

APAC Monthly Update

September 2014

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

Regulatory Activities

Australia:

On September 5, ISDA participated in an Australian Treasury and Counsel of Regulators call on Australia's clearing and reporting mandates.

China:

On September 11, ISDA held a conference in Beijing regarding the impact of the U.S. and European swap regulations and the relevant ISDA Protocols and ISDA Amend by Markit. A number of regulators including CBRC, CSRC, SAFE and PBOC attended the conference. ISDA also met with CBRC and discussed the progress of the proposed banking financial institution recovery and resolution rules in China.

Committee/Working Group Activities

North Asia L&R

On September 30, ISDA held its monthly Legal and Regulatory Committee Meeting in Hong Kong. ISDA updated members on the following North Asia developments: CSRC's Opinions on the Further Promotion of Innovative Development of Futures Business Institutions, Guidance on Disposals and Transfers of Pledged Securities issued by CSDC, new master agreement for OTC derivatives and equity derivatives definitions published by China's SROs, Korean collateral opinion update, Korean FSC's plan to introduce liquidity coverage ratio and Bilateral amendment agreement for OTC derivative transactions referencing a rate to be totally discontinued.

ISDA also updated the meeting on the following Southeast Asian developments: MoU entered into by ASIC and MAS to allow trade repositories licensed in one jurisdiction to provide relevant data to the authority in the other jurisdiction, CFTC's no-action relief for Australian Swaps Trading Platform, ISDA's submissions on CP 221 and on the Financial System Inquiry Interim Report in Australia, netting enforceability in India, RBI's guidelines on amendments to the implementation of Basel III, Bank Indonesia's amendments to regulations concerning foreign currency transactions and hedging and Bank Negara's consultation paper on the Netting of Financial Agreements Bill.

ISDA also briefed members on the following recent ISDA documentation initiatives: updated form of Credit Derivatives Physical Settlement Matrix and forms of Confirmation for use with Matrix, updated implementation date for 2014 ISDA Credit Derivatives Definitions, a new project to revise the 2006 ISDA Definitions, and ISDA's letter to ESAs on proposed margin rules in the EU. ISDA also discussed

with members the ODRG report on further progress on cross-border implementations issues and the margin requirements proposed by the U.S. federal banking agencies.

South Asia L&R

On September 25, ISDA held its monthly Legal and Regulatory Committee meeting in Singapore. Members raised the following topics for discussion: the ISDA 2014 Collateral Agreement Negative Interest Protocol and netting with Korean branches of international banks.

ISDA also updated members on the following Australian developments: APRA's discussion paper on draft amendments to Prudential Standard APS 110 Capital Adequacy and Prudential Standard APS 330 Public Disclosure, the MOU entered into by ASIC and MAS on allowing trade repositories licensed in one jurisdiction to provide relevant data to the authority in the other jurisdiction, ASIC's grant of an Australian derivative trade repository license to DTCC Data Repository (Singapore) Pte Ltd, APRA's release for consultation of its amended Prudential Standard (APS 110 Liquidity, ISDA's submission on CP221 and ISDA's submission on the Financial System Inquiry Interim Report. India-related topics were also discussed: RBI's guidelines on amendments to the implementation of Basel III and CCIL's revised schedule of charges for trade repository.

ISDA also updated members on the following developments in Indonesia: Bank Indonesia amendments to regulations concerning foreign currency transactions and hedging and the decision of the Indonesian High Court to affirm the first instance court decision that contracts written in English language are void.

The meeting also went to discuss the release by Bank Negara Malaysia the consultation paper on the Netting of Financial Agreements Bill and the release by MOF, MAS and IRAS in Singapore of their public consultation on proposed regulations to help financial institutions in Singapore to comply with FATCA.

ISDA updated the meeting on the following ISDA efforts: ISDA's efforts with respect to the 2014 ISDA Credit Derivatives Definitions, the ISDA project to revise the 2006 ISDA Definitions, ISDA's letter to the ESAs on proposed margin rules. ISDA also updated the meeting on certain global efforts including CFTC-related efforts, for instance CFTC's approval of the proposed rule on margin requirements for uncleared swaps, the ODRG report that provides an update to the G20 on further progress on cross-border implementation issues, FSB's report to G20 Finance Ministers and Central Bank Governors concerning jurisdictions' ability to defer to each other's OTC derivatives market regulatory reforms.

