

APAC Monthly Update

March 2015

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

Regulatory Activities

Hong Kong:

On March 20, ISDA participated in an HKMA breakfast meeting to discuss specific issues raised by HKMA in their recent resolution consultancy paper. On the same day, ISDA submitted a comment letter to the HKMA on its suite of draft supplementary trade reporting documentation, including draft FAQs and draft Supplementary Reporting Instructions (SRIs).

On March 25, ISDA moderated a panel on regulatory reform at the Derivatives World Asia Conference in Hong Kong.

On March 30, ISDA sent a follow-up response letter to the HKMA on the timing of additional data fields related to HK trade reporting.

Korea:

On March 5, ISDA co-hosted with Korea Federation of Banks and a netting seminar for prospective members in Seoul.

Committee/Working Group Activities

North Asia L&R:

On March 31, ISDA held its monthly Legal and Regulatory Committee Meeting in Hong Kong. ISDA updated members on the following North Asia developments: latest developments regarding derivatives litigation in China, Shanghai International Energy Exchange consultation on draft trading rules and other supplementary rules, the amended Industry Catalogue for the Guidance of Foreign Investments in China, ISDA's letter to HKMA in relation to the HK trade reporting regime, CFTC's order permitting HKSFCL licensed corporations to deal directly with U.S. customers without having to register with the CFTC, the second stage consultation on establishing an effective resolution regime for financial institutions in Hong Kong, FSC's business guideline for financial market infrastructures to adopt the G20 Principles for Financial Market Infrastructures as the guiding principles for the supervision of its domestic financial market infrastructures, and KRX's revised Enforcement Rules of the Derivatives Market Business Regulation.

ISDA also updated the meeting on the following Southeast Asian developments: ISDA's draft response to the Treasury Consultation Paper on Resolution Regime for Financial Market Infrastructures, MOU

between ESMA and RBA allowing RBA to access data held in European trade repositories, publication of Supplement No.47 to the 2006 ISDA Definitions containing the new rate INR-FBIL-MIBOR-OIS-COMPOUND, update on Malaysian netting opinion, MAS Consultation Paper on Proposed Amendments to the Securities and Futures Act and MOU between MAS and ESMA establishing cooperation arrangements between regarding CCPs authorised by MAS who have applied for recognition under EMIR.

ISDA also briefed members on the revised implementation timeline for margin requirements for non-centrally cleared derivatives.

South Asia L&R:

On March 26, ISDA held its monthly Legal and Regulatory committee meeting in Singapore. The meeting considered a topic raised by a member on the issue of netting for foreign bank branches in Korea. ISDA also updated members on the following developments in South Asia. The following Australian matters were discussed: the Treasury Consultation Paper on resolution regime for financial market infrastructures and ISDA's response, AFMA's efforts to develop a robust risk-free benchmark interest rate to operate alongside the BBSW, the MoU signed by ESMA and RBA on access of data and the consultation paper released by the Council of Financial Regulators on clearing Australian cash equities. The meeting also considered the following India-related matters: the publication of Supplement No 47 to the 2006 Definitions containing the INR –FBIL-MIBOR-OIS-Compound and the India Budget 2015-2016. The meeting also considered the coming into force of the Malaysia Netting of Financial Agreements Act. The meeting then considered the following Singapore-related developments: the MAS consultation paper on proposed amendments to the Securities and Futures Act and ISDA's proposed response and the MoU signed by MAS and ESAM on CCP arrangements.

ISDA also updated members on the following North Asia developments: Shanghai International Energy Exchange consultation on draft trading rules and other supplementary rules, the amended Industry Catalogue for the Guidance of Foreign Investments in China, ISDA's letter to HKMA in relation to the HK trade reporting regime, CFTC's order permitting HKSFC licensed corporations to deal directly with U.S. customers without having to register with the CFTC, the second stage consultation on establishing an effective resolution regime for financial institutions in Hong Kong, the Korean FSC's business guideline for financial market infrastructures to adopt the G20 Principles for Financial Market Infrastructures as the guiding principles for the supervision of its domestic financial market infrastructures, and KRX's revised Enforcement Rules of the Derivatives Market Business Regulation.

ISDA then updated members on the following ISDA efforts and global developments: the draft Chinese translation of the 2014 credit derivatives definitions, the Hague Principles on Choice of Law in International Commercial Contracts, the draft TOTUS Exemption Representative Letter, the pre-publication draft of the ISDA EMIR Classification Letter, the release by IOSCO-BCBS on revisions to the framework and timelines for margin requirements for non-centrally cleared derivatives.

