

APAC Monthly Update

May 2012

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

Regulatory Activities

Australia

On May 16, ISDA met with the Australian Treasury, Australian Prudential Regulation Authority, Reserve Bank of Australia and Australian Securities and Investments Commission to discuss the SCSA, standardization, the amendments to the ISDA Master Agreement to cater to the Dodd-Frank requirements and the OTC derivatives reforms.

Hong Kong

On May 11, ISDA co-chaired a meeting of the HKMA/TMA working group, attended by the HKMA and SFC, on establishing a CCP for OTC derivatives clearing at Hong Kong Exchange and Clearing Limited.

Indonesia

On May 23, ISDA met with Bank Negara Indonesia to discuss the possibilities of deepening the OTC derivatives market in Indonesia. On the same day, ISDA met with Bank Indonesia to discuss the Currency Law and G20 commitments.

Committee/Working Group Activities

North Asia L&R

On May 29, ISDA held its monthly L&R meeting in Hong Kong. At the meeting, ISDA briefed members on the latest regulatory and documentation developments in this region. Topics discussed included NDRC Circular on the Matters concerning Issuance of RMB Bonds by Onshore Non-financial Institutions in Hong Kong, ISDA's letter regarding the RMB IRS clearing proposal, HKMA circular on RMB Net Open Position and an update on work regarding the central clearing plan issued by KRX. Various issues regarding South Asia were also discussed at the meeting, including an update on ISDA's visit to Australia and Jakarta, ISDA's proposed submission to the Treasury's consultation paper on the G20 OTC derivatives legislative framework, the tax issues in India and ISDA's submissions on this topic, and the MAS' consultation paper on the proposed amendments to the Securities and Futures Act on regulation of OTC derivatives.

South Asia L&R

On May 31, ISDA held its monthly L&R meeting in Singapore. At the meeting, ISDA briefed members on the latest regulatory and documentation developments in this region. Topics

discussed regarding South Asia included an update on ISDA's visit to Australia and Jakarta, a member's topic on the types of collateral and independent amounts used in India, ISDA's proposed submission to the Treasury's consultation paper on the G20 OTC derivatives legislative framework, the tax issues in India and ISDA's submissions on this topic, ISDA's submission on PIDM and BNM's joint concept paper on Recordkeeping and Reporting Requirement for OTC Derivatives and the MAS' consultation paper on the proposed amendments to the Securities and Futures Act on regulation of OTC derivatives.

Operations/Market Infrastructure

On May 8, ISDA held its APAC Interest Rates Derivatives Operations Working Group meeting to address the electronic confirmation format of onshore CNY swaps and the addition / amendment of floating rate options.

On May 18, ISDA held its APAC Credit Derivatives Operations Working Group meeting to discuss the treatment of a name change event.

On May 21, ISDA held its APAC Equity Derivatives Operations Working Group meeting to address the documentation of MSCI swap and AEJ Variance Swap, the group also discussed the AEJ reference price source matrix.

On May 28, ISDA held its APAC Implementation Group meeting to discuss the operational issues on certain regional CCP and Trade Repositories developments.

Country Working Group

On May 14, ISDA held its Australian Members' Working Group meeting in Sydney. Topics discussed included preparations the FATCA and Dodd-Frank Act protocols, the standard CSA and European contingency planning.

On May 23, ISDA held its Indonesian Members' Working Group meeting in Jakarta. Topics discussed included Law 24, the Currency Law, the new Commodities Futures Trading Law and notarial deeds.

Regulatory Developments

India:

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GAAR provisions deferred until April 2013

On May 7, Indian Finance Minister Pranab Mukherjee confirmed in parliament that introduction of the General Anti-Avoidance Rules (GAAR) would be deferred until April 2013. The burden of proof in any suspected case of tax evasion will be on the tax authorities and not the taxpayer. Foreign institutional investment flows into India had fallen sharply following the announcement of the GAAR measures. However, the Finance Ministry still intends to go ahead with plans to allow the retrospective taxation of certain international transactions.

Final Guidelines on Implementation of Basel III Capital Regulations

On May 2, RBI released the final guidelines on Implementation of Basel III Capital Requirements (<http://rbi.org.in/Scripts/NotificationUser.aspx?Id=7174&Mode=0>) stating a minimum Common Equity Tier 1 (CET1) ratio at 5.5%, Total Tier 1 capital at 7% and Total capital (Tier 1 + Tier 2) at 9%. A

Capital Conservation Buffer (CCB) of 2.5%, comprising of CET1, will be applied. Banks would be required to hold a total of 11.5% of capital. The transitional arrangements will begin on January 1, 2013 in a phased manner and be fully implemented by March 31, 2018.

