ISDA® | Safe, Efficient Markets

Asia-Pacific Country Reports

October 2012

This collection of country reports lists key institutions, regulatory milestones and ISDA submissions for the OTC derivatives markets in the following jurisdictions:

- Australia
- China
- Hong Kong
- India
- Indonesia
- Korea
- Malaysia
- New Zealand
- Singapore
- Taiwan

For information about ISDA's work in the APAC region, please visit:
http://www2.isda.org/regions/asia-pacific/ or contact Keith Noyes, knoyes@isda.org

AUSTRALIA

AT A GLANCE

Central Bank:	Reserve Bank of Australia (RBA) http://www.rba.gov.au
Bank Regulators:	Reserve Bank of Australia (RBA)
	Australian Prudential Regulation Authority (APRA) http://www.apra.gov.au
Fin. Mkts Regulator:	Australian Securities & Investments Commission (ASIC) http://www.asic.gov
Association:	Australian Financial Markets Association (AFMA)
Master Agreement:	ISDA
Legal Opinions:	Netting and collateral opinions by Mallesons Stephen Jaques
	Opinion on transactions entered into electronically and electronic records by Mallesons Stephen Jaques
CCP/TR Status:	The Council of Financial Regulators (comprising RBA, APRA, ASIC and the Treasury) released a discussion paper on 'Central Clearing of OTC Derivatives in Australia' in June 2011 and a consultation paper on 'Review of Financial Market Infrastructure Regulation' in October 2011.
	On April 18, 2012, the Australian Treasury published Consultation Paper on Implementation of a framework for Australia's G20 over-the-counter derivatives commitments.
	On July 25, 2012, the Australian Treasury released a draft of the Corporations Legislation Amendment (Derivatives Transactions) Bill 2012. On July 27, 2012, the Council of Financial Regulators (comprising of APRA, ASIC, RBA and the Treasury), issued a paper on Ensuring Appropriate Influence for Australian Regulators over Cross-border Clearing and Settlement Facilities.

Key Regulatory Milestones

- On August 29, 2012, 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.

- On August 28, 2012, the Australian Treasury requested 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.

- On August 10, 2012, 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 if 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%.

- The Payments System Board of RBA has updated its eligibility requirements for Exchange Settlement Accounts (ESA). The Bank has created a specific category of ESA for CCPs and has developed a policy for use of these accounts with immediate effect. This formalises the existing arrangements for currently licensed CCPs, under which ASX Clearing Corporation Limited holds an ESA for Australian dollar settlements arising from the activities of the two licensed CCPs in Australia, ASX Clear Pty Limited and ASX Clear (Futures) Pty Limited. The new policy recognises the important role that access to an ESA can play in assisting a CCP to manage its liquidity and settlement risks. The policy applies to any CCP that holds an Australian Clearing and Settlement Facility Licence.

- On July 27, 2012, the Council of Financial Regulators comprising of APRA, ASIC, RBA and the Treasury, issued a paper on Ensuring Appropriate Influence for Australian Regulators over Cross-border Clearing and Settlement Facilities. This is a supplementary paper to the review of the Financial Market Infrastructure Regulation, which provides further clarity on the measures that could be applied in cross-border clearing and settlement (CS) facilities and how they may be implemented in practice under current legislative arrangements. The framework will also apply to overseas facilities operating in Australia and to domestic facilities looking to move some of their operations offshore.

ASIC will consult on revisions to the Regulatory Guide (RG) 211 later in the year, which sets out ASIC's broad approach to advising the Minister on CS facility license applications and conditions. RBA will consult on the Financial Stability Standards (FSSs) later in the year. The objective of the two future consultations is to align the Australian regulation of CS facilities with the best practices as reflected in the CPSS-IOSCO Principles for Financial Market Infrastructures and to enable stakeholders to provide input on revisions to RG 211 and FSS.

- On July 25, 2012, the Australian Treasury released a draft of the Corporations Legislation Amendment (Derivatives Transactions) Bill 2012. The legislation would amend the Corporations Act by introducing a framework to allow the Minister for Financial Services and Superannuation to decide that mandatory obligations should apply to certain classes of OTC derivatives, requiring those classes to be reported, centrally cleared, or traded on suitable trading platforms. This will allow regulations and rules to be made to specify the details of these obligations. The framework would enable Australia to implement the commitments made at the Pittsburgh G-20 summit in September 2009.

