

APAC Monthly Update

November 2013

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

Regulatory Activities

Asia-Pacific:

On November 12, ISDA conducted a call with Ontario Securities Commission to update on the trade reporting development in the region.

Hong Kong:

On November 12, ISDA and industry representatives met with Hong Kong Monetary Authority – TR to discuss the application of trade identifiers for trade reporting.

Malaysia:

On November 13, ISDA presented to representatives of Bank Negara Malaysia (BNM), the Securities Commission (SC) and Perbadanan Insurans Deposit Malaysia (PIDM) on international regulatory reforms and global developments in the OTC derivatives markets. ISDA also discussed developments relating to netting in Malaysia with the BNM, SC and PIDM representatives.

On the same day, ISDA also presented to Persatuan Pasaran Kewangan Malaysia (PPKM) on international regulatory reforms and global developments in the OTC derivatives markets.

Manila:

On November 5, ISDA made presentations to the Philippine central bank and the Asian Development Bank on global regulatory developments.

Taiwan:

On November 18, ISDA presented on DF and EMIR protocols at the Bankers Association in Taipei. Over 100 participants from 51 banks in Taiwan attended the meeting.

On November 19, ISDA made separate presentations to the Taiwan's Banking Bureau and the Securities and Futures Bureau of the Financial Supervisory Commission on global regulatory reform.

Committee/Working Group Activities

North Asia L&R

On November 26, ISDA held its L&R Members' meeting in Hong Kong. Topics discussed included the SFC survey on participants in Hong Kong OTC derivatives market, the Korean Ministry of Strategy and Finance's press release announcing the easing of regulations in relation to foreign exchange transactions, publication of the representations and undertakings in respect of Taiwan market access products, ISDA's

submission to ASX OTC Interest Rate Derivatives 2nd Consultation Paper on Draft Operating Rules for the ASX 24 Exchange Traded Derivatives and OTC Interest Rate Derivatives Client Clearing Service, an Indonesia court ruling on contracts written in English, Indonesian Supreme Court's decision on appeal against a decision of Central Jakarta District Court rejecting claimants' application to enforce SIAC award, ISDA's submission on the Consultation Paper on the Proposed SGX-DC Remote Clearing Membership and Derivatives Clearing Organization Rules, ISDA's letter on OTC derivatives trade reporting in Singapore and MAS's final rules for trade reporting.

ISDA also updated members on the ISDA 2013 DF Agreement for Non U.S. Transactions, IOSCO APRC's letter to EU on Asian CCP recognition, ESMA's final draft extraterritoriality RTS and CFTC's policy statement, guidance and NALs related to SEF trading and extraterritoriality.

South Asia L&R

On November 28, ISDA held its L&R Members' meeting in Singapore. Topics discussed included ISDA's submission to the ASX Second Consultation Paper on Draft Operating Rules for ASX 24 Exchange Traded Derivatives and the OTC Interest Rate Derivatives Client Clearing Service, the framework released by the RBI for setting up of wholly-owned subsidiaries by foreign banks in India, SEBI's consultation with market intermediaries on the FATCA IGA and an update on the benchmark for MIBOR. The meeting also discussed the recent Indonesian court ruling on contracts written in English and the Indonesian Supreme Court's decision on appeal against a decision of the Central Jakarta District Court rejecting claimants' application to enforce the SIAC award, the Joint Public Consultation Paper on Trade Repository Requirements released by BNM, SC and PIDM on trade repository reporting requirement for OTC derivatives, the 2014 Malaysia Budget Speech and ISDA's November trip to Kuala Lumpur.

The meeting also considered ISDA's submission on the Consultation Paper on the Proposed SGX-DC Remote Clearing Membership and Derivatives Organization Rules, ISDA's letter on OTC derivatives trade reporting in Singapore and the publication of the MAS final rules for trade reporting. Other topics discussed included the SFC survey on participants in Hong Kong OTC derivatives market, the Korean Ministry of Strategy and Finance's press release announcing the easing of regulations in relation to foreign exchange transactions and publication of the representations and undertakings in respect of Taiwan market access products. ISDA also provided an update on the ISDA 2013 DF Agreement for Non U.S. Transactions, the ISDA 2013 ICE Brent Protocol, the ISDA statement letter from the major resolution authorities and ISDA's response to the FSB consultation on Assessment Methodology for the Key Attributes of Effective Resolution Regimes for Financial Institutions.