Regulatory Developments

Australia:

Contact: Keith Noyes - knoyes@isda.org / Rishi Kapoor - rkapoor@isda.org

ASIC amends OTC trade reporting rules

On February 9, the Australian Securities and Investments Commission (ASIC) amended its trade reporting rules for over-the-counter (OTC) derivatives following industry consultation and feedback on an earlier consultation. The changes include:

- Introducing ‘snapshot’ reporting instead of ‘lifecycle’ reporting as a permanent option (but also allowing for ASIC to determine otherwise in the future);
- Introducing a ‘safe harbour’ from liability for reporting entities using delegated reporting, if certain conditions are met;
- Expanding the ability of foreign firms to rely on alternative reporting, while also introducing a requirement for firms to ‘tag’ these trades; and
- Making a number of technical changes to the reporting rules, reflecting the proposals in the consultation paper and/or feedback received.

ASIC has also decided not to proceed with the proposal to require the larger subsidiaries of Australian authorised deposit-taking institutions and Australian financial services licensees to report OTC trades, after concluding that the regulatory benefit would not outweigh the additional compliance cost.

RBA and ESMA sign MOU on data access

ESMA and the Reserve Bank of Australia (RBA) have signed a memorandum of understanding that will allow the RBA to access data held in European trade repositories according to its mandate. The MOU is effective from February 18.

The ESMA-RBA MOU is the second cooperation arrangement established under Article 76 of the European Market Infrastructure Regulation (EMIR). This provision is meant to ensure that third-country authorities that do not have trade repositories in their jurisdiction can access information on derivatives held in European trade repositories.

Council of Financial Regulators to review cash equities clearing

The Council of Financial Regulators (CFR), which includes ASIC, the RBA and the Australian Treasury, released a consultation paper on February 11 as part of its review of competition in clearing Australian cash equities. This follows a similar review of competition in the clearing and settlement of Australian cash equities in 2012, in which the CFR recommended a two-year moratorium on competition in the clearing of cash equities, but promised a review after that. With the two-year period ending in early 2015, the consultation paper sets out the scope of the CFR’s review and the issues that will be considered. Following the consultation process, the CFR will consider stakeholder submissions and will advise the government on the findings of its review in due course. The submission deadline is March 27.

CFR consults on clearing and settlement facility licensing

On March 27, the Council of Financial Regulators (CFR) released a consultation paper on the licensing regime for overseas clearing and settlement (CS) facilities. The consultation paper sets out a proposal that aims to provide greater clarity on the circumstances in which a CS facility must be either licensed in Australia or exempted from the Australian CS facility licensing regime. It is not expected that the proposed new approach will result in additional CS facilities being within the scope of Australia’s CS facility licensing regime, and the rest of the Australian CS facility licensing regime will remain unchanged. The submission deadline is May 8.

Hong Kong:**HKMA designates D-SIBs**

Contact: Keith Noyes – knoyes@isda.org

On March 16, the Hong Kong Monetary Authority (HKMA) announced the designation of five authorised institutions as domestic systemically-important banks (D-SIBs). Each of the designated D-SIBs will be required to include a higher loss-absorbency (HLA) requirement in their regulatory capital buffer calculations within 12 months. The full amount of the HLA requirement will be phased in between 2016 and 2019, in parallel with the capital conservation buffer and countercyclical capital buffer. One institution has been designated as an ‘HLA bucket 4’ D-SIB. Three institutions have been designated as ‘HLA bucket 2’ D-SIBs, and one institution has been designated an ‘HLA bucket 1’ D-SIB. The HKMA intends to update the list of D-SIBs and their applicable HLA requirement annually.

CFTC allows US customers to deal with Hong Kong brokers

Contact: Keith Noyes - knoyes@isda.org / Rishi Kapoor - rkapoor@isda.org

On March 19, the US Commodity Futures Trading Commission (CFTC) issued an order to the Hong Kong Securities and Futures Commission (SFC) permitting SFC-licensed corporations to solicit and accept orders and funds directly from US customers for trading on any exchange subject to the SFC’s oversight, without having to register with the CFTC as futures commission merchants (FCMs). This follows similar exemptions granted to other foreign exchanges or foreign regulators. The relief is effective for foreign firms once they file certain representations with the National Futures Association.

These orders allow firms located in certain foreign jurisdictions to deal directly with US customers in non-US markets without having to comply with certain requirements within the Commodity Exchange Act and CFTC regulations, including the requirement to register as an FCM. These foreign firms are permitted to do so because they are subject to comparable customer protection standards in their home jurisdiction.

HKMA allows more time for trade ID reporting

Contact: Keith Noyes - knoyes@isda.org / Rishi Kapoor - rkapoor@isda.org

On March 27, the Hong Kong Monetary Authority (HKMA) sent a letter to all authorised institutions giving them an extra two months to report the unique trade ID (TID) as required under the European Market and Infrastructure Regulation (EMIR) for new transactions, and complete the provision of TIDs for existing transactions. The deadline is now end-May, having been previously postponed from end-December 2014 to end-March 2015.

