

APAC Monthly Update

April 2013

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

Regulatory Activities

Australia:

From April 9-11, ISDA attended the Asia-Pacific Financial Market Forum in Sydney. ISDA met with regulators during the period and made a presentation on market infrastructure developments (CCPs and TRs) and regulatory conflict issues in the region.

On April 11, ISDA, together with the Australian Financial Markets Association (AFMA), held a discussion with Australian Securities and Investments Commission (ASIC) on its consultation paper on Derivative Transaction Reporting.

Hong Kong:

On April 19, ISDA, the Asia Securities Industry & Financial Markets Association (ASIFMA) and a group of European banks met with the Hong Kong Securities and Futures Commission (SFC) to discuss issues around ESMA recognition of 3rd country CCPs. The group also discussed the possible role that IOSCO could play in developing globally transparent recognition standards. SFC CEO Ashley Alder will become the chairman of the IOSCO Asian Regional Committee at the end of April.

Singapore

On April 19, ISDA conducted a presentation for the Monetary Authority of Singapore (MAS) on OTC derivatives regulatory reforms and extra-territoriality.

On April 26, ISDA met with the Energy Market Authority Singapore to discuss the development of power derivatives in Singapore.

Committee/Working Group Activities

North Asia L&R

On April 30, ISDA held its monthly Legal & Regulatory meeting in Hong Kong. Topics discussed included Hong Kong regulators' announcement to comply with CPSS-IOSCO Principles for financial market infrastructures, ISDA submission to ASIC on Consultation Paper 201 Derivatives Trade Repositories, ISDA submission to ASX on Consultation Paper on Draft Operating Rules, the

Corporations and Financial Sector Legislation Amendment Bill 2013 in Australia and the proposed new banking law in Indonesia. ISDA also updated members on the Proposed ISDA Reporting Protocol, the new Annotated Versions of ISDA August 2012 Dodd-Frank Protocol Documentation, the Exclusionary Terms and Keepwell Terms and recently published Version 2.1 of Appendix to the 2011 ISDA Equity Derivatives Definitions incorporating terms of index variance swaps for the Asian open markets.

South Asia L&R

On April 18, ISDA held its L&R Members' meeting in Singapore. Topics discussed included ISDA's submission dated April 12 to the Australian Securities & Investments Commission (ASIC) on its Consultation Paper 201 on derivatives trade repositories, ISDA's submission to the Australian Securities Exchange (ASX) on its Consultation Paper on Draft Operating Rules, Consultation Paper 205 on derivatives transaction reporting released by ASIC on March 28 as well as the Australian Parliament's introduction on March 20 of the Corporations and Financial Sector Legislation Amendment Bill 2013. The meeting also discussed the release of the Indian netting survey results on April 8 and the introduction of a proposed new banking law in Indonesia to regulate the operation of foreign banks. Also discussed was the decision by Perbadanan Insurans Deposit Malaysia (PIDM) and Bank Negara Malaysia (BNM) not to proceed with proposals in its joint concept paper released on March 26, 2012 on Recordkeeping and Reporting Requirements for Over-the-Counter Derivatives. The meeting discussed the announcement regarding its founding shareholders on April 8 by OTC Clear in Hong Kong and the announcement on March 28 by the Hong Kong Monetary Authority (HKMA) and the Securities and Futures Commission (SFC) of their commitment to comply with CPSS-IOSCO Principles for financial market infrastructures. The meeting also provided an update on current ISDA efforts and projects including an update on the Proposed ISDA Reporting Protocol, an update on the Working Group on Conflicts between Mandatory Trade Reporting Requirements and National Laws, ISDA's publication on April 12 of the new annotated versions of the ISDA August 2012 Dodd-Frank Protocol Documentation, the update of the ISDA DF Disclosures, the release of the pre-publication drafts of Exclusionary Terms and Keepwell Terms, ISDA's publication on April 10 of Version 2.1 of Appendix 2.1 to the 2011 ISDA Equity Derivatives Definitions and the call for participation in the accumulators/ decumulators project. The meeting also discussed the CPSS-IOSCO's publication on April 11 of its consultative report entitled "Authorities' access to trade repository data" and the publication by BCBS and IOSCO on April 2 of the responses received on the consultation on margin requirements.

Operations/Market Infrastructure

On April 9, ISDA held its APAC Interest Rates Derivatives Operations Working Group meeting to brief the latest regional developments on rates. The group also discussed the addition / amendment of floating rate options/matrices, the issues on electronically confirming certain products, novation practice and the upcoming changes in certain rate fixings.