- The Carbon Price Mechanism looks set to start on July 1, 2012. This is one prong of the Clean Energy Future package announced in July 2011. The Clean Energy Future plan comprises the introduction of a carbon price and using revenue raised to assist households and businesses, promoting innovation and investment in renewable energy, encouraging energy efficiency and creating opportunities in the land sector to cut pollution, improve productivity, sustainability and resilience. The carbon price will be established by an Emissions Trading Scheme (ETS). The ETS will commence with a 3-year fixed price period on July 1, 2012 and then move to a flexible pricing scheme (but with a price ceiling and price floor during the first 3 years of the flexible pricing period).

- On June 8, 2012, Australian Prudential Regulation Authority (APRA) released a discussion paper on implementing Basel III Capital Reforms in Australia: Reporting Requirements. APRA proposes two reporting standards for Reporting standard ARS 110.0 Capital Adequacy and Reporting standard ARS 111.0 Fair Values APRA, and intends to issue the final reporting standards later in 2012 with an effective date of January 1, 2013.

  APRA proposes to amend Reporting Form ARF 110.0.1 Capital Adequacy (Level 1) (ARF 110.0.1) and Reporting Form ARF 110.0.2 Capital Adequacy (Level 2) (ARF 110.0.2) to reflect the proposed changes in the eligibility criteria of the components of capital under Basel III and the predominant focus on Common Equity Tier 1 (CET1) capital. Under the existing prudential framework, there are four categories of capital: Fundamental Tier 1 capital, Residual Tier 1 capital, Upper Tier 2 capital and Lower tier 2 capital. Under Basel III, these four categories will be replaced with Tier 1 capital

(CET1 and Additional tier 1) and Tier 2 capital. ARF 110.0.1 and ARF 110.0.2 will be amended to reflect the changes in the number of categories of capital. APRA also proposes:

- amending the reporting standard for ARF 110.0 forms and instructions. One such amendment would be the moving away from ‘gross’ and ‘net’ to ‘Total Capital’, which is net of adjustments. Another adjustment for ARF 110.0 would be the requirement for most adjustments to be made to CET1 instead of the current deductions from Tier 1 and Tier 2 capital. A new line item will be introduced to adjust both ARF 110.0.1 and ARF 110.0.2 to capture the assets held in a covered bond pool, in excess of 8% of the Authorized Deposit Taking Institutions’ (ADI) assets in Australia to be deducted from CET1;
- ADIs’ adoption of the same accounting treatment (i.e. equity accounting) for joint operations and joint ventures. This would result in a full deduction of equity investment as a regulatory adjustment to capital;
- a requirement for quarterly reporting of cumulative gross unrealized gains and losses for all fair values. Fair value reporting will be required at both the ADI on a stand alone basis and at the level of the group of which the ADI is a member, as appropriate. ADIs are to submit their fair value information from January 1, 2013 onwards on a ‘best endeavors’ basis until AASB 13 has been adopted for public reporting for annual reporting periods beginning on or after January 1, 2013.

Respondents are also requested to provide an assessment of the impact of the proposed changes and the marginal and compliance costs the ADIs are likely to face. Submission deadline is August 3.

- On April 18, 2012, the Australia Treasury published Consultation Paper on Implementation of a framework for Australia’s G20 over-the-counter derivatives commitments. The paper proposes the legislative framework as follows:

  - The Minister for Financial Services and Superannuation will prescribe a certain class of derivatives as being subject to one or more mandatory obligations in respect of trade reporting, central clearing and trade execution;
  - ASIC will make derivatives transaction rules (DTRs), which will require the Minister’s consent and may apply across-the-board to all derivative classes or be tailored for particular derivative classes. ASIC will also have regulation-making power to narrow the persons and transactions to which the obligations will apply. ASIC will be required to undertake a minimum period of consultation with other regulatory agencies (as well as stakeholders) in developing DTRs and to ensure sufficient notice or a transition period is provided prior to the commencement of any mandate. However, the framework will also allow for a DTR to be made expeditiously where circumstances warrant it;
  - ASIC will also make rules regarding the obligations of trade repositories, clearing facilities and trading platforms;
  - In conjunction with any proposed prescription by the Minister and any DTR by ASIC, a report on derivatives markets including a regulation impact statement (RIS) must be prepared.

  A new trade repository licensing (TRL) regime will be introduced that will be modeled on the existing licensing regimes for market license holders (AML) and clearing and settlement facility license holders (CSFL).