The meeting discussed the IOSCO APRC letter to the EU on Asian CCP recognition, ESMA publication of the draft extraterritoriality RTS, the release by CTFC of a series of policy statements, guidance and No-Action Letters related to SEF trading, extraterritoriality and "straight-through processing", ESMA's publication of its updated FAQ document, the release by BIS of OTC derivatives statistics as at end-June 2013, ESMA's registration of the first four trade repositories, the publication by ESMA of a list of non-European Economic Area CCPs that have applied for RSMA recognition under Article 25 of EMIR. CFTC's approval of the re-proposal of its controversial Position Limits rule, the IOSCO notice on implementation of Principles for Financial Benchmarks, the release by the U.S. Department of Treasury and the IRS of its proposed FATCA guidance for FFIs and the letter issued by IOSCO on the cross-border regulation task force.

Operations/Market Infrastructure

On November 7, ISDA held its APAC Interest Rates Derivatives Operations Working Group meeting to brief members 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 industry preference of an unscheduled holiday.

On November 12 and 26, ISDA held its AEJ Data and Reporting Compliance – reporting nexus subgroup meeting to discuss the reporting nexus matters in the region.

On November 7, 11 and 14, ISDA held its AEJ Data and Reporting Compliance – Asia identifiers subgroup meeting to discuss the application of trade identifiers in HK.

On November 14, 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 November 19, ISDA held its AEJ Data and Reporting Compliance working group meeting to discuss the trade reporting matters in the region and the latest developments in EU and US.

Members' / Other Activities

Kuala Lumpur Members' Meeting

On 12 November, ISDA held its members' meeting in Kuala Lumpur. Topics discussed included issues relating to single counterparty exposure limit and the capital adequacy framework, the Malaysian Budget Speech presented by the Prime Minister and the Minister of Finance on 25 October, an update on the July meeting with the Malaysian regulators, the Companies Commission of Malaysia public consultation document on the proposed Companies Bill and the coming into force of force of the Financial Services 2013 and the Islamic Financial Services Act 2013 in June 2013. The meeting also discussed the ongoing G-20 regulatory reforms, the Indonesian court ruling on contracts written in English being void, an update on Working Group on legal opinions for cleared derivatives and the Working Group on ISDA Addendum Opinion and the 2013 ISDA Arbitration Guide.

Taipei Members' Meeting

On November 18, ISDA held its annual Taiwan members meeting in Taipei. At the meeting, ISDA informed members of the publication of the FINI representations and undertakings. ISDA also updated members on recent developments of the regulatory reforms in respect of OTC derivatives in the US and EU such as ESMA's technical advice on the third country CCPs. Recent ISDA EMIR and DFA documentation initiative were also discussed at the meeting, including the ISDA 2013 DF Agreement for Non-U.S. Transactions, the ISDA 2013 Discontinued Rates Maturities Protocol and the ISDA 2013 Arbitration Guide.

Regulatory Developments

India: RBI framework for foreign banks' wholly owned subsidiaries

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

On November 6, the Reserve Bank of India (RBI) released the framework for setting up of Wholly Owned Subsidiaries (WOS) by foreign banks in India. The policy is guided by the two cardinal principles of reciprocity and single mode of presence. As a locally incorporated bank, the WOSs will be given near-national treatment which will enable them to open branches anywhere in the country at par with Indian banks (except in certain sensitive areas where the RBI's prior approval would be required). They would also be able to participate fully in the development of the Indian financial sector. The policy creates an

incentive for existing foreign bank branches which operate within the framework of India's commitment to the World Trade Organisation (WTO) to convert into WOS, due to the attractiveness of near-national treatment. Key features of the framework include:

- Banks with complex structures, banks which do not provide adequate disclosure in their home jurisdiction, banks which are not widely held, banks from jurisdictions having legislation giving a preferential claim to depositors of home country in a winding up proceedings, etc., would be mandated entry into India only in the WOS mode;
- Foreign banks in whose case the above conditions do not apply can opt for a branch or WOS form of presence;
- A foreign bank opting for branch form of presence shall convert into a WOS as and when the above conditions become applicable to it or it becomes systemically important on account of its balance sheet size in India;
- Foreign banks which commenced banking business in India before August 2010 shall have the option to continue their banking business through the branch mode;
- To prevent domination by foreign banks, restrictions would be placed on further entry of new WOSs of foreign banks/capital infusion, when the capital and reserves of the WOSs and foreign bank branches in India exceed 20 per cent of the capital and reserves of the banking system;
- The initial minimum paid-up voting equity capital for a WOS shall be Rs5 billion for new entrants. Existing branches of foreign banks desiring to convert into WOS shall have a minimum net worth of Rs5 billion;
- The parent of the WOS would be required to issue a letter of comfort to the RBI for meeting the liabilities of the WOS;
- Corporate Governance: (i) not less than two-third of the directors should be non-executive directors; (ii) a minimum of one-third of the directors should be independent of the management of the subsidiary in India, its parent or associates; (iii) not less than fifty per cent of the directors should be Indian nationals / Non-Resident Indians (NRIs) /Persons of Indian Origin (PIOs) subject to the condition that not less than one-third of the directors are Indian nationals resident in India.
- The branch expansion guidelines as applicable to domestic scheduled commercial banks would generally be applicable to WOSs of foreign banks except that they will require prior approval of RBI for opening branches at certain locations that are sensitive from the perspective of national security;
- Priority Sector lending requirement would be 40 percent for WOS like domestic scheduled commercial banks with adequate transition period for existing foreign bank branches converting into WOS;
- On arm's length basis, WOS would be permitted to use parental guarantee/ credit rating only for the purpose of providing custodial services and for their international operations. However, WOS should not provide counter guarantee to its parent for such support;
- WOSs may, at their option, dilute their stake to 74 percent or less in accordance with the existing FDI policy. In the event of dilution, they will have to list themselves.

The issue of permitting WOS to enter into M&A transactions with any private sector bank in India subject to the overall investment limit of 74 per cent would be considered after a review is made with regard to the extent of penetration of foreign investment in Indian banks and functioning of foreign banks (branch mode and WOS).

Hong Kong: OTC Clearing Hong Kong launches IRS clearing services

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

On November 25, OTC Clearing Hong Kong Limited (OTC Clear) launched its clearing services for inter-dealer interest rate swaps denominated in four currencies: RMB, Hong Kong Dollars, US Dollars

and Euros. It also offers clearing services for inter-dealer non-deliverable forwards referencing RMB, Taiwan Dollars, Korean Won and the Indian Rupee. OTC Clear plans to introduce client clearing in 2014 after the new legislation on the Securities and Futures (Amendment) Bill is in place and relevant amendments to OTC Clear rules are approved by the Securities and Futures Commission. In addition, it will expand its clearing services to cover other OTC derivatives when appropriate.

OTC Clear's clearing members currently comprise of the Bank of China (Hong Kong) Limited, the Hongkong and Shanghai Banking Corporation Limited and Industrial and Commercial Bank of China (Asia) Limited, three of its 12 founding shareholders. OTC Clear is also working with a number of financial institutions in Hong Kong on membership admission arrangements.

Korea:

Government eases regulations of FX transactions

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

On November 11, the Ministry of Strategy and Finance issued a press release announcing the easing of regulations by the Korean government in regard to foreign exchange transactions. The revised regulations will expand the scope of FX transaction-related businesses by non-bank financial institutions and promote the use of the won in foreign exchange related settlements.

The revised regulations include:

- Foreign exchange transactions between securities brokerages will be allowed;
- Investment banks will be allowed to lend securities denominated in a foreign currency by notifying the Bank of Korea following the transaction, instead of reporting it beforehand;
- Trust companies will be allowed to deal with derivatives and credit derivatives. However, credit derivatives which have high capital movement risks should be reported to the Bank of Korea before transactions;
- Borrowing the won from the Korea-China swap currency line will be made easier with the fund to be made available by opening won accounts in Chinese branches of Korean banks instead of having won accounts in Korea;
- Accessing won deposits in foreign banks will be made easier with transactions through domestic banks' accounts to be allowed.

The revisions will take effect in 2014.

FSC announces Basel III capital regulations

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

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

Capital Conservation Buffer will start from 0.625% in January 2016 and gradually increased to 2.5% in December 2019. The total Capital Ratio and the Capital Conservation Buffer will be 10%.

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

Malaysia: Joint consultation paper on OTC derivatives reporting requirements

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

On November 20, Securities Commission Malaysia (SC), Bank Negara Malaysia (BNM) and Perbadanan Insurans Deposit Malaysia (PIDM) issued a joint public consultation paper on requirements for the reporting of OTC derivatives trading activity to a trade repository in Malaysia.

