchase agreements by banks and quasi-banks. New provisions have been added to the MORB requiring quasi-banks, universal and commercial banks and their thrift bank subsidiaries to a submit a report on repurchase agreements on a solo basis in accordance with the Reporting Guidelines and Instructions on Reportorial Template on Repurchase Agreements.

  Reporting will commence with a pilot run for the month of November 2016, followed by monthly ongoing reporting when this takes effect on June 30, 2017.

10. BSP includes renminbi in international reserves

- On October 24, 2016, the BSP announced that its monetary board approved the inclusion of the Chinese renminbi (RMB) in the official international reserves of the BSP effective October 13, 2016. The BSP may hold RMB as part of its gross international reserves to ensure that RMB is available to the banking system when needed. At present, the country’s reserves are held in various currencies, mainly the US dollar, International Monetary Fund (IMF) special drawing rights, and gold.

  In deciding to make the RMB Philippine reserve-eligible, the monetary board took into consideration the inclusion of the RMB in the basket of reserve currencies that determine the value of the IMF special drawing rights and the rising economic and financial importance of China. The monetary board also took into consideration the country’s increasing economic links with China.

11. SEC approves rules on dollar-denominated securities

- On November 11, 2016, the SEC announced that it has approved the rules to govern the listing, trading and settlement of dollar-denominated securities (DDS) at the Philippine Stock Exchange (PSE).

  The introduction of DDS aims to provide issuers with dollar-denominated requirements an opportunity to raise capital without incurring foreign exchange risks. The eligible issuers of DDS are those existing listed companies in good standing with the PSE. The issuer is required to engage at least two eligible brokers that are qualified to trade DDS.

  The eligible brokers definition is as follows:

  - Must have attended the DDS training session or seminar conducted by the PSE;
  - Must be operationally ready to trade DDS and shall issue a sworn certification to the PSE attesting to its operational readiness;
  - Maintain a US deposit account or foreign currency deposit unit and a separate US dollar settlement account for clearing of trades;
  - Open a separate US dollar cash collateral deposit account for DDS; and,
  - Submit an undertaking to obtain the consent of its clients to the disclosure of their names to the SEC if said information is requested by the SEC in the course of an investigation, examination, official inquiry or as part of the surveillance procedures or compliance with other pertinent laws.

  The procedures for securities deliveries are the same as with peso-denominated securities. However, settlement shall be denominated in US dollars. Therefore, brokers intending to participate in the trading of DDS are required to have a US dollar deposit account with any universal or commercial bank, and a separate US dollar cash settlement account with the designated settlement bank.

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. Clearing for USD interest rate swaps was discontinued in 2015. LCH.Clearnet currently clears Singapore Dollar-denominated interest rate swaps as well as commodity futures, including freight, iron ore, and steel, executed on Cleartrade Exchange (CLTX), the MAS-regulated trading venue. LCH.Clearnet also has a number of Singapore-based clients clearing interest rate derivatives and commodities via clearing brokers. DTCC Data Repository (Singapore) Pte Ltd (DDRS) is a Licensed Foreign Trade Repository (LFTR) that supports reporting of OTC derivatives trades under the jurisdiction of MAS. 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 would operationalize the new Part IIA and Part III of the SFA respectively.

  In summary:

  <u>TRs and CCPs</u>

  - 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 would be regulated as approved clearing houses (ACH) and entities (which can be Singapore or foreign-incorporated) operating clearing facilities that are not systemically-important would be regulated as recognized clearing houses (RCH).
  - One can establish or operate a TR without being licensed but reporting to a non-licensed TR would 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.

  <u>Reporting</u>
  All financial institutions regulated by MAS (FIs) and non-FIs resident or having a presence in Singapore above a reporting threshold are 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 would 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 would need to be reported. However, this would be phased-in at a later stage.
  - Transactions would need to be reported by the next business day.
  - Reporting by an agent is permitted but the party subject to the mandate remains responsible.
  - Reporting would 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 would 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 would be identified through a bottom-up and top-down approach. FX spots and deliverable FX forwards and swaps would be exempted.
- FIs with minimal derivatives exposures in aggregate and by asset class, central banks and governments, and supranational organizations would be exempted. Intra-group transactions (subject to appropriate safeguards) and possibly pension schemes would 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 TR license needs 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 would 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.

  An LTR shall seek approval prior to commencing any linkage, arrangement or co-operative arrangements. The LTR would need to submit periodic reports to MAS. The LTR shall maintain confidentiality except in certain circumstances, such as where the disclosure of user information is necessary for the making of a complaint or report under any written law for an offence. An LTR would 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 LTR. An LTR would also need prior approval from MAS to impose any reporting fee on its participants for any services provided by the LTR; 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 needs to comply with the requirements imposed for an approved clearinghouse and would need to maintain a minimum base capital of at least $10 million. A recognized clearinghouse would need to comply with the requirements imposed for a recognized clearinghouse and would 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 would be a recognized clearinghouse if the above two conditions do not apply.

  An approved clearinghouse would 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 would 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 would 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.

- 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 proposed to require derivatives contracts which are traded in Singapore and/or booked in Singapore by specified persons to be reported to an LTR or 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 would 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, would be exempt from the reporting obligation.

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

  Reporting would 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 would have a transition period of one month from the Date of Listing. Other FIs would have three months from the Date of Listing and NFSPs would have six months from the Date of Listing. Each of these dates were 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 would need to be back-loaded. Firms would 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 would need to be reported and 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 regime in foreign jurisdictions to be deemed as having complied with Section 125 of the SFA. MAS would 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 would begin on April 1, 2014 for licensed banks and merchant banks for credit and interest rate derivatives. All other financial entities began reporting for credit and interest rate derivatives on July 1, 2014, 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. A specified derivative contract would 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 included:

  - a specified person or a specified person who enters into a specified derivatives contract as agent of a part to the specified derivatives contract, 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 entered into on or after April 1, 2015, counterparties would 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 issued by a licensed trade repository or licensed foreign trade repository, or client code may be used;
  - reporting of interest rate contracts and credit derivatives "traded in Singapore" would start on April 1, 2015 instead of April 1, 2014.

- On July 1, 2014, MAS published the Securities and Futures (Reporting of Derivatives Contracts) (Exemption) Regulations 2014. These regulations came into effect on July 1 and exempted certain entities below a $8 billion threshold from Section 125 of the SFA. The exemptions are as follows:

  - A holder of a capital services license to carry on the business of fund management or real estate investment trust management is exempted from section 125 of the Act if the total value of the holder's managed assets as at the last day of its most recent completed financial year does not exceed $8 billion; or where the holder has not held the capital markets services license for a full financial year, the total value of the holder's managed assets does not exceed $8 billion;
  - An approved trustee under section 289 of the Act of a collective investment scheme managed by (a) a holder of a capital markets services license who is exempt from section 125 of the Act under paragraph (1); (b) a Registered Fund Management Company; or (c) a person (but not a specified person) who carries on the business of fund management, is exempted from section 125 of the Act in respect of a specified derivatives contract which it enters into in its capacity of a trustee.

- On July 10, 2014, MAS released a consultation paper on the draft regulations for reporting of foreign exchange derivatives contracts. The draft regulations proposed the following on FX derivatives requirements:

  - The reporting of FX derivatives would be phased-in. The first phase would be FX derivatives booked in Singapore by banks on April 1, 2015. The draft amendment regulations were expected to come into effect by September 30, 2014, providing banks with a 6 month transition period. The second phase would be FX derivatives traded in Singapore by banks by October 1, 2015;

- Banks are to report information in Part I, IA and IV of the First Schedule by April 1, 2015. This would be followed by the information in Part IB of the First Schedule by October 1, 2015;
- For the other specified derivatives contracts that were previously prescribed for reporting, MAS proposed for banks to report the additional information in Part IA of the First Schedule by April 1, 2015 and information in Part IB of the First Schedule by October 1, 2015. Part IA of the First Schedules are data fields relating to information for all classes of specified derivatives contracts while Part IB of the First Schedule are data fields relating to collateral;
- FX derivatives are forwards, swaps and options that are related to currencies or currency indices, or whose cash flows are determined by reference to currencies or currency indices. This would include non-deliverable forwards (NDFs), non-deliverable options (NDO) and non-deliverable exotic options. Information regarding the execution, termination, amendments, modifications, variations to a FX derivative must be reported within 2 business days after the execution, termination, amendment, modification, variation or change.
- MAS did not intend to require the reporting of transactions that are considered by the market to be spot transactions. MAS proposed not to require the reporting of transactions settled by the actual delivery of the underlying currency within 2 business days of execution. MAS would assess the readiness of non-bank entities to report FX derivatives at a later stage and provide a transition period as appropriate.

On 'traded in' Singapore, MAS proposed to tie the execution of the transaction to a trader as opposed to a trading desk. MAS further proposed to consider any transaction that is executed by a trader who is generally employed in Singapore, regardless of the trader's physical location at the time of transaction, as having been traded in Singapore. Additionally, MAS proposed to consider a trader to be employed in Singapore if he conducts, or is authorized to conduct on behalf of specified persons, activities relating to the execution of derivatives contracts in Singapore for more than half the preceding quarter.

On masking relief for counterparty information, specified persons would not need to report counterparty information before November 1, 2015, subject to the condition as stated in the Draft Regulations. However, this masking relief would not be extended to EU countries. MAS proposed to remove all EU countries from the Fifth Schedule.

- On September 17, 2014, the Australian Securities and Investments Commission (ASIC) and MAS entered into a memorandum of understanding (MoU) to allow trade repositories licenced in one jurisdiction to provide relevant data to the authority in the other jurisdiction. Through this MoU, ASIC and MAS would cooperate with each other to fulfil their respective responsibilities and mandates by facilitating each authority's access to relevant trade repository data, while ensuring the confidentiality of the information is appropriately protected.