- On March 30, 2012, the Deputy Prime Minister and Treasurer released the Council of Financial Regulators Working Group’s (the Council) letter of advice on the Financial Market Regulation. Key Council recommendations include:

- ASIC and the Reserve Bank have appropriate powers to ensure financial market infrastructures (FMIs) manage their risks effectively. An FMI will be dealt with in a manner consistent with continued financial stability;
- ASIC and the Reserve Bank have explicit power to impose location requirements in key areas such as financial and risk management. In the case of an overseas-based FMI, this power should extend, where appropriate, to the establishment of oversight arrangements that would give Australian regulators sufficient influence. In certain instances, Australian regulators may insist on a legal presence in Australia, or seek assurance of compatibility of the FMI's rules with Australian law. The Council recommends basic power be given to ASIC and the Reserve Bank, through legislative via an amendment to the Corporations Act;
- Reserve Bank power to issue directions to Clearing and Settlement Facility Licensees (CSFLs) in matters affecting financial stability. The range of sanctions, where licensees fail to comply with directions and licence conditions, will be broadened to include criminal sanctions, fines, and civil and administrative penalties;
- ASIC and the Reserve Bank be given power to appoint a statutory manager, where appropriate and in consultation with the Minister, to any domestically licensed FMI in certain defined circumstances.

- The Personal Property Securities Register created under the Personal Property Securities Act (PPSA) was scheduled to be set up by February 1, 2012. All forms of security interests in personal property must be registered on the Register in order to provide the holder with the best protection and rights. This will provide a single national register and replace the multiple registers of security interests kept under many different Commonwealth, State and Territory laws administered by various Australian government agencies. The next update of the ISDA collateral opinion will be an amended and restated opinion that deals with the PPSA.

- On November 19, 2011, the Treasury released a discussion paper on 'Handling and Use of Client Money in Relation to Over-the-Counter (OTC) Derivatives Transactions'. The purpose of the paper is to discuss the issues relating to the holding of client money in connection with OTC derivatives transactions and to review whether client monies provisions of the Corporations Act 2001 provide sufficient protection for investors.

- APRA released a couple of discussion papers on implementing Basel III – a discussion paper on Implementing Basel III Liquidity Reforms in Australia on November 16, 2011 and a discussion paper on Implementing Basel III Capital Reforms in Australia on September 6, 2011.

- On October 21, 2011, the Council of Financial Regulators released a consultation paper on 'Review of Financial Market Infrastructure Regulation' that sets out proposals to enhance the supervision of Australia's critical financial market infrastructure. The proposals include new powers to require certain systemically-important market infrastructure to have key aspects of their operations located in Australia and be overseen by 'fit and proper' persons, as well as increased power for regulators to intervene in the event of infrastructure experiencing substantial difficulties.

- The Treasury released a consultation paper on the Exposure Draft – Financial Sector Legislation Amendment (Close-out Netting Contracts) Bill 2011 on July 1, 2011. The Bill seeks to strike the right balance between ensuring market confidence in the enforceability of close-out netting contracts and protecting depositors and insurance holders by imposing a short stay before close-out netting rights can be enforced. The Bill will address the inconsistency related to close-out netting contracts between the Banking Act, the Insurance Act and the Life Insurance Act on the one hand and the Payment Systems and Netting Act on the other hand that was introduced when the former Acts were amended in 2008.

- On June 17, 2011, the Council of Financial Regulators released a discussion paper on 'Central Clearing of OTC Derivatives in Australia'. The paper discusses the evolving global landscape for OTC derivatives and central clearing, the Australian market for OTC derivatives, and a range of matters to be considered if central clearing in the domestic market is to be established. The paper argues that where offshore CCPs are clearing domestic markets that are of systemic importance, this may introduce risks to the Australian financial system that do not currently exist and identifies AUD-denominated interest rate derivatives as being systemically important to Australia. The Council is considering whether to make it mandatory for participants such as Australian Authorized Deposit-taking Institutions and Australian Financial Services Licensees to clear AUD-denominated interest rate derivatives through a domestic CCP.

