ISDA® Safe, Efficient Markets

Asia-Pacific Regulatory Profiles

October 2013

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

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

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
Association:	Australian Financial Markets Association (AFMA)
Master Agreement:	ISDA
Legal Opinions:	Netting and collateral opinions by Mallesons Stephen Jaques
	Opinion on transactions entered into electronically and electronic records by Mallesons Stephen Jaques
CCP/TR Status:	The Australian Securities Exchange (ASX) has announced that it will offer clearing services for OTC interest rate derivatives, starting with inter-dealer AUD interest rate swaps (IRS) 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 plans to offer client clearing.
	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.
	On October 12, 2012, the Corporations Legislation Amendment (Derivatives Transactions) Bill 2012 was introduced into Parliament. This Bill will amend the Corporations Act 2001 and introduce a legislative framework to implement the proposals set out in the Treasury's April 18, 2012 Consultation Paper *on 'Implementation of a framework for Australia's G20 over-the-counter 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 will make derivatives transaction rules (DTRs), which will require the Minister's consent. ASIC will be required to undertake a minimum period of consultation with other regulatory agencies (as well as stakeholders) in developing DTRs and to ensure sufficient notice or a transition period is provided prior to the commencement of any mandate. A new trade repository licensing regime will also be introduced.
- On October 12, 2012, the Corporations Legislation Amendment (Derivative Transactions) Bill 2012 (2012 Bill) was introduced into Parliament. The 2012 Bill will 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.

2. Trade reporting

- On March 15, 2013, ASIC released Consultation Paper 201 on *'Derivatives trade repositories'* (CP 201). CP 201 sets 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 proposes the following:

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

- On June 5, 2013, the Australian Treasury released the Draft Regulation to Facilitate the Operation of Australia's Derivatives Trade Reporting Regime. The purpose of the Corporations Amendment (Derivatives Transactions) Regulation 2013 (the draft regulation) is to implement measures that temporarily restrict 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. The draft regulation will commence on the day after it is registered.

  The draft regulation temporarily restricts ASIC's rulemaking power from imposing requirements on end users. 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. This regulation ceases to have effect on December 31, 2014.

  The draft regulations also inserts an enforceable undertaking regime, whereby ASIC may accept enforceable undertakings from person alleged to have not complied with section 901E and 903D as an alternative to civil proceedings. Undertakings that could be made are undertakings to perform or refrain from performing a specific action, or to pay a specified amount to a specified party. These undertakings may be altered with ASIC's agreement. If a person breaches these undertakings, ASIC may apply to a court to make an order that the court considers appropriate, including orders directing

the person to comply with the undertaking, to pay the benefit obtained by the breach to the Commonwealth, or to compensate a person who has suffered losses from the breach.

The draft regulations also inserts an infringement notice regime, which allows ASIC to request a person who is alleged to have contravened section 901E or 903D of the Act to pay a penalty to the Commonwealth, undertake remedial measures, enter into an undertaking or otherwise accept sanctions, as an alternative to civil proceedings. The offer of an infringement notice is at ASIC's discretion. The draft regulation sets out certain parameters for the infringement notice, such as: the circumstances under which an infringement notice can be given; what is required in the issuing of an infringement notice; and the details required, as well as others. The draft regulation also contains provisions on how information provided to ASIC will be treated under section 127 (confidentiality) of the ASIC Act.

- On July 10, 2013, the Australian Securities and Investments Commission (ASIC) published its final guidance, ASIC Derivative Transaction Rules (Reporting) 2013. An Australian entity will be required to report all OTC derivatives contracts to which it is a party, regardless of where the contract is entered into. A foreign Authorised Deposit-taking Institution (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.

  An Australian entity that is registered as a swap dealer (SD) with the CFTC will begin reporting from October 1. An Australian ADI, an AFS Licensee, a CS Facility Licensee, an exempt Foreign Licensee or a foreign ADI, which has a total gross notional outstanding position of AUD $50 billion as at December 31, 2013, and is not required to report under Phase 1, will begin reporting from October 1, 2014 onwards. An Australian ADI, an Australian financial services (AFS) Licensee, a CS Facility Licensee, an exempt Foreign Licensee or a foreign ADI that did not begin reporting in Phase 2 will begin reporting in Phase 3. Reporting will commence for credit derivatives and interest rate derivatives from October 1, 2014 to March 31, 2015. From April 1, 2015 onwards, these reporting entities will report all OTC transactions.

  Position reporting will also be phased-in started with Phase 1 on October 1, 2014 for Australian entities that are registered as a SD with the CFTC. Phase 2 will apply to an Australian ADI, an AFS Licensee, a CS Facility Licensee, an exempt Foreign Licensee or a foreign ADI, which has a total gross notional outstanding position of AUD $50 billion as at December 31, 2013; and is not required to report under Phase 1, on October 1, 2014 for credit and interest rate products. This will be followed by equity, foreign exchange and commodity derivative from April 1, 2015. Phase 3 will apply to those entities that did not begin reporting in Phase 2 and will begin on April 1, 2015 for interest and credit derivatives, followed by equity, foreign exchange and commodity derivative from October 1, 2015.

3. Financial market infrastructure

- On October 21, 2011, the Council of Financial Regulators 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). The proposals include new powers to require certain systemically-important FMIs to have key aspects of their operations located in Australia and be overseen by *'fit and proper'* persons, as well as increased power for regulators to intervene in the event of the FMI experiencing substantial difficulties.
- On March 30, 2012, the Deputy Prime Minister and Treasurer released the Council of Financial Regulators 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 Council of Financial Regulators 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 clearing and settlement (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 Clearing and Settlement 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 Council of Financial Regulators' 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 Council of Financial Regulators' 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 licence.

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

- On May 8, 2013, three members of the Council of Financial Regulators, the Reserve Bank of Australia (RBA), Australian Prudential Regulation Authority (APRA) and Australian Securities and Investments Commission (ASIC) published information on how they will assess the case for a clearing mandate under the new regulatory framework for the OTC derivatives markets. The information issued addresses:

  - the preconditions for central clearing such as liquidity and standardization;
  - the benefits for central clearing for products that are widely traded in Australia for the efficiency, integrity and stability of financial markets;
  - consideration to the availability of central clearing options to meet the needs of the Australian market participants. Any incremental costs of imposing a mandate will likely be lowered if there is a choice of clearing solutions either domestic or international.

  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 Reserve Bank of Australia (RBA), the Australian Prudential regulation Authority (APRA) and the Australian Securities and Investment Commission (ASIC) (collectively known as "the regulators") issued a Report on the Australian OTC Derivatives Market – July 2013. The regulators recommended that the Government considers 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. A further report is expected in early 2014.

4. ASX

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

- On May 1, 2013 Australian Securities Exchange (ASX) releases its response to the Consultation Paper on Draft Operating Rules released on Feb 21, 2013:

  - 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 will inject a further AUD$20 million, increasing the "first loss" tranche in the default waterfall to AUD$120 million. All Secondary Commitments will be removed for Futures Clearing Participants;
  - The trigger points for "scaling up" process for the transitional OTC Clearing Participant ("CP") Commitments were clarified. The Aggregate OTC Commitment will be equal to AUD$100 million if there are 8 or more OTC CPs. If there are less than 8 OTC CPs, the commitment will be AUD$12.5 million x Number of OTC CPs, if (1) total OTC initial margin (including offsetting futures) reaches AUD$500 million, (2) a competent authority directs ASX or (3) all OTC CPs agree, then aggregate OTC Commitment will increase to AUD$100 million;
  - ASX group will provide the next AUD$100 million, added in increments as required if total Commitment requirements increase beyond AUD$470 million for the single default fund in the future;
  - Voting rights will be one vote per CP rather than one vote per authorization held by a CP;
  - Only OTC CPs that fail to bid in the default auctions when they are required to bid will have the OTC Commitment juniorized.

