

## APAC Monthly Update

**August 2012**

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

### **Regulatory Activities**

#### **Australia:**

On August 7, ISDA held a call with the Australian Securities and Investments Commission (ASIC) and Reserve Bank of Australia (RBA) to discuss RBA's recent policy on domestic and offshore CCP's requirements of holding Exchange Settlement Accounts at the RBA and ISDA's submission to EMIR on the prohibition against non-EU CCPs providing clearing services in the EU.

On August 10, ISDA held a call with the Australian Treasury, to discuss the draft of the Corporations Legislation Amendment (Derivatives Transactions) Bill 2012.

On August 17, ISDA together with Davis Polk, updated the Australian regulators on the DFA requirements and substituted compliance.

On August 30, ISDA together with Davis Polk, updated members of the Australian Financial Markets Association (AFMA) on the impact of the Dodd-Frank developments on Australian banks.

#### **Hong Kong:**

On August 14, ISDA together with the Chairman of the Joint Associations Committee (JAC), met with Ashley Alder, CEO of the SFC and Arthur Yuen, Deputy CEO of HKMA separately to discuss the global developments in the retail structured products space and on the regulatory front.

On August 16, ISDA participated in a consultative meeting for establishing a Financial Services Development Council in Hong Kong.

#### **Korea:**

On August 27, ISDA met with:

- Bank of Korea to discuss the status and challenges of CCP developments in Asia
- members from the Korea Federation of Banks to discuss development of the KRX CCP

On August 28, ISDA met with the Financial Services Commission to discuss the development of the Korean CCP and the need for the Korean CCP to comply with the CPSS-IOSCO standards.

On August 28, ISDA met with the Korea Exchange to discuss its central clearing proposal and various legal and risk management issues relating to the proposal.

**Malaysia:**

On August 8, ISDA met with Bank Negara Malaysia (BNM), Perbadanan Insurans Deposit Malaysia (PIDM) and Securities Commission to discuss various market developments and issues including the recent developments of the Dodd-Frank Act; the current status and implementation of central clearing, trade reporting and trade repositories in Asia and Malaysia; BNM and PIDM's concept paper on Recordkeeping and Reporting Requirements for Over-the-counter Derivatives; netting issues; the BIS-IOSCO paper on margin for non-centrally cleared OTC derivatives; the FAQs for the CMSA and substituted compliance for the DFA.

**Singapore:**

On August 16, ISDA together with the Chairman of JAC, met with MAS to discuss global developments in the retail structured products space. On the same day, ISDA provided an update on global and US regulatory developments at the Singapore Foreign Exchange Market Committee Operations Committee meeting.

On August 17, ISDA discussed with MAS about their second consultation paper on the proposed amendments to the SFA.

**Committee/Working Group Activities**

**South Asia L&R**

On August 30, ISDA held its L&R Members' meeting in Singapore. Topics discussed included ISDA's submission to the Australian Treasury's consultation paper on Corporations Legislation Amendment (Derivatives Transactions) Bill 2012, RBA's consultation paper on New Financial Stability Standards, ISDA's templates dealing with RBI's Comprehensive Guidelines on Derivatives, RBI's circular on Management of Intra-Group transactions and exposures, RBI's report on Enhancing Liquidity in the Government Securities and Interest Rate Derivatives Markets, Shri. Padmanabhan's speeches, RBI's circular on Foreign Exchange Management Act, 1999, RBI's circular on Risk Management and Inter Bank Dealings. ISDA also provided an update on its trip to KL, the New Zealand Takeovers Panel's consultation paper on the Disclosure of Equity Derivatives Positions, MAS's 2<sup>nd</sup> consultation paper on the Proposed Amendments to the Securities and Futures Act on Regulation of OTC Derivatives, ISDA's draft submission to that consultation paper and MAS's 2<sup>nd</sup> response to Feedback on Proposed Regulation of Derivatives Markets in Singapore. Additionally, ISDA updated members on ISDA's two comment letters to the CFTC on the Proposed Interpretive Guidance on the Cross-border application of Certain Swaps Provisions of the Commodity Exchange Act, ISDA's pre-publication draft of Tri Party IA Notices, ISDA's FATCA protocol, ISDA's publication of the DFA protocol and ISDA Amend, ISDA's response to the CE on timing of Own Fund Requirements for Exposures to a CCP in CRD4 and ISDA's comment letter to the EBA's consultation paper on Draft Technical Standards on Capital Requirements for CCPs, the joint Hong Kong, Australia and Singapore regulators' submission to the CFTC's Proposed Amendments to the Securities and Futures Act on Regulation of OTC Derivatives, The discussion paper on the Wheatley Review of Libor and the Standard Chartered Bank vs. Ceylon Petroleum Corporation ruling.