- On October 31, 2014, MAS released the Securities and Futures (Reporting of Derivatives Contracts) (Amendment) (No.2) Regulations and their response to the feedback received on the consultation paper for the Securities and Futures (Reporting of Derivatives Contracts) Regulations (Amendment) 2014 (SF(RDC)R). Key changes included:

  - the regulations exclude certain categories of FX contracts from the reporting requirements;
  - the refined definition of "traded in Singapore" to include contracts executed by traders located in Singapore who have been executing or have been authorized to execute contracts for at least the last 30 days prior to the date of the contract;
  - the reporting commencement date for credit, interest rate and FX derivatives contracts traded in Singapore would commence on November 1, 2015;

- the reporting commencement date for FX derivative contracts booked in Singapore would commence on May 1, 2015;
- the requirement to report the additional data fields would commence from November 1, 2015; and
- Masking relief was extended to November 1, 2015.

- MAS and ESMA also signed an MoU to establish cooperation arrangements regarding CCPs in Singapore that have applied for recognition under EMIR. The MoU fulfils a pre-condition for ESMA to recognise CCPs in Singapore providing clearing services to European Union (EU) participants and trading venues. This would allow ESMA-recognised CCPs in Singapore to be used by EU market participants to satisfy their mandatory clearing obligations under EU law and would allow EU banks to enjoy lower capital charges for their clearing exposures to such recognised CCPs.

- On July 1, 2015, MAS issued a Consultation Paper on Draft Regulations for Mandatory Clearing of Derivatives Contracts. The draft Securities and Futures (Clearing of Derivatives Contracts) Regulations provided the implementation details of the initial set of product and persons subject to clearing obligations under the Securities and Futures Act, Chapter 289 of Singapore.

  Key highlights of the policy proposals include:

  - MAS intends to commence mandatory clearing by asset class, beginning with interest rate derivatives contracts. This includes Singapore dollar fixed-to-floating swaps based on the Singapore swap offer rate and US dollar fixed-to-floating swaps referenced to LIBOR. MAS is also considering interest rate swaps denominated in euro, sterling and yen.
  - MAS seeks views on subjecting transactions that are booked in the Singapore-based operations of both transacting counterparties (ie, a Singapore-incorporated company or a Singapore branch of a foreign entity) to clearing obligations.
  - MAS proposes to exempt all banks from clearing obligations, as long as they do not exceed a maximum threshold of S$20 billion in derivatives gross notional outstanding booked in Singapore for each of the past four calendar quarters.
  - The paper proposes to exempt intra-group transactions from the scope of clearing obligations. MAS also proposes to exempt public bodies from clearing requirements, including all central banks and governments, as well as international multilateral organisations such as the Bank for International Settlements, the International Monetary Fund and the World Bank.
  - MAS intends to issue regulations by the end of 2015, and would provide at least six months' notice before the clearing obligations take effect.

- On October 30, 2015, MAS released the Securities and Futures (Reporting of Derivatives Contracts) (Amendment) Regulations 2015, which amend the following reporting components of the Singaporean regime:

  - The scope for determining whether an entity is a significant derivatives holder. In particular, for the purpose of calculating whether an entity breaches the gross notional threshold (SGD 8 billion) and therefore becomes a significant derivatives holder, the new amendment serves to remove from the calculation: i) FX derivatives contracts traded in or booked in Singapore, where the last day of the quarter in question is on or after August 1, 2015, but before November 1, 2015; and ii) interest-rate- and credit-nexus derivatives contracts, and FX derivatives contracts traded in or booked in Singapore, in any other case.

- Reporting of derivatives contracts traded in Singapore for specified persons in paragraphs (b) and (d) to (g) under section 124 of the Securities and Futures Act, as well as significant derivatives holders (essentially all non-banks); and
- Extending the ability to mask counterparty information from November 1, 2015 to July 1, 2017. The time period in which to unmask historical transactions after expiry of the relief has also been extended, from a two-month window (November 1, 2015 – December 31, 2015) to a six-month window (July 1, 2017 – January 1, 2018).

- On January 18, 2016, MAS released a consultation paper proposing amendments to the Securities & Futures (Reporting of Derivatives Contracts) Regulations to implement reporting of commodity and equity derivatives contracts, as well as other revisions to complete implementation of the derivatives trade reporting regime in Singapore. Under the proposed amendments, MAS intends to implement the reporting of equity and commodity derivatives by banks and merchant banks on November 1, 2016. This is in addition to interest rate, credit and foreign exchange derivative trades already being reported. MAS is also proposing revisions to fine-tune the reporting obligations for certain non-bank financial institutions, while maintaining effective data coverage of derivative activities in Singapore.

- On January 28, 2016, MAS published the Securities & Futures (Reporting of Derivatives Contracts) (Amendment) Regulations 2016, which defers the implementation of an UTI share-and-pair obligations until February 1, 2017.

- On May 26, 2016, the Chicago Mercantile Exchange (CME) announced that it has been formally granted the status of a recognised clearing house by the Monetary Authority of Singapore (MAS) with effect from May 18, 2016.

  With this status, CME Clearing is now able to sign up direct clearing members from Singapore for clearing of both exchange-traded futures and options, as well as over-the-counter derivatives. In addition, with the implementation of MAS' proposal to mandate clearing for interest rate swaps, including Singapore-dollar and US-dollar-denominated swaps, recognised clearing house status will permit local market participants to fulfill their clearing obligations in these instruments with CME Clearing.

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.

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.

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 followed a public consultation issued in September 2011.

- 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 MAS to exercise control over and to resolve distressed financial institutions. The new resolution regime would 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 would be amended to expressly reflect that the exercise of resolution powers is not intended to defeat bilateral netting arrangements. MAS would 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, would 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 would 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 would require Singapore-incorporated banks to meet these requirements by January 1, 2013. Further, MAS would require them 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%) would remain unchanged. Additionally, there would be a capital conservation buffer of 2.5% to be comprised of Common Equity Tier 1. This buffer would be phased in from January 1, 2016 to January 1, 2019. The new eligibility criteria for regulatory capital would also be phased in from January 1, 2014 to January 1, 2018. These requirements would 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 LCR framework. Locally incorporated banks, foreign bank branches and finance companies in Singapore would 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 would 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 would be set at 80%. Bank-specific requirements would be imposed on a case-by-case basis if prudential concerns warrant them. The USD LCR would start at 40% on Jan 1, 2015 and rise in equal annual steps to reach 80% on Jan 1, 2019.

- On August 6, 2014, MAS released its response to feedback received from the consultation paper on Local Implementation of Basel III Liquidity Rules – Liquidity Coverage Ratio (LCR), issued on August 16, 2013. The revised framework for banks would be implemented in a new MAS notice, which have been appended in Annexes A and B of this paper.

  In the draft MAS notice, MAS proposes to adopt a two-tiered liquidity requirement framework. Banks and related entities assessed by MAS to be systemically important to Singapore would be required to adopt the LCR framework. Smaller, niche institutions whose operations in Singapore are simpler than the larger banks would be given a choice to comply with either the LCR or a modified MLA framework. MAS would not impose a separate US dollar liquidity requirement but would monitor how institutions manage prudently their liquidity risks by currency on a supervisory basis.

- On August 6, 2014, MAS issued its proposed amendments to Parts II, IV, XI and XII of MAS Notice 637 on Risk Based Capital Adequacy Requirements for Banks Incorporated in Singapore (the Notice) to implement the leverage ratio disclosure requirements for Singapore-incorporated banks that are consistent with the requirements issued by the Basel Committee on Banking Supervision (BCBS). The proposed amendments would take effect from Jan 1, 2015. The draft amendments to the Notice are appended in Annex 1.

- On July 31, 2015, MAS issued its consultation paper on the proposed notice (Proposed MAS Notice) on LCR and MLA requirements for merchant banks. MAS issued two consultation papers on Local Implementation of Basel III Liquidity Rules in August 2013 and August 2014.

  Responses to the consultation feedback described revisions to the liquidity regulatory framework in Singapore, which includes the introduction of the LCR rules in Singapore and a revision of the MLA rules. Another key revision to the framework was the expansion of the scope of liquidity requirements, in particular, which means that merchant banks would therefore be subject to the same liquidity requirements as banks from January 1, 2016. The revised framework for banks was implemented through MAS Notice 649, which was published in November 2014. The Proposed MAS Notice (as set out in Annex A of the consultation paper) prescribes equivalent requirements for merchant banks in Singapore. The corresponding reporting forms are set out in Annex B of the consultation paper.

- On October 9, 2015, MAS issued its consultation paper on proposed amendments to MAS Notice 637 to implement revisions to the Basel III Capital Framework. The Notice sets out the risk based capital adequacy requirements for banks incorporated in Singapore.

  The proposed amendments are intended to implement requirements for Singapore-incorporated banks that are consistent with the final standards issued by the Basel Committee on Banking Supervision (BCBS). In particular, proposed amendments to Part VII of the Notice will enhance the risk capture of banks' equity exposures and counterparty credit exposures (including exposures to central counterparties). Revised Pillar 3 disclosure requirements will enable market participants to better compare banks' disclosures of risk-weighted assets and improve consistency of disclosures. Technical revisions were also made to Part VI of the Notice to clarify the regulatory capital treatment for investments in unconsolidated entities.

  Other than the proposed amendments to Part XI of the Notice, the proposed amendments are intended to take effect on January 1, 2017. Singapore-incorporated banks are to publish their first standalone Pillar 3 report, which complies with the revised disclosure requirements from the publication date of their first set of financial statements relating to a balance sheet on or after December 31, 2016.

- On December 11, 2015, MAS issued its response document to industry's feedback on its consultation paper on LCR disclosure requirements, which was issued on October 9. The document includes MAS's responses to industry comments on specific areas identified for feedback in the consultation paper, in particular the scope of application, the retention period, the reporting currency and treatment of country-level groups.

  The LCR disclosure requirements comprise a common LCR disclosure template to promote consistency and comparability in banks' disclosure of their liquidity risk position. In addition, banks are required to provide qualitative discussion around the LCR to help users understand the results and data provided in the LCR disclosure template. Banks are also encouraged to disclose additional qualitative and quantitative information related to its internal liquidity risk measurement and management framework.