ISDA Submissions (since 2010)

- August 20, 2012: ISDA submission to Australian Treasury on Corporations Legislation Amendment (Derivative Transactions) Bill 2012 - Exposure Draft. This submission is not public.
- June 15, 2012: ISDA submission to The Treasury regards to the Consultation Paper on the 'Implementation of a framework for Australia's G20 over-the-counter derivatives commitments'
- January 27, 2012: ISDA submission to the Australian Treasury on consultation pager 'Handling and use of client money in relation to over-the-country derivatives transactions'
- November 28, 2011: ISDA submission to the Treasury on discussion paper 'Review of Financial Market Infrastructure Regulation'
- August 26, 2011: ISDA submission to RBA on discussion paper 'Central Clearing of OTC Derivatives in Australia'
- August 1, 2011: ISDA submission to the Treasury on Financial Sector Legislation Amendment (Close-out Netting Contracts) Bill 2011
- July 30, 2010: ISDA (as part of the JAC) submission to ASIC on 'Review of Disclosure for Capital Protected Products and Retail Structured or Derivatives Products'
- May 26, 2010: ISDA submission to the Attorney General on the Exposure Draft of the Personal Property Securities Regulations 2010
- March 16, 2010: ISDA submission to the Treasury on the Financial Sector Legislation Amendment (Prudential Refinements and Other Measures) Bill 2010 (Commonwealth)

CHINA

AT A GLANCE

Central Bank:	People's Bank of China (PBOC) http://www.pbc.gov.cn
Bank Regulator:	China Banking Regulatory Commission (CBRC) http://www.cbrc.gov.cn
Securities Regulator:	China Securities Regulatory Commission (CSRC) http://www.csrc.gov.cn
Insurance Regulator:	China Insurance Regulatory Commission (CIRC) http://www.circ.gov.cn
Other Regulators:	State Administration of Foreign Exchange (SAFE) http://www.safe.gov.cn
	State-owned Assets Supervision and Administration Commission of the State Council (SASAC) http://www.sasac.gov.cn
Association:	National Association of Financial Market Institutional Investors (NAFMII, a self regulatory organization on China's interbank market)
Master Agreement:	NAFMII Master Agreement for onshore currency, rate, bond, credit and gold trades, ISDA Master Agreement for cross border trades
Legal Opinions:	N/A
CCP/TR Status:	Shanghai Clearing House (SCH) was established in 2009 to provide clearing services for financial market participants in China. According to the authorization of PBOC, SCH will provide centralized and standardized clearing services for spot and derivatives transactions in RMB and foreign currencies as well as RMB cross-border transactions approved by PBOC. SCH conducted a consultation among onshore banks in early 2012 regarding voluntary central clearing of onshore interest rate swaps denominated in RMB. To date, China has not proposed any mandatory clearing requirement in respect of OTC derivatives.

Key Regulatory Milestones

- The China Securities Regulatory Commission (CSRC) released the revised Rules on Implementation of "Measures on Administration of Domestic Securities Investments of Qualified Foreign Institutional Investors (QFIIs)" (the "Revised Rules") on July 27, 2012. CSRS amended the Rules in order to attract more long term investors to China's capital markets. The major changes include (1) relaxing the qualification requirements that QFII applicants need to meet such as requirements regarding minimum operating period and assets under management; (2) allowing a QFII to transact via multiple securities brokers; (3) permitting QFIIs to invest in bonds traded on the interbank bond market and bonds issued via private placements by SMEs; (4) raising the cap on total A-shares that can be held by all QFIIs in one A-share listed company from 20% to 30% of the total outstanding shares of the company; and (5) simplifying the QFII qualification application procedures and allowing electronic submission of documents.

- On June 7, 2012, CBRC issued the Measures for Commercial Banks' Capital (Trial Implementation). These Measures will apply to commercial banks established in China and sets out the requirements for the capital adequacy ratio (CAR). The Measures follow the Basel guidelines and do not provide any exceptional deviation from the Basel guidelines. The CAR will consist of 5% Core Equity Tier 1, 6% Tier 1 and 8% for Total Capital.

A Conservation Buffer of 2.5% of Core Tier 1 capital and a Countercyclical Buffer of 0%-2.5% Core Tier 1 capital will be applied. Additionally, domestic systemically important banks will have to hold an additional 1% of Core Tier 1 capital. A systemically important bank will need to hold a total of 11.5% capital while the non-systemically important banks will need to hold 10.5% capital. Banks should develop and implement a step-by-step compliance plan to meet the new capital requirements and will need to report it to CBRC for approval. CBRC has the right to take regulatory action if banks do not meet their capital requirements.

The Measures also sets out the definition of what constitutes Core Tier 1 capital, Tier 1 capital and Tier 2 capital, and have listed which items may be deducted from the CAR, such as goodwill and sales from asset securitization. Additionally, guidance on credit risk, market risk and operational risk are provided in the Measures.

- SAFE issued a circular on November 11, 2011 which allows banks in China to offer RMB/FX combined options to clients. According to the circular, "RMB/FX combined options" means two European risk reversal options sold and purchased by a client concurrently, both of which share the same currency, term and notional amount. The circular provides that the option fee of the option sold by the client must not be higher than that of the option it purchases. The circular requires a bank to verify the underlying commercial transaction and ensure that the client complies with the hedging principle when offering RMB/FX combined options.

