

## APAC Monthly Update

### January 2014

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

#### **Regulatory Activities**

##### **Korea:**

On January 20, ISDA met with:

- the Korea Securities Depository (KSD) to understand KSD rules on pledged collateral and discuss issues around rehypothecation of collateral. ISDA also explained the ISDA Korean law CSA to the CEO and working staff in KSD and requested that they consider how rehypothecation of pledged collateral could be made easier and better enforceable.

- the Korean Financial Services Commission (FSC) to discuss the status of FSC dialogue with ESMA/EC on an MOU and Korean country equivalence, as well as risk allocation at the end of the waterfall. FSC advised that they expected the Korea Exchange to be recognized as a 3<sup>rd</sup> country CCPs by ESMA this year (2014). ISDA reiterated the hope that the FSC would complete legal and administrative preparations for clearing, including 3<sup>rd</sup> country recognition issues, prior to the beginning of mandatory clearing.

- the Korea Exchange (KRX) to discuss preparations for central clearing and recent KRX risk management issues around HanMag Securities' default.

On January 21, ISDA met with the Bank of Korea to discuss their updated plans regarding trade reporting for OTC derivatives.

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

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

On January 28, ISDA held its North Asia Legal & Regulatory Committee meeting in Hong Kong. Members discussed the SAFE notice on adjusting the administration of RMB/FX derivatives business, the SFC's proposed guidelines on internal product approval process of the product providers, SFC's circular to licensed corporations on reporting of OTC derivatives transactions to HKTR, the consultation paper on an Effective Resolution Regime for Financial institutions in Hong Kong, the plans of the FSC in Korea to improve security of derivatives transactions, the FSC allowing the KRX "shutdown switch" for erroneous derivatives trades, and the HanMag securities default at KRX and the capital regulations announced by the FSC under Basel III.

The meeting also discussed the final prudential standard APS 210 released by APRA, the retirement of RBI Deputy Governor Anand Sinha, the possible merger of SEBI and the Forward Markets Commission, the circular released by RBI on interim arrangements for Banks' Exposure to Central Counterparties,

SEBI's release of its SEBI (Foreign Portfolio Investors) Regulations 2014, RBI's appointment of CCIL as the LOU for LEIs in India, RBI's release of its Draft Report of the Committee on Financial benchmarks, RBI granting QCCP status to CCIL, SEBI declaring NSCCL, ICCL and MCX-SXCCL to be QCCPs, RBI's notification on Capital Requirements for Banks' Exposures to Central Counterparties coming into effect on January 1, RBI's notification on Novation of OTC Derivatives Contracts, RBI's notification allowing cash-settled interest rate futures on 10-year IGS, RBI's circular on the Reporting Platform for OTC Foreign Exchange and Interest Rate Derivatives, RBI's Draft Framework for Dealing with Domestic Systemically Important Banks and RBI's clarification on the application of capital gains and stamp duty on foreign banks' subsidiarisation.

The meeting also considered ISDA's draft submission on Indonesian Law No. 24 and ISDA's submission on the Joint Public Consultation Paper on Trade Repository Reporting Requirement for Over-the-Counter Derivatives. ISDA provided an update on the MoU signed by the CFTC and MAS on the supervision of cross-border entities, CFTC's Order granting SGX-DC registration as a DCO, CFTC's No-Action Letter No. 13-74 to SGX-DC and its clearing members, MAS's consultation paper on Related Party Transaction Requirements for Banks, MAS's release of the Consultation Paper on the Review of the Banking Act and SGX's Consultation Paper on Proposed Refinements to the SGX-DC Clearing Fund and OTCF Default Management Procedure as well as the inclusion of close-out netting safe harbor in Vietnam's proposed Bankruptcy Law.

ISDA also updated members on the paper on Standard Initial Margin Model for Non-Cleared Derivatives, the Research Note published by ISDA on "Footnote 88 and Market Fragmentation: An ISDA Survey" and the ISDA memo on key global dates for OTC derivatives reforms.

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

On January 23, ISDA held its Asia-Pacific Legal & Regulatory Committee meeting in Singapore. Members discussed the first-stage public consultation paper on AN Effective Resolution Regime for Financial institutions in Hong Kong released by the Financial Services and Treasury Bureau, HKMA, SFC and IA and also considered the treatment of Friday 3 July 2015 as a U.S. holiday.

