

## APAC Monthly Update

**October 2013**

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

### **Regulatory Activities**

#### **Australia:**

On October 16, ISDA met with APRA, ASIC, RBA and the Treasury to discuss the resolution, loss allocation for CCPs, the Basel requirements for margin for non-centrally cleared derivatives and bank exposures to CCPs, the OTC reforms, financial benchmarks and trade reporting.

On October 18, ISDA Chairman Steve O'Connor, CEO Bob Pickel and ISDA staff met with ASIC and IOSCO Chairman Greg Medcraft to discuss global regulatory reform issues.

On October 30, ISDA together with AFMA and ASIC, held a meeting with industry participants to discuss Phase 2 of the Australian trade reporting implementation.

#### **Hong Kong:**

On October 10, ISDA and industry representatives met with HKMA and SFC to discuss the originate or execute definition for trade reporting. Supplementary information on the existing trading practice was submitted to the regulators subsequently.

On October 21, ISDA Chairman Steve O'Connor, CEO Bob Pickel and ISDA staff met with Hong Kong Undersecretary for Financial Services and Treasury Julia Leung to discuss global regulatory reform issues.

On October 22, ISDA Chairman Steve O'Connor, CEO Bob Pickel and ISDA staff met with Hong Kong SFC CEO and IOSCO Asia Regional Committee Chairman Ashley Alder to discuss global regulatory reform issues.

#### **Indonesia:**

On October 2, ISDA met with the ABAC working group to discuss the capital markets work stream, in particular, issues surrounding netting, protection of collateral rights under the various bankruptcy regimes, mutual recognition of regulations and the fragmentation arising from multiple CCPs.

#### **Korea:**

On October 28, ISDA made a presentation to EMEAP (Executives' Meeting of East Asia-Pacific Central Banks) 14th Monetary and Financial Stability Committee (MFSC) meeting in Seoul, Korea. ISDA's presentation covered proposed Basel capital exposure rules when facing a CCP, loss allocation at the end of a CCP's waterfall, the impact on Asia of the margining of non-cleared swaps rules, and the impact on Asia of extraterritoriality and market fragmentation.

## **Committee/Working Group Activities**

### **North Asia L&R**

On October 28, ISDA held its North Asia L&R meeting in Hong Kong. Topics discussed include an update on China's central clearing proposal, BCBS report on capital framework in China, the industry's meeting with HK regulators on definition of trades "originated and executed" in Hong Kong, the new Hong Kong Companies Ordinance, ISDA submission to ASX's Consultation Paper on Client Clearing Service, the Proposed Amendments to MAS Notice 637 on Disclosure and Submission Requirements for Assessing Global Systemically Important Banks and Point of Non-Viability Requirements and Insolvency Law Review Committee's report on bankruptcy and insolvency regimes to the Ministry of Law in Singapore.

ISDA also provided an update on recent ISDA efforts including the project on standardizing Taiwan FINI related representation and undertakings, accumulators/decumulators appendix to the 2011 Equity Derivative Definitions, working group discussions on legal opinions for cleared derivatives and working group on ISDA Addendum opinions, draft ISDA 2013 DF Agreement for Non-U.S. Transactions and ISDA 2013 Discontinued Rates Maturities Protocol.

### **South Asia L&R**

On October 28, ISDA held its monthly L&R meeting in Singapore. Topics discussed included ISDA's submission on the ASX's consultation paper on client clearing service, RBI's announcement that Authorised Dealer Category I Banks may borrow from international/multilateral financial institutions for a limited period as well as RBI's announcements on the enhancement of limit and lowering of minimum maturity for overseas foreign currency borrowings by Authorised Dealer Banks. The meeting also discussed the proposed amendments to MAS Notice 637 on Disclosure and Submission requirements for assessing global systemically important banks and point of non-viability requirements and the report from the Insolvency Law Review Committee on bankruptcy and insolvency regimes to the Ministry of Law.

Other topics discussed also included the BCBS report on capital framework in China, an update on the industry meeting with the Hong Kong regulators on definition of trades "originated and executed" in Hong Kong and the pre-publication draft of the FINI representations and undertakings. The meeting also provided updates on the accumulators/decumulators appendix to the 2011 Equity Derivatives Definitions and Working Group on Legal opinions for Cleared Derivatives and Working Group on ISDA Addendum Opinion.

