

## APAC Monthly Update

**July 2014**

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

### **Regulatory Activities**

#### **Asia Pacific:**

On July 4, ISDA sent a letter to Asian regulatory members of BCBS-IOSCO and WGMR to inform them of ISDA's concerns with draft Relevant Technical Standards for non-cleared derivatives proposed by European regulators.

On July 7, ISDA made a presentation on "The Importance of Legal Infrastructure as Risk Mitigant in Capital Markets" at the APEC Financial Forum.

#### **Singapore:**

On 15 July, ISDA met with MAS to discuss the BCBS margin for uncleared transactions, the various workstreams relating to margin for uncleared transactions, clearing requirements in Asia and client clearing.

### **Committee/Working Group Activities**

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

On July 24, ISDA held its monthly Legal and Regulatory Committee meeting in Hong Kong. ISDA provided updates on the following developments in North Asia: Shanghai Clearing House's start of mandatory direct and client clearing of RMB interest rate swaps, China and the U.S. reaching an agreement in principle in relation to the implementation of FATCA, SAFE's new regulations for RMB/FX derivatives trading with clients, the HKMA and SFC Joint Consultation Paper on Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping) Rules, HKMA's new Supervisory Policy Manual, FSC's announced plan to improve the license system for financial investment businesses as well as its plan for financial regulatory reform, KRX launch of its mandatory clearing service for OTC derivatives and CFTC's time-limited no-action letter for KRX.

ISDA also updated the meeting on the following Australian developments: the release of the ASX consultation paper on possible enhancements to account structure for clients and the Treasury proposal paper on AUD-IRD central clearing mandate.

The following India-related matters were also discussed: the use of the onshore CSA, RBI's framework for dealing with domestically systemically important banks, ISDA's draft submission to RBI on the C-Factor and RBI's circular on India's IGA with the U.S. for the implementation of FATCA.

ISDA provided an update on progress relating to the trade reporting paper issued by the Malaysian regulators.

The meeting considered the following developments in Singapore: MAS proposed legislation for a regulatory framework for financial benchmarks, MAS consultation paper on proposals to enhance regulatory safeguards for investors in the capital markets, MAS consultation on the draft regulations for reporting of foreign exchange derivatives contracts, the coming into effect of the Securities and Futures (Reporting of Derivatives Contracts) (Exemption) Regulations 2014 and MAS consultation on proposed Framework for Systemically Important Banks in Singapore.

ISDA highlighted the following ISDA efforts: an update on the 2014 ISDA Credit Derivatives Definitions, the ISDA Cleared Opinions Working Group, ISDA's letter to the Asian regulators on European draft RTS on OTC margining and update on progress relating to the Reporting Delegation Agreement.

The following global developments were also discussed during the meeting: CFTC's extension of relief related to trade reporting as set out in CFTC Staff Letter 14-90 and CFTC DMO Letter 14-89.

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

On July 31, ISDA held its monthly Legal and Regulatory Committee meeting in Singapore. Members raised the following topics for discussion: a discussion on Bank Indonesia Regulation No. 10/37/PBI/2008 concerning Foreign Exchange against Rupiah Transactions, progress on clearing mandates in each jurisdiction, the impact of U.S. and E.U. sanctions on Russia and Ukraine and the mark-to-market swap architecture.

ISDA updated the meeting on the following Australian developments: the release of the ASX consultation paper on possible enhancements to account structure for clients, the Treasury proposal paper on AUD-IRD central clearing mandate, ASIC's release of the final class exemption which gives effect to the delayed start for Phase 3 entities and the Autonomous Sanctions (Designated Persons and Declared Persons – Ukraine) List 2014.

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ISDA highlighted the following ISDA efforts: an update on the 2014 ISDA Credit Derivatives Definitions, the ISDA Cleared Opinions Working Group, ISDA's letter to the Asian regulators on European draft RTS on OTC margining and update on progress relating to the Reporting Delegation Agreement.

The following global developments were also discussed during the meeting: CFTC's extension of relief related to trade reporting, as set out in CFTC Staff Letter 14-90 and CFTC DMO Letter 14-89, ESMA's consultation on a proposed clearing mandate for certain interest swaps and credit default swaps as well as the endorsement by the European Commission of ESMA's proposed approach to EMIR frontloading requirements.