  MAS noted that they have considered all feedback received and are responding to feedback deemed to be of wider interest. Areas not covered in this document will be addressed directly with the respondents involved. The finalized Notice is appended in Annex C in the document and will take effect on January 1, 2016.

- On October 17, 2016, the MAS issued amendments to Notice 637 on risk-based capital adequacy requirements for banks incorporated in Singapore, and a response to feedback received on the October 9, 2015 consultation paper. The MAS has revised Notice 637 to implement requirements for Singapore-incorporated banks that are consistent with the following final standards:
    - Capital requirements for banks' equity investments in funds;
    - The standardised approach for measuring counterparty credit risk exposures (SA-CCR);
    - Capital requirements for bank exposures to central counterparties (CCPs); and
    - Revised pillar 3 disclosure requirements.

  The amendments will take effect from January 1, 2017. For the amendments related to the SA-CCR and capital requirements for bank exposures to CCPs, transitional arrangements are provided to allow more time for implementation. Pillar 3 disclosure required under the revised framework will be for the reporting periods ending on or immediately after January 1, 2017 (for the majority of disclosure templates) and January 1, 2018 (for the remaining templates).

7. 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 would 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 would 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.

8. 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 would 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 would 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 MYRFIX2 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 MYRFIX2 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 would be affected via amendments to the 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 would apply to OTC derivatives and other financial transactions such as repos. In addition, the Rates-MAA would 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 would 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 would 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) would 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 would 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.

- On July 29, 2014, MAS released a consultation paper on legislation to introduce a regulatory framework for financial benchmarks which would bring the regulation of benchmark setting activities into the regulatory ambit of MAS. This follows MAS consultation in June 2013 which had set out certain policy proposals for introducing a regulatory framework for financial benchmarks. MAS has also issued a response paper to the 2013 consultation.

  The proposed legislation provides, among others, that the manipulation of any financial benchmark in Singapore would be made liable to criminal and civil sanctions under the Securities and Futures Act. This would apply to acts of manipulation occurring within Singapore and in respect of financial benchmarks administered in Singapore. Additionally, administrators and submitters of financial benchmarks designated by MAS would be subject to regulation, including licensing requirements. MAS would designate key financial benchmarks, taking into account their systemic importance and susceptibility to manipulation. Presently, MAS intends to designate the SIBOR and SOR as key benchmarks.

- On November 7, 2016, the Securities and Futures (Amendment) Bill was read in Parliament. This Bill incorporates the proposed amendments in relation to the regulation of financial benchmarks. MAS also issued a Response to Feedback received on the consultation on proposed amendments to the Securities and Futures Act on Regulation of Financial Benchmarks.

9. MAS enhances safeguards for the sale of financial products at retailers and public places

- On September 17, 2013, MAS released the Consultation Paper on Draft Regulations pursuant to the 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.

- On March 14, 2014, 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 consulted on the Draft Regulations pursuant to the SFA which would affect 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 retails 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 retails 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 would prescribe margin requirements for exempt financial institutions as set out under Section 99(1)(a), (b) and (c) of the SFA.

- On July 21, 2014, MAS released its consultation paper on proposals to enhance regulatory safeguards for investors in the capital markets after reviewing its regulatory framework in light of recent market developments. The proposals consult on three key areas:
  - extending to investors in non-conventional investment products the current regulatory safeguards available to investors in the capital markets;
  - requiring investment products to be rated for complexity and risks, and for these ratings to be disclosed to investors; and
  - refining the investor classes under the SFA and the FAA.

  By way of background, MAS has taken into account, among others, that the pace of development of the capital markets necessitates continual review of the regulatory framework to ensure that it remains relevant and effective in achieving its regulatory objectives. Additionally, the myriad pieces of product information being pushed out to investors as a result of more complex features underscore the need for better means of illustrating the risk-return trade-offs associated with each product.

  Part I of the paper proposes to modify the scope of capital markets products under the SFA and FAA. MAS proposes to subject the offer and distribution of products and schemes that exhibit similar features as regulated capital markets products to the same treatment under the SFA and FAA.

  Part II of the paper tackles regulated investment products which are offered to retail investors by introducing a framework by which all investment products can be rated for their complexity and the risk that investors may lose some or all, or more than their principal investment amount. It also requires product issuers to rate their products and discloses these ratings in regulated offering documents and through other stipulated channels.

  In Part III, MAS notes that while the existing tiered level of regulator protection is appropriate for safeguarding the interest of retail investors, it has nonetheless set out proposals to refine and streamline classes of non-retail investors.

- On July 23, 2015, MAS published a consultation paper on Market Conduct Guidelines outlining measures to safeguard consumers' interests when buying financial products and services at retailers and public places. These measures include ensuring that there are adequate controls for a proper sales and advisory process. MAS also proposes to require financial institutions to notify MAS of their marketing and distribution activities at retailers and public places. The proposals seek to address the risk of consumers making purchases of financial products that may be unsuitable for them when they are prospected at retailers or public places. The proposed Guidelines complement existing rules and practices, and ensure consistency and alignment of standards across the financial industry.

- On September 22, 2015, MAS announced that it will proceed with enhancements to its regulatory framework for safeguarding investors' interests, taking into account feedback received on its consultation paper which was published on July 21, 2014 (described above).

  Key changes include:

- Retail investors in non-conventional investment products will be accorded the same regulatory safeguards as investors in capital markets products.
- Investors who meet prescribed wealth or income thresholds to qualify as accredited investors (AIs) will have the option to benefit from the full range of regulatory safeguards that are applicable for retail investors.

Amendments to the SFA to implement these changes will be tabled in Parliament in 2016. MAS will also extend its capital markets regulatory framework to non-conventional investment products that share features similar to capital markets products. These are currently not subject to MAS' regulations. In future, such non-conventional investment products will be regulated either as debentures or investment funds, depending on their features. Examples given include precious metals buy-back arrangements and collectively managed investment schemes.
Under the current regulatory regime, investors who meet prescribed wealth or income thresholds are classified as AIs by default. They are accorded a lower level of regulatory protection as they are considered to be better able to protect their own interests. This may not be true for all investors who meet the prescribed wealth or income thresholds.

MAS intends to refine the regulatory regime to empower AI-eligible investors to choose the level of regulatory safeguards best suited to their individual circumstances:

- FIs will have to treat new customers who are AI-eligible as retail investors by default, unless the customers choose to "opt-in" to AI status.
- FIs can continue to treat existing customers who are AI-eligible as AIs, unless the customers choose to "opt-out" of AI status to benefit from the full range of capital markets regulatory safeguards available to retail investors.

AI-eligible customers who choose to "opt-in" to, or retain their, AI-status may be those that are willing to forgo the benefits of stronger regulatory safeguards available to retail investors, in return for the ability to more easily access a wider range of complex and risky products.

Also, MAS notes that it is still reviewing feedback on the remaining proposal to introduce a complexity-risk ratings framework for investment products and will issue a separate public response later.

10. 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 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 would be reviewed by MAS as part of its ongoing supervisory programme. The deadline for submission is October 21, 2013.

11. Review on bankruptcy, insolvency regimes

- On October 4, 2013, the Insolvency Law Review Committee (ILRC) 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 would 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.

- On 21 October 2016, the Ministry of Law (MoL) released its public consultation on proposed amendments to the Companies Act to reform Singapore's debt restructuring and corporate rescue framework. These changes are intended to come into effect in 2017. This public consultation follows the recommendations of the ILRC as well as the Committee to Strengthen Singapore as an International Centre for Debt Restructuring (Restructuring Committee).

  These reforms are part of the efforts of the MoL and Ministry of Finance (MoF) to introduce changes to the Companies Act and fully implement the recommendations of the ILRC and the Restructuring Committee. Taking into consideration the volume of proposed legislative amendments and the complexity of the proposed changes and recommendations, the MoL intends to take a phased approach to the implementation of these proposals.
  It should be noted that these set of proposed changes are intended to form the first phase of legislative amendments and include, among others:

  -A new set of provisions to support <u>creditor schemes of arrangement</u>, including:

  (i) Enhanced moratoriums against creditor action, including: (a) allowing the Court to grant a moratorium when the company has made an application to call a meeting of its creditors or intends to make such an application, (b) an expansion in the scope of the moratorium available to be similar to what is available under judicial management, (c) allowing for an automatic 30 day moratorium, subject to safeguards for creditor interests, (d) moratoriums with in personam worldwide effect and, (e) allowing extension of moratorium to related entities to the debtor.

(ii) Rescue finance provisions, enabling the Court to grant new financing and allowing the Court to be able to grant three levels of priority

(iii) Cram-down provisions, allowing a scheme to be approved even if a class of creditors oppose the scheme.

(iv) Enhanced creditor protection.

(v)Pre-packaged provisions.

(vi) Procedural enhancements.

-Amendments to judicial management, including:

(i) Enabling companies to apply for judicial management order more easily.

(ii) Introducing provisions for super-priority for rescue financing in judicial management.

-Reforms to facilitate cross-border insolvency:

(i) Judicial management to be made available to foreign companies.

(ii) Specific criteria to guide the Court on its discretion to take jurisdiction over foreign debtors.

(iii) Adoption of the UNCITRAL Model Law on Cross-Border Insolvency.

(iv) The abolition of the general ring-fencing rule in the winding up of foreign companies. Ring-fencing will be retained with respect to specific financial institutions, including banks and insurance companies.

12. 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 would be required to comply with the applicable US laws and regulations as well as the 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 would 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 would 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 would 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, the 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 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 the CFTC determines SGX-DC is eligible to clear. This Order was effective on December 31, 2013.

13. 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 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 would 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 would be effective from Jan 1, 2014.