ASX retains the ultimate decision on whether to implement the DMG's advice. However, ASX will be required to explain its reasons when it does not follow the DMG's advice.

- On August 28, 2013, the Australian Securities Exchange (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 is the first of two consultation papers in which ASX seeks stakeholders' input on the draft Operating Rules for its Client Clearing Service for ASX 24 Exchange Traded Derivatives and OTC Interest Rate Derivatives. Deadline for comments is October 2. Main points of the consultation paper are as follows:

  - 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 plans 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 initial margin (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 he 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 client 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 Client's 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 the Clients directly. As 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.

  - Upon a CP default, ASX will communicate the details of the positions in the account to any Alternate CP(s) nominated by the Client and will request confirmation from the Alternate CP if it accepts the positions. An Alternate CP will have 48 hours after ASX's declaration of default to confirm its acceptance of Client positions. If the Alternative CP agrees to accept all positions in a client account, ASX will transfer all positions, and the cash value of IM calculated by ASX in respect of the account to the Alternate CP. The positions transferred will include any positions

recorded in the client account since the defaulting CP's last end-of-day IM settlement. It is possible that the Alternate CP may be credited with an amount of collateral that is less than the IM requirement for those positions. In such an instance, the Alternate CP will be required to make up the difference to ASX. If an Alternate CP does not confirm within 48 hours, ASX will close-out the client positions and return directly to the Client or the defaulting CP's external administrator the cash value of IM calculated by ASX for the account, less any losses, costs and expenses attributable to closing out of those positions.

- Under an Omnibus account, clients will not have the ability to nominate an Alternate CP. Upon a CP default, ASX may in its discretion transfer the positions of all Clients holding positions in the account, the associated IM, to a non-defaulting CP, provided that all Clients holding positions in the account agree to port to the same CP and that CP confirms acceptance of all positions in the account.

- Client Protection Model (the Model) refers to the legal relationships established between a Client, its CP and ASX. The Model recognizes that a CP is acting as agent for its Client. The CP remains fully liable as principal to ASX in connection with its clients' contracts. ASX agrees to not take any action against the Client personally for the performance of any obligation owed by the CP. A Client may enforce its rights and entitlements against ASX directly on one of three bases: (i) as a party to cleared contracts; (ii) as the party on whose behalf the CP holds those rights and entitlements; or (iii) as a "person aggrieved" by the failure of any person who is under an obligation to comply with or enforce the Operating Rules. In the ordinary course of events, ASX will deal only with the CP in relation to position registration and maintenance. Only in the event of a CP's default, will Clients of the CP be entitled to communicate directly with ASX.

- The OTC Client Clearing Service will only be available initially to 'wholesale clients' (as defined in the Corporations Act) connected with Australia. A Client must be connected to Australia in that they are: (a) incorporated/ carrying on business in Australia; or (b) acting on behalf of an entity or entities, in respect of contracts to be registered in the client account maintained for the Client, that are incorporated / carrying on business in Australia.

- ASX proposes to clarify that positions held by a CP on behalf of a Client that is a related body corporate, where the Client acts, directly or through a chain of entities in the same corporate group, as agent for unrelated end user clients, these positions must be designated as 'Client' positions; and may be allocated by the CP to either an Omnibus Account or an ICA; and where the Client acts in any other capacity (i.e. as principal or as agent for other related bodies corporate only), these positions may be designated as 'House' or 'Client' positions. In such an instance, if it is designated as 'House' positions, it must be allocated to the House Account and if it is designated as 'Client' positions, it must be allocated to an ICA for each such related entity.

- ASX proposes to require CP to (i) maintain 1 or more Client's Segregated Accounts (outside the clearing facility) for monies the CP receives from Clients; (ii) perform daily and monthly reconciliation of client monies in the Client's Segregated Account(s); and (iii) submit an annual director's declaration and auditor's report.

- ASX proposes to require CP to maintain a separate Client's Segregated Accounts for monies the CP receives from a Clients that is a related bodies corporate where the Client's positions have been designated as 'Client' positions.

- The Risk Committee is to comprise of representatives of Clearing Participants and will have an independent, member-elected chairperson.

- ASX proposes initially to require non-cash collateral for IM to be absolutely transferred to it by the CPs, in accordance with existing practice for ASX 24 Exchange Traded Derivatives.

ASX proposes a new Part 11(Security Interest Provisions) of the Futures Rules, that will apply to the acceptance by ASX of property from a CP as IM where ASX is granted a security interest in the property rather than an absolute transfer.

5. Australia proposes 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 seeks 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 will address 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 amends a number of statutes, in particular, the PSN Act. The amendments to the PSN Act will clarify 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 will also clarify that a CCP may enforce security that it holds over any type of assets of a defaulting participant.

6. Resolution regime

- On September 12, 2012, the Australian 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.

7. Basel III reforms.

- On August 10, 2012, APRA released a discussion and consultation paper on implementing the Basel III counterparty credit risk capital reforms. APRA intends to apply the Basel III capital framework for counterparty credit risk to ADIs; subsidiaries of foreign banks and clearing members of a CCP. APRA's proposals for counterparty credit risk include, among others, the introduction of the Credit Value 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 that will apply to ADIs include, 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, the Australian Prudential Regulation Authority (APRA) released a second consultation package, which includes a 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 (the Discussion paper). The

consultation package outlines APRA's proposed amendments to its 2011 proposals on the implementation of the Liquidity Coverage Ratio (LCR) in Australia and addresses the main issues raised in submissions, and in dialogue with the industry and other interested parties.

The Basel III liquidity framework introduces two new minimum global standards: a 30-day LCR to address an acute stress scenario and a Net Stable Funding Ratio (NSFR) to encourage longer-term funding resilience. APRA has not made any amendments to its proposed implementation of the NSFR but will ensure that concerns raised in the submissions for the NSFR will be fed to the Basel Committee.

APRA intends to issue the final APS 210 and APG 210 in mid-2013. The new prudential standard is intended to be effective on January 1, 2014. The LCR and NSFR requirements are intended to commence on January 1, 2015 and January 1, 2018, respectively. The LCR will become effective on January 1, 2015 with no phase-in allowed.

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 is proposing 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).

APRA is also proposing to adopt the revised Basel III assumed cash inflow and outflow rates, with only one minor modification for maturing central bank funding transactions. APRA proposes for maturing secured funding transactions with a central bank backed by CLF eligible debt securities, it will have an outflow rate of zero percent. All other maturing secured funding transactions with a central bank not backed by HQLA will have an outflow rate of 100 percent.

Currently, ADIs are subject to a simple quantitative liquidity ratio requirement, the minimum liquidity holdings (MLH) regime. APRA proposes to leave the MLH regime broadly unchanged but to revise the definition of assets that are eligible for inclusion in an ADI's minimum liquidity holdings.

- On August 8, 2013, APRA released a note for Authorized Deposit-taking Institutions (ADIs) with further details on its approach to the implementation of the Basel III liquidity framework, in particular the Committed Liquidity Facility (CLF). Due to the relatively short supply of Australian-dollar high quality liquid assets (HQLA), the Reserve Bank of Australia (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 liquidity coverage ratio (LCR). The note provides details on APRA's role in determining the appropriate size of the CLF for each scenario analysis ADI. The main steps are as follows:

  - 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;
- The CLF will be available to address Australian dollar liquidity needs only;
- The size of the CLF for each ADI will be limited to a specified percentage of that ADI's Australian dollar net cash outflow target as agreed by APRA, plus an allowance for an appropriately sized buffer.

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. This submission is not yet public.
- June 20, 2013: ISDA submission to The Treasury regards to Corporations Amendment (Derivatives Transactions) Regulation 2013. This submission is not yet public.