On April 12, ISDA held its APAC Equity Derivatives Operations Working Group meeting to brief the latest confirmation template development for Asian products. The group also discussed the eligibility in confirming certain products via an electronic confirmation platform, the confirmation practice for products involving CNY/USD and the documentation practice upon occurrence of KI/KO event.

On April 3, 9, 12, 19, 23 and 30, ISDA held its APAC Trade Reporting Sub Group meetings to discuss the HK and Australia trade reporting matters.

Regulatory Developments

Australia:

ASIC consults on trade reporting obligations

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On March 28, Australian Securities and Investments Commission (ASIC) issued Consultation Paper 205, Derivative transaction reporting (CP 205) to address the mandatory trade reporting obligations for OTC derivatives such as interest rate swaps. CP 205 proposes:

- rules governing the reporting of OTC derivative transactions to derivative trade repositories, such as which institutions will need to report to trade repositories, what information will need to be reported, and when the reporting obligation will start for different classes of reporting entities;
- rules aiming at complying with internationally-agreed standards on transaction reporting developed by the International Organization of Securities Commissions (IOSCO) and the Committee on Payment and Settlement Systems (CPSS).

ASIC has also considered the transaction reporting regimes being implemented in other parts of the world including the EU, US, Singapore, Hong Kong and Canada, aiming to ensure consistency by identifying and trying to mitigate any conflicting or overlapping rules across jurisdictions.

Under ASIC's proposals, major financial institutions (those with at least \$50 billion of notional outstanding positions in OTC derivatives on September 30, 2013) would be subject to a reporting obligation in some asset classes from December 31, 2013; other smaller financial institutions would be subject to a reporting obligation in some asset classes from June 30, 2014. Submissions deadline is May 1.

Amendment Bill proposes measures to regulate OTC derivatives

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Introduced on March 20, the Corporations and Financial Sector Legislation Amendment Bill 2013 (the Bill) amends the Corporations Act 2001 (the Corporations Act), the Payment Systems and Netting Act 1998 (the PSN Act), the Mutual Assistance in Business Regulation Act 1992, the Australian Securities and Investments Commission Act 2001, the Reserve Bank Act 1959, the Clean Energy Regulator Act 2011 and the CarbonCredits Act 2011. It is not clear when the Bill will be passed.

The Bill introduces a range of measures to regulate OTC derivatives and other financial products, intended to:

- assist CCPs in managing defaults of clearing participants;
- improve allocation of resources by ASIC and the RBA in assessing the compliance of AML and CFSL holders with their legal obligations;
- allow certain Australian regulators including the RBA to exchange protected information with other entities in Australia and overseas in the execution of their duties subject to appropriate safeguards;
- allow ASIC to gather and share protected information with regulatory entities overseas for supervision and enforcement purposes;
- require ASIC to report on the use of those powers.

The amendments to the PSN Act will clarify that porting of positions, including associated collateral, in the case of a default or insolvency of a participant is allowed, regardless of provisions in other legislation including the Corporations Act. Both the CCP and the clearing participant would be subject to a number

of requirements under the Corporations Act which are intended to address the risk of insolvency of a clearing participant. The Corporations Act currently allows a CCP to enforce security it holds over a defaulting participant's property if the relevant property is cash, negotiable instruments, securities or derivatives and is subject to a "possessory security interest" as defined in the Corporations Act. There is some ambiguity as to whether the security held over certain types of frequently used collateral satisfies this definition. Consequently, the proposed amendment to the PSN Act will ensure that a CCP may enforce security held over all types of assets.

Hong Kong:

HKMA and SFC will comply with international standards on FMIs

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On March 28, the Hong Kong Monetary Authority (HKMA) and the Securities and Futures Commission (SFC) jointly announced their commitment to comply with the new international regulatory standards for financial market infrastructures (FMIs). These standards are contained in the Principles for financial market infrastructures (PFMIs) issued by the Bank for International Settlements' Committee on Payment and Settlement Systems (CPSS) and the International Organization of Securities Commissions (IOSCO) in April 2012.