### **Operations/Market Infrastructure**

On July 2 and 18, 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 July 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 and changes in certain rate fixings.

On July 17, ISDA held its AEJ Data and Reporting Compliance – Asia identifiers & delegated reporting sub-group meeting to discuss the application of trade identifiers and delegated reporting in Australia, Hong Kong and Singapore together with the current technological limitations.

On July 30, 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 and Australia.

### **Regulatory Developments**

#### **Australia:**

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#### **Treasury proposes clearing mandate for AUD IR derivatives**

On July 8, the Treasury issued a proposal paper on the AUD-IRD central clearing mandate. The Proposals Paper builds on the version published in February which proposed the mandating of central clearing for US Dollars, Euro, British Pound and Japanese Yen interest rate derivatives (G4 IRD). The Paper extends the mandatory requirement for central clearing to include interest rate derivatives in Australian dollars as part of the global reforms on OTC derivatives markets in Australia. The Paper proposes that the clearing requirement will only apply to large financial institutions and the Paper provides two options for defining the class of entities that will be captured:

#### **Option A:**

1. any domestic financial entity with \$100 billion or more gross notional OTC derivatives outstanding;
2. any foreign financial entity with \$100 billion or more gross notional OTC derivatives outstanding booked or entered into in Australia;
3. any foreign financial institution with \$100 billion or more of gross notional OTC derivatives outstanding with domestic and foreign financial entities subject to the clearing mandate in Australia under the first two rules above; or

4. any entity that opts in to a mandatory clearing obligation in G4-IRD or AUD-IRD.

Option B:

1. any domestic financial entity with \$100 billion or more gross notional OTC derivatives outstanding;
2. any foreign financial entity with \$100 billion or more gross notional OTC derivatives outstanding booked or entered into in Australia;
3. any entity regulated as a swap dealer in the US; or
4. any entity that opts in to a mandatory clearing obligation in G4-IRD or AUD-IRD.

The threshold will be calculated on a legal entity basis, hence, only outstanding OTC derivatives entered into by the legal entity will be counted. Public entities such as central banks etc., will be out of scope of the central clearing rules.

The Paper also proposes to combine the central clearing mandates for G4 and AUD-IRD in one Ministerial determination with the proposed timetable for implementation: draft Ministerial determination to be released for comments in third quarter 2014; determination and regulations to be made in late 2014; and early 2015 for the clearing mandate to come into force. Deadline for submission is Aug 1.

#### **ASX consults on enhanced account structure for client clearing**

On July 14, the Australian Securities Exchange (ASX) issued a consultation paper to seek input on enhancing account structure for client clearing in both ASX 24 exchange traded derivatives (ASX 24 ETD) and OTC interest rate derivatives.

ASX plans on issuing two consultation papers for client clearing accounts. This is the first consultation paper which provides some background to possible enhancements to the account structure in order to determine the level of collateral protection favored by stakeholders. Based on feedback from this first consultation paper, a second consultation paper will be released in Q4 2014, presenting ASX's proposed solution for an enhanced account structure and its supporting rules framework. The consultation paper proposes the following account structures:

- Individual Client Account (ICA) with Excess – Value Attribution (applies to cash and non-cash collateral)
- ICA with Excess - Asset Attribution (applies to non-cash collateral)
- Full Asset Segregation (applies to cash and non-cash collateral)

Deadline for submission is August 22.

#### **China: SAFE issues new regulations for RMB/FX derivatives trading with clients**

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On June 27, the State Administration of Foreign Exchange (SAFE) issued “Administrative Provisions for Renminbi/Foreign Exchange Derivatives Products Business Offered to Clients by Banks”, which apply to the RMB/FX forward, swap and option transactions between banks and their clients (the “RMB/FX Derivatives”). The provisions (Chinese only), which are intended to facilitate FX hedging by domestic entities, will become effective on August 1. According to the provisions:

- prior to conducting the RMB/FX Derivatives business, banks must file its applications with relevant SAFE offices and satisfy the conditions set out in the provisions (e.g., holding the license for spot FX purchase/sale business from SAFE, having sound risk management system, internal control system, appropriate trading system and personnel, and satisfying the qualifications for financial derivatives business issued by the China Banking Regulatory Commission);