The meeting discussed the final prudential standard APS 210 released by APRA, the retirement of RBI Deputy Governor Anand Sinha, the possible merger of SEBI and the Forward Markets Commission, the circular released by RBI on interim arrangements for Banks' Exposure to Central Counterparties, SEBI's release of its SEBI (Foreign Portfolio Investors) Regulations 2014, RBI's appointment of CCIL as the LOU for LEIs in India, RBI's release of its Draft Report of the Committee on Financial benchmarks, RBI granting QCCP status to CCIL, SEBI declaring NSCCL, ICCL and MCX-SXCCL to be QCCPs, RBI's notification on Capital Requirements for Banks' Exposures to Central Counterparties coming into effect on January 1, RBI's notification on Novation of OTC Derivatives Contracts, RBI's notification allowing cash-settled interest rate futures on 10-year IGS, RBI's circular on the Reporting Platform for OTC Foreign Exchange and Interest Rate Derivatives, RBI's Draft Framework for Dealing with Domestic Systemically Important Banks and RBI's clarification on the application of capital gains and stamp duty on foreign banks' subsidiarisation.

The meeting also considered ISDA's draft submission on Indonesian Law No. 24 and ISDA's submission on the Joint Public Consultation Paper on Trade Repository Reporting Requirement for Over-the-Counter Derivatives. ISDA provided an update on the MoU signed by the CFTC and MAS on the supervision of cross-border entities, CFTC's Order granting SGX-DC registration as a DCO, CFTC's No-Action Letter No. 13-74 to SGX-DC and its clearing members, MAS's consultation paper on Related Party Transaction Requirements for Banks, MAS's release of the Consultation Paper on the Review of the Banking Act and SGX's Consultation Paper on Proposed Refinements to the SGX-DC Clearing Fund and OTCF Default

Management Procedure as well as the inclusion of close-out netting safe harbor in Vietnam's proposed Bankruptcy Law.

The meeting discussed the SAFE notice on adjusting the administration of RMB/FX Derivatives Business, the SFC's proposed guidelines on internal product approval process of the product providers, SFC's circular to licensed corporations on reporting of OTC derivatives transactions to HKTR, the plans of the FSC in Korea to improve security of derivatives transactions, the FSC allowing the KRX "shutdown switch" for erroneous derivatives trades, the HanMag securities default at KRX and the capital regulations announced by the FSC under Basel III.

ISDA provided an update on the proposed new definition of IDR JISDOR, the proposed new definitions of PHP-PHIREF-BAP and PHP-PHIREF-Reference Banks, changes to THBFIX, the publication of the ISDA/FOA EMIR Reporting Delegation Agreement, ISDA's paper on Standard Initial Margin Model for Non-Cleared Derivatives, the Research Note published by ISDA on "Footnote 88 and Market Fragmentation: An ISDA Survey" and the ISDA memo on key global dates for OTC derivatives reforms. Updates were also provided on the advance notice issued by the U.S. Federal Reserve Board of proposed rule-making inviting public comments on physical commodity activities conducted by financial holding companies, the suspension of publication of all maturities of EUR LIBOR ISDAFIX. The publication of draft ITS by the European Commission with regard to supervisory reporting of institutions under CRD IV, various CFTC announcements, including Staff Advisory 13-69 being subject to a formal notice and comment period, Staff Letter No. 14-01 extending the non-action relief contained in previous Staff Letter No. 13-71 and the comparability determinations for substituted compliance purposes released by the CFTC, the letter from the European Commission to IOSCO APRC in response to IOSCO APRC's letter on Asian CCP recognition, ESMA's updated implementation Q&As and the approval of the final draft of the Volcker Rule by federal financial regulators.

### **Operations/Market Infrastructure**

On January 9, 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 industry preference of an unscheduled holiday.

On January 16, 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, the latest update of adding certain disclaimers or representations in a confirmation, the documentation practice of certain products and the electronic confirmation migration of a vendor.

On January 8, 21 and 28, ISDA held its AEJ Data and Reporting Compliance – reporting nexus sub-group meeting to discuss the reporting nexus matters in the region.

On January 7, 16, 23 and 28, ISDA held its AEJ Data and Reporting Compliance – Asia identifiers sub-group meeting to discuss the application of trade identifiers in Australia, HK and Singapore.

On January 23, ISDA held its AEJ Data and Reporting Compliance working group meeting to discuss the trade reporting progress in the region.

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

#### **Seoul Member's Meeting**

On January 20, ISDA held a members' meeting in Seoul. Topics discussed included the progress of Han Mag Securities default as well as KRX's action for its solution and their role/responsibility as a CCP in

case of erroneous transactions. The meeting also discussed ESMA's response to KRX registration application, technical advice on third country regulatory equivalence under EMIR for Korea, an update of discussion with Kim&Chang on the progress of both ISDA Korean Law CSA and the User's Guide and Ministry of Strategy and Finance release of announcement on the easing of regulations in relation to foreign exchange transactions.