- CBRC issued Regulations on the Sale of Wealth Management Products by Commercial Banks on August 28, 2011 (the "Regulations"). The Regulations, which came into effect on January 1, 2012, apply to the sale by commercial banks of in-house designed wealth management products (including retail structured products) to the individual clients (including private banking clients and high-net worth individuals) or institutional clients. The Regulations set out detailed rules concerning the marketing activities and reporting requirements applicable to those products. The Regulations are the most comprehensive rules that CBRC has ever issued regarding distribution of wealth management products, and should prevail over other rules issued by CBRC previously.

- In August 2011, CBRC sought public opinion on the draft capital rules which introduce the Basel 3 guidelines. CBRC's aim is to bring the banking regulatory framework in-line with the international standards, promote the banking sector's development and to maintain the long-term viability of the banking sector. CBRC will take into account the international standards and national practice in its implementation process.

- The Interim Measures for the Supervision and Administration of Overseas State-owned Assets of Central State-owned Enterprises (the "Measures") issued by SASAC came into effect on July 1, 2011. The Measures govern the overseas investments of central state-owned enterprises (Central SOEs) and their subsidiaries and regulate the business activities of the offshore subsidiaries of the Central SOEs. Article 14 of the Measures provides that a Central SOE should centrally manage its financial derivative business, clarify decision-making process and authorization and operational procedures, and specify annual trade volume, trade authority and trading process which should be filed with or approved by SASAC according to relevant rules. Article 14 further provides that overseas financial derivative business (such as futures, options, forwards and swaps) should strictly comply with the hedging requirement and speculative activities are prohibited.

- On June 22, 2011, NAFMII held its first working team meeting for the revision of the definition of the China Inter-bank Market Financial Derivatives Transaction Master Agreement (also known as the NAFMII Master Agreement). The meeting determined the revision should meet four requirements: 1) to serve the needs of developing the Chinese financial derivatives market; 2) to serve the needs of the supervisory authorities to regulate the market; 3) to serve the needs of RMB to “go out”; and 4) to adhere to the Chinese characteristics and conform to the Chinese expression habits.

- On May 4, 2011, CSRC issued the Guidelines on Participation by Qualified Foreign Institutional Investors in Stock Index Futures (the “Guidelines”) which came into effect on the same day. The Guidelines govern the trading of stock index futures listed on the China Financial Futures Exchange (CFFEx) by QFIIs. Under the Guidelines, QFIIs are only permitted to trade stock index futures for hedging purposes.

- On April 29, 2011, CSRC issued the Rules on Investment Scope of Securities Companies’ Proprietary Securities Business (the “Rules”) which came into effect on June 1. The Rules set out the eligible investment products which a securities company in China may invest for its own account. The eligible products include: 1) securities traded on the domestic exchanges; 2) debt securities traded on the domestic inter-bank market and 3) securities which have been approved by or registered with CSRC and traded over the counter of domestic financial institutions. Financial derivatives are not on the approved product list.

- On January 30, 2011 SAFE issued a circular to allow banks to trade RMB/FX cross currency interest rate swaps (currency swaps) for corporate clients, in a move to help corporations hedge against exchange rate risks. Under the circular, which came into effect on March 1, banks can determine the currencies, terms and interest rates under the swap contracts. However, interest rates offered must be in line with China's central bank's regulations on deposit and loan rates.

- CBRC issued the revised Provisional Administrative Rules Governing Derivatives Activities of Banking Financial Institutions (the “Revised Derivatives Rules”) on January 5, 2011. The Revised Derivatives Rules divide derivatives transactions into two categories: hedging transactions and non-hedging transactions. Hedging transactions consist of transactions a financial institution enters into for the purpose of hedging its own assets or liabilities. Non-hedging transactions include proprietary transactions entered into for profit making purposes, market making activities and transactions conducted on behalf of clients (including hedging trades related to the client trades). According to the Revised Derivatives Rules, a banking financial institution shall allocate risk capital for its derivative transactions based on its exposure and the risk capital allocated can not exceed three percent of the core capital of the bank. Under the Revised Derivatives Rules, there are two types of licenses for which banks may apply: "basic" and "ordinary". A basic license holder can only enter hedging transactions and an ordinary license holder can enter into both hedging and non-hedging transactions.