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 and supervised by PBOC)
	Securities Association of China (SAC, a self-regulatory organization of securities companies and 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 Master Agreement is mandatory for OTC derivatives transactions entered into by domestic securities companies unless Chinese law provides otherwise.
	Cross-border transactions: ISDA Master Agreement for cross border trades
Legal Opinions:	N/A
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. SCH conducted a consultation among onshore banks in early 2012 regarding voluntary central clearing of onshore interest rate swaps denominated in RMB. To date, China has not proposed any mandatory clearing requirement in respect of OTC derivatives.

Key Regulatory Milestones

1. CSRC relaxes policy on derivatives trading by securities companies and SAC publishes its own master agreement

- On April 29, 2011, CSRC issued the Proprietary Trading Regulation which came into effect on June 1. The Regulation sets out the eligible investment products which a securities company in China may invest for its own account. The eligible products include: 1) securities traded on the domestic exchanges; 2) debt securities traded on the domestic inter-bank market and 3) securities which have been approved by or registered with CSRC and traded over the counter of domestic financial institutions.

- On November 18, 2012, the China Securities Regulatory Commission (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 are intended to expand the scope of investment products of proprietary trading business of securities companies, and clarify 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 are not qualified to conduct proprietary securities business can 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.

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 will 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 will be applied. Additionally, domestic systemically important banks will have to hold an additional 1% of Core Tier 1 capital. A systemically important bank will 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 sets 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);
  - the CBRC determines that a commercial bank will be non-viable and/or the relevant authority determines a commercial bank will become non-viable without a public sector injection of capital or its equivalent support.

  For capital instruments containing a write down provision, upon a trigger event occurring, the AT1 instrument should be written down, in full or in part, as per the contractual agreements, in order for the core equity Tier 1 ratio to return above the trigger point. Upon occurrence of a trigger event for Tier 2 capital instruments, the AT1 and Tier 2 capital instruments shall be immediately written down in full, subject to contractual agreements. If a commercial bank is going to compensate investors for their losses, payment should 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. CIRC allows securities companies to enter into derivatives transactions for hedging purposes

- CIRC issued a Notice on July 14, 2010, allowing insurance groups (holding) companies, insurance companies and insurance asset management companies to carry out interest rate swaps in China

- On October 12, 2012, the China Insurance Regulatory Commission (CIRC) issued the long-awaited Implementing Rules of the Interim Measures on Overseas Investments by Insurance Companies (the "Implementing Rules"). The Implementing Rules seek to broaden the scope of permissible overseas investment by domestic insurance companies and set out detailed qualification and ratio requirements in relation to overseas investments.

  Qualified domestic insurance companies are now permitted to enter into interest rate forwards, interest rate swaps, interest rate futures, FX forwards, FX swaps, stock index futures transactions, or purchase index options and other types of derivatives for hedging purposes. When conducting derivatives transactions, the insurance companies are required to comply with certain requirements which include signing an ISDA Master Agreement with each of their counterparties. Although the Implementing Rules require that the agreement between a domestic insurance company and its asset manager or custodian be governed by Hong Kong law or the PRC law, there is no such requirement in respect of the ISDA Master Agreement. The Implementing Rules prohibit insurance companies from entering into any *speculative* derivatives transactions or commodity (including precious metal) related derivatives transactions.

- On October 12, 2012, CIRC also issued the Interim Measures on Insurance Funds' Participation in Financial Derivatives Trading (the "Interim Measures"). According to the Interim Measures, PRC-incorporated insurance group (holding) companies, insurance companies and insurance assets management companies (together known as "insurance institutions") are allowed to enter into derivatives transactions in the domestic market for *hedging* purposes.

  The Interim Measures set out the qualification criteria and risk management requirements for the insurance institutions which wish to engage in financial derivatives trading. The insurance institutions are required to submit a report to CIRC before commencing trading and afterwards report to CIRC certain information of their derivatives transactions periodically.

4. SCH consults banks on central clearing of Renminbi interest rate swaps

- Shanghai Clearing House (SCH) has said publicly on several occasions that SCH plans to launch central clearing services for onshore RMB interest rate swaps (IRS) to meet the G20 commitments. To this end, SCH consulted the banking industry on its central clearing proposal for RMB IRS in 2012. SCH also said that it plans to expand their CCP services to cover onshore RMB/FX swaps at a later stage. To date, China has not passed any law or regulation to mandate central clearing of standardized OTC derivatives transactions. It remains a question whether market participants will participate in the central clearing solution offered by SCH on a voluntary basis initially, or whether central clearing will be mandated by regulators when the services are launched.

5. CSRC and SAFE relax regulation of QFIIs

- The CSRC released the revised Rules on Implementation of "Measures on Administration of Domestic Securities Investments of Qualified Foreign Institutional Investors (QFIIs)" (the "QFII Rules") on July 27, 2012. CSRS amended the QFII Rules in order to attract more long term investors to China's capital markets. The major changes include (1) relaxing the qualification requirements that QFII applicants need to meet such as requirements regarding minimum operating period and

assets under management; (2) allowing a QFII to transact via multiple securities brokers; (3) permitting QFIIs to invest in bonds traded on the interbank bond market and bonds issued via private placements by SMEs; (4) raising the cap on total A-shares that can be held by all QFIIs in one A-share listed company from 20% to 30% of the total outstanding shares of the company; and (5) simplifying the QFII qualification application procedures and allowing electronic submission of documents.

- On December 2012, the State Administration of Foreign Exchange (SAFE) issued the revised Rules on Foreign Exchange Administration of Securities Investments in the PRC by Qualified Foreign Institutional Investors (the "FX Rules"). The revised FX Rules made several important amendments to the version issued in 2009. The revised FX Rules specifically refer to the futures trading account, which provides the implementation measures which will finally allow QFIIs to open accounts to commence stock index futures trading. The revised FX Rules also allow a RMB special account to be split into a maximum of six for different clients' assets, which will help QFIIs to better meet client asset segregation requirements of their home jurisdictions. In addition, the revised FX Rules relax certain restrictions on repatriation/remittance of funds by QFIIs.

6. CBRC issues draft guidelines on capital requirements for bank exposures to CCPs

- 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.

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

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)
Master Agreement:	ISDA
Legal Opinions:	Netting and collateral opinions by Allen & Overy; Opinion on transactions entered into "electronically" and electronic records by Clifford Chance
CCP/TR Status:	On July 11, 2012, HKMA and SFC released consultation conclusions on proposals to regulate the OTC derivatives market. The proposed mandatory reporting and clearing obligations will initially only cover certain types of interest rate swaps (IRS) and non-deliverable forwards (NDF). HKMA and SFC have 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 Securities and Futures (Amendment) Bill was gazatted on June 28, 2013 and is now pending the approval of the Legislative Council. Subject to the passage of the relevant legislation by LegCo by end of this year, the new regulations are expected to take effect in the second quarter of 2014 at the earliest. In the meanwhile, HKMA has imposed interim reporting requirements on licensed banks for certain OTC derivative transactions starting from August 2013, before the new legislation comes into effect.

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 are the first in a series of consultation papers which the HKMA intends to issue 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 amends the powers of HKMA, enabling them to make rules prescribing capital and disclosure requirements for AIs incorporated in HK. The notice also prescribes the procedures for remedial action upon contravention of these requirements;
  - The Banking (Capital) (Amendment) Rules 2012 introduces the amendments to the Banking (Capital) Rules to implement the first phase of the Basel III requirements. The new rules will

revise the capital requirements for locally incorporated AIs which are scheduled to take effect in Jan 2013. Under the revised framework, a bank will need to maintain a Common Equity Tier 1 (CET1) capital ratio of 405%, a Tier 1 ratio of 6% (both Tier 1 and CET1 to be phased in from January 1, 2013 to January 1, 2015) and a 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 gazette on Oct 19, 2012.