ISDA also provided an update on global regulatory developments, in particular, CFTC's substituted compliance assessments for Australia, Canada, the European Union, Hong Kong, Japan, and Switzerland, CFTC Letter No. 13-71 in relation to CFTC Staff Advisory 13-69, CFTC release of SGX's registration as DCO under Section 5b of the Commodity Exchange Act, CFTC's Memorandum of Understanding with MAS for enhancing supervision of cross-border regulated entities, CFTC's series of NALs at the end of December 2013, the IOSCO APRC letter to the European Union on Asian CCP recognition and the European Commission's response letter in Dec and ESMA's publication of its draft extraterritoriality RTS.

ISDA also updated the meeting on certain ISDA efforts and current documentation projects, including an update of ISDA/FOA Client Clearing Addendum, the preparation of the Quick Reference Guides on U.S., EU and Asian OTC derivatives reforms, the publication of the ISDA 2013 DF Agreement for non-U.S. transactions, the ISDA statement letter received from major resolution authorities and the response to FSB consultation Assessment Methodology for the Key Attributes of Effective Resolution Regimes for Financial Institutions. In addition, ISDA and Seoul members have selected a theme, 'OTC Derivatives Client Clearing In-depth and Clearing General' for ISDA Seoul Conference set for the 21<sup>st</sup> August.

### **Regulatory Developments**

#### **China: Notice on evaluation of financial market infrastructures**

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

On January 21, the People's Bank of China and the China Securities and Regulatory Commission published the "Notice on Carrying out Evaluation of Financial Market Infrastructures". In the notice, it was mentioned that the regulators would jointly evaluate a number of China's financial market infrastructures including CCPs and TRs according to the "Principles for financial market infrastructure Disclosure framework and Assessment methodology" issued by IOSCO and CPSS. The assessment is due to be completed by March.

#### **Hong Kong: Resolution regime for financial institutions**

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

On January 7, the Financial Services and the Treasury Bureau, together with the Hong Kong Monetary Authority (HKMA), the Securities and Futures Commission (SFC) and the Insurance Authority (IA), issued the first-stage public consultation paper on An Effective Resolution Regime for Financial Institutions in Hong Kong. Key highlights of the paper include:

- Initial thinking and proposals on how a "resolution regime" might be established, which provides the authorities in Hong Kong with powers to bring about the orderly resolution of financial institutions (FIs) which could pose systemic risk if they were to become non-viable and, in so doing, complies with the Financial Stability Board (FSB)'s "Key Attributes of Effective Resolution Regimes for Financial Institutions" (Key Attributes) published in November 2011. The Key Attributes are the new international standards for resolution regimes. The FSB has indicated that all of its member jurisdictions (including Hong Kong) should implement resolution regimes which are compliant with the Key Attributes by the end of 2015;

- The Government and regulators' current thinking on legislative changes needed to bring Hong Kong's existing arrangements in line with the Key Attributes are described. A number of gaps were identified in the existing supervisory intervention powers or toolkits of the local regulators when compared to the Key Attributes. To address these gaps and provide the basis for a robust resolution regime, a single cross-sectoral regime is proposed and a case is made for each of the sectoral regulators (HKMA, SFC and IA) to be designated as the resolution authorities for FIs within their purview.
- Consideration on which FIs should fall within the scope of the regime (taking into account which FIs could pose systemic risk on failure) as well as the conditions under which the regime will be used and the objectives to be advanced in any resolution. The powers which are proposed to be made available to the resolution authorities to stabilize and resolve an FI are those identified in the Key Attributes (namely transfer of the FI or some or all of its business to another FI or to a bridge institution and "bail-in" of liabilities to recapitalize the FI);
- Discussion on whether a "temporary public ownership" option should be made available;
- Safeguards that should be available to parties affected by resolution and how the resolution regime might operate in a cross-border context;
- Discussion on how certain rights of creditors might be temporarily suspended during the initial stages of resolution.

Submission deadline is April 6.

#### **India:**

##### **RBI grants Qualified Central Counterparty Status to CCIL**

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

On January 1, the Reserve Bank of India (RBI) granted the status of Qualified Central Counterparty (QCCP) to The Clearing Corporation of India Ltd. (CCIL). CCIL has qualified as a QCCP on the basis that it is authorized and supervised by the RBI under the Payment and Settlement Systems Act, 2007. It is also subject, on an on-going basis, to rules and regulations that are consistent with the Principles of Financial Market Infrastructures (PFMIs) issued by CPSS-IOSCO. In July 2013, CCIL was designated as a critical Financial Market Infrastructure (FMI) for oversight considering its systemic importance in financial markets regulated by the RBI.

##### **Draft Report of the Committee on Financial Benchmarks**

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

On January 3, the Reserve Bank of India (RBI) released its Draft Report of the Committee on Financial Benchmarks. The Report considers different measures recommended by various international bodies/committees and reforms which are already underway in key benchmarks, and provides an in-depth analysis of the existing methodology and governance framework of the major Indian Rupee interest rate and foreign exchange benchmarks.