- On October 29, 2010 NAFMII published the Guidelines for a Pilot Credit Risk Mitigation Business in the Inter-bank Market (the “CRM Guidelines”). The CRM Guidelines introduce two types of credit derivatives to China’s domestic market - Credit Risk Mitigation Agreements (CRMA) and Credit Risk Mitigation Warrants (CRMW). The CRM Guidelines categorize the participants of the credit derivatives market into three types, according to the participant’s registered capital, relevant trading experience/qualifications and risk control systems, etc. The CRM Guidelines also include various rules about issuance of CRMW.

- CIRC issued a Notice on July 14, 2010 to allow insurance groups (holding) companies, insurance companies and insurance asset management companies to carry out interest rate swaps in China.

ISDA Submissions (since 2010)

- June 5, 2012: ISDA letter to Shanghai Clearing House on Clearing proposal regarding interest rate swaps (IRS) denominated in RMB. This submission is not public.
- January 17, 2012: ISDA submission to China's State Administration of Foreign Exchange on the Notice on Banks' RMB FX Combined Option Business. This submission is not public.
- May 26, 2011: ISDA submission to CBRC on the exposure draft of the circular on risk management of credit derivatives transactions. The CBRC was also planning to publish Chinese definitions for onshore credit derivatives products. ISDA has offered to help the CBRC draft the Chinese definitions. This submission is not public.
- February 21, 2011: ISDA submission to CBRC on the revised Provisional Administrative Rules Governing Derivatives Activities of Banking Financial Institutions
- January 14, 2011: Joint Associations Committee (JAC) submission to CBRC on the draft Regulations governing Sales of Wealth Management Products by Commercial Banks. This submission is not public.
- May 4, 2010: Second ISDA submission regarding index futures trading by the Qualified Foreign Institutional Investors
- April 15, 2010: First ISDA submission to the CSRC and CFFEX regarding index futures trading by the Qualified Foreign Institutional Investors

HONG KONG

AT A GLANCE

Central Bank:	Hong Kong Monetary Authority (HKMA) http://www.hkma.gov.hk
Bank Regulator:	HKMA
Securities Regulatory:	Securities and Futures Commission (SFC) http://www.sfc.hk
Other Regulators:	Financial Services and Treasury Bureau (FSTB) http://www.fstb.gov.hk
Association:	Treasury Markets Association (TMA)
Master Agreement:	ISDA
Legal Opinions:	Netting and collateral opinions by Allen & Overy; Opinion on transactions entered into "electronically" and electronic records by Clifford Chance
CCP/TR Status:	On December 10, 2010 HKMA, SFC and HKEx announced the plan to develop a trade repository and a central counterparty for OTC derivatives transactions. On July 11, 2012, HKMA and SFC released consultation conclusions on proposals to regulate the OTC derivatives market. The proposed mandatory reporting and clearing obligations will initially only cover certain types of interest rate swaps (IRS) and non-deliverable forwards (NDF). The HKMA-TR will be launched in two stages – the first in Q4 2012 to support any local CCP that may be established by then, and in 2013 to support mandatory reporting when implemented. The CCP being established by The Hong Kong Exchanges and Clearing Limited ("HKEx") plans to offer clearing services for IRS and NDF in Q4 2012.

Key Regulatory Milestones

- On July 11, 2012, HKMA and SFC released consultation conclusions on proposals to regulate the OTC derivatives market. HKMA and SFC also issued a Supplemental Consultation Paper on the proposed scope of newly-regulated activities to be introduced under the proposed OTC derivatives regulatory regime, and the proposed oversight of systemically important players. The proposed regulatory regime regarding OTC derivatives proposed in the consultation conclusions are as follows:

  Joint oversight by HKMA and SFC : The new regime is proposed to be subject to the joint oversight of HKMA and SFC, with HKMA regulating the OTC derivatives activities of locally and overseas incorporated authorized institutions ("AIs") and inter-dealer brokers who are licensed and regulated by HKMA as approved money brokers ("AMBs"), and SFC regulating that of licensed corporations ("LCs") and Hong Kong persons.

  Scope of the new regime: The term "OTC derivatives transaction" will be defined by reference to the term "structured product" (as defined in the Securities and Futures Ordinance(SFO)) with carve-outs for securities and futures contracts, structured products, securitized products, embedded derivatives and similar products (i.e. products offered by a single issuer to a number of investors) and spot contracts.