- On January 17, 2013, the HKMA released a memorandum on the revisions to the Liquidity Coverage Ratio (LCR). As Basel recently issued its full text with some changes from the original version published in 2010, the HKMA plans to develop, with industry consultation, a framework for local implementation of the revised LCR. Some issues under consideration include:

  - Two-tiered approach: HKMA still maintains 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 will 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 is considering the BCBS phase-in arrangement and assessing the need to adhere to the original timetable;
  - Level 2B Assets: HKMA will be examining 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 High Quality Liquid Assets (HQLA) in times of stress: HKMA will 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 will 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 the HKMA's Supervisory Policy Manual (LM-2) which will be updated later in the year.

- On March 4, 2013, the Hong Kong Monetary Authority (HKMA) released their consultation paper on draft banking (Capital) (Amendment) Rules 2013 (B(C)(A)R) together with two letters to the Hong Kong Association of Banks and the Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies (the DTC Association) respectively. The consultation paper is seeking

feedback on the refinements to the Banking (Capital) Rules (B(C)R). The additional refinements include:

- Sections 226 X and 226ZD of the B(C)R have been amended to recognize the credit risk mitigation given to exposures of authorized institutions (AIs) to central counterparties. One of the refinements proposed is 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 addresses 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 will come 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, the Hong Kong Monetary Authority (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 the HKMA for approval to use the Internal Models Method (IMM) approach, an Authorized Institution (AI) should discuss and agree with the 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, the HKMA and the SFC announced in March 2013 their commitment to comply with the PFMIs. Therefore AIs can regard CCPs overseen by the 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.

2. Hong Kong strengthens the fixing mechanism of HIBOR

- On February 6, 2013, the HKMA announced a package of measures to strengthen the fixing mechanism of the HKD Interest Settlement Rate (more commonly known as HIBOR). The following measures are to be implemented in six months' time:
  - Transfer administrator function of HIBOR fixing process to the Treasury Markets Association (TMA);
  - Institute an effective surveillance and governance structure for the administrator function;
  - Develop a comprehensive Code of Conduct;
  - Phase out HIBOR fixings with little market demand (4-month, 5-month, 8-month, 9-month, 10-month and 11-month); and
  - Review the composition of the panel of reference banks every 12 months.

  Additionally, once HKMA is satisfied with the Code of Conduct developed by the industry, banks will need to comply with the Code, through the issuance of a HKMA Guideline pursuant to Section 7 of the Banking Ordinance. Under Section 7 of the Guidelines, Managers, as defined under the Banking Ordinance, in charge of treasury, risk control and compliance functions will take responsibility for the reference bank's rate submission activities. Banks are encouraged to participate voluntarily; however, HKMA has powers to ensure a sufficient number of reference banks contribute to the HIBOR benchmark. Independent external audits on TMA's systems of control will also be conducted periodically.

3. Hong Kong plans to implement mandatory reporting and clearing requirements

- HKMA and SFC issued a joint consultation paper on the proposed regulatory regime for Hong Kong's over-the-counter derivatives market on October 17, 2011. The joint consultation paper sets out the HKMA's and SFC's current thinking on how the regime might be cast given the present status of the global reform efforts. In brief, the main proposals in the consultation paper are as follows:
  - The proposed regime will be set out in the SFO, and will be jointly overseen and regulated by the HKMA and SFC.
  - OTC derivatives transactions will have to be reported to the trade repository, which is being set up by the HKMA. This reporting obligation will initially apply only to certain IRS and NDF, but will subsequently be extended to other product classes (such as equity derivatives and other types of interest rate derivatives) after further market consultation.
  - Standardized OTC derivatives transactions will have to be centrally cleared through a designated CCP. This mandatory clearing obligation will also initially be limited to only certain IRS and NDF, and subsequently extended to other product classes after further market consultation;

- Non-AI entities that engage in OTC derivatives activities (other than as end-users) will be required to be licensed for a new Type 11 regulated activity under the SFO;
- Large players who are not regulated by the HKMA or the SFC may be subject to certain obligations and requirements, such as producing information regarding their OTC derivatives activities, and reducing their OTC derivatives positions, if so requested by the SFC in extreme situations.

- On March 27, 2012, the Legislative Council Secretariat published a joint paper from the Financial Services and the Treasury Bureau (FSTB), the HKMA and the SFC called Progress in the Regulation of Over-the-counter Derivatives Market.

  In response to the industry's comments, the HKMA and SFC will provide further clarification and/or refine the proposals, and aim to publish the consultation conclusions in the second quarter. In the fourth quarter, the regulators plan to introduce the bill into the Legislative Council, to provide a regulatory framework for the OTC derivatives market in Hong Kong. A further public consultation on the draft subsidiary legislation will also be conducted.

  While mandatory clearing has yet to be implemented, regulators intend to enable voluntary clearing of OTC derivatives in Hong Kong through a local CCP, pending the introduction of a full-fledged regulatory regime for the OTC derivatives market in Hong Kong.

- 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 on 27 June. It extended the insolvency override provisions under part iii of the SFO to cover also OTC derivatives transactions that are cleared through a recognised local CCP and are subject also to the rules of a recognised 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 is 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 the SFC) will apply to OTC derivatives. It is 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 is proposed to 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" will be defined by reference to the term "structured product" (as defined in the Securities and Futures Ordinance(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 will 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 has a "Hong Kong nexus". HKMA TR is proposed to be the only designated TR although market participants may 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 is 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 have 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 will not impose a mandatory trading requirement at the outset.

Capital and margin requirements: The regulators have 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) will 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 the HKMA or SFC but whose positions or activities may nevertheless raise concerns of potential systemic risk.

- On September 11, 2012, the HKMA announced it intends to offer a matching and confirmation service in December for market participants to transmit their OTC derivatives transactions to the HK Exchange CCP for voluntary clearing.
- On December 10, 2012, HKMA published its latest update of Administration and Interface Development Guide (AIDG) for Reporting Service, which lays out the finalized technical and logistical arrangements for reporting OTC derivatives transactions to the HKMA Trade Repository. As the regulations for mandating TR reporting are targeted to take effect in Q3 2013, the HKMA aims to launch the TR by July 2013. The TR will initially cover IRS Floating vs Fixed (deliverable), IRS Floating vs Fixed (non-deliverable), Basis Swap (Floating vs Floating), Overnight Index Swap (Floating vs Fixed) and non-deliverable foreign exchange forwards. Users subscribing to the TR are required to pay a membership fee (if applicable) and transaction fees. The fee schedule is to be advised.
- On March 14, 2013, the HKMA wrote to the Hong Kong Association of Banks, consulting the association on an interim proposal requiring the reporting of specified OTC derivative transactions by licensed banks until such time as the relevant legislation implementing the local regulatory regime for OTC derivative transactions is in place. According to the proposal, the HKMA will require licensed

banks to report, on an interim basis, certain OTC derivative transactions from August 5, 2013, subject to some transitional arrangement. Reportable transactions are those conducted by a reporting bank that have the following characteristics:

- the transaction is an interest rate swap or FX non-deliverable forward supported by the HKMA-TR;
- the transaction is booked in the HK office or branch of a licensed bank;
- the other counterparty to the transaction is also a licensed bank; and
- The transaction is outstanding as of implementation date (i.e., August 5, 2013) or entered into after the implementation date, subject to the transitional reporting requirements set out below.

A three-month grace period will be allowed for setting up reporting channels to the HKMA-TR and a six-month grace period will be allowed for completing any backloading or reporting of reportable transactions entered into on or before the expiry of the three-month grace period.

The proposed interim reporting requirements by the HKMA do not apply to Licensed Corporations regulated by SFC. However, SFC has also written to some Licensed Corporations, seeking their comments on the proposed reporting requirements if they were to apply to Licensed Corporations in a similar way. SFC asks the Licensed Corporations to give feedback on whether it would be possible for the Licensed Corporation to participate in the interim reporting on a voluntary basis and if not possible, the major obstacles that need to be resolved.