- banks are only allowed to trade RMB/FX Derivatives with domestic entities or individuals for hedging purposes and the underlying anticipatory FX income or existing FX liabilities to be hedged must be eligible for conversation under the relevant regulations regarding spot FX purchase/sale business.
- banks should conduct KYC and due diligence to verify that clients' RMB/FX Derivatives transactions are for hedging purposes;
- For RMB/FX forward transactions, only physically settled transactions are permitted under the provisions;
- For RMB/FX option transactions, only European options are permitted. For cash settled RMB/FX option transactions, the FX rate used to determine the cash settlement amount must be an effective market rate used in the onshore market and the amount should be paid in RMB;
- banks should keep the records regarding their RMB/FX Derivatives business for at least five years; and
- The provisions are also applicable to the RMB/FX Derivatives business conducted by non-banking financial institutions.

### **Hong Kong: HKMA and SFC consult on mandatory reporting**

*Contact: Cindy Leiw (cleiw@isda.org) / Jeffrey Kan (jkan@isda.org)*

On July 18, the Hong Kong Monetary Authority (HKMA) and the Securities and Futures Commission (SFC) issued a consultation paper on mandatory reporting and recordkeeping obligations under the new OTC derivatives regime. Reporting parties are required to report certain vanilla interest rate swaps (floating vs. fixed and floating vs. floating) and non-deliverable forward transactions to the HK Trade Repository. Transactions conducted in Hong Kong are also reportable, subject to certain conditions.

Reporting parties include Authorized institutions (AIs), approved money brokers (AMBs), licensed corporations (LCs), central counterparties (CCPs) that provide clearing services to persons in HK and other persons (subject to a reporting threshold of US\$3billion for IRS and US\$1billion for NDF) that are based in or operate from Hong Kong (Hong Kong persons). In particular, Hong Kong persons will cover all Hong Kong residents and all entities established under Hong Kong law (including all partnerships, trusts, companies and other entities established under Hong Kong law), and all overseas companies registered or required to be registered under the Companies Ordinance (non-Hong Kong companies).

The consultation paper also covers provisions of masking of counterparty information, exemptions and relief and other reporting particulars. The commencement date has not been determined but a 3-6 month grace period is proposed conditionally for reporting new transactions and backloading of transactions. Submission deadline is Aug 18.

### **India: RBI designates domestic systemically important banks**

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

On July 22, the Reserve Bank of India (RBI) released its Framework for dealing with Domestic Systemically Important Banks (D-SIBs). The Framework considers the methodology to be adopted by RBI in identifying D-SIBs as well as promulgating additional regulatory or supervisory policies which D-SIBs will be subject to.

RBI has based its assessment methodology primarily on the Basel Committee on Banking Supervision (BCBS) methodology for identifying Global Systemically Important Banks (G-SIBs). Indicators which would be used for assessment include size, interconnectedness, substitutability and complexity. Based on the sample of banks chosen for computation of their systemic importance, a relative composite systemic

importance score of the banks will be computed. RBI will then determine a cut-off score beyond which banks will be considered as D-SIBs.

RBI notes that based on data as at March 31, 2013, it is expected that about four to six banks may be designated as D-SIBs under various buckets. D-SIBs will be subject to differentiated supervisory requirements and higher intensity of supervision, taking into account the risks they pose to the system. The computation of systemic importance scores will be carried out at yearly intervals. The names of the banks classified as D-SIBs will be disclosed in August of every year starting from 2015.

**Singapore:**

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**MAS publishes Securities and Futures (Exemption) Regulation**

On July 1, the Monetary Authority of Singapore (MAS) published the Securities and Futures (reporting of Derivatives Contracts) (Exemption) Regulations 2014. These regulations came into effect on July 1 this year and exempts certain entities below a \$8 billion threshold from Section 125 of the Securities and Futures Act (the Act), which is the reporting of specified derivatives contracts. The exemptions are as follows:

- A holder of a capital services license to carry on the business of fund management or real estate investment trust management is exempted from section 125 of the Act if the total value of the holder's managed assets as at the last day of its most recent completed financial year does not exceed \$8 billion; or where the holder has not held the capital markets services license for a full financial year, the total value of the holder's managed assets does not exceed \$8 billion;
- An approved trustee under section 289 of the Act of a collective investment scheme managed by (a) a holder of a capital markets services license who is exempt from section 125 of the Act under paragraph (1); (b) a Registered Fund Management Company; or (c) a person (but not a specified person) who carries on the business of fund management, is exempted from section 125 of the Act in respect of a specified derivatives contract which it enters into in its capacity of a trustee.