The Report found the existing system generally satisfactory, but several measures are recommended to strengthen benchmark quality, methodology and the governance framework of the Benchmark Administrators, Calculation Agents and Submitters. In line with the international move towards greater regulatory oversight, the Report also reviews the existing regulatory powers of RBI over the financial benchmarks. It recommends, as a long term measure, amendments to the Reserve Bank of India Act to empower the RBI to determine benchmark policy in Money, G-sec, Credit and Foreign Exchange markets and to issue binding directions to all the agencies involved. Pending these amendments, the Report recommends appropriate regulatory and supervisory framework to be put in place by RBI for the above financial benchmarks under its existing statutory powers. Submission deadline is January 17.

### **RBI publishes interim arrangements for bank's exposure to CCPs**

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

On January 7, RBI issued a circular on the interim arrangements for Banks' Exposure to Central Counterparties (CCPs). As an interim measure, a bank's clearing exposure to a Qualifying CCP (QCCP) will be excluded from the exposure ceiling of 15% of its capital funds for a single counterparty. The clearing exposure will include trade exposure and default fund exposure. Other exposures to QCCPs such as loans, credit lines, investments in the capital of the CCP, liquidity facilities etc. will remain within the existing exposure ceiling of 15% of capital funds to a single counterparty. All exposures of a bank to a non-QCCP will fall within the 15% exposure ceiling to a single counterparty.

Banks will be required to report their clearing exposures to each QCCP to RBI. RBI may initiate suitable measures, requiring banks to initiate risk mitigation plans if their exposures to QCCPs are considered high. Currently, there are four QCCPs in India: Clearing Corporation of India Ltd. (CCIL), National Securities Clearing Corporation Ltd. (NSCCL), Indian Clearing Corporation Ltd. (ICCL) and MCX-SX Clearing Corporation Ltd. (MCX-SXCCL).

### **Korea: Plan for improving security of derivatives transactions announced**

*Contact: Keith Noyes (knoyes@isda.org) / Claire Kim (ckim@isda.org)*

On January 15, the Financial Services Commission (FSC) together with the Financial Supervisory Service (FSS), the Korea Exchange (KRX) and the Korea Financial Investment Association (KOFIA) announced a plan to improve the security of derivatives transactions. The introduction of a "shutdown switch" and price banding limits is intended to prevent the recurrence of large scale losses from erroneous orders, and to mitigate settlement risk and violent price fluctuations of derivatives. The FSC will implement the measures before the end of the first half of 2014 by amending the related rules and improving systems. Key highlights of the plan include:

- The FSC will encourage securities firms to strengthen the standard of their internal control systems related to excessive orders, and supervision thereof by the FSS and the KRX will be enhanced;
- Currently, the KRX runs the price limits and circuit breakers (CBs) as safety mechanisms, which are inadequate for controlling excessive price fluctuations. In future, KRX will allow all securities firms to trade derivatives within a certain price range of the latest trade price during market hours, depending on the type of derivatives. Similar systems are now in force in the US (CME), Germany (Eurex) and Japan (OSE);
- At present, under an agreement by counterparties, a derivatives price could only be corrected. Going forward, if necessary, erroneous transactions can be canceled by the KRX's authority in order to maintain stability in settlement;
- All securities firms dealing derivatives will be required to upgrade their trading platforms so as to minimize algorithmic errors and enhance their risk management and internal control systems against possible mistakes.

### **Singapore: MAS opens applications for RQFII**

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

On January 24, the Monetary Authority of Singapore (MAS) announced that eligible financial institutions may submit applications for the Renminbi (RMB) Qualified Foreign Institutional Investor (RQFII) license. The RQFII license will allow these institutions to offer RMB investment products and invest offshore RMB into China's securities markets. The applications are made to the China Securities

Regulatory Commission (CSRC) via approved custodian banks. All Singapore-incorporated financial institutions that are approved by MAS to conduct fund management activities may apply for the license. Singapore was allocated an aggregate quota of RMB 50 billion under China's RQFII programme.

**Submission**

On January 20, ISDA made submission to Securities Commission Malaysia, Bank Negara Malaysia and Perbadanan Insurans Deposit Malaysia on Joint Public Consultation Paper on Trade Repository Reporting Requirement for Over-the-Counter Derivatives. This submission is not yet public.

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

**Meetings:**

APAC Legal & Regulatory Advisory Group Meeting	Feb 11
New Zealand Members' Meeting	Feb 12
Call Proposed Additional Provisions for Benchmarks	Feb 13
Taipei Members' Meeting	Feb 17
Industry call with MAS	Feb 18
North Asia L&R Meeting	Feb 24
APAC CCP Risk call	Feb 26
South Asia L&R Meeting	Feb 27

**Conference:**

US & European Swap Regulations Conference – Taipei	Feb 18
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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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