The meeting also considered the draft ISDA 2013 DF Agreement for non-U.S. transactions, ISDA's hosting of the Market Education Webcast on EMIR Counterparty Classification Tool, the publication of the ISDA 2013 Discontinued Rates Maturities Protocol and the public webinar hosted by ISDA on CFTC's Final Cross-Border Guidance. The meeting discussed the recent speeches by CFTC Commissioner Scott O'Malia on regulatory harmonization, an update on the ESMA consultation on derivatives subject to clearing, the No-Action Letters issued by the CFTC on SEFs, the amended Q&A published by ESMA and the second set of technical advice published by ESMA and presented to the European Commission.

### **Operations/Market Infrastructure**

On October 3, 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, the confirmation practice, the upcoming changes in certain rate fixings and the treatment of a country business day.

On October 10, ISDA held its APAC Equity Derivatives Operations Working Group meeting to discuss the confirmation matching requirements in US and Europe, the practice of executing a confirmation and the latest update of adding certain disclaimers or representations in a confirmation.

On October 2, 7, 9 and 24, ISDA held its AEJ Data and Reporting Compliance – reporting nexus subgroup meeting to discuss the reporting nexus matters in the region.

On October 11, ISDA held its AEJ Data and Reporting Compliance working group meeting to discuss the trade reporting matters in the region.

### **Members' / Other Activities**

On October 9, ISDA hosted a public webinar to provide an update on the CFTC's Final Cross-border Guidance.

### **Sydney Members' Meeting**

On October 15, ISDA held its Australian members meeting to discuss the ASIC's final rules for trade reporting and ASX's consultation paper on its proposed client clearing model.

### **Asian Steering Committee Meeting:**

On October 21, the ISDA Asian Steering Committee held its semi-annual meeting. The impact of SEF-trading on Asian markets and challenges faced on boarding clients to the relevant protocols were the most discussed items. Also discussed were third country CCP recognition issues, Basel capital charges and changes to financial benchmarks.

### **Regulatory Developments**

#### **Australia: ASX releases second consultation on draft operating rules**

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

On October 17, the Australian Securities Exchange (ASX) released its second consultation paper on the Draft Operating Rules for the ASX 24 Exchange Traded Derivatives and OTC Interest Rate Derivatives Client Clearing Service. This is the second consultation paper in which ASX seeks stakeholders' input on the draft Operating Rules. Submission deadline is November 15. Highlights include:

1. This Consultation Paper focuses exclusively on the default of Clearing Participants. There are no changes proposed in the paper for the default of Clients that was published in the first Consultation Paper.
2. The Default Portfolio will comprise all OTC and portfolio-margined ETD transactions of the defaulting OTC Clearing Participant in its own name ("House" transactions) and Client transactions that have not been ported successfully within the porting window, and hedging transactions entered into by ASX following the default. ASX reserves the right to sell/auction the Default Portfolio either as one or more lots comprising either or both House and Client transactions according to the Default Management Process. In the event of multiple contemporaneous or near-contemporaneous defaults, ASX may further combine into a single Default Portfolio House and non-ported Client transactions of multiple defaulting OTC Clearing Participants.