**MAS consultation on reporting of FX derivatives**

On July 10, MAS released a consultation paper on the draft regulations for reporting of foreign exchange derivatives contracts. The draft regulations propose the following on FX derivatives requirements:

- The reporting of FX derivatives will be phased-in. The first phase will be FX derivatives booked in Singapore by banks on April 1, 2015. The draft amendment regulations are expected to come into effect by September 30, 2014, which will provide banks with a 6 months transition period. The second phase will be FX derivatives that are traded in Singapore by banks by October 1, 2015;
- Banks are to report information in Part I, IA and IV of the First Schedule by April 1, 2015. This will be followed by the information in Part IB of the First Schedule by October 1, 2015;
- For the other specified derivatives contracts that have been previously prescribed for reporting, MAS proposes for banks to report the additional information in Part IA of the First Schedule by April 1, 2015 and information in Part IB of the First Schedule by October 1, 2015. Part IA of the First Schedules are data fields relating to information for all classes of specified derivatives contracts while Part IB of the First Schedule are data fields relating to collateral;
- FX derivatives are forwards, swaps and options that are related to currencies or currency indices, or whose cash flows are determined by reference to currencies or currency indices. This will include non-deliverable forwards (NDFs), non-deliverable options (NDO) and non-deliverable exotic options. Information regarding the execution, termination, amendments, modifications,

variations to a FX derivative must be reported within 2 business days after the execution, termination, amendment, modification, variation or change.

- MAS does not intend to require the reporting of transactions that are considered by the market to be spot transactions, MAS proposes not to require the reporting of transactions settled by the actual delivery of the underlying currency within 2 business days of execution. MAS will assess the readiness of non-bank entities to report FX derivatives at a later stage and provide a transition period as appropriate.

On trading in Singapore, MAS proposes to tie the execution of the transaction to a trader as opposed to a trading desk. MAS further proposes to consider any transaction that is executed by a trader who is generally employed in Singapore, regardless of the trader's physical location at the time of transaction, having been traded in Singapore. Additionally, MAS proposes to consider a trader to be employed in Singapore if he conducts, or is authorized to conduct on behalf of specified persons, activities relating to the execution of derivatives contracts in Singapore for more than half the preceding quarter.

On masking relief for counterparty information, specified persons will not need to report counterparty information before November 1, 2015, subject to the condition as stated in the Draft Regulations. However, this masking relief will not be extended to EU countries. MAS proposes to remove all EU countries from the Fifth Schedule. Deadline for submission is Aug 8.

#### **MAS consults on regulatory safeguards for investors**

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

On July 21, the Monetary Authority of Singapore (MAS) released its consultation paper on proposals to enhance regulatory safeguards for investors in the capital markets after reviewing its regulatory framework in light of recent market developments. The proposals consult on three key areas:

- extending to investors in non-conventional investment products the current regulatory safeguards available to investors in the capital markets;
- requiring investment products to be rated for complexity and risks, and for these ratings to be disclosed to investors; and
- refining the investor classes under the Securities and Futures Act (SFA) and the Financial Advisers Act (FAA).

By way of background, MAS has taken into account, among others, that the pace of development of the capital markets necessitates continual review of the regulatory framework to ensure that it remains relevant and effective in achieving its regulatory objectives. Additionally, the myriad pieces of product information being pushed out to investors as a result of more complex features underscore the need for better means of illustrating the risk-return trade-offs associated with each product.

Part I of the paper proposes to modify the scope of capital markets products under the SFA and FAA. MAS proposes to subject the offer and distribution of products and schemes that exhibit similar features as regulated capital markets products to the same treatment under the SFA and FAA.