Regulatory adjustments will be fully deducted from CET1 by March 31, 2017. The Basel III framework will be applicable to both the consolidated banks (Group) as well as at the stand-alone (Solo) level for banks operating in India. Overseas operations of a bank through its branches will be covered in both scenarios. Some regulatory adjustments or deductions include:

- Goodwill and all other intangible assets will be deducted from CET1 instead of Tier 1.
- Deferred Tax Assets (DTAs) will be deducted from CET1 capital as a prudent measure.
- Cash Flow Hedge Reserve will be derecognized in the calculation of CET1.
- Gain-on-sale relating to securitization transactions will not be recognized, including cash profits.

The Current Exposure Method (CEM) will be used to calculate counterparty credit risk.

- Banks will be required to compute an additional capital charge to cover the risk of mark-to-market losses on the expected counterparty credit risk, i.e., credit valuation adjustments (CVAs).
- Bilateral netting of counterparty exposures, i.e., mark-to-market values arising from derivative transactions, is not permitted in India.
- Foreign exchange (except gold) transactions with an original maturity of 14 calendar days or less will be exempted from the capital requirements for counterparty risk.

At present, the average leverage ratio of the scheduled commercial banks in India is above 5%. During the parallel run period from January 1, 2013 to January 1, 2017, banks should maintain the existing level of leverage ratio which cannot fall below 4.5%. The final leverage ratio requirement will be prescribed by RBI after the parallel run, with consideration of the Basel Committee's prescriptions. Banks will need to disclose their leverage ratios starting from April 1, 2015.

RBI is working on the operational aspects of implementation of the Countercyclical Capital Buffer and will issue guidance. RBI will also consider the Basel Committee's final proposals on issues including the "Capitalization of Bank Exposures to Central Counterparties" and the "Definition of Capital Disclosure Requirements".

Singapore:

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MAS response to proposed derivatives regulation feedback

On May 23, MAS issued its response to the feedback on the Proposed Regulation of Derivatives in Singapore. In licensing an overseas trade repository, MAS will consider whether the repository, in its home jurisdiction, is subject to regulation and supervision comparable to the standards under MAS's Securities and Futures Act (SFA). The new requirements under the SFA will be in line with international standards.

The same method for recognizing an overseas clearing facility will be applied. MAS will take a risk-based approach towards the regulation of clearing facilities. MAS will adopt a two-tier regulatory regime, where systemically-important clearing facilities will be regulated as approved clearing facilities and subject to a more rigorous set of standards, while other clearing facilities will be subject to a basic set of obligations more appropriate to the risk they pose. MAS intends to require "living will" policies and procedures for all clearing facilities. A designated clearinghouse may provide segregation of clients' monies and assets on an omnibus basis, however, as the international norms are still evolving, MAS will prescribe the level of segregation at a later stage.

MAS consultation on proposed amendments to the SFA

On May 23, MAS also released a consultation paper on the Proposed Amendments to the Securities and Futures Act (SFA) on Regulation of OTC Derivatives. The first draft of the legislative amendments addresses extending the current regulatory regime for clearing facilities to OTC derivatives, and introducing a new regulatory regime for trade repositories.

Proposed amendments to the SFA:

- New Part IIA (clearing facilities): introduces an authorization approach for clearing facilities that clear/ settle transactions in “securities”, “futures contracts” and “derivatives contracts”. A corporation seeking to operate a clearing facility in Singapore for contracts falling under the above product definitions may do so if it is either an approved clearinghouse or a MAS-recognized clearinghouse. A two-tier regulatory regime will be applied, thereby matching regulatory requirements towards the risk posed by each clearing facility to Singapore’s financial system. MAS will apply insolvency protection provisions to both approved clearinghouses and recognized clearinghouses. Details on the level of segregation required for clients’ monies will be prescribed through subsequent regulations;
- New Part III (trade repositories): introduces the regulatory regime for trade repositories. A locally-incorporated corporation may apply to be licensed as a licensed trade repository, while an overseas corporation may apply to be licensed as a licensed overseas trade repository. Unlike authorization for clearing facilities, application to be licensed by MAS is voluntary;
- Part IIIA: replaces references to designated clearinghouses with approved clearinghouses. A mechanism is introduced to preserve the flexibility for MAS, under certain circumstances, to designate a holding company of a licensed trade repository as a designated holding company. Upon such designation, the designated holding company will be required to apply to be approved by MAS as an approved holding company;
- Section 2: these are the consequential amendments to the definitions in section 2 of the SFA as a result of the extension of the regulatory regime for clearing facilities to OTC derivatives and the introduction of the new regulatory regime for trade repositories.

Deadline for submissions is June 22.

Submission

On May 4, ISDA made submission to Ministry of Finance with regards to the service tax in response to the Finance Bill 2012.

Upcoming committee and working group meetings/conferences

Meetings:

APAC Steering Committee Meeting	Jun 1
Mumbai Member’s meeting	Jun 5
Updates on Arbitration	Jun 15
APAC L&R Advisory Mtg	Jun 19
L&R North Asia Meeting	Jun 26
L&R South Asia Meeting	Jun 28

Conferences:

Fundamentals of OTC Derivatives Clearing – Shanghai	Jun 11
Operations Training Workshop – Shanghai	Jun 12

ISDA APAC Monthly Update

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

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