3. If Terminated Open Contracts in a default management process relate to both House and Client Positions of a Defaulted OTC Participant, or the OTC Positions of more than one Defaulted OTC Participant then ASX Clear (Futures) may combine any such Terminated Open Contracts such that they are treated as part of one or more portfolios at any time after the commencement of the default management process; and allocate any Loss in conjunction with that default management process between the relevant Defaulted OTC Participants and between the House Accounts, Client Accounts and Client Sub-Accounts of the relevant Defaulted OTC Participant (a Relevant Account). This will be done as of the time of combination of such Terminated Open Contracts and will be conducted by allocating any Losses to each Relevant Account proportionately to its relative risk as determined by ASX Clear (Futures) using the value of Initial margin calculated with respect to each Relevant Account; and if the Relevant Account is a Client Sub-Account, the Loss will be deducted in accordance with (ii) above from the Guaranteed Initial Margin value of that Client Sub-Account.
4. ASX Clear (Futures) will establish default management groups (a DMG) in respect of each OTC transaction Type for the purposes of advising and assisting ASX Clear (Futures) for all DMG matters.
5. In addition to what has been previously stated in Schedule 3 of the Default Management Process, ASX Clear (Futures) may choose to convene a meeting of one or more DMGs for (a) the Open Contracts which are to be Terminated Open Contracts and their respective Termination Times in accordance with OTC Rule 6.6; (b) the entry into of Independent DM Transactions; (c) the holding of one or more DM auctions; (d) determining the Auction Pool Risk Weighting for each Auction Pool and the price at which a Bid for a particular DM Auction will be taken to be an Uneconomic Price; and (e) to obtain advice related to the default management in any other circumstances as considered appropriate by ASX Clear (Futures).
6. After consultation with the relevant DMGs, ASX Clear (Futures) may include a single OTC Transaction Type in more than one Auction Pool and a single DM Auction Transaction may be split into multiple transactions by ASX Clear (Futures) with each transaction being included in a different Auction Pool as separate DM Auction Transaction. DM Auction Transactions which are related to Client and House Positions, and which are related to different Defaulted Clearing Participants may be included in the same Auction Pool.
7. If there is more than one Auction Pool, then ASX Clear (Futures), in consultation with the relevant DMGs, will calculate a risk weighting multiplier attributable to each Auction Pool (an Auction Pool Risk Weighting). The Mandatory OTC Participant in the DM Auction will be notified of the Auction Pool Risk Weighting.
8. After consultation with the relevant DMGs, each Auction Pool will be separated into homogeneous units (an Auction Unit). If there is more than one Auction Unit in an Auction Pool, then each Auction Unit must be composed of identical components of DM Auction Transactions.
9. For each Auction Pool, ASX in consultation with the relevant DMG, will determine a price (referred to as the Uneconomic Price) at or beneath which a Bid in a particular DM Auction will be taken to be uneconomic. The Uneconomic Price will not be disclosed prior to the Expiration Time of the DM Auction.
10. For each Auction Pool, ASX Clear (Futures) will (a) determine which Mandatory OTC Participants (Non-Contributing Participants) have failed to submit a Bid in the DM Auction corresponding to the relevant Auction Pool which is greater than its Uneconomic Price, including those which have failed to submit any Bid; (b) rank all Mandatory OTC Participants, other than the Non-Contributing Participants, by the Bids they have submitted in the DM Auction in the relevant Auction Pool in order of price from the highest price Bid to the lowest price Bid; and (c) when there is only one Auction Pool, rank OTC Participants which are not Mandatory OTC Participants who submitted Bids in the DM Auction equally with the OTC Participants who submitted the highest Bid for that DM Auction. ASX Clear (Futures) will group the OTC Participants into Priority Groups using these rankings, i.e., from highest Bids to the lowest Bids.

11. Using the rankings of Mandatory OTC Participants in Priority Groups and the Weighted OTC Commitments of Mandatory OTC Participant's applicable to each Auction Pool, ASX Clear (Futures) will determine the aggregate amount of the Weighted OTC Commitment of each Mandatory OTC Participant applicable to each Priority Group.
12. ASX Clear (Futures) will use the OTC Commitment of the OTC Participants in order of Priority Group, from lowest Bid received to highest bid received. Each Commitment Application Amount for each Priority Group will be used in full before applying the Commitment Application Amount to the next Priority Group unless losses of ASX Clear (Futures) have been met or all the Commitment Application Amounts for all Priority Groups have been used.

### **China: BCBS report on capital framework in China**

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

On September 27, 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.

### **Malaysia: 2014 Budget Speech**

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

On October 25, the Malaysian Prime Minister and Minister of Finance Datuk Seri Najib Tun Razak tabled the 2014 Malaysia Budget Speech at the Dewan Rakyat and made the following statements:

“Currently, the domestic bond market is the largest in South-East Asia with a value exceeding RM1trillion, while daily transactions in the foreign exchange and money markets are more than RM30 billion. To ensure efficient operations of financial markets, a clear regulatory framework is required.

“In this regard, amendments will be made to existing laws and Bank Negara Malaysia will lead the initiative in formulating the Netting Act to protect enforcement rights of close-out netting under the financial contract. This is to reduce credit risk and promote the derivatives market, thereby reducing systemic risks in the domestic financial market as well as reduce the cost of doing business.”

### **Singapore:**

#### **Insolvency Law Review Committee reviews bankruptcy, insolvency regimes**

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

On October 4, the Insolvency Law Review Committee submitted its report reviewing the existing bankruptcy and corporate insolvency regimes in Singapore to the Ministry of Law, which has invited comments through December 2. The aims of the review were to:

- unify the bankruptcy and corporate insolvency regimes into a single piece of legislation;
- modernize the law of bankruptcy and corporate insolvency as well as adopt practices best suited to Singapore;
- make the attendant processes user-friendly and accessible for individuals and corporations alike;
- where appropriate, take into account the relevant recommendations made by the Companies Regulation Framework Steering Committee in 2002.