Part II of the paper tackles regulated investment products which are offered to retail investors by introducing a framework by which all investment products can be rated for their complexity and the risk that investors may lose some or all, or more than their principal investment amount. It also requires product issuers to rate their products and disclose these ratings in regulated offering documents and through other stipulated channels.

In Part III, MAS notes that while the existing tiered level of regulator protection is appropriate for safeguarding the interest of retail investors, it has nonetheless set out proposals to refine and streamline classes of non-retail investors. Submission deadline is September 1.

### **MAS consults on financial benchmarks regulatory framework**

*Contact: Cindy Leiw (cleiw@isda.org) / Erryan Abdul Samad (eabdulsamad@isda.org)*

On July 29, the Monetary Authority of Singapore (MAS) released a consultation paper on legislation to introduce a regulatory framework for financial benchmarks which will bring the regulation of benchmark setting activities into the regulatory ambit of MAS. This follows the MAS consultation in June 2013 which had set out certain policy proposals for introducing a regulatory framework for financial benchmarks. MAS has also issued a response paper to the 2013 consultation.

The proposed legislation provides, among others, that the manipulation of any financial benchmark in Singapore will be made liable to criminal and civil sanctions under the Securities and Futures Act. This will apply to acts of manipulation occurring within Singapore and in respect of financial benchmarks administered in Singapore. Additionally, administrators and submitters of financial benchmarks designated by MAS will be subject to regulation, including licensing requirements. MAS will designate key financial benchmarks, taking into account their systemic importance and susceptibility to manipulation. Presently, MAS intends to designate the SIBOR and SOR as key benchmarks.

Submission deadline is August 29.

### **South Korea:**

#### **2014 ISDA Korean Law CSA published**

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On July 3, ISDA published the 2014 ISDA Korean Law Credit Support Annex (Bilateral Form – Loan and Pledge). This was prepared for use in documenting bilateral security and other credit support arrangements between counterparties for transactions documented under an ISDA Master Agreement for which the parties intend to use two different methods (pledge and lending) of providing Korean collateral (for transactions documented under a 1992 ISDA Master Agreement or 2002 ISDA Master Agreement). A user's guide has also been published alongside the Annex. Both documents are available for purchase in the ISDA Bookstore.

### **FSC announces plan for financial regulatory reform**

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On July 10, the Financial Services Commission (FSC) announced its plan for financial regulatory reform to create new opportunities and growth drivers for Korea's financial industry and economy. Key points with regards to new business opportunities for the financial industry include:

- If a financial company is granted a business license for financial investment business, the company will be allowed to add a new business within the licensed category with registration only;
- For banks, the FSC will allow sales of OTC derivatives of currency, interest rate, commodity and credit as part of efforts to integrate different sectors of the financial industry to boost efficiency;
- Domestic financial companies will be permitted to operate overseas businesses which are not allowed under the Korean law in a foreign country as long as such businesses are permitted under the country's law;



- Non-banking financial institutions such as insurers and brokerage firms will be allowed to own overseas banks.

**FSC to improve license system for financial investment businesses**

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On July 15, the FSC announced its plan to ease regulations on license system for financial investment business, which includes integrating business units for license, currently overly subdivided, and simplifying license process. A draft bill to revise relevant laws and supervision regulations will be submitted to the National Assembly by the end of this year. Measures that can be taken without law revision will be implemented in September.

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

**Meetings:**

APAC IRD Operation Working Group Meeting Call	Aug 4
APAC Legal Regulatory Advisory Group Meeting	Aug 5
Members' Meeting – Seoul	Aug 22
AEJ Data and Reporting Compliance Working Meeting -	Aug 25
North Asia L&R Meeting	Aug 26
APAC CCP Risk call	Aug 27
South Asia L&R Meeting	Aug 28

**Conference:**

Understanding the ISDA Master Agreements Conference Including the Update on Documentation and the Use of the ISDA Master Agreement in Client Clearing – Singapore	Aug 19
Understanding Collateral Arrangements and the ISDA Credit Support Documents Conference Including Close-outs under the ISDA Credit Support Annex – Singapore	Aug 20
OTC Derivatives Clearing Conference – Seoul	Aug 21

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

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