  Mandatory reporting obligation: The mandatory reporting obligation will apply to a reportable transaction: (1) to which a LC, an AMB, a locally incorporated AI (whether acting through a local or an overseas branch) ("Local AI"), a Hong Kong branch of an overseas incorporated AI ("Overseas AI") or (subject to meeting the reporting threshold) a Hong Kong person is a counterparty; or (2) which a LC, an AMB, a Local AI or a Hong Kong branch of an Overseas AI has originated or executed if the transaction has a "Hong Kong nexus". HKMA TR is proposed to be the only designated TR although market participants may appoint a reporting agent (e.g. a global TR) through whom reporting to HKMA TR could be made.

Mandatory clearing obligation: The mandatory clearing obligation is proposed to apply to a LC, a Hong Kong person, an AMB, a Local AI (whether acting through a local or an overseas branch) or an Overseas AI (where the trade is booked through its Hong Kong branch) if it is a counterparty to a clearing eligible transaction, both counterparties exceed the clearing threshold, and neither party is exempt from the clearing obligation. The regulators have proposed to exempt transactions entered into by central banks, monetary authorities and certain public bodies and global institutions (such as IMF and BIS), intra-group transactions and transactions involving "closed markets" from the mandatory clearing obligation. Both local and overseas CCPs may become designated CCPs for the purposes of the mandatory clearing obligation provided that the CCPs are either a recognized clearing house (RCH) or an authorized automated trading services (ATS) provider under the SFO.

Mandatory trading obligation: Hong Kong will not impose a mandatory trading requirement at the outset.

Capital and margin requirements: The regulators have indicated that they intend to impose higher capital and margin requirements for non-cleared OTC derivatives transactions and specific proposals will be put forward for consultation later.

Regulation of intermediaries: Two new types of Regulated Activities (RA) will be introduced: (i) a new Type 11 RA which will capture the activities of dealers and advisers, and (ii) a new Type 12 RA which will capture the activities of clearing agents. The scope of the existing Type 9 RA (asset management) will also be expanded to cover the management of portfolios of OTC derivatives.

Regulations of systemically important players (SIPs): The regulators also proposed to regulate players who are not otherwise regulated by the HKMA or SFC but whose positions or activities may nevertheless raise concerns of potential systemic risk

- On March 27, 2012, the Legislative Council Secretariat published a joint paper from the Financial Services and the Treasury Bureau (FSTB), the Hong Kong Monetary Authority (HKMA) and the Securities and Futures Commission (SFC) called Progress in the Regulation of Over-the-counter Derivatives Market.

  In response to the industry's comments, the HKMA and SFC will provide further clarification and/or refine the proposals, and aim to publish the consultation conclusions in the second quarter. In the fourth quarter, the regulators plan to introduce the bill into the Legislative Council, to provide a regulatory framework for the OTC derivatives market in Hong Kong. A further public consultation on the draft subsidiary legislation will also be conducted.

  While mandatory clearing has yet to be implemented, regulators intend to enable voluntary clearing of OTC derivatives in Hong Kong through a local CCP, pending the introduction of a full-fledged regulatory regime for the OTC derivatives market in Hong Kong.

- HKMA released a notice on March 9, 2012 that the Banking (Amendment) Bill 2011 was passed by the Legislative Council (Legco) on February 29, and enacted as the Banking (Amendment) Ordinance 2012 (BAO 2012). The provisions of BAO 2012 will be phased in, starting with the capital and disclosure requirements with effect from January 1, 2013.

- HKMA issued two consultation papers, Implementation of Basel III Capital Standards in Hong Kong and Implementation of Basel III Liquidity Standards in Hong Kong on January 20, 2012. These documents are the first in a series of consultation papers which the HKMA intends to issue for seeking the banking industry's feedback on its proposals to implement Basel III.

- HKMA and SFC issued a joint consultation paper on the proposed regulatory regime for Hong Kong's over-the-counter derivatives market on October 17, 2011. The joint consultation paper sets out the HKMA's and SFC's current thinking on how the regime might be cast given the present status of the global reform efforts. In brief, the main proposals in the consultation paper are as follows:

  - The proposed regime will be set out in the SFO, and will be jointly overseen and regulated by the HKMA and SFC.
  - OTC derivatives transactions will have to be reported to the trade repository, which is being set up by the HKMA. This reporting obligation will initially apply only to certain IRS and NDF, but will subsequently be extended to other product classes (such as equity derivatives and other types of interest rate derivatives) after further market consultation.
  - Standardized OTC derivatives transactions will have to be centrally cleared through a designated CCP. This mandatory clearing obligation will also initially be limited to only certain IRS and NDF, and subsequently extended to other product classes after further market consultation;
  - Non-AI entities that engage in OTC derivatives activities (other than as end-users) will be required to be licensed for a new Type 11 regulated activity under the SFO;
  - Large players who are not regulated by the HKMA or the SFC may be subject to certain obligations and requirements, such as producing information regarding their OTC derivatives activities, and reducing their OTC derivatives positions, if so requested by the SFC in extreme situations.