The FMIs under HKMA's purview are those designated under the Clearing and Settlement Systems Ordinance, and the trade repository established and operated by HKMA. The FMIs under the purview of the SFC are the clearinghouses recognized under the Securities and Futures Ordinance. Both the HKMA and the SFC will implement the PFMIs within their respective regulatory frameworks through their regulatory guidelines. HKMA has revised its oversight guideline on the designated systems, adding new or more elaborate requirements on governance, disclosure and risk management, etc. The SFC will issue its guidelines for recognized clearinghouses, after consultation with relevant stakeholders. The HKMA and the SFC will continue to monitor the compliance of their FMIs against the international standards.

TMA announces the launch of CNH HIBOR fixing

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On April 25, the Treasury Markets Association (TMA) announced its plan to launch the CNH Hong Kong Interbank Offered Rate fixing (CNH HIBOR fixing) in June 2013. The launch of the fixing will provide a formal benchmark for market participants to make reference to in pricing their RMB loan and interest rate contracts. The planned CNH HIBOR fixing will include tenors of overnight, 1 week, 2 weeks, 1 month, 2 months, 3 months, 6 months and 12 months and will be calculated from rates contributed by 15 to 18 reference banks that are active in the RMB interbank market. The exact launch date will be announced upon completion of logistics arrangements, including the appointment of the reference banks and the calculating agent.

Malaysia: PIDM, BNM and Securities Commission on TR implementation

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A year ago, Perbadanan Insurans Deposit Malaysia (PIDM), together with Bank Negara Malaysia (BNM) issued a joint concept paper on Recordkeeping and Reporting Requirements for Over-the-Counter Derivatives; ISDA subsequently submitted a comment last April. On April 3 of this year, PIDM released a joint response to the feedback received on the concept paper.

PIDM and BNM have since decided not to proceed with the proposals set out in the joint concept paper and will instead work with the Securities Commission on the implementation of the trade repository (TR). The detailed requirements for the trade repository are expected to be substantially similar to the

transaction-level data requirements set out in the joint concept paper. The joint consultation paper on the trade repository is expected to be issued in the second quarter of 2013.

Although an appropriate transitional arrangement will be considered, PIDM and BNM note that it is important that reporting institutions plan their system enhancements at a sufficiently early stage to ensure readiness in meeting the future requirements under the trade repository. PIDM and BNM also note that the readiness of reporting institutions to report the required data will allow PIDM and BNM to reduce the temporary suspension period before the safe harbor for qualified financial agreements comes into operation under the Malaysia Deposit Insurance Corporation Act 2011 (MDICA), the Financial Services Act 2013 (FSA) and the Islamic Financial Services Act 2013 (IFSA). Pursuant to the Malaysia Deposit Insurance Corporation (Temporary Suspension Period) Regulations 2012, the temporary suspension period under the MDICA is 10 days. Neither the FSA nor IFSA have yet come into force.

Submission

ISDA made the following submissions in April:

Australia:

- On April 5, submission to ASX Limited regards to ASX OTC Interest Rate Derivatives Clearing consultation paper on Draft Operating Rules. This submission is not yet public.
- On April 12, submission to Australian Securities and Investments Commission regards to the Consultation Paper 201 on Derivatives Trade Repositories. This submission is not yet public.
- On April 19, submission to Australia's Parliamentary Joint Committee regards to Corporations and Financial Services on Corporations and Financial Sector Legislation Amendment Bill 2013.

Hong Kong:

- On April 5, submission to Hong Kong Monetary Authority and Securities and Futures Commission regards to the "originated or executed" definition in the consultation paper on the proposed regulatory regime for the over-the-counter derivatives market in Hong Kong. This submission is not yet public.
- On April 15, submission to Hong Kong Monetary Authority regards to the HKMA Consultation on reporting requirement for OTC derivatives transactions. This submission is not yet public.

Upcoming committee and working group meetings/conferences

Meetings:

Trade Reporting Meeting Call	May 7
ISDA Reporting Protocol Conference Call	May 7
Accumulators/ Decumulators Meeting	May 8
APAC Equity Operations Working Group Meeting (Asia)	May 9
Australia Members' Meeting	May 20
APAC Steering Committee Meeting	May 23
APAC Collateral Operations Meeting	May 27
SEC Presentation	May 27
North Asia L&R Meeting	May 28
South Asia L&R Meeting	May 30
Shanghai Members' Meeting	May 31

Conferences:

Extra-Territoriality in International Derivatives Regulation and Australia's Changing
Regulatory Landscape for OTC Derivatives - Sydney
Global Transaction Reporting Conference – Sydney

May 21
May 22

ISDA APAC Monthly Update

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