## **North Asia L&R**

On August 28, ISDA held its Legal & Regulatory Commission's meeting in Hong Kong. Topics discussed included the revised QFII regulations issued by CSRC, new short-term benchmark rate introduced in Korea and central clearing in Korea. At the meeting, ISDA also briefed members on the new development in Southeast Asia including ISDA's submission to the Australian Treasury's consultation paper on Corporations Legislation Amendment (Derivatives Transactions) Bill 2012, ISDA's templates dealing with RBI's Comprehensive Guidelines on Derivatives, MAS's 2<sup>nd</sup> consultation paper on the Proposed Amendments to the Securities and Futures Act on Regulation of OTC Derivatives, ISDA's draft submission to that consultation paper and MAS's 2<sup>nd</sup> response to Feedback on Proposed Regulation of Derivatives Markets in Singapore. Additionally, ISDA updated members on ISDA's two comment letters to the CFTC on the Proposed Interpretive Guidance on the Cross-border application of Certain Swaps Provisions of the Commodity Exchange Act and the joint Hong Kong, Australia and Singapore regulators' letter to the CFTC regarding the interpretive guidance, ISDA's pre-publication draft of Tri Party IA Notices, ISDA's FATCA protocol and ISDA's publication of the DFA protocol and ISDA Amend.

## **Operations/Market Infrastructure**

On August 14, ISDA held its APAC Interest Rates Derivatives Operations Working Group meeting to discuss the addition / amendment of floating rate options / matrices and the market practice of unscheduled holiday.

On August 23, ISDA held its APAC Equity Derivatives Operations Working Group meeting to address the documentation of MSCI swap and AEJ Variance Swap, the group also discussed the AEJ reference price source matrix.

## **Member Activities**

On August 16, ISDA held a members' meeting to discuss the MAS second consultation paper on the proposed amendments to the SFA.

## **Regulatory Developments**

### **Australia:**

### **APRA consults on the implementation of the Basel III counterparty credit risk capital reforms**

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On August 10, the Australian Prudential Regulatory Authority (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 Authorized Deposit-taking Institutions (ADIs); subsidiaries of foreign banks; clearing members of CCP; and other internationally active ADIs. Following the submissions received, APRA will issue the final prudential standards for implementation from January 1, 2013. Deadline for submission is September 28, 2013.

APRA's proposals for counterparty credit risk include:

- Introduction of the Credit Value Adjustment (CVA) risk capital charge. Going forward, the counterparty credit risk for bilateral transactions will be the sum of the existing counterparty credit risk default component, and the CVA risk capital charge. However, for ADIs that do not have a material credit risk exposure in OTC derivatives, their CVA risk capital requirement will be calculated as equal to the counterparty credit default capital requirement. The CVA risk capital charge will not apply to trades with a Qualified CCP (QCCP);
- The increased asset value correlation (AVC) whereby an advanced ADI will increase its correlation by multiplying 1.25 in respect of exposures to financial institutions whose assets exceed US\$10 billion and for unregulated financial institutions (e.g., leveraged funds);
- Clearing member (CM) trade exposures to QCCPs will be subject to 2% risk weight. This will also apply to exposures where the CM guarantees that its client will not suffer any losses in the event that CCP defaults. If an ADI is a client of a CM, it will also apply a 2% risk weight if the client is protected from the loss of: (1) default/ insolvency of the CM; (2) default/ insolvency of another client of the CM; or (3) the joint default/ insolvency of the CM and any of its clients. If condition (3) is not met but (1) and (2) are met, a higher risk weight of 4% will be applied. If none of the above conditions are met, the trade exposure will be treated as a bilateral exposure. A CM's trade exposure to its client will be capitalized as a bilateral trade. However, its EAD may be multiplied by 0.71. For the capital charges for a default fund exposures to a QCCP, APRA proposes a simplified method, in which, the default fund exposure will be subject to a 1250% risk weight, capped at 20%.

### **Treasury requests comments on intergovernmental agreement**

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The Australian Treasury is requesting submissions on the advantages and disadvantages of an intergovernmental agreement (IGA) with the US (based on the published US Model IGA) as an alternative to individual agreements between Australian financial institutions and the US Internal Revenue Service. This is in response to concerns about the impact of FATCA compliance on Australian financial institutions and the economy as a whole. The agreement aims to minimize the compliance costs for Australian stakeholders while enhancing the cooperation between the countries. The submission deadline is September 28.