Operations/Market Infrastructure

On September 4, ISDA held its APAC Interest Rates Derivatives Operations Working Group meeting to brief members on the latest regional developments on rates. The group also discussed the addition /amendment of floating rate options / matrices, changes in certain rate fixings and confirmation practice in Taiwan.

On September 18, ISDA held its APAC Equity Derivatives Operations Working Group meeting to discuss the electronic confirmation migration of a vendor, the addition of a parameter in confirming an option product electronically, and the issues on onboarding counterparty to electronic confirmation platform.

On September 23, ISDA held its AEJ Data and Reporting Compliance – reporting nexus sub-group meeting to discuss the reporting nexus relief requests and the technical challenges of implementation in the region.

On September 11, ISDA held its AEJ Data and Reporting Compliance – Asia identifiers & delegated reporting sub-group meeting to discuss the application of trade identifiers in Australia, HK and Singapore together with the current technological limitations.

On September 29, ISDA held its AEJ Data and Reporting Compliance working group meeting to discuss the trade reporting progress in the region. The meeting also addressed the regulatory updates in HK, Singapore, Australia and South Korea.

Members' / Other Activities

On September 4, ISDA organized a dealer call to discuss portfolio compression for Asian cross currency swaps.

On September 5, ISDA spoke at the Asian Investment Banking Conference, a forum for university students considering careers in finance.

On September 12, ISDA held its China members' meeting in Beijing to discuss mandatory clearing of onshore RMB IRS and Stock Connect Pilot Program. ISDA also updated members on the latest developments of global regulatory issues and ISDA documentation.

On September 17, ISDA made a keynote presentation on “Current Issues in OTC Clearing” at the China Financial Derivatives Forum in Shanghai.

Regulatory Developments

Australia:

Contact: Keith Noyes (knoyes@isda.org) / Cindy Leiw (cleiw@isda.org)

APRA consults on LCR amendments

On September 1, the Australian Prudential Regulation Authority (APRA) released for consultation an amended Prudential Standard APS 210 (APS 210) Liquidity and amended reporting instructions. These amendments relate to the liquidity coverage ratio (LCR), which comes into effect on January 1, 2015.

Some of the proposed amendments are as follows:

- A proposed amendment to the definition of expected derivatives cash inflows and cash outflows that may be shown on a net basis, and clarifications regarding the reporting instructions relating to this matter. This affects all authorised deposit-taking institutions (ADIs) classified as ‘LCR ADIs’.
- As the process of assessing application for a committed liquidity facility from the Reserve Bank of Australia has raised a number of challenges in applying the LCR to foreign bank branches in the current form, APRA plans to reassess the nature of, and rationale underlying its application of, liquid asset requirements to foreign bank branches in Australia. APRA intends to publish a consultation on this topic in 2015.
- In the interim, APRA proposes to apply an LCR with a 15-calendar-day time horizon to branches (rather than the full 30-calendar-day time horizon applied to locally incorporated ADIs). Branches will also be allowed to meet the liquid asset requirements using both assets defined as high-quality liquid assets (HQLA), as listed in Attachment A paragraphs 6-11 of APS 210, and assets listed in APS 210 in Attachment C paragraphs 3(c) – (g), subject to paragraph 4 of Attachment C. For clarity, there is no change to the definition of HQLA. It is proposed that

minimum liquidity holdings securities comprise an additional asset that will be deemed to form part of the 'stock of high-quality liquid assets' in the numerator of the formula in APS 210.

ASIC grants first trade repository licence

On September 15, the Australian Securities and Investments Commission (ASIC) granted an Australian derivative trade repository license to DTCC data repository (Singapore) Pte Ltd (DDRS). As a result of licensing, the trade reporting obligation will commence for phase 3 reporting entities above the A\$5 billion threshold (phase 3A entities) on April 13, 2015 for interest rate and credit derivatives. Phase 3A entities will commence reporting for foreign exchange, equity and commodity derivatives on October 12, 2015. Phase 3 reporting entities below the A\$5 billion threshold (phase 3B entities) are due to start reporting for all asset classes on October 12, 2015. Phase 1, 2 and 3 reporting entities that are incorporated or formed in Australia are required to use a licensed trade repository from October 1, 2014. Foreign reporting entities may report to prescribed trade repositories as set out in the ASIC OTC derivatives reform web page.