- On March 28, 2013, the HKMA and the Securities and Futures Commission (SFC) jointly announced their commitment to comply with the new international regulatory standards for financial market infrastructures (FMIs). These standards are contained in the Principles for financial market infrastructures (PFMIs) issued by the Bank for International Settlements' Committee on Payment and Settlement Systems (CPSS) and the International Organization of Securities Commissions (IOSCO) in April 2012.

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

- On April 8, 2013, Hong Kong Exchanges and Clearing Limited (HKEx) announced that 12 financial institutions would join OTC Clearing Hong Kong Limited (OTC Clear), a clearing house HKEx established for the purpose of providing clearing services for OTC derivatives, as founding shareholders. The 12 financial institutions are Agricultural Bank of China Limited, Hong Kong Branch, Bank of China (Hong Kong) Limited, Bank of Communications Co., Ltd. Hong Kong Branch, The Bank of East Asia Limited, CCB International Securities Limited, Citibank, N.A., Deutsche Bank AG, The Hongkong and Shanghai Banking Corporation Limited, Industrial and Commercial Bank of China (Asia) Limited, J.P. Morgan, Standard Chartered Bank (Hong Kong) Limited and one other financial institution which was in the final stage of obtaining formal internal approval at the time of the issuance of the HKEx press release.

- The Securities and Futures (Amendment) Bill 2013 was gazetted on June 28, 2013 and comprises three key aspects:

- to introduce mandatory reporting, clearing and trading obligations in line with the G20 commitments;
- to provide for the establishment and regulation of the necessary infrastructure through which the mandatory obligations will be fulfilled;
- to provide for the regulation and oversight of key players in the OTC derivative market, i.e. authorized institutions (which covers licensed banks, restricted license banks and deposit-taking companies), approved money brokers, licensed corporations and other persons to be prescribed by subsidiary legislation.

Under the proposed regulatory regime, two new regulated activities (RAs) in relation to OTC derivatives will be introduced, namely a new Type 11 RA to cover the activities of dealers and advisers and a new Type 12 RA to cover the activities of clearing agents. In addition, the existing Type 9 RA (asset management) and Type 7 RA (provision of automated trading services) will be expanded to cover OTC derivative portfolios and transactions respectively.

The Bill will also provide 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.

- On June 28, 2013, HKMA announced rules for interim trade reporting. Licensed banks are required to report FXNDF and vanilla single currency interest rate swaps (Fixed vs Floating swaps, basis swaps and overnight indexed swaps) to a trade repository operated by the HKMA (HKMA-TR). 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 remain outstanding on August 5 or are traded on or after such date are subject to the reporting requirements. A grace period of approximately four months is granted to licensed banks to commence reporting by December 9 and a period of six months is 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, the Hong Kong Monetary Authority (HKMA) and the Securities and Futures Commission (SFC) jointly published their conclusions on a joint supplemental consultation (the "Consultation Conclusions") regarding the proposed scope of activities to be regulated under the new over-the-counter (OTC) derivatives regime, and regulatory oversight of systemically important participants. The HKMA and SFC's proposals in relation to these two areas are 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 bill is anticipated to come into effect in early 2014. 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 Securities and Futures Ordinance (SFO). Type 11 RA would cover the activities of dealers and advisers and Type 12 RA would cover the activities of clearing agents. Additionally, the existing Type 7 RA and Type 9 RA were proposed to be expanded to cover OTC derivatives.

4. Hong Kong launches CNH HIBOR fixing

- On April 25, 2013, the Treasury Markets Association (TMA) announced its plan to launch the CNH Hong Kong Interbank Offered Rate fixing (CNH HIBOR fixing) in June 2013. The launch of the fixing will provide a formal benchmark for market participants to make reference to in pricing their

RMB loan and interest rate contracts. The planned CNH HIBOR fixing will include tenors of overnight, 1 week, 2 weeks, 1 month, 2 months, 3 months, 6 months and 12 months and will be calculated from rates contributed by 15 to 18 reference banks that are active in the RMB interbank market. The rate was launched on June 24, 2013.

- On August 20, 2013 following a consultation with the Hong Kong Association of Banks (HKAB), HKMA announced that it will issue the Code of Conduct for Reference Banks for TMA's CNH Hong Kong Interbank Offered Rate as Annex B to module CG-7 of the Supervisory Policy Manual (SPM).

  The Code was published by notice in the Gazette on August 23. The SPM module issued on May 3 sets out the supervisory requirements on systems of control to be maintained by authorized institutions (AIs) that are benchmark submitters. The module is intended to be of generic application to benchmark submitters, while its Annexes provide detailed requirements and rate submission guidance for specific benchmark fixings. As an Annex to the SPM module, the new Code provides sound practices on systems of control for the CNH Hong Kong Interbank Offered Rate (CNH HIBOR) fixing process as well as clear guidance for reference banks to observe in making rate submissions for this fixing. HKMA requires AIs that are submitting rates for CNH HIBOR take active steps to comply with the guidance set out in the Code as quickly as possible and achieve full compliance within six months from the date of the Gazette notice.

5. SFC amends Professional Investor Regime and the Client Agreement Requirements

- On May 15, 2013, the Securities and Futures Commission (SFC) issued a consultation paper on the Proposed Amendments to the Professional Investor Regime and the Client Agreement Requirements. In it, the SFC seeks 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.

  The SFC also proposes 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, the SFC proposes 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, the 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.

  The SFC also proposes that amendments be made to the client agreement requirements in the Code. The SFC proposes, 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.

6. SFC publishes guidelines on applying PFMIs

- The Hong Kong Securities and Futures Commission (SFC) published its Guidelines on the Application of the CPSS-IOSCO Principles for Financial Market Infrastructures. These Guidelines came into effect on August 9, 2013. The SFC fully supports the CPSS-IOSCO Principles for Financial Market Infrastructures and will adopt the PFMIs as benchmarks against which to assess recognized clearinghouses in their supervisory, monitoring and regulation.

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 the HKMA on the Conceptual Framework of the Trade Repository
- November 30, 2011: ISDA submission to the 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 the 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 the 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 Hong Kong Monetary Authority and Securities and Futures Commission 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. This submission is not yet public.
- April 15, 2013: ISDA submission to Hong Kong Monetary Authority regards to the HKMA Consultation on reporting requirement for OTC derivatives transactions. This submission is not yet public.
- May 16, 2013: ISDA submission to the HKMA regarding the HKMA Consultation on reporting requirement for OTC derivatives transactions. This submission is not yet public.
- June 4, 2013: ISDA submission to the HKMA regarding the reporting logic for historical records amendment. This submission is not yet public.
- July 16, 2013: ISDA submission to the HKMA and SFC on the "originated or executed" definitions under the trade reporting regime. This submission is not yet public.
- July 6 and 25, 2013: ISDA submissions to the HKMA on the Reporting Service Agreement. These two submissions are not yet public.
- August 30, 2013: ISDA submission to the HKMA and SFC on the "originate or execute" definition under the trade reporting regime. 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. While clearing is currently voluntary, FEDAI has issued a circular requiring its members to clear their eligible USD-INR FX forwards through CCIL though the deadline has been postponed indefinitely.
	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. 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 has 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.

2. Clearing

- 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 (although the indications are that FEDAI is now looking at January 2014).
- 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 limits 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 will prescribe the terms regarding minimum notional principal amount, tenors, trading hours, settlement calculations etc., in consultation with market participants. Standardization will 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 will need to be standardized.

3. Onshore CDS market

- 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.