### **RBA consults on New Financial Stability Standards**

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On August 29, RBA released a Consultation on New Financial Stability Standards. In accordance with powers under the Corporations Act 2001 (the Act), RBA has determined Financial Stability Standards (FSSs) for central counterparties (CCPs) and for securities settlement facilities (SSFs). The consultation seeks views on a proposal to revoke existing FSSs and determine new FSSs for both CCPs and SSFs. The aim is to align the Australian regime for regulation of licensed clearing and settlement (CS) facilities with the new CPSS-IOSCO's Principles for Financial Market Infrastructures (FMIs). 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 determined by the Act will only apply to licensed CS facilities and only in matters concerning the stability of the Australian financial system.

Attachment 2 of the Consultation Paper, focuses on the Draft Guidance – Financial Standards for Central Counterparties, which contains 21 standards including: legal basis; governance; framework for the comprehensive management of risks; credit risk; collateral; margin; liquidity risk; settlement finality; money settlements; physical deliveries; exchange-of-value settlements; participant-default rules and procedures; segregation and portability; general business risk; custody and investment risks; operational risk; access and participation requirements; tiered participation arrangements; FMI links; disclosure of rules, key policies and procedures, and market data; and regulatory reporting. ISDA plans to make a submission by the October 19 deadline.

**China: SCH plans central clearing for onshore RMB interest rate swaps**

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Xu Zhen, Chairman of Shanghai Clearing House (SCH), recently said at a Shanghai conference which run from August 28 – 30 that SCH plans to launch central clearing services for onshore RMB interest rate swaps this year to meet the G20 commitments. He also stated that SCH 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.

**India:**

**RBI allows QFIs to hedge currency risk**

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On August 31, RBI released a circular allowing QFIs to hedge their currency risk of their permissible investments with the AD Category-I bank with which they have a rupee account for such investment. The eligibility of the hedge may be determined on the basis of the declaration of the QFI with periodic review undertaken by the AD Category-I bank based on the investment value provided/ certified by QDP of the QFI at quarterly intervals. If the hedge becomes naked in part or in full, the hedge will be allowed to continue until original maturity, if so desired. However, once the contracts are cancelled, they cannot be rebooked. Forward contracts may be rolled over on or before maturity.

For IPO-related transient capital flows, QFIs may undertake foreign currency-rupee swaps only for hedging the flows relating to the IPO. The amount of the swap cannot exceed the proposed amount to be invested in the IPO, the tenor of swap should not exceed 30 days and once the contracts are cancelled, they cannot be rebooked. Rollovers will not be permitted for IPO-related capital flows.

## **Singapore: MAS consults on draft amendments to the SFA**

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On August 3, MAS issued a consultation paper on the draft amendments to the Securities and Futures Act (SFA) in response to the feedback received on its earlier proposals in the consultation paper on the Regulation of the Over-the-Counter Derivatives published on February 13. MAS proposes to introduce two new parts to the SFA.

- Part IIIC will set out the requirements under the clearing obligation. The clearing obligation will cover specified entities dealing in specified clearable derivatives contracts. One of the proposals is that MAS will prescribe specific entities, and exempt entities that fall below the clearing threshold. MAS will consult on subsidiary legislation on the proposed thresholds. Another proposal is the detailed guidance on how eligible CCPs may submit applications under the bottom-up approach and gives MAS powers to request for information from relevant persons. MAS proposes mandatory clearing for derivative contracts where at least one leg of the contract is booked in Singapore and where either (a) both parties are resident or have a presence in Singapore; or (b) where one party is a resident or has a presence in Singapore and the other party would have been subject to the clearing mandate had it been a resident or had a presence in Singapore.
- Part IIID will introduce the reporting obligation and relevant requirements. MAS intends that financial institutions and non-financial entities above a certain threshold be subject to the reporting mandate. MAS will prescribe specified entities, and exempt non-financial entities that fall below certain thresholds. The draft legislation also clarifies that the reporting obligation applies to specified parties acting as agents in a derivatives contract. The reporting obligation will apply to derivative contracts either booked or traded in Singapore.

ISDA will make a submission by the August 31 deadline.

### **Submission:**

On August 20, ISDA made submission to Australian Treasury on Corporations Legislation Amendment (Derivative Transactions) Bill 2012 - Exposure Draft.

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

#### **Meetings:**

APAC IRD Operation Working Group Meeting	Sep 6
Beijing Members' Meeting	Sep 6
Jakarta Members' Meeting	Sep 12
APAC Credit Operations Working Group Meeting –HK	Sep 13
APAC Equity Operations Working Group Meeting – Singapore	Sep 20
L&R North Asia Meeting	Sep 25
L&R South Asia Meeting	Sep 27
Commodity Meeting – Singapore	Sep 28

#### **Conferences:**

Clearing and Regulatory Documentation Conference With a focus on the Volcker Rule and issues facing Chinese banks – Beijing	Sep 7
Understanding the ISDA Master Agreements and Credit Support	

**ISDA APAC Monthly Update**

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