APRA releases disclosure reforms discussion paper

On September 18, the Australian Prudential Regulation Authority (APRA) released for consultation a discussion paper and draft amendments to Prudential Standard APS 110 Capital Adequacy (APS 110) and Prudential Standard APS 330 Public Disclosure (APS 330), which outline APRA's proposed implementation of new disclosure requirements for authorised deposit-taking institutions (ADIs).

Highlights of the proposals:

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

Deadline for comments is October 31.

China: A new master agreement for OTC derivatives published

Contact: Keith Noyes (knoyes@isda.org) /Jing Gu(jgu@isda.org)

On August 22, the Securities Association of China, the China Futures Association and the Asset Management Association of China jointly published (Chinese only) the master agreement for OTC derivatives transactions on China's securities and futures Market (2014 version), the supplemental agreement and product definitions of OTC equity derivatives transactions on China's securities and futures market (2014 version). The associations require their members to comply with their respective filing requirements after entering into a master agreement.

India: RBI publishes guidelines on implementing Basel III capital regulations

Contact: Keith Noyes (*knoyes@isda.org*) /Cindy Leiw (*cleiw@isda.org*)

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

1. Non-equity regulatory capital instruments (additional Tier 1 and Tier 2) – loss absorption mechanism
 - Banks may now issue additional Tier 1 capital instruments with the principal loss absorption through either: (1) conversion into common shares; or (2) write-down mechanism (temporary or permanent) that allocates losses to the instruments.
 - The terms and conditions of all non-equity capital instruments (both additional Tier 1 and Tier 2) issues by banks must have a provision that requires such instruments, at the option of RBI, to either be permanently written off or converted into common shares upon the occurrence of a ‘point of non-viability’ trigger event.
 - Banks need to ensure that all non-common equity capital instruments issued by them meet all the eligibility criteria, such as legal, accounting and operational, for such instruments to be recognised as regulatory capital instruments.
2. Additional Tier 1 capital instruments – exercise of call option
 - The call option on additional Tier 1 instruments (perpetual non-cumulative preference shares and perpetual debt instruments (PDIs)) will be permissible at the initiative of the issuer after the instrument has run for at least five years.
3. Tier 2 capital instruments – maturity period
 - Banks are allowed to issue redeemable non-cumulative preference shares and redeemable cumulative preference shares as part of Tier 2 capital with a minimum original maturity of at least five years. All other criteria relating to maturity period of Tier 2 instruments remain unchanged.
4. Non-equity regulatory capital instruments (additional Tier 1 and Tier 2) – issuance to retail investors
 - Banks may issue other forms of Tier 2 capital instruments to retail investors, such as perpetual cumulative preference shares/redeemable non-cumulative preference shares/redeemable cumulative preference shares. Such issuances should be subject to the approval of the Board and conditions as required under paragraph 1.17 of Annex 5 of the master circular.
 - Banks may now issue additional Tier 1 capital instruments to retail investors, subject to Board approval. However, banks should adhere to the investor protection requirements analogous to those contained in paragraph 1.17 of Annex 5 of the master circular.
5. Coupon discretion on additional Tier 1 debt capital instruments
 - Paragraph 1.8(e) of Annex 4 of the master circular has been amended, such as payment of coupons on PDIs, which must be paid out of current year profits. If current year profits are not sufficient, then the balance amount of the coupon may be paid out of revenue reserves and/or credit balance in the profit and loss account, if any. However, the payment of coupons on PDIs from revenue reserves is subject to the bank meeting the minimum regulatory requirement for core equity Tier 1, Tier 1 and total capital ratios at all times and subject to the requirements of the capital buffer frameworks (capital conservation buffer, countercyclical capital buffer and domestic systemically important banks).