- On June 25, 2014, MAS issued a consultation paper on the proposed Framework for Systemically Important Banks in Singapore. In this paper, MAS seeks to develop a D-SIB framework that achieves the objectives of updating MAS' diagnostic toolkit for assessing systemic importance and identifying D-SIBs as well as establishing a range of policy measures that may be applied to D-SIBs.

  The proposed D-SIB framework builds on MAS' existing impact assessment framework to assess a bank's systemic importance to Singapore's financial system and broader domestic economy. It would also establish other relevant policy measures that may apply to D-SIBs to address the specific negative externalities that they pose. In terms of scope, MAS proposes to assess locally-incorporated banks, including subsidiaries of foreign banks, and foreign bank branches under the D-SIB framework. The

D-SIB framework would also assess locally-incorporated banks at the consolidated group level. In addition, the D-SIB assessment of foreign banks would take into account the activities of all related banking entities in Singapore.

MAS also proposes:

- to adopt an indicator-based approach to assess banks' systemic importance based on size, interconnectedness, substitutability and complexity;
- to set out appropriate policy measures with respect to each type of D-SIB;
- to require D-SIBs to undertake recovery and resolution planning;
- to publish the initial list of D-SIBs, which would include D-SIB branches (if any), by the first quarter of 2015, in order to provide banks with sufficient time to comply with relevant D-SIB policy measures;
- to review the D-SIB framework, including the methodology and indicators, every three years.

• On April 30, 2015, MAS published its framework for identifying and supervising domestic systemically important banks (D-SIBs) in Singapore, and the inaugural list of seven D-SIBs.

  MAS would apply additional supervisory measures on banks designated as D-SIBs. Banks that have a significant retail presence in Singapore would be required to locally incorporate their retail operations. Locally-incorporated D-SIBs would need to meet higher capital requirements – a minimum common equity Tier 1 capital adequacy ratio CAR of 6.5%, Tier 1 CAR of 8% and total CAR of 10%, compared with the Basel III minimum requirements of 4.5%, 6% and 8%, respectively. Other measures, such as recovery and resolution planning, liquidity coverage ratio requirements and enhanced disclosures, would also apply, depending on the bank's operating model and structure. MAS would allow a transition period for affected banks to comply with the requirements that are currently not in effect, such as the local incorporation requirement.

• On October 9, 2015, MAS issued its consultation paper on LCR disclosure requirements. The Paper contains a set of proposed disclosure requirements which are intended to complement the LCR requirement as set out in MAS Notice 649.

  The LCR requirement was introduced for D-SIBs in Singapore. These proposed disclosure requirements closely mirror the requirements promulgated by the BCBS for internationally active banks. A common LCR disclosure template has been provided in order to promote consistency and comparability of liquidity disclosures by banks, and accompanying qualitative disclosures to help users understand the information published by banks. Guidance is also provided on additional qualitative and quantitative disclosures that banks are encouraged to disclose in order to provide market participants with a broader understanding of the reporting banks' liquidity risk profile and management. These requirements are intended to take effect on January 1, 2016. Banks are required to comply with these disclosure requirements from the date of the first reporting period after January 1. MAS also identified specific areas for comment, in particular the scope of application, the retention period, the reporting currency and treatment of country-level groups. MAS proposed that the LCR disclosure requirements not apply to D-SIBs that are foreign branches.

14. 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) wouldfully contravened or wouldfully 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 would allow MAS to consider the reputation of and stakeholder confidence in the financial system when determining whether to exercise its power of removal.

  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 would be required to establish a comprehensive risk management framework and internal controls. MAS would determine whether the risk management systems and controls are adequate.

- On January 15, 2015, MAS published its response to feedback on its November 2013 consultation paper on the review of the Banking Act. MAS had previously sought feedback on proposed amendments aimed at:

- Formalising banks' duties to inform MAS of material adverse developments and information related to the bank, its shareholders and controllers, and key appointment holders;
- Strengthening MAS's control over banks' key appointment holders and auditors; and
- Formalising banks' duties to implement risk management systems and controls.

MAS has now launched another consultation on further proposed amendments to the Banking Act. The proposed amendments include:

- Requiring banks to seek MAS's approval to open a new place of business or change the location of their existing place of business at which they conduct other financial or related activities (for example, money-changing and remittance activities); and
- Empowering MAS to declare any day or part thereof to be a bank holiday or holidays, and to prescribe either a positive or negative list of activities that banks may or may not conduct during the bank holiday.

MAS has also invited comments on the draft Banking Act (Amendment) Bill, which is appended at Annex B of the January 2015 consultation paper.

15. 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 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;

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

- On December 27, 2013, the 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 though 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.

17. 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 would 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.

18. MAS consults on MAS Act and Trust Companies Act amendment

- On June 5, 2014, MAS released a consultation paper on the proposed amendments to the MAS Act and Trust Companies Act. The aim of the consultation paper is to strengthen the regulatory framework for combating money laundering (ML) and terrorism financing (TF) through enhancing the effectiveness of Singapore's AML/CTF regime, in particular international cooperation. These enhancements would align Singapore's regime with the revised Financial Action Task Force (FATF) Recommendations as well as other international standards such as the Basel Committee on Banking Supervision. MAS is also currently developing subsidiary legislation to amend the definition of 'financial institutions' in the MAS Act to include designated financial holding companies, which would subject these companies to the appropriate AML/CFT regulation.

19. Authorities consult on FATCA regulations

- On September 22, 2014, the Ministry of Finance, MAS and the Inland Revenue Authority of Singapore released a public consultation on proposed regulations to help financial institutions in Singapore to comply with the US Foreign Account Tax Compliance Act (FATCA). In order to ease the compliance in relation to FATCA, Singapore has now substantially concluded a Model 1 Intergovernmental Agreement (IGA) with the US.

  The FATCA IGA would be signed in the fourth quarter of 2014. The public consultation invites feedback on the draft Income Tax (International Tax Compliance Agreements) (United States of America) Regulations 2014 and the draft FATCA e-Tax Guide. The draft regulations set out the due diligence and reporting obligations of Singapore-based financial institutions in relation to the FATCA IGA, whereas the draft e-Tax Guide provides further explanation of those obligations. The public consultation would be from September 22 to October 17.On March 17, 2015, MOF, IRAS and MAS published their responses to public feedback on the draft income tax regulations and e-tax guide relating to the implementation of the Singapore-US Foreign Account Tax Compliance Act (FATCA) Intergovernmental Agreement (IGA).

A total of 567 suggestions were received from the public consultation, held between September 22 and October 17, 2014. They covered areas such as the information reporting obligations of trusts, the applicability of US regulations and the exemption of supplementary retirement scheme accounts (SRS) and SRS investment accounts. More than 200 suggestions that helped advance the policy objectives for implementing the Singapore-US FATCA IGA were accepted and incorporated into the regulations and e-tax guide. The remaining suggestions were felt to be inconsistent with Singapore's policy on the implementation of the IGA or with the provisions of the IGA.

20. Singapore and China strengthen financial cooperation

- MAS announced on October 27, 2014 that Singapore and China have reached an agreement on financial cooperation in offshore RMB market, capital markets and insurance.

  In particular, two initiatives were agreed:

  - Direct currency trading between Chinese Yuan and SGD would commence on October 28, 2014. This would lower foreign exchange transaction costs and encourage the greater use of the two currencies in cross border trade and investment; and

  - China-incorporated financial institutions can issue RMB-denominated debt instruments in Singapore directly. This would help to diversify long-term funding for Chinese financial institutions by allowing them to tap into the international institutional investor base in Singapore.

  MAS indicated further that the two countries would explore measures to strengthen cooperation in the areas of derivatives and catastrophe risk insurance.

- On October 13, 2015, MAS announced that Singapore and China have agreed on new initiatives to further promote the international use of the RMB through Singapore. The agreement was reached at the 12th Joint Council for Bilateral Cooperation (JCBC). The new initiatives will broaden the cross-border RMB channels between Singapore and China.

  Under the agreement, banks in Singapore will be able to lend RMB to corporates across Suzhou and Tianjin, and corporates in Suzhou and Tianjin will be able to issue RMB bonds in Singapore. Corporates in Suzhou and Tianjin will be allowed to repatriate 100% of the proceeds raised from bonds issued in Singapore, and corporates in SIP will be allowed to borrow from Singapore-based companies. Qualifying privately-owned banks in Singapore-Sino Tianjin Eco-City (SSTEC) will be allowed to borrow from Singapore-based banks.

  Singapore also supports the inclusion of the RMB in the International Monetary Fund's (IMF) Special Drawing Rights' basket of currencies, noting that the use of the RMB for payments, trade settlement, and investments has grown rapidly in recent years. Singapore and China also look forward to enhancing financial connectivity to support projects under the "One Belt One Road" initiative in order to facilitate access by Chinese companies to ASEAN markets through Singapore.

- On November 9, 2015, MAS announced that initiatives to strengthen cross-border RMB flows and a commitment to collaborate on capital market connectivity between China and Singapore were key financial co-operation outcomes arising from a recent state visit to Singapore by the president of the People's Republic of China.

  Three key initiatives further expand channels for cross-border RMB flows and help support greater use of the RMB outside China. First, China and Singapore agreed to extend the same cross-border RMB initiatives that currently exist with respect to Suzhou and Tianjin to Chongqing municipality. The enhanced cross-border channels will boost RMB activities in Singapore. They will also provide a larger variety of financing solutions for Chinese corporates and help strengthen financial connectivity between Singapore and China's western region. Second, Singapore's quota under the RMB qualified foreign institutional investor scheme will be doubled from RMB 50 billion to RMB 100 billion. Third, MAS and the People's Bank of China agreed to renew and enhance the bilateral currency swap arrangement established between the two central banks.

The financial co-operation agenda between Singapore and China now includes an agreement to enhance capital market co-operation through two initiatives. This includes an agreement to institute a regular high-level dialogue between MAS and the China Securities Regulatory Commission (CSRC). In addition, MAS and CSRC agreed to explore product collaboration to broaden capital market offerings.