4. OTC derivatives guidelines

- The *2007 Comprehensive Guidelines on Derivatives* (Derivatives Guidelines) were amended by RBI on August 2 and November 2, 2011. The November amendments came into effect on January 1, 2012. The Derivatives Guidelines describe the types of generic and structured derivative products that can be offered by market-makers (generally commercial banks and primary dealers). The Derivatives Guidelines also sets out the requirements that must be complied with by market-makers (including risk management practices, conducting a 'user appropriateness' and 'product suitability' assessment, obtaining Board Resolutions from the user, providing term sheets and risk disclosure statements to the user and making available mark-to-market calculators to the user) before offering derivative products to users (primarily corporates). The requirements differentiate between the offer of generic and structured derivative products, being more rigorous where structured derivative products are concerned.
- On May 16, November 23 and December 15, 2011, RBI amended its *Comprehensive Guidelines on Over the Counter (OTC) Foreign Exchange Derivatives and Overseas Hedging of Commodity Price and Freight Risks* (FX Guidelines) issued on December 28, 2010. The FX Guidelines set out the categories of persons permitted to participate in the OTC foreign exchange derivatives market in India, the types of products that they can use and the conditions under which they may do so. The FX Guidelines also set out the circumstances in which residents are permitted to hedge commodity price and freight risk overseas. The Derivatives Guidelines also apply *mutatis mutandis* to foreign exchange derivatives. The part of the FX Guidelines that attract great interest deals with the entry into foreign exchange derivatives by Authorized Dealer Category I banks (AD Banks) with persons resident in India that are non-AD Banks under the 'Contracted Exposures' or 'Probable Exposures based on Past Performance' routes. In particular, the FX Guidelines restrict the categories of persons that can engage in cost reduction structures and the types of cost reduction structures that are permitted. The FX Guidelines also clarify the nature and extent of the due diligence that the AD Banks are required to undertake to verify that the user has the underlying exposure.

5. Financial Sector Legislative Reforms Commission

- The Financial Sector Legislative Reforms Commission (FSLRC) has issued its final report in March 2013. The 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, the 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.
- The FSLRC took a principles-based instead of a sectoral-based approach in drafting an Indian Financial Code (Code). The draft Code establishes a single framework for regulatory governance across all regulatory agencies and defines the functioning of regulators with considerable specificity in the areas of regulation-making, executive functions and administrative law functions.

- The FSLRC proposes that there be 7 agencies but suggests that the possibility of a single unified financial regulator be considered over a horizon of 5 to 10 years. The 7 agencies are:
  - RBI (but with modified functions).
  - SEBI, FMC, the Insurance Regulatory and Development Authority and the Pension Fund Regulatory and Development Authority be merged into a new unified agency.
  - The Securities Appellate Tribunal be subsumed into the new Financial Sector Appellate Tribunal.
  - The Deposit Insurance and Credit Guarantee Corporation of India be subsumed into the new Resolution Corporation.
  - A new Financial Redressal Agency be created.
  - A new Debt Management Office be created.
  - The Financial Stability and Development Council will continue to exist, though with modified functions and a statutory framework.

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

6. Constitution of a Standing Council of Experts

- On June 7, 2013, the Ministry of Finance constituted a Standing Council of Experts with a view to assessing the international competitiveness of the Indian financial sector. The Standing Council will examine various pecuniary and non-pecuniary transaction costs / burden of doing business in the Indian market and make certain recommendations for enhancing its competitiveness. It will also examine possibilities for and make recommendations aimed at enhancing transparency, promoting developments of and strengthening governance in the Indian capital markets /financial sector while ensuring that risks are contained and investor interests are protected.

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 will 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 will begin from the end of the second quarter, 2012. The LCR and NSFR will 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 will 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, 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.

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), The Clearing Corporation of India Limited (CCIL) and Negotiated Dealing System (NDS). RBI also states 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.

10. Amendments to Maharashtra Stamp Act published

- The Maharashtra Tax Laws (Levy and Amendment) Act, 2013 (Mah. Act No. VIII of 2013) (2013 Act) (Indian version) was published in the Maharashtra Government Gazette and came into force on May 1, 2013. This Act amends certain tax laws in the State of Maharashtra. It provides that where any instrument referred to in clauses (a) to (g) of Section 30 of the Maharashtra Stamp Act is executed after the commencement of the 2013 Act, the liability to pay proper stamp duty shall be on such financial institution concerned without affecting their right, if any, to collect it from the other

party. In respect of any such instrument executed before the commencement of the 2013 Act, and are effective and where proper stamp duty is not paid, the financial institution shall impound such instrument on or before September 30, 2013 and forward the same to the relevant authorities for recovery.

11. RBI releases circular on prudential norms for off-balance sheet exposures of banks

- On June 18, 2013, the Reserve Bank of India (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.

12. 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 proposes 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 will apply.

13. 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 refers to its earlier circular issued on June 26 which provides 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 clarifies 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.

14. 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, the 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.

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

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. 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:	No announced plans

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. Please refer to http://www.oecd.org/finance/financial-markets/49703438.pdf for more information.

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 will 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.

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.

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)

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 & Co
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. KRX is planning to offer clearing services for Korean Won interest rate swap from December, 2013. Mandatory clearing of Korean Won interest rate swap is scheduled to start from June 30, 2014.

Key Regulatory Milestones

1. Korea plans to impose mandatory clearing requirements

- Korea Exchange 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 will 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 "Over-the-counter (OTC) derivatives whose default could deliver significant impact to the market will be mandatorily cleared through a CCP."

The clearing mandate will likely begin with Won interest rate swaps, identified by the FSC as the largest derivatives asset class in the Korean market. Because the Won is a restricted currency only tradeable onshore, physically-settled Won IRS could only be cleared in a Korean CCP. The FSC notes that central clearing of this product would "significantly improve the settlement safety of OTC derivatives" and allow Korea to implement G20 agreements and bring Korea in line with global OTC regulatory standards.

- On May 15, 2013, the Financial Services Commission (FSC) of Korea 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 Korean Financial Services Commission decided to postpone the enforcement date of mandatory clearing obligations under the amended Financial Investment Services and Capital Markets Act from October 2013 to June 30, 2014.

- On September 11, 2013, Korea Exchange (KRX) received authorization on over-the-counter (OTC) derivatives clearing business from the Financial Services Commission (FSC). KRX will be the central counterparty for both exchange traded and OTC market products. The mandatory clearing of KRW-denominated interest rate swaps will come into effect on June 30, 2014. KRX plans to launch their clearing services for KRW-denominated IRS from December 2.

2. FSC clarifies the policy regarding derivatives-linked securities

- FSC announced proposed amendments to the Enforcement Decree of the Financial Investment Services and Capital Markets Act (FSCMA) on February 24, 2012. The amendments seek to, among other things, clarify the regulations on issuance of derivatives-linked securities (DLS) by foreign financial institutions and exempt the foreign issuers which satisfy certain requirements from the licensing requirement under the FSCMA. The amendment came into affect on September 30, 2012.

3. Implementing of Basel III

- On December 21, 2012, FSC issued a press release on Korean implementation plan for Basel III. FSC mentioned in the press release that Korea has been preparing for Basel III implementation from early 2011 and have issued draft regulations for Basel III implementation. FSC noted that the US already announced on November 9, 2012, that it would be difficult to implement Basel III starting January 2013 as initially agreed and the EU has not yet reached an agreement to finalize the implementation plan for Basel III. FSC said that it would delay adoption of Basel III capital requirements because it wanted to first observe how other countries implemented these rules.

- On May 30, 2013, the Financial Services Commission (FSC) issued a press release to announce Korea's plan to implement Basel III rules as of December 1. On July 31, 2013, the Financial Services Commission (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 elast 6% of risk-weighted assets. Tier 1 and Tier 2 capital must be at least 8%. The new rules will 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.

4. FSS issues best practices for managing FX settlement risk

- On June 17, 2013, the Financial Supervisory Service (FSS) issued the Best Practices for Managing Settlement Risk in Foreign Exchange Transactions. The key recommendations are:

  - 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.

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.

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 will work together on a joint consultation paper.

Key Regulatory Milestones

1. 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 only comes into operation in October 2013 (and may be deferred for up to another year).