Malaysia: Netting Act becomes effective

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

The Netting of Financial Agreements Act came into force on March 30. Bank Negara Malaysia, Perbadanan Insurans Deposit Malaysia and Pengurusan Danaharta Malaysia Berhad also announced that a stay period of two business days under the Act became effective on March 30.

South Korea:

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

KRX implements the securities transaction tax exemption

On March 13, the Korea Exchange (KRX) announced its implementation of the securities transaction tax exemption for market-makers of single-stock futures and options based on the amended Restriction of Special Taxation Act.

Going forward, the securities transaction tax (0.3%) will not apply to the portion of underlying stocks that are sold for the purpose of hedging against the risk of price fluctuations that may occur in the course of market-making for single-stock futures and options by the market-makers concerned. The tax exemption was implemented for KOSPI single-stock futures and options market-makers from March 13, and will be expanded to include KOSDAQ's single-stock futures, which will be listed by the end of this year.

KRX revises derivatives enforcement rules

On March 12, the Korea Exchange amended its Enforcement Rules of the Derivatives Market Business Regulation (Korean only). Key contents include:

- Delta for market-makers of single-stock futures and options amended to implement the securities transaction tax exemption (Article 90-3 and Annex 27, with effective date on March 13):
- Single-stock futures: (buying) 1; (selling) -1
- Single-stock options: set based on arrival of the last trading day, type of call and put options, etc (specified in Annex 27)
- Change of institution for calculating the final settlement price of mini-gold futures (Article 30 and 32-2, with effective date on March 20)
- (Current) The London Gold Market Fixing Ltd
- (Revised) InterContinental Exchange Benchmark Administration Ltd (IBA)

FSC publishes FMI guidelines

On March 20, South Korea's Financial Services Commission released business guidelines for financial market infrastructures (FMIs), which adopt the principles for financial market infrastructures (PFMIs), published by the Committee on Payment and Settlement Systems and International Organization of Securities Commissions in 2012. The guidelines have immediate effect.

The guidelines reorganise provisions related to financial market infrastructures, which were scattered through the Financial Investment Services and Capital Markets Act. The 24 key principles of the PFMIs are reorganised into 14 principles in accordance with domestic circumstances, and provide detailed standards for implementation.

FMIs need to self-evaluate on a regular basis whether their internal rules and business operations are in compliance with international standards and disclose the results of self-evaluation. The Financial Supervisory Service will adopt the guidelines as supervisory principles in its supervision on FMIs. The guidelines will serve as guiding principles for new FMI entrants when devising internal rules.

Singapore:**MAS and ESMA cooperate on CCPs in Singapore**

Contact: Keith Noyes (knoyes@isda.org)

The Monetary Authority of Singapore (MAS) and ESMA have signed an MOU to establish cooperation arrangements regarding central counterparties (CCPs) in Singapore that have applied for recognition

under EMIR. The MOU fulfils a pre-condition for ESMA to recognise CCPs in Singapore providing clearing services to European Union (EU) participants and trading venues. This will allow ESMA-recognised CCPs in Singapore to be used by EU market participants to satisfy their mandatory clearing obligations under EU law and will allow EU banks to enjoy lower capital charges for their clearing exposures to such recognised CCPs.

Authorities respond to FATCA agreement

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

On March 17, Singapore's Ministry of Finance (MOF), Inland Revenue Authority of Singapore (IRAS) and Monetary Authority of Singapore (MAS) published their responses to public feedback on the draft income tax regulations and e-tax guide relating to the implementation of the Singapore-US Foreign Account Tax Compliance Act (FATCA) Intergovernmental Agreement (IGA).

A total of 567 suggestions were received from the public consultation, held between September 22 and October 17, 2014. They covered areas such as the information reporting obligations of trusts, the applicability of US regulations and the exemption of supplementary retirement scheme accounts (SRS) and SRS investment accounts. More than 200 suggestions that helped advance the policy objectives for implementing the Singapore-US FATCA IGA were accepted and incorporated into the regulations and e-tax guide. The remaining suggestions were felt to be inconsistent with Singapore's policy on the implementation of the IGA or with the provisions of the IGA.

Upcoming committee and working group meetings/conferences

Meetings:

APAC Legal Regulatory Advisory Group Meeting	Apr 14
Members' Meeting – Mumbai	Apr 15
North Asia L&R Meeting	Apr 28
AEJ Data and Reporting Compliance Working Group Meeting	Apr 29
APAC CCP Risk call	Apr 29
South Asia L&R Meeting	Apr 30
APAC Equity Operations Working Group Meeting	Apr 30

Conference:

ISDA 2015 AGM	Apr 21 -23
---------------	------------

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 2011-2015 International Swaps and Derivatives Association.