21. MAS consults on amendments to the Securities and Futures Act

- On February 11, 2015, MAS released a Consultation Paper on Proposed Amendments to the SFA. In this Consultation Paper, MAS proposes certain amendments to the SFA in order to complete the expansion of its scope to regulate OTC derivatives (including the transfer of regulatory oversight commodity derivatives from the Commodity Trading Act (CTA) (Cap. 48A)).

  The proposed amendments are set out in the following parts of the Consultation Paper:

  - Part A – Amendments arising from the OTC Reforms;
  - Part B – Transfer of Regulation of Commodity Derivatives from CTA to SFA; and
  - Part C – Other Amendments to the SFA

  The Consultation Paper also includes four annexes, which set out the draft amendments to the SFA as well as to the Second Schedule to Securities and Futures (Licensing and Conduct of Business) Regulations (SF/(LCB)R).

  Certain key amendments proposed in the Consultation Paper include, among others:

  - Amendments to the product definitions in Part I of the SFA;
  - Amendments to Part II of the SFA to extend the markets regime to OTC derivatives;
  - New provision in Part VIA of the SFA to ensure that banking confidentiality does not restrict the efficacy of the trade reporting regime;
  - New Part VIC of the SFA to introduce powers to set out the requirements under the trading obligation;
  - Amendments Part IV and the Second Schedule to the SFA, and the Second Schedule to the SF/(LCB)R to extend the capital markets services licensing regime to OTC derivatives; and
  - Consequential amendments to the remaining parts of the SFA, the FAA and the CTA arising from the proposals.

  MAS also proposes a revised principles-based definition of a "derivative contract", which aims to describe the key elements of derivatives. This also provides flexibility for MAS to regulate OTC derivatives, which may evolve in complexity and structure.

- On November 7, 2016, the Monetary Authority of Singapore (MAS) released an explanatory brief on the Securities and Futures (Amendment) Bill 2016.

  The MAS is introducing legislative amendments to the Securities and Futures Act (Cap. 289) ("SFA") to implement policy proposals aimed at ensuring that the capital markets regulatory framework in Singapore keeps pace with market developments and is aligned to international standards and best practices. The Bill completes MAS' two-phase review to implement OTC derivatives regulatory reforms, in line with recommendations made by the Financial Stability Board ("FSB") and the Group of Twenty ("G20") to strengthen regulation of OTC derivatives markets following the 2008 global financial crisis. MAS is also introducing amendments aimed at enhancing regulatory safeguards for retail investors, enhancing the credibility and transparency of the capital markets, and strengthening MAS' ability to take enforcement action against market misconduct.

  MAS conducted public consultations on significant policy changes and the proposed SFA amendments between 2012 and 2015. MAS has further engaged key industry stakeholders where appropriate before finalising the Bill. The Bill includes the following key provisions:

  - Regulation of OTC derivatives;
  - Enhance regulatory safeguards for retail investors, including:
    - Widen regulatory perimeter to products that are in substance capital markets products;
    - Refine non-retail investor classes;
  - Enhance credibility and transparency of capital markets, including:
    - Securities short-selling requirements;
    - New regulatory framework for financial benchmarks;
  - Strengthen enforcement regime against market misconduct, including:
    - Clarify scope of prohibition against false or misleading disclosures (section 199)
    - Introduce statutory definition of "persons who commonly invest" for prohibitions against insider trading;
    - Confer priority on MAS' civil penalty claims;
    - Standardisation of civil penalty ceiling;
  - Other technical amendments.

22. MAS and RBA sign MOU

- On April 14, 2015, MAS and RBA entered into a memorandum of understanding (MoU) on cooperation arrangements to facilitate access by the RBA to information on derivatives contracts held in trade repositories in Singapore. The MoU is meant to enable RBA to fulfil its responsibilities and mandates, while ensuring the privacy of the information is appropriately protected. The MoU also provides for derivatives trade data to be disclosed to an Australian governmental entity, subject to strict conditions.

23. MAS releases policy consultation paper on intermediaries dealing in derivative contracts

- On June 3, 2015, MAS released its Policy Consultation paper on Regulatory Framework for Intermediaries Dealing in OTC Derivative Contracts, Execution-related Advice and Marketing of

Collective Investment Schemes. Part A of the consultation considers the proposed regulatory framework for intermediaries dealing in OTC derivatives. This includes considerations relating to admission criteria, business conduct requirements, capital and financial requirements and transitional arrangements. Part B considers proposed amendments to the SFA and FAA, in relation to execution-related advice and marketing of collective investment schemes, among other things.

As background and as described earlier, on February 11, 2015, MAS issued a consultation paper that proposed amendments to the SFA in order to complete the expansion of the scope of the SFA to regulate derivatives contracts. This included the expansion of the capital markets services licensing requirement to OTC intermediaries.

24. MAS issues consultation on resolution

- On June 23, 2015, MAS released its Consultation Paper on Proposed Enhancements to Resolution Regime for Financial Institutions in Singapore. In this paper, MAS proposes to enhance its resolution regime by strengthening its powers to resolve distressed institutions while maintaining continuity of their critical economic functions. The policy proposals cover:

  - Recovery and resolution planning;
  - Temporary stays and suspensions;
  - Statutory bail-in powers;
  - Cross-border recognition of resolution actions;
  - Creditor safeguards; and
  - Resolution funding

  The proposed policy changes would be introduced primarily through amendments to the MAS Act, supported by the necessary regulations. MAS would also consult on the legislative amendments, after considering the feedback received on the policy proposals in this consultation.

- On April 29, 2016, the Monetary Authority of Singapore (MAS) released a consultation paper on proposed legislative amendments to enhance the resolution regime for financial institutions in Singapore. This follows an MAS consultation released on June 23, 2015, which set out the policy proposals on enhancements to the resolution regime.

  The proposed legislative amendments include strengthening the MAS's powers to resolve distressed financial institutions, while maintaining continuity of their critical economic functions. In addition, the MAS will issue a notice and guidelines on the recovery and resolution planning for banks. The MAS has proposed legislative amendments in these areas: temporary stay on termination rights; a statutory bail-in regime; cross-border recognition of resolution actions; resolution funding arrangements; and creditor compensation framework.

  The MAS has also proposed amendments to the Monetary Authority of Singapore (Control and Resolution of Financial Institutions) Regulations 2013, which are intended to provide broad protection to ensure that netting and set-off arrangements will not be affected by the exercise of resolution powers – in particular, where there is a transfer of part of the business of a pertinent financial institution.

25. MAS issues notice on FMI standards

- On August 31, 2015, MAS issued its Notice on Financial Market Infrastructure Standards (Notice). The notice applies to licensed trade repositories and approved clearing houses. MAS had previously released its Monograph on Supervision of Financial Market Infrastructures (Monograph). MAS also administers the Securities and Futures Act (Cap. 289) (SFA) in respect of the supervision and oversight of trade repositories and clearing houses in accordance with the Committee on Payment and Settlement Systems and International Organization of Securities Commissions Principles for Financial Market Infrastructures (PFMIs), as set out in the monograph. Some of the principles of the PFMIs are set out in the SFA and subsidiary legislation issued under the SFA. The notice sets out the remaining principles in the PFMIs that an FMI has to comply with.

  The notice sets out the standards that are applicable to FMIs. These standards apply to:

  - Legal risk management;
  - Governance arrangements;
  - Credit risk management;
  - Framework for the comprehensive management of risks;
  - Collateral;
  - Margin;
  - Liquidity risk;
  - Settlement finality;
  - Money settlements;
  - Physical deliveries;
  - Exchange-of-value settlement systems;
  - Participant-default rules and procedures;
  - Segregation and portability;
  - General business risk;
  - Custody and investment risk;
  - Operational risks;
  - Access and participation requirements;
  - Tiered participation arrangements;
  - FMI links;
  - Efficiency and effectiveness;
  - Communication procedures and standards;
  - Disclosure of rules, key procedures and market data; and
  - Disclosure of market data by trade repositories.

  The notice takes effect on August 31, 2015.

26. MAS paper on removing DBU-ACU divide

- On August 31, 2015, MAS released its Consultation Paper on Removing the DBU-ACU Divide – Implementation Issues. All banks in Singapore currently have to maintain two accounting units – the domestic banking unit (DBU) and the Asian currency unit (ACU). Transactions in Singapore dollars can be booked only in the DBU, whereas transactions in foreign currencies are typically booked in the ACU. In June, MAS announced that it will remove the DBU-ACU divide. Therefore, banks will no longer need to maintain two separate accounting units.

  This consultation paper considers the proposed amendments to regulatory requirements that will be required following the removal of the DBU-ACU divide. As many of the prudential limits in Singapore are calibrated based on the DBU-ACU divide, the removal will require changes to certain regulatory provisions, including:

  - Priority of specified liabilities in insolvency (Section 62(1) of the Banking Act);
  - Asset maintenance requirements (MAS Notice 640);
  - Anti-commingling limits (regulations 23F and 23G of the Banking Regulations);
  - Equity investment limits (Section 31 of the Banking Act) and immovable property limit (Section 33 of the Banking Act); and
  - Concentration limits (MAS Notice 639)

  MAS is also working separately with industry participants on proposed amendments to the regulatory returns based on the DBU and ACU, as set out in MAS Notice 610 –Submission of Statistics and Returns.

27. MAS proposes amendments to financial market legislation

- On September 18, 2015, MAS issued a consultation paper on proposed amendments to the SFA, FAA and Trust Companies Act (TCA). MAS had conducted a review of these acts and their subsidiary legislation to identify areas where MAS' supervisory powers should be further enhanced, as well as strengthen business conduct requirements applicable to entities regulated under these acts. This is in line with MAS' ongoing review of the Banking Act, and it is intended that these proposed enhancements will harmonise similar requirements across the various acts where appropriate.