- On March 26, 2012, Perbadanan Insurans Deposit Malaysia (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 have decided not to proceed with the proposals set out in the March 26, 2012 joint concept paper. Instead, they will work with the SC on the implementation of the trade repository. The detailed requirements for the trade repository are expected to be substantially similar to the transaction-level data requirements set out in the joint concept paper. Although an appropriate transitional arrangement will be considered, PIDM and BNM note that it is 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 note that the readiness of reporting institutions to report the required data will 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).

2. Regulation of OTC derivatives activity

- The CMSA 2011 (except the provision amending Section 92 of the Capital Markets and Services Act (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 Capital Market Services License (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.

3. Offer of unlisted capital market products

- The Capital Markets and Services (Amendment) Act 2012 (CMSA 2012) which has come 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 will apply to all retail investors and high net-worth individuals. These requirements will also apply to high net-worth entities, unless they opt out. They will not however apply to accredited investors. The principles on treating investors fairly will 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.

4. Financial Services Act, Islamic Financial Services Act and the Central Bank of Malaysia (Amendment) Act 2013 – Impact on 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.

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 will 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 will 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). The deadline for comments was August 1, 2013.

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*

Annex

Qualified financial agreements

(5) For the purposes of this Act—

(a) "qualified financial agreement" means—

(i) a master agreement in respect of one or more qualified financial transactions under which if certain events specified by the parties to the agreement occur—

(A) the transactions referred to in the agreement terminate or may be terminated;

(B) the termination values of the transactions under subparagraph (i) are calculated or may be calculated; and

(C) the termination values of the transactions under subparagraph (i) are netted or may be netted, so that a net amount is payable, and where an agreement is also in respect of one or more transactions that are not qualified financial transactions, the agreement shall be deemed to be a qualified financial agreement only with respect to the transactions that are qualified financial transactions and any permitted enforcement by the parties of their rights under such agreement;

(ii) an agreement relating to financial collateral, including a title transfer credit support agreement, with respect to one or more qualified financial transactions under a master agreement referred to in subparagraph (i); or

(iii) any other agreement as prescribed under section 4;

(b) "qualified financial transaction" means—

(i) a derivative, whether to be settled by payment or delivery; or

(ii) a repurchase, reverse repurchase or buy-sell back agreement with respect to securities;

(c) "financial collateral" means any of the following that is subject to an interest or a right that secures payment or performance of an obligation in respect of a qualified financial agreement or that is subject to a title transfer credit support agreement:

(i) cash or cash equivalents, including negotiable instruments and demand deposits;

(ii) security, a securities account or a right to acquire securities; or

(iii) futures agreement or futures account;

(d) "title transfer credit support agreement" means an agreement under which title to property has been provided for the purpose of securing the payment or performance of an obligation in respect of a qualified financial agreement.

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 Association:	New Zealand Bankers Association (NZBA)
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 will, for the first time, become a regulated financial product. However, dealings between wholesale market participants will largely be exempted. The new Act will be brought into force progressively from April 2014. Much of the detail will 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 proposes 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 introduces a framework for implementing the Countercyclical Buffer which will 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.

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) will be 6% and the Tier 1 ratio will be at a minimum of 7.5%. The new guidelines also introduce a capital conservation buffer of 2.5%, which will be comprised of CET1 capital. Banks that have issued capital instruments from 2011 will be allowed to count these instruments as Basel III-eligible until end-2015.

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.
	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 will operationalize the new Part IIA and Part III of the SFA respectively.

  In summary:

  TRs and CCPs
  - 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 will be regulated as approved clearing houses (ACH) and entities (which can be Singapore- or foreign-incorporated) operating clearing facilities that are not systemically-important will be regulated as recognized clearing houses (RCH).
  - One can establish or operate a TR without being licensed but reporting to a non-licensed TR will 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.

  Reporting (current proposal)
  - All financial institutions regulated by MAS (FIs) and non-FIs resident or having a presence in Singapore above a reporting threshold will be 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 will 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 will need to be reported. However, this is expected to be phased-in at a later stage.
  - Transactions will need to be reported by the next business day.
  - Reporting by an agent will be permitted but the party subject to the mandate remains responsible.
  - Reporting will be phased-in by asset class and reporting entity type.

  Clearing (current proposal)
  - All FIs and non-FIs resident or having a presence in Singapore above a clearing threshold will 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 will be identified through a bottom-up and top-down approach. FX spots and deliverable FX forwards and swaps will be exempted.
  - FIs with minimal derivatives exposures in aggregate and by asset class, central banks and governments, and supranational organizations will be exempted. Intra-group transactions (subject to appropriate safeguards) and possibly pension schemes will 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 trade repository (TR) license will need 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 will 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.

  A licensed TR shall seek approval prior to commencing any linkage, arrangement or co-operative arrangements. The licensed TR will need to submit periodic reports to MAS. The licensed TR shall maintain confidentiality except in certain circumstances, such as: the disclosure of user information is necessary for the making of a complaint or report under any written law for an offence. A licensed TR will 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 licensed TR. A licensed TR will also need prior approval from MAS to impose any reporting fee on its participants for any services provided by the licensed TR; 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 will need to comply with the requirements imposed for an approved clearinghouse and will need to maintain a minimum base capital of at least $10 million. A recognized clearinghouse will need to comply with the requirements imposed for a recognized clearinghouse and will 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 will be a recognized clearinghouse if the above two conditions do not apply.

  An approved clearinghouse will 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 will 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 will 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.

  A member is required to notify an approved clearinghouse in such a manner that the approved clearinghouse is able to identify client money and assets and whether they are segregated in accordance with the instructions given by the client. If the client chooses to have its money and assets segregated from the books of the other customers of the member, the approved

clearinghouse will need to ensure the relevant money is deposited in a trust account or custody account, to be held for the benefit of the client; ensure the relevant assets and money are kept separate from all other money and assets of the members and clearinghouse accounts. If a client chooses not to segregate its money and assets from the books of other clients of the member, the approved clearinghouse shall deposit it in a trust or custody account; ensure all money and assets are kept separate from the other members and clearinghouse accounts. However, if a member fails to meet its obligations to the approved clearinghouse and may be attributable to the failure of the client to meet its obligations, the clearinghouse may use these money and assets under certain conditions. An approved clearinghouse may invest any money or assets received in certain investment products only, such as securities of the Government.

A recognized clearinghouse shall ensure that every member shall inform their clients that they may choose to have any money or assets separated from the books of any other customer or customers of that member. A recognized clearinghouse will need to maintain at all times a business continuity plan and maintain the integrity and security of the transmission and storage of its user information. Similar client segregation rules apply to a recognized clearinghouse which is a Singaporean corporation.

- 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 proposes to require derivatives contracts which are traded in Singapore and/or booked in Singapore by specified persons to be reported to a licensed trade repository (LTR) or licensed foreign trade repository (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 will 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, will be exempt from the reporting obligation.

  All asset classes will be reportable, however, it will be subject to a phased implementation process. Reporting will begin on October 31, 2013 for interest rate derivatives contracts and credit derivatives contracts. This will be followed by foreign exchange, equity and commodity derivatives contracts on April 1, 2014. FX spots will not be reported.

  Reporting will 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 will have a transition period of one month from the Date of Listing. Other FIs will have three months from the Date of Listing and NFSPs will have six months from the Date of Listing. Each of these dates will be

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 will need to be back-loaded. Firms will 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 will need to be reported and will be 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 regimes in foreign jurisdictions to be deemed as having complied with Section 125 of the SFA. MAS will await further international consensus before exercising such power.

On July 24, 2013, ISDA submitted comments on the proposed amendments to the consultation paper on Draft Regulations Pursuant to the Securities and Futures Act for Reporting of Derivatives Contracts released by the Monetary Authority of Singapore (MAS) on June 26.In the comment letter, ISDA listed the challenges and bottlenecks the industry will face in meeting the October 31 reporting commencement date. It also requested the deferment of collateral reporting until six months after it has been implemented in EMIR to allow issues to be worked out in Europe prior to implementation in Singapore.