The regulatory agencies will look to leverage on the trade repository as a single point of access to OTC derivatives information for the purpose of performing their respective mandates. Accordingly, the interim reporting of aggregated level data on OTC derivatives implemented by BNM will be phased out when the trade repository has been established. The Consultation Paper highlights include:

- **Reportable Transactions:** All OTC derivative contracts (which may include a swap, forward or option with an underlying reference to foreign exchange, interest rates, credit, commodity or equity, conventional or Islamic derivatives, and of any remaining maturity) must be reported, subject to certain exemptions. Foreign exchange spot transactions are not deemed to be an OTC derivative contract and therefore will not be required to be reported to the trade repository.
- **Exempted Transactions:** A structured product is not a reportable transaction. However, the reporting entity must report these OTC derivative transactions to the trade repository if it enters into an OTC derivative or hedging transaction as a principal party to manufacture the underlying economics of a structured product or if it enters into a hedging transaction as a principal party to manage risks arising from the portfolio of structured products sold to their customers. BNM or SC may also require a reporting entity to report information on structured products that they offer separately on a need to basis. Transactions where BNM or the Government of Malaysia is a party are exempted from reporting requirements under Section 107J(2) of the Capital Markets and Services Act 2007 (CMSA). In addition, PIDM's "member institution" means a financial institution or any person that is deemed to be or prescribed as a member institution under the Malaysia Deposit Insurance Corporation Act 2011. The reporting obligation shall not apply to BNM or the Government of Malaysia.
- **Principal Party:** Each reporting entity who is a principal party to an OTC derivative transaction has an obligation to report the required information directly to the trade repository.
- **Branches:** Each reporting entity must ensure that their reporting covers all transactions to which the reporting entity is a principal party, including transactions which are originated from, negotiated, arranged or booked by its domestic or foreign branches.
- **Treatment of subsidiaries of CMSL holders and BNM licensed entities:** The reporting obligation would apply to a subsidiary company of a CMSL holder or an entity licensed by BNM under the FSA 2013 and IFSA 2013 only if the subsidiary is a "reporting entity" as set out above. The reporting obligation does not extend to a subsidiary which is incorporated in a foreign jurisdiction.
- **Phase-in-reporting:** Reporting will be implemented in three phases. Phase 1 will involve the investment banks licensed by the SC and BNM. Phase 2 will include the CMSL holders other than those captured in Phase 1. Phase 3 will involve any registered person or any other persons who deals in OTC derivative transactions and have exceeded certain reporting thresholds, not captured in Phase 1 or Phase 2. The specific type of entity, the reporting threshold and an appropriate commencement date for reporting to the trade repository will be determined at a later date by the regulatory agencies.

Reporting entities with mandatory reporting obligations include:

- Investment banks licensed by SC under the CMSA and by BNM under the Financial Services Act (FSA) 2013;
- Holders of a Capital Markets Services Licence (CMSL) under the CMSA. These include derivatives brokers, stockholding companies and fund management companies;
- Institutions licensed by the Bank under the FSA and the Islamic Financial Services Act (IFSA) 2013. These include conventional and Islamic commercial banks, international Islamic banks, insurance and reinsurance companies, as well as takaful and re-takaful operators; and
- Any other person dealing in OTC derivatives as prescribed by the SC. The SC will further define the scope of these entities and consult the industry before prescribing any person for this purpose.

Singapore:

MAS publishes derivatives reporting regulations

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

The Monetary Authority of Singapore (MAS) published the Securities and Futures (Reporting of Derivatives Contracts) Regulations 2013, which came into operation on October 31. Reporting will begin on April 1, 2014 for licensed banks and merchant banks for credit and interest rate derivatives. All other financial entities will begin reporting for credit and interest rate derivatives on July 1, 2014. This will be followed by significant derivatives holders on October 1, 2014.

A significant derivatives holder is prescribed as a Singapore resident person with an aggregate gross notional exceeding SGD 8 billion over 4 consecutive quarters. The reporting for all other asset classes is likely to begin in October 2014. A specified derivative contract will need to be reported if it is any interest rate or credit derivative contract which is traded in Singapore or booked in Singapore to a licensed trade repository or licensed foreign trade repository.

SGX consults on clearing fund and default management procedures

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

On November 6, the Singapore Exchange (SGX) issued a consultation paper on the Proposed Refinements to the SGX-DC Clearing Fund and OTCF Default Management Procedures. SGX aims to implement the proposed amendments in February 2014. Singapore Exchange Derivatives Clearing Limited (SGX-DC) is proposing refinements to its Clearing Fund structure and improvements in the auction process for managing a default of a member that clears OTC financial derivatives. The proposed rule amendments specify the appointment and sequence of use of resources in the event of a default.