  The proposed amendments would also ensure that MAS is apprised of specified adverse developments in financial institutions, provide for suitable powers of regulatory oversight, and align requirements for these financial institutions with those applicable to banks where appropriate. The proposed amendments will apply to financial institutions including SFA-regulated entities comprising capital markets services licence holders and market infrastructures consisting of approved exchanges and recognised market operators, approved clearing houses and recognised clearing houses, licenced trade repositories and licenced foreign trade repositories and approved holding companies.

  In the consultation, MAS also proposes to provide an option for investors to more conveniently pledge securities held in their central depository direct accounts to their brokers. This would facilitate investors using these securities to meet collateral requirements. To promote financial prudence, securities brokers will be required to collect a minimum of 5% of collateral from their customers for the trading of listed securities.

28. MAS proposes margin requirements for non-centrally cleared derivatives

- On October 1, 2015, MAS issued its Policy Consultation on Margin Requirements for Non-Centrally Cleared Derivatives (Consultation). These policy proposals will be effected by way of new rules, which MAS will consult on after considering feedback received from this Consultation.

- On August 22, 2016, the Monetary Authority of Singapore (MAS) made announcements deferring the implementation of margin requirements for non-cleared derivatives beyond the proposed September 1, 2016 commencement date.

  It further indicated that it would issue final rules in the coming months and would announce a revised phase-in schedule in due course.

- On December 6, 2016, the Monetary Authority of Singapore (MAS) released the final guidelines on the margining on non-centrally cleared derivatives. Some key points to note:

  - There will be a six-month transition period from March 1, 2017 to August 31, 2017, with no retrospective application of margining requirements in respect of transactions entered into during this period;
  - During the transition period, the MAS expects covered entities to make progress to meet the guidelines as soon as practicable;
  - The margin requirements apply to any bank licensed under the Banking Act and any merchant bank approved as a financial institution under the MAS Act;
  - Margin requirements apply to all non-cleared derivatives contracts booked in Singapore, except physically settled FX forwards or swaps and commodity derivatives contracts entered into for commercial purposes;
  - Margin requirements do not apply to any covered entity with an aggregate month-end average notional amount of non-cleared derivatives contracts booked in Singapore for March, April and May of the year not exceeding S$5 billion;
  - The phase-in of IM requirements for phase-one institutions, and VM requirements for all covered entities, will commence from March 1, 2017;
  - The MAS may deem that a covered entity is in compliance with the guidelines if the margin requirements in the foreign jurisdiction are assessed to be comparable to the requirements in the guidelines, and the MAS-covered entity can demonstrate that it has complied with the margin requirements of that foreign jurisdiction;
  - The MAS is of the view that margin requirements implemented by jurisdictions such as Australia, Canada, the EU, Hong Kong, Japan, Singapore, Switzerland and the US are comparable; and
  - Margin requirements will not apply if a legal review has concluded that the relevant netting agreement or initial margin arrangement is not legally enforceable.

29. MAS issues explanatory brief on banking amendments

- On January 25, 2016, MAS released an explanatory brief on the Banking (Amendment) Bill 2016, which has been moved for a first reading in parliament. These legislative amendments aim to enhance prudential safeguards and corporate governance and risk management controls in the banking industry, as well as strengthen and align MAS' regulatory and supervisory framework with international best practice. Amendments are also being made to formalise MAS' existing requirements and clarify policy intent. MAS conducted public consultations on the significant policy changes (November 2013) and developed a draft bill (January 2015), and has incorporated the feedback into the bill where appropriate. The bill touches on three key areas:

- Prudential safeguards: including empowering MAS to require foreign banks to locally incorporate all or part of their banking business. MAS is also able to set prudential requirements that cap banks' leverage and ensure they maintain sufficient liquidity, in line with international standards;
- Corporate governance: including empowering MAS to remove key appointment holders of banks if they are found to be not fit and proper, and providing protections to external auditors from liability associated with disclosures. MAS is also able to direct banks to remove their external auditors and to prohibit, restrict or direct a bank to terminate any transaction it enters into with its related parties; and
- Risk management controls: including formalising MAS' expectation for banks to institute risk management systems and controls that are commensurate with their business profiles and operations, with penalties for failing to do so. It also introduces a requirement for banks to obtain MAS' approval to establish new places of business where non-banking activities (such as money changing and remittance) are conducted.

There are also a number of other amendments, including a duty to inform MAS of any adverse material developments, and other amendments of a technical nature.

30. LCH recognised by MAS

- On February 1, 2016, LCH.Clearnet announced that it has been granted the status of Recognised Clearing House by MAS, pursuant to the provisions of the Securities and Futures Act, Chapter 289, of Singapore (SFA) and the Securities and Futures (Clearing Facilities) Regulations 2013. Recognition applies to LCH.Clearnet's EnClear (Freight Division), ForexClear and SwapClear services.

  LCH.Clearnet currently clears Singapore Dollar-denominated interest rate swaps as well as commodity futures, including freight, iron ore, and steel, executed on Cleartrade Exchange (CLTX), the MAS-regulated trading venue. LCH.Clearnet also has a number of Singapore-based clients clearing interest rate derivatives and commodities via clearing brokers.

31. Parliament passes the Choice of Court Agreements Bill

- On April 14, 2016, parliament passed the Choice of Court Agreements Bill. This bill seeks to give effect to the Hague Convention on Choice of Court Agreements, which established an international legal regime for upholding exclusive choice of court agreements in international civil or commercial cases, and governs the recognition and enforcement of judgments among parties to the Hague Convention.

  In implementing the Hague Convention, the bill paves the way for Singapore to ratify the Hague Convention, thereby enhancing the enforceability of Singapore court judgments. Under the bill, if a Singapore court is the chosen court, it will have the jurisdiction to decide the dispute at hand. The Singapore court cannot generally decline jurisdiction on the grounds that the dispute should be decided by a court of another state. Conversely, if Singapore is not the chosen court, then the Singapore court must generally stay or dismiss the matter.

32. MAS facilitates retail investment in corporate bonds

- On May 19, 2016, the Monetary Authority of Singapore (MAS) introduced two new regulations to facilitate corporate bond offerings to retail investors.

  Under the bond seasoning framework, wholesale bonds issued by issuers that meet eligibility criteria stipulated by the Singapore Exchange (SGX) can be offered to retail investors after the bonds have been listed on SGX for six months. These 'seasoned' bonds can be re-denominated into smaller lot sizes and offered to retail investors on the secondary market.

  Eligible issuers can also offer additional bonds to retail investors on the same terms as the seasoned bonds without a prospectus. SGX has amended its rules to effect the framework, and issued a practice note to provide guidance to issuers on the relevant procedures and processes.

  In addition, under the exempt bond issuer framework, issuers that satisfy specified thresholds that are higher than the eligibility criteria under the bond seasoning framework can offer bonds directly to retail investors at the start of an offer without a prospectus.

  The changes are part of an effort to widen the investment options available to retail investors. The new regulations give effect to the policy and legislative proposals on the bond seasoning framework and exempt bond issuer framework, which were open for consultation in September 2014 and December 2014, respectively. As an additional incentive for eligible issuers under the bond seasoning framework and exempt bond issuer framework, the Minister for Finance will grant a tax deduction of up to two times to qualifying retail bond issuers for issuance costs attributable to these retail bonds. The tax concession will be available for five years and took effect on May 19.

33. Fintech

- On April 12, 2016, The Monetary Authority of Singapore (MAS) announced the inaugural Singapore FinTech Festival, to be held in Singapore from 14 to 18 November 2016. The Singapore FinTech Festival will comprise three components:

  Global FinTech Hackcelerator – In May 2016, the global FinTech community will be invited to ideate and co-create solutions to specific problems or challenges solicited from the financial industry. Up to 20 teams will then be selected from across the world to develop market-ready solutions to these problems over the following months. The selected teams will present their completed solutions at the Demo Day during the Festival.

  MAS FinTech Awards – The Awards will recognise innovative FinTech solutions that have been implemented by FinTech start-ups, financial institutions, and technology companies.
  Conferences and Events – The Festival will include the MAS FinTech Conference, ABS-MAS Tech Risk Conference, ABS-MAS Regulation Technology (RegTech) Forum. The Festival will also feature other community and networking activities like the Innovation Lab Crawl, the SGX Bull Charge Charity Run, etc.

- On June 6, 2016, the Monetary Authority of Singapore (MAS) released a consultation paper on proposed guidelines for a "regulatory sandbox" that will enable financial institutions, as well as non-financial players, to experiment with financial technology (fintech) solutions in an environment where actual products or services are provided to the customers. For the duration of the regulatory sandbox, MAS will relax specific regulatory requirements, which an applicant would otherwise be subject to. MAS recognises that the purpose of the regulatory sandbox is to provide appropriate safeguards to contain the consequences of failure for customers rather than to prevent failure altogether.

Interested firms are encouraged to approach MAS to discuss how their innovative fintech solutions can be launched in the regulatory sandbox, even while the proposed guidelines are being consulted and finalised.

- On August 2, 2016, the Monetary Authority of Singapore (MAS) announced that it has set up an international technology advisory panel. The panel will advise MAS on international developments in fintech and how Singapore can harness new technologies to enhance the provision of financial services.

  The panel comprises of chief innovation and science officers in major financial institutions, fintech business leaders, venture capitalists, and thought leaders in technology and innovation. It met for the first time on August 2. The meeting was attended by the deputy prime minister and chairman of MAS, as well as senior MAS officials.

  The panel discussed emerging trends in fintech; explored the wider applications of decentralised systems, such as blockchains, and new business models in areas such as retail and corporate banking; wholesale markets and insurance; and highlighted the importance of a regulatory regime that facilitates innovation and adoption of new technologies while maintaining trust and confidence. Panel discussions explored the impact of technologies like blockchains, wearables, and telematics on the financial services, as well as new business models for banking and fixed income and foreign exchange markets.