The main recommendation in the report is for the enactment of a new Insolvency Act. This new act will consolidate and update the core areas of Singapore's personal and corporate insolvency regime, as well as set out common principles and procedures. This is intended to provide greater consistency certainty on

various concepts that are common to the various insolvency regimes; and better support the transition and coordination between these regimes.

The report also considers the various corporate insolvency regimes in Singapore including private receivership, liquidation, judicial management and schemes of arrangement.

### **MAS requirements for assessing systemically important banks**

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

On October 4, MAS issued the Proposed Amendments to MAS Notice 637 on Disclosure and Submission Requirements for Assessing Global Systemically Important Banks and Point of Non-Viability Requirements (the Consultation Paper). The proposed disclosure and submission requirements in the Consultation Paper aim to allow the BCBS to assess the systemic importance of Singapore-incorporated banks. The methodology is based on the BCBS' framework "Global systemically important banks: updated assessment methodology and the higher loss absorbency requirement".

The Consultation Paper will require Singapore-incorporated banks to make publicly available the 12 indicators used in the BCBS assessment methodology for identifying "G-SIBs"; and submit to MAS the full set of data required by the BCBS' data collection exercise. The Consultation Paper also proposes requirements to ensure loss absorbency at the point of non-viability, for example: whether the assets of a Bank, in MAS's opinion, are sufficient to provide adequate protection to the bank's depositors and creditors. The proposed amendments will be effective from Jan 1, 2014. The deadline for comments is November 4.

### **SGX consults on DCO rules**

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

On October 25, the Singapore Exchange (SGX) issued a consultation paper on the proposed SGX-DC Remote Membership and Derivatives Clearing Organization Rules. The Singapore Exchange Derivatives Clearing Limited (SGX-DC) has applied for registration with the CFTC as a derivatives clearing organization (DCO). Consequently, SGX-DC will be required to comply with the applicable US laws and regulations as well as the US Commodity Futures trading Commission (CFTC) Commodity Exchange Act (CEA) requirements for a DCO.

Under Section 4d(f)(1) of the CEA, an intermediary accepting collateral from a US person for a swaps contract cleared through a DCO must be a futures commission merchant (FCM) registered with the CFTC. SGX-DC proposes to allow remote clearing members (RCMs). FCMs based in the US or otherwise may apply to become members of SGX-DC as a RCM in order to clear swap contracts for their US customers through SGX-DC. A RCM must be regulated and licensed by a recognized regulator and governed by the laws of a jurisdiction acceptable to SGX-DC. SGX-DC will consider the comparability of laws of the foreign jurisdiction and the regulatory standards with Singapore laws and regulations; the licensing and supervision of OTC activities by an independent statutory regulator; and the existence of information sharing arrangement between MAS and the statutory foreign regulator or between SGX-DC and any foreign self-regulatory organization responsible for the supervision of the RCM.

A RCM clearing Non-Relevant market contracts and/or customers OTCF contracts is required to have, or have a parent entity who has a long term credit rating indicating strong overall creditworthiness supporting fulfillment of its financial obligations. RCMs will have reporting, access to records, appointment of management personnel, segregation of positions and collateral and default management requirements that are similar to those of the General Clearing Members (GCMs). There will be additional membership criteria, for example: RCMs must have the ability to conduct its clearing activities during SGX-DC's business hours and maintain adequate contactable staff and RCMs should not have a business

presence in Singapore related to the provision of financial services or serve Singapore-domiciled customers. Submission deadline is November 8.

### **Submission**

On October 10, ISDA made a submission to ASX Limited on ASX 24 Exchange Traded Derivatives and OTC Interest Rate Derivatives Client Clearing Service Consultation Paper on Draft Operating Rules. This submission is not yet public.

### **Upcoming committee and working group meetings/conferences**

#### **Meetings:**

Asian Public Policy Meeting Call	Nov 4
APAC IRD Operations Working Group Meeting	Nov 7
Kuala Lumpur Members' Meeting	Nov 12
Taipei Members' Meeting	Nov 18
North Asia L&R Meeting	Nov 26
South Asia L&R Meeting	Nov 28

#### **Conferences:**

Understanding ISDA Master Agreements and Credit Support Documents Conference – Kuala Lumpur	Nov 14
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#### **ISDA APAC Monthly Update**

Please direct comments and questions about APAC Monthly Update to Donna Chan, [dchan@isda.org](mailto:dchan@isda.org)

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