MAS Consultation Paper on the Review of the Banking Act

Contact: Keith Noyes (knoyes@isda.org) / Jacqueline Low (jlow@isda.org)

On November 28, the Monetary Authority of Singapore (MAS) released a Consultation Paper on the Review of the Banking Act. MAS proposes several changes to the Banking Act (BA) to strengthen its supervisory oversight over banks and codify its expectations regarding the risk management practices that banks should implement. Key proposed amendments include:

Duty to inform MAS of material developments:

- MAS proposes that banks be required to notify MAS as soon as they become aware of any material adverse developments affecting the bank (including the head office and branches) or any entity in its group.
- Material adverse developments include, at a minimum, the breach (or possible breach) of any laws or regulations, business rules or codes of conduct in Singapore or elsewhere.
- Locally incorporated banks are currently required to obtain MAS' prior approval for the appointment of directors, chief executive officers, deputy chief executive officers, chief financial officers and chief risk officers. MAS proposes banks to notify them when they become aware of any material information which may negatively affect the fitness and propriety of any officer whose appointment was approved by MAS.
- Sections 15A and 15B of the BA require the Minister's approval before any person becomes a substantial shareholder of a bank incorporated in Singapore. MAS proposes to require banks incorporated in Singapore to notify them when they become aware of persons who have become shareholders or controllers without obtaining approval. MAS also proposes that banks be required to notify MAS as soon as they become aware of any material information that may negatively affect the suitability of their substantial shareholders and controllers.

MAS' control over key officers and auditors:

- Currently, under section 54(2) of the BA, MAS may direct the removal of a director of a locally incorporated bank or an executive officer of any bank in Singapore if the director or officer has (a) willfully contravened or willfully caused the bank to contravene any provisions of the BA; (b) without reasonable excuse, failed to secure the bank's compliance with the BA or the MAS Act; or (c) failed to discharge any duties of his office where MAS thinks such removal is necessary in the public interest or for the protection of the depositors of the bank.
- MAS proposes replacing the current grounds for removal in section 54(2) with a single criterion of the director or the executive officer ceasing to be fit and proper.
- MAS further proposes to include "interest of the Singapore financial system" as an additional premise for the removal of a bank director or executive officer. This will allow MAS to consider the reputation of and stakeholder confidence in the financial system when determining whether to exercise its power of removal.
- MAS will give prior notice of any intention to remove a bank director/executive officer in accordance with section 54(4) of the BA to afford them an opportunity to show cause against the removal. Any bank or director/executive officer may appeal in writing to the Minister within 30 days after receiving the notice.
- Bank auditors are required to discharge statutory duties to MAS as prescribed in section 58 of the BA. These include reporting the following: a serious breach or non-observance of BA provisions; a criminal offence involving fraud or dishonesty; losses that reduce the capital funds of the bank by 50%; and serious irregularities, including ones that jeopardize the security of creditors.
- To ensure auditors are not held liable for breach of their duties of confidentiality or defamation, MAS proposes to introduce a safe harbor provision into the BA to protect auditors which disclose information to MAS in good faith. MAS also proposes to prescribe the failure of auditors to discharge their statutory duties as an offence. Additionally, MAS proposes to direct the removal of an auditor who has not satisfactorily discharged its statutory functions.

Duty to implement adequate risk management systems and controls:

- MAS proposes to codify its expectation that all banks institute and maintain adequate risk management systems and controls in the BA. Banks will be required to establish a comprehensive

risk management framework and internal controls. MAS will determine whether the risk management systems and controls are adequate.

Submissions deadline is January 15, 2014.

Submission

In November, ISDA made the following submissions:

November 5: Letter to MAS on Over-the-Counter Derivatives Trade Reporting in Singapore

November 15: ISDA submission to Singapore Exchange Limited on Proposed Amendments to SGX-DC Remote Clearing Membership and Derivatives Clearing Organization Rules. This submission is not yet public.

November 19: ISDA submission to ASX Limited on ASX 24 Exchange Traded Derivatives and OTC Interest Rate Derivatives Client Clearing Service Second Consultation Paper on Draft Operating Rules. This submission is not yet public.

Upcoming committee and working group meetings/conferences

Meetings:

Mumbai Members' Meeting	Dec 3
APAC Legal & Regulatory Advisory Group Meeting	Dec 10
Conference call on Malaysia: Joint Public Consultation Paper on TR Reporting Requirement for OTC Derivatives	Dec 10
APAC Commodity Meeting	Dec 11

ISDA APAC Monthly Update

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

ISDA® is a registered trademark of the International Swaps and Derivatives Association, Inc.

©Copyright 2011 International Swaps and Derivatives Association.