- On August 24, 2016, the Monetary Authority of Singapore (MAS) announced the opening of its FinTech Innovation Lab. The purpose-built facility, known as Looking Glass @ MAS, is located within the MAS Building. Looking Glass @ MAS will serve the following purposes:
  - allow MAS to experiment FinTech solutions with financial institutions, start-ups, and technology vendors;
  - facilitate consultations for start-ups by industry experts on areas of interest such as legal, regulation, and business-related matters; and
  - provide a venue for relevant training sessions and networking activities for the FinTech community.

- On September 12, 2016, the Monetary Authority of Singapore (MAS) and the Swiss Financial Market Supervisory Authority (FINMA) signed a cooperation agreement to foster greater cooperation on FinTech. This initiative was launched at the second Financial Dialogue between the MAS and the State Secretariat for International Finance (SIF) held today. The annual Dialogue aims to deepen bilateral cooperation and exchange views on domestic and international financial market developments and policies.

  The cooperation agreement between MAS and FINMA provides a framework for innovative FinTech companies in Singapore and Switzerland to expedite initial discussions on introducing new FinTech solutions in each other's market and understand regulatory requirements, thus helping to reduce regulatory uncertainty and the time-to-market for these new FinTech solutions. The agreement will help to create opportunities for FinTech businesses from Singapore and Switzerland to expand into each other's markets. FINMA and MAS have also committed to share information about emerging FinTech trends and regulatory issues pertaining to innovation.

- On October 24, 2016, the Monetary Authority of Singapore (MAS) and the Korean Financial Services Commission (KFSC) signed a cooperation agreement to foster greater cooperation in FinTech. The signing took place at the sidelines of the FinTech Demo Day organised by the Korean FinTech Centre. The agreement provides a framework for cooperation in FinTech between Singapore and South Korea. Under the agreement, MAS and KFSC will explore potential joint innovation projects on technologies such as big data and mobile payments. MAS and KFSC will also discuss issues of common interest, and share information on FinTech trends and how it may impact existing regulations.

- On November 16, 2016, the MAS published its regulatory sandbox guidelines to encourage experimentation of solutions that utilise technology innovatively to deliver financial products or services. The guidelines incorporate feedback from the public consultation, as well as learning points from actual sandbox applications. The guidelines will improve the clarity, flexibility and transparency of the regulatory sandbox through improved clarity, greater flexibility and increased transparency.

34. Consultation on enhancements to customer protection rights

- On July 19, 2016, the Monetary Authority of Singapore (MAS) released its consultation paper on Enhancements to Regulatory Requirements on Protection of Customers' Moneys and Assets. These proposed enhancements take into account international standards promulgated by the International Organization of Securities Commission and the Financial Stability Board.

  Holders of a capital markets services license conducting regulated activities under the Securities and Futures Act Chapter 50 of Singapore are required to take the necessary measures to safeguard customer's moneys and assets as prescribed under the Securities and Futures Licensing and Conduct of Business (LCB) regulations. The proposals follow a review by MAS. This consultation considers various aspects and measures including the definition of customer's money, due diligence on third party custodian, acknowledgement form financial institutions, information requirement and record keeping, disclosure to customers, daily computation of trust accounts and custody accounts and re-hypothecation and other use of customer's assets.

  The LCB regulations governing the treatment and handling of moneys and assets received from customers are presently applicable to banks, merchant banks and finance companies (collectively referred to as exempt financial institutions), which conduct regulated activities under the Securities and Futures Act. In this consultation, MAS proposes to remove the LCB money rules for these exempt financial institutions. MAS intends to continue to apply the LCB asset rules to exempt financial institutions.

It should be noted that the proposals in this consultation do not apply to the non-centrally cleared derivatives.

The proposals set out in this consultation will be subsequently effected via new rules, which MAS intends to consult on after receiving and considering the feedback from this consultation.

35. MAS issues guidance on outsourcing risk management, cloud services

- On July 27, 2016, the Monetary Authority of Singapore (MAS) issued new guidelines on outsourcing risk management to financial institutions following extensive industry and public consultation. These provide expanded guidance to the industry on prudent risk management practices for outsourcing, including cloud services, which have been adopted by a growing number of financial institutions. Key changes to the guidelines include the introduction of a new section on cloud computing that sets out MAS' stance on cloud computing, removal of the expectation for financial institutions to pre-notify MAS of material outsourcing arrangements, and revision to the definition of 'material outsourcing arrangement' to include, under certain circumstances, an arrangement that involves customer information.

  This set of guidelines replaces the existing MAS outsourcing guidelines as well as the circular on information technology outsourcing.

36. MAS consults on amendments to exemption from requirement to hold CMSL

- On August 5, 2016, the Monetary Authority of Singapore (MAS) released a consultation paper on Consultation Paper on Proposed Amendments to Securities and Futures (Exemption from Requirement to Hold Capital Markets Services Licence) Regulations.

  To expand their futures clearing business, central clearing counterparties ("CCPs") operating in Singapore may admit clearing members which are based overseas and do not have physical operations in Singapore ("Remote Clearing Members"), in addition to onshore clearing members. To the extent that Remote Clearing Members conduct their business activities outside Singapore and only serve overseas-based customers, the business conduct concerns which they pose are limited. Accordingly, MAS intends to exempt Remote Clearing Members which clear futures contracts on Singapore-based CCPs from the requirement to hold a Capital Markets Services ("CMS") licence in respect of trading in futures contracts under the Securities and Futures Act ("SFA"), subject to certain conditions.

  This paper seeks views on the proposed exemption, including whether the conditions of exemption are adequate to address the risks that may arise from the participation of these Remote Clearing Members in Singapore's clearing system.

37. MAS hosts EU-APAC forum on financial regulation

- On October 14, 2016, the Monetary Authority of Singapore (MAS) hosted regulators from the European Union (EU) and the Asia-Pacific region at the inaugural EU-Asia-Pacific Forum on Financial Regulation.

  The forum seeks to enhance information exchange between regulators from the EU and the Asia-Pacific region on a number of key aspects related to cross-border cooperation. These include the current regulatory framework governing financial services, future regulatory developments, issues and challenges that may arise in cross-border coordination for regulatory purposes, and forward-looking and emerging policy priorities for the global regulatory agenda.

  Delegates covered the three topics on the forum agenda of this year: the cross-border implications of financial services regulatory frameworks; asset management and funds passporting; and opportunities in fintech. Participants agreed to reconvene in a year in Asia.

38. MAS releases consultation on NSFR and NSFR disclosure requirements

- On November 16, 2016, the Monetary Authority of Singapore (MAS) released a consultation paper on the NSFR and NSFR disclosure requirements. The proposals are as follows:
    - The NSFR will be applicable to banks that have been designated as domestic systemically important banks (D-SIBs) by the MAS;
    - For a D-SIB that is locally incorporated with a group headquartered in Singapore, the NSFR will be implemented at the consolidated group level on a 100% all-currency basis
    - For a D-SIB with a group not headquartered in Singapore, the NSFR will be implemented at the entity level on a minimum 50% all-currency basis;
    - Derivatives transactions with central banks arising from short-term monetary policy and liquidity operations will be excluded from NSFR computations;
    - Banks should report their monthly NSFR numbers together with the full quarter-end NSFR data per the prescribed format to the MAS by the 30th day of the following month after quarter-end; and,
    - NSFR requirements will be applicable from January 1, 2018, and the NSFR disclosure requirements will become effective from the date of the first reporting period after January 1, 2018.

  The deadline for comments is December 15, 2016.

39. MAS publishes liquidity and policy analyses for platform trading of OTC derivatives

- On December 16, 2016, MAS issued a paper on liquidity and policy analyses for the on-platform trading of OTC derivatives.

  This paper is not a consultation, but rather a thought piece on when it might be appropriate to mandate the trading of standardized OTC derivatives on trading platforms, including a two-stage trading infrastructure and a product test. The paper also introduces a methodology to assess the liquidity of a product using a clustering technique and analyses the cost-benefit of public dissemination of anonymised transaction-level post-trade data from a trade repository as an alternative to improve market transparency.

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.
- March 7, 2014: ISDA submission to The Monetary Authority of Singapore on MAS Relief Letter.
- August 8, 2014: ISDA submission to Monetary Authority of Singapore on the data fields in the First Schedule of the Consultation Paper on the Draft Securities and Futures (Reporting of Derivatives Contracts) (Amendment) Regulations 2014.
- August 15, 2014: ISDA submission to Monetary Authority of Singapore regards to the Consultation Paper on Draft for Reporting of Foreign Exchange Derivatives Contracts.
- March 31, 2015: ISDA submission to Monetary Authority of Singapore with regards to MAS's Consultation Paper on Proposed Amendments to the Securities and Futures Act.
- July 10, 2015: ISDA joint submission with FIA Asia and ASIFMA to Monetary Authority of Singapore with regards to Policy Consultation on Regulatory Framework for Intermediaries Dealing in OTC Derivative Contracts, Execution-Related Advice, and Marketing of Collective Investment Scheme.
- July 29, 2015: ISDA submission to Monetary Authority of Singapore with regards to Consultation Paper on Proposed Enhancements to Resolution Regime for Financial Institutions in Singapore.

- July 31, 2015: ISDA submission to Monetary Authority of Singapore with regards to Consultation Paper on Draft Regulations for Mandatory Clearing of Derivatives Contracts.
- October 13, 2015: ISDA submission to Monetary Authority of Singapore requesting extension of current masking relief under Rule 11 of the Securities and Futures (Reporting of Derivatives Contracts) Regulations.
- November 6, 2015: ISDA joint submission with ASIFMA to Monetary Authority on Policy Consultation on Margin Requirements for Non-Centrally Cleared OTC Derivatives.
- February 24, 2016: ISDA submission to Monetary Authority of Singapore on Consultation Paper P002: Proposed Amendments to the Securities and Futures (Reporting of Derivatives Contracts) Regulations.
- June 6, 2016: ISDA submission to Monetary Authority of Singapore on draft data fields under the proposed amendments to the Securities & Futures (Reporting of Derivatives Contracts) Regulations. This submission is not yet public.
- June 10, 2016: ISDA submission to Monetary Authority of Singapore on Consultation Paper on proposed legislative amendments to enhance the resolution regime for financial institutions in Singapore. This submission is not yet public.
- June 13, 2016: ISDA submission to Monetary Authority of Singapore on Guidelines on Margin Requirements for Non-Centrally Cleared OTC Derivatives Contracts. This submission is not yet public.