Malaysia: BNM releases consultation paper on netting of financial agreements bill

Contact: Keith Noyes (knoyes@isda.org) / Erryan Abdul Samad (eabdulsamad@isda.org)

On September 9, Bank Negara Malaysia (BNM) released its consultation paper on the Netting of Financial Agreements Bill. The initiative follows the 2014 budget speech given by the Prime Minister in October 2013.

The Bill introduces a definition of 'netting provision' under certain 'qualified financial agreements' in order to address close-out netting mechanisms that are typically embedded in financial contracts. The scope of the Bill will extend to certain 'qualified financial transactions' which include OTC derivatives, Islamic financial instruments such as Islamic derivatives, repurchase transactions and a securities borrowing and lending of unlisted debt securities under the real time electronic transfer of funds and securities systems. The consultation paper also provides an overview of the key concerns relating to close-out netting in Malaysia. BNM envisages that the legislation will provide legal assurance for the enforceability of close-out netting mechanisms under certain types of financial agreements by removing legal impediments or uncertainties to netting in existing legislation.

Deadline for submissions is September 23.

South Korea:

Contact: Keith Noyes (knoyes@isda.org) /Claire Kim (ckim@isda.org)

KRX introduces measures for settlement stability

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

Key contents of the plan:

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

South Korea: FSS announces effective compliance measures

On September 1, South Korea's Financial Supervisory Service (FSS) announced its measures to ensure effective compliance at financial companies. The FSS stated that compliance should be considered a profit centre with a high level of confidence, not a cost centre, and compliance will be included in the performance measurement of the financial company.

Key contents of the measures include:

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

- efforts to reduce the cost of compliance will be stepped up.

Measures requiring amendments to the current laws and regulations to incorporate changes will be implemented this year, while changes that can be made through amendments to best practices for the compliance function will come first.

FSC announces its revision to implement financial regulatory reform

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

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

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

Singapore:

MAS and ASIC signed MOU on trade data access

Contact: Keith Noyes (knoyes@isda.org) / Cindy Leiw (cleiw@isda.org)

On September 17, ASIC and the Monetary Authority of Singapore (MAS) entered into a memorandum of understanding (MOU) to allow trade repositories licenced in one jurisdiction to provide relevant data to the authority in the other jurisdiction. Through this MOU, ASIC and MAS will cooperate with each other to fulfil their respective responsibilities and mandates by facilitating each authority's access to relevant trade repository data, while ensuring the confidentiality of the information is appropriately protected.

Authorities consult on FATCA regulations

Contact: Keith Noyes (knoyes@isda.org) / Erryan Abdul Samad (eabdulsamad@isda.org)

On September 22, the Ministry of Finance, MAS and the Inland Revenue Authority of Singapore released a public consultation on proposed regulations to help financial institutions in Singapore to comply with the US Foreign Account Tax Compliance Act (FATCA). In order to ease the compliance in relation to FATCA, Singapore has now substantially concluded a Model 1 Intergovernmental Agreement (IGA) with the US. The FATCA IGA will be signed in the fourth quarter of 2014. The public consultation invites feedback on the draft Income Tax (International Tax Compliance Agreements) (United States of America) Regulations 2014 and the draft FATCA e-Tax Guide. The draft regulations set out the due diligence and reporting obligations of Singapore-based financial institutions in relation to the FATCA IGA, whereas the draft e-Tax Guide provides further explanation of those obligations. The public consultation will be from September 22 to October 17.

Submission

On September 2, ISDA made a submission to Hong Kong Monetary Authority and Securities and Futures Commission on the Consultation paper on the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping) Rules. This submission is not yet public.

Upcoming committee and working group meetings/conferences

Meetings:

Mumbai Members' Meeting	Oct 7
APAC Legal and Regulatory Advisory Group Meeting	Oct 14
North Asia L&R Meeting	Oct 21
Sydney Members' Meeting	Oct 22
South Asia L&R Meeting	Oct 30

Conference:

2014 ISDA Annual Australia Conference - Sydney	Oct 23
Global Swap Regulations Conference – Sydney	Oct 24
2014 ISDA Annual Asia Pacific Conference – Singapore	Oct 27
Global Swap Regulations Conference – Singapore	Oct 28
2014 ISDA Annual Japan Conference – Tokyo	Oct 30
Global Swap Regulations Conference – Tokyo	Oct 31

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

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