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.
- The monograph sets out MAS' adoption of the CPSS-IOSCO Principles for Financial Market Infrastructures (FMI Principles) issued in April 2012. The FMI Principles sets the benchmark for the supervision of financial market infrastructures (FMIs) and are expressed as broad principles. In summary, the monograph:
  - sets out MAS' supervisory objectives of safety and efficiency. To achieve these objectives, MAS monitors and assesses existing and new FMIs to ensure that FMIs have proper structures, processes and rules in place;
  - introduces the regulatory framework for supervision of FMIs. MAS' powers for supervision of FMIs are derived from the Payment Systems (Oversight) Act and the SFA; and
  - articulates MAS' supervisory approach with respect to FMIs.
- MAS may impose higher or more specific requirements on FMIs, as appropriate, in the context of specific risks, or in the context of wider financial stability. Where relevant and practical, MAS also seeks to participate in the cooperative oversight of cross-border or multi-currency FMIs which may affect the stability of the financial system of Singapore. Presently, the Continuous Linked Settlement (CLS) is subject to cooperative oversight by MAS.

3. SGX releases consultation paper on proposed amendments to SGX-DC clearing rules

- On October 3, 2012, Singapore Exchange (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.
- Highlights relating to the clearing of OTCF contracts include:

- A minimum capital requirement of SGD50 million for all Clearing Members clearing OTCF Contracts, whether house or client trades;
- Bank Clearing Members (BCMs) (or their parent bank) and parent banks of General Clearing Members (GCMs) clearing both house and client trades will no longer be subject to the minimum SGD1 billion share capital requirement but must instead comply with capital standards prescribed by MAS or their home regulator;
- GCMs clearing client trades only must hold a capital markets services license, be guaranteed by a parent entity licensed and regulated by a financial authority/regulator and such parent entity must comply with capital requirements imposed by its home regulator;
- BCMs (or their parent bank) and parent banks of GCMs clearing both house and client trades must have a long term rating indicating strong creditworthiness and a rating indicating adequate intrinsic safety and soundness (excluding external credit support) instead of the current long term rating of 'A' and financial strength rating of 'C'. The parent entity of a GCM clearing client trades only must have a long term rating indicating strong creditworthiness;
- All Clearing Members must demonstrate to SGX-DC that they have the requisite default management capabilities in place; and
- All Clearing Members will be subject to such further capital and financial requirements as may be prescribed by SGX-DC from time to time.

- Highlights relating to enhanced customer collateral protection for OTC commodity contracts (OTC contracts) and OTCF contracts include:
  - By virtue of the statutory trust imposed by Section 62 of the SFA, SGX-DC holds customer collateral on trust and separate from its own funds and Clearing Members' collateral. Customer collateral is therefore protected against the risk of insolvency of the Clearing Member and SGX-DC.
  - However, customer collateral is not protected against "fellow customer risk" as SGX-DC's Rules permit SGX-DC to have recourse to customer collateral in the case of a "double default" where a Clearing Member defaults due to the default of one of its customers.
  - The proposed Enhanced Customer Collateral Protection gives customers the option of electing to ring-fence their collateral from "fellow customer risk" and is based on the US LSOC model.
  - SGX-DC's portability arrangements under Rule 7A.02.1.1 will continue to apply to all customers whether or not they opt for the 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 follows a public consultation issued in September 2011. The rule enhancements include:
  - establishing the Clearing Member's liabilities in circumstances of multiple defaults;
  - allowing SGX to apply the Clearing Fund continually, for a fixed period of 90 days, to meet the losses arising from all defaults in that period; and
  - various clarifications and refinements to SGX's powers in managing a default, such as SGX's authority to transfer and manage customer positions and margins from a defaulted Clearing Member to a non-defaulting Clearing Member.

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 the MAS to exercise control over and to resolve distressed financial institutions. The new resolution regime will 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 will be amended to expressly reflect that the exercise of resolution powers is not intended to defeat bilateral netting arrangements. MAS will 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, will 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 will 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 will require Singapore-incorporated banks to meet these requirements by January 1, 2013. Further, MAS will 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%) will remain unchanged. Additionally, there will be a capital conservation buffer of 2.5% to be comprised of Common Equity Tier 1. This buffer will be phased in from January 1, 2016 to January 1, 2019. The new eligibility criteria for regulatory capital will also be phased in from January 1, 2014 to January 1, 2018. These requirements will 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 Liquidity Coverage Ratio (LCR) framework. Locally incorporated banks, foreign bank branches and finance companies in Singapore will 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 will 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 will be set at 80%. Bank-specific requirements

will be imposed on a case-by-case basis if prudential concerns warrant them. The USD LCR will start at 40% on Jan 1, 2015 and rise in equal annual steps to reach 80% on Jan 1, 2019.

High Quality Liquid Assets (HQLA) will comprise mainly of cash, central bank reserves, and certain marketable securities backed by sovereigns and central banks, among others. Residential mortgage-backed securities (RMBS) and non-financial equities will not be allowed. MAS proposes to accept non-financial corporate securities as HQLA but this will be limited to those rated A and above.

MAS is prepared to waive the end-of-day cash balance requirement for banks and finance companies in a liquidity stress situation, to allow them to meet their payment obligation for the day. As such, MAS proposes to allow cash balances held to meet the Minimum Cash Balance (MCB) requirement to be included as HQLA for the computation of LCR. Currently, banks and finance companies are required to maintain a MCB of 2% of their Qualifying Liabilities at the end of each day and a minimum daily average of 3% over each two-week maintenance period. For trade finance, MAS proposes to apply an outflow factor of 3% to trade finance instruments instead of 5%. For intragroup flows, MAS proposes to allow netting of intragroup flows within each day inside the 30 days period.

7. MAS amends MAS Notice 637

- MAS Notice 637 on *'Risk Based Capital Requirements for Banks Incorporated in Singapore'* has been amended to implement the Basel III capital reforms for bank exposures to central counterparties set out by the Basel Committee on Banking Supervision in its July 2012 paper. The amendments seek to strengthen the capital framework for trade exposures and default fund exposures of banks to CCPs. It also sets out the requirements to be met by a CCP for the purpose of determining the applicable capital requirements for bank exposures to the CCP. The proposed revisions will take effect from July 1, 2013. Other revisions have also been made to MAS Notice 637 (including the implementation of the Basel III composition of capital disclosure requirements) which will take effect from January 1, 2013.

8. 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 will 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 will 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.

9. New 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 will 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 will 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 proposes to introduce a regulatory framework for the setting of financial benchmarks. The framework will be affected via amendments to the Securities and Futures Act (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 will apply to OTC derivatives and other financial transactions such as repos. In addition, the Rates-MAA will 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 will 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).

10. MAS releases Consultation Paper on Draft Regulations pursuant to the SFA and FAA

- On September 17, 2013, MAS released the Consultation Paper on Draft Regulations pursuant to the Securities and Futures Act ("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 secruities 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.

  MAS is also proposing to remove exemptions available to Financial Advisers ("FAs") from complying with certain business conduct requirements under the FAA when providing financial advisory services to overseas investors. Also, in order to ensure accountability for advertisements published, MAS intends to require senior management of financial institutions ("FIs") and other persons who are subject to these requirements to approve advertisements before they are made public. The deadline for submission is October 17, 2013.

11. 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 Securities and Futures Act (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 will be reviewed by MAS as part of its ongoing supervisory programme. The deadline for submission is October 21, 2013.

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. 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

- 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 will be required (an FI can defer the reporting of its overseas branch's transactions until the second phase). Effective on January 02, 2013 (Phase 2), FX Options and Forward must be reported. Reporting of all other derivatives will be required 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, Gretai would perform sample checking for those confirmed single-sided deals from March 18, 2013 onwards.

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

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 will 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 will 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 will assess the developments and impact studies on the Leverage ratio and Liquidity risk framework before adoption in Thailand.