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

1. Taiwan implements mandatory trade reporting

- 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.

2. Derivatives

- On June 17, 2014, FSC approved that revised "Self-regulatory Rules governing Banks' Financial Derivatives Business" issued by the Bankers Association, a SRO in Taiwan. Under the revised rules, onshore banks selling OTC derivatives to non-institutional investor including all corporates and individuals must provide Chinese translation of the agreements. FSC has given banks a 3-month grace period (and in the case ISDA documentation, 6-month) to comply with the new language requirement.

3. FSC introduces new measure to strengthen regulation regime for derivative business of banks

- On February 1, 2016, Taiwan's FSC announced new measures to strengthen the regulatory regime for derivatives business of banks. The new measures include increasing the threshold for professional investors; imposing restrictions on banks dealing high-risk products with natural persons; imposing restrictions on high-risk and complex FX derivatives (eg, maturity, leverage); enhancing disclosure requirements; imposing initial margin requirements for certain types of transactions; prescribing the transaction size of derivatives products offered to non-professional investors who are not professional investors nor high-net-worth institutional investors; and amending the calculation requirements for credit valuation adjustment (CVA). In particular, it proposes the following margining requirements for derivatives products offered to investors who are not professional investors nor high-net-worth institutional investors:
  - Initial margin (IM): For high-risk and complex OTC derivatives products, IM will not be less than 2% of the notional amount. For certain FX products with a maturity of more than one year, IM will not be less than 5% of the notional amount. For other products, IM will be determined by the bank's risk management system.
  - Variation margin will be determined by the bank's risk management system.

  The new measures came into effect on March 1, 2016.

4. Taiwan: FSC publishes new rules on liquidity coverage ratio

- On November 4, 2014, FSC issued new rules to implement the liquidity coverage ratio (LCR) and liquidity risk monitoring. From January 1, 2015, domestic Taiwanese banks would be required to submit monthly reports on their LCR to FSC and the central bank. Additionally, a phase-in period would be implemented whereby Taiwanese domestic banks would be required to maintain a minimum LCR of at least 60% from January 1, 2015. The LCR percentage would be raised by 10 percentage points per annum until it reaches a 100% by January 1, 2019.

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
- July 28, 2016: ISDA submission to the Securities and Futures Bureau of the Financial Supervisory Commission on securities investment trust funds providing collateral for their OTC derivatives transactions.

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 would 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 would 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 would assess the developments and impact studies on the Leverage ratio and Liquidity risk framework before adoption in Thailand.

2. Legislation on new type of security interest

- On August 7, 2015, the National Legislative Assembly formally greenlighted the Business Security Act. This new Act will address the obstacles and concerns in the existing Civil and Commercial Code (CCC) that presently prevent the taking of security in Thailand. For instance under the CCC, only mortgages and pledges can be used as security to ensure performance under contracts. This new Act introduces a new type of security interest under Thai law to be referred to as "business security". As security interest, the creditor in whose favor the business security is created is recognized as the secured creditor under bankruptcy law. The Act describes the persons eligible to use assets as security under the Act, the types of collateral, the creation of the business security and certain features relating to the business security as well as the enforcement of such business security. The Act was published in the Royal Gazette on 5 November, 2015. The Act will be effective on July 1, 2016.

3. SEC

- On November 5, 2015, the SEC announced it was seeking public comment on a proposed relaxation of rules governing the investment policy of mutual funds offered for sale to accredited investors (institutional and high-net-worth investors), to enhance the competitiveness of asset management companies and diversify choices for investors with higher risk tolerances.

The draft revision will allow asset management companies to offer more diversified, complex types of mutual funds, similar to those sold in foreign markets, and introduce investors to more investment opportunities through various types of complex products. The relaxation would allow mutual funds offered to accredited investors to invest in any types of financial instruments without company limit ratio, which has already been the case with hedge funds. Meanwhile, the investor qualifications would also be revised to ensure that only accredited investors with matching risk profiles would be eligible to invest in higher-risk mutual funds. The public hearing ends on 16 November.

- On November 12, 2015, the SEC announced it was seeking public comment on a draft amendment to the rules on calculation and reporting of net liquid capital to better reflect asset values and the changing market environment. The proposed key changes include:

  - Adjustment of the position risk calculation;
  - Inclusion of diverse financial instruments, such as equity, debt, investment units and trusts in the risk calculation; and
  - Updating the net liquid capital calculation methods to be more flexible and suitable to current market trends.

  The latest draft amendment includes feedback and recommendations from stakeholders who participated in the hearing in August 2015. The public hearing ends on December 7, 2015.

- On January 26, 2016, the SEC revised several regulations concerning the investment policies of mutual funds and provident funds (PVDs), to enhance flexibility and compliance with international guidelines and market developments. Amendments include:

  - Determination of the types and characteristics of investible assets based on principles instead of specific details;
  - Permission for mutual funds to invest in a wide variety of assets according to a suitable risk profile. For example, funds offered to retail investors are now allowed to invest in non-listed infrastructure funds that may not have accepted retail investors, subject to pre-specified ratios. Previously, mutual funds were allowed to invest in Stock Exchange of Thailand-listed infrastructure funds or those offered to retail investors only;
  - Relaxation of PVD rules by increasing the permissible investment proportion for PVDs in property funds and infrastructure funds, combined with alternative assets, such as commodities, from 15% to not more than 30% of the net asset value. In addition, the establishment of PVDs as a sector fund, the investment policy of which concentrates on securities of certain industry sectors, is allowed, provided there is an investment limit for each member;
  - Promotion of investment diversification to be in line with international standards and market development. This includes determination of investment ratios for certain products (product limit) suitable for the market environment and relevant investment policies, and cancellation of the product limit for general mutual funds; and
  - Derivative investment in accordance with international standards. This includes calculation of the ratio limit; categorisation of fund types to better reflect investment risks based on net exposure instead of investment value; and revision to the investment ratio in various types of assets to be more suitable and in line with different types of funds.

- On February 8, 2016, the SEC announced it was seeking public comments on draft revisions to the rules governing the operation of capital market infrastructures. The proposed revisions would apply to futures exchanges, derivatives clearing houses, securities clearing houses and securities depositories with regard to improving business contingency management, IT security, operational outsourcing and complaint handling. In addition, all such firms, barring futures exchanges, would be required to comply with new rules on organisational structuring, capital resources and risk management. The consultation process closed on March 8.

- On April 12, the Securities and Exchange Commission of Thailand (SEC) announced it is seeking public comments on a draft amendment to the rules governing intermediaries' business continuity management and service outsourcing to enhance their risk management capacity and lower potential disruption to the overall market in compliance with international standards.

  Essentially, the amendment would require that the senior management of securities companies and derivatives business operators take full ownership of the written business continuity management policy and enforce strict implementation of the business continuity management plan. In case of outsourcing business functions to service providers, the outsourcing contract would have to incorporate a business continuity management plan therein as well.

4. Bank of Thailand

- On December 17, 2015, the BoT announced that the People's Bank of China (PBC) granted Thailand a quota of RMB 50 billion to invest in RMB-denominated securities in China under the Renminbi Qualified Foreign Institutional Investor (RQFII) scheme. This will provide opportunities for institutional investors in Thailand to efficiently manage their investment returns and diversify risks, as well as promote the use of Renminbi to facilitate the growing trade and investment between Thailand and China.

  Over the years, the two central banks have deepened their financial cooperation in support of the use of local currencies for trade and investment, starting with the signing of the RMB-THB Bilateral Swap Arrangement (BSA) in 2011 and its subsequent extension in December 2014, followed by the establishment of the RMB Clearing Bank in Thailand in early 2015.

Vietnam

AT A GLANCE

Central Bank:	The State Bank of Vietnam (SBV) http://www.sbv.gov.vn
Bank Regulator:	The State Bank of Vietnam
Securities Regulator:	State Securities Commission http://www.ssc.gov.cn
Association:	Vietnamese Bond Market Association (VBMA)
Legal Opinions:	
Master Agreement:	ISDA
CCP/TR Status:	

Key Regulatory Milestones

1. Derivatives Market Regulations

- In May 2015, The Vietnamese government issued a new decree 42/2015/ND-CP (Decree 42), which is understood to provide general provisions on the establishment of a derivatives market in Vietnam. Decree 42 provides information on the types of instruments that may be traded in Vietnam, as well as the participants that are expected to take part in this market. The scope of Decree 42 does not cover interest rate swaps or foreign currency swaps – these continue to be regulated by the State Bank of Vietnam. Decree 42 is the first set of regulations that are expected to be released this year aimed at developing the Vietnamese market.

2. SBV announces new administrative procedures

- On August 5, 2015, the governor of SBV issued Decision No. 1548/QĐ-NHNN to publicise new administrative procedures.

  The new administrative procedures cover the establishment and operations of credit institutions, including:

  - the procedure applicable to commercial banks and foreign bank branches requesting the renewal of a licence;
  - the procedure applicable to commercial banks and foreign bank branches requesting additional operations;
  - the procedure applicable to commercial banks and foreign bank branches requesting the renewal of a licence and additional operations.

  The new administrative procedures are formulated as stipulated in Circular No. 08/2015/TT-NHNN dated June 30, 2015, revising several articles of Circular No. 40/2011/TT-NHNN dated December 15, 2011 on granting licences and the operational structure of commercial banks, foreign bank branches and representative offices of foreign credit institutions and other foreign institutions with banking operations in Vietnam.

At the same time, SBV announced new administrative procedures for revising, providing additional operations and scope of operations of foreign branches, joint-venture banks and wholly foreign owned banks.