- On July 14, 2011, TMA convened a meeting on the development of a CCP and trade repository in Hong Kong. The meeting concluded with the formation of sub-groups to address the development of a local repository, a local CCP and the regulatory framework for the OTC derivatives market in Hong Kong.

- The Securities and Futures and Companies Legislation (Structured Products Amendment) Ordinance 2011 (the Amendment Ordinance) (the "Amendment Ordinance") was gazetted on May 13, 2011 and took effect on the same day. The Amendment Ordinance transfers the regulation of public offers of structured products in the form of shares or debentures from the prospectus regime of Companies Ordinance (CO) to the regime for public offers of investments under the Securities and Futures Ordinance (SFO). The Amendment Ordinance was the result of a two-month consultation conducted in 2009, and was part of the regulatory reforms carried out by the SFC after the Lehman minibond events.

- Receivers from PwC announced on March 28, 2011 that they had reached a conditional agreement with Lehman Brothers Special Financing Inc. which was expected to result in most of the minibond investors receiving more than 80 percent of their original investment from the underlying collateral.

- HKMA issued a Circular on the implementation of Basel III on January 26, 2011. HKMA will follow the timeline proposed by the Commission which includes a transition period from January 1, 2013 to full implementation by January 1, 2019. The implementation of Basel III will require the amendment of the Banking Ordinance, Banking (Capital) Rules and Banking (Disclosure) Rules. To meet the first deadline, HKMA will introduce amendments in the 2011-2012 legislative sessions, and will allow HKMA time to develop their supervisory guidelines.

- On July 9, 2010, FSTB issued consultation conclusions on the Consultation Paper on the Review of Corporate Rescue Procedure Legislative Proposals. In the conclusions, FSTB proposes to remove the general prohibition against set-off. Regarding the exempted financial contracts, FSTB accepted ISDA's suggestions and agreed that the exemption list approach should be retained and the list of contracts to be included should be updated in the light of market developments since the insurance of the Bill. FSTB also concluded that the revised list may be introduced in the form of subsidiary legislation to facilitate further updates in the future. ISDA will continue assisting FSTB in revising and updating the list of exempted derivatives transactions.

- On May 28, 2010, SFC published Consultation Conclusions on Proposals to Enhance Protection for the Investing Public (Consultation Conclusions). The document announces a package of measures to strengthen the regulatory regime governing the sale of investment products in Hong Kong.

ISDA Submissions (since 2010)

- December 6, 2011: ISDA submission to HKMA on the report on consultation on logistical and technical arrangements for reporting to the Hong Kong trade repository
- November 30, 2011: ISDA submission to HKMA and SFC on the consultation paper on the proposed regulatory regime for Hong Kong's over-the-counter derivatives market
- July 8, 2011: ISDA submission to HKMA on the Conceptual Framework of the Trade Repository
- December 2, 2010: JAC submission to the Bills Committee on the Securities and Futures and Companies Legislation (Structured Products Amendment) Bill
- January 27, 2010: ISDA submission in response to the Consultation Paper on the Review of Corporate Rescue Legislative Proposals

INDIA

AT A GLANCE

Central Bank:	Reserve Bank of India (RBI) http://www.rbi.org.in
Bank Regulator:	Reserve Bank of India (RBI)
Securities/Futures Regulator:	Securities and Exchange Board of India (SEBI) http://www.sebi.gov.in
Other Regulator:	Forward Markets Commission (FMC) http://www.fmc.gov.in
Associations:	Fixed Income Money Market and Derivatives Association (FIMMDA)
	Foreign Exchange Dealers' Association of India (FEDAI)
	Primary Dealers Association of India (PDAI)
Master Agreement:	ISDA
Legal Opinions:	Netting and collateral opinions by Juris Corp
	Opinion on transactions entered into electronically and electronic records by Juris Corp
CCP/TR Status:	Clearing Corporation of India Ltd (CCIL) clears inter-dealer INR FX spots and forwards, and is expected to launch inter-dealing clearing for INR Interest Rate Swaps (IRS) and Forward Rate Agreements (FRA) in 2012.
	CCIL provides a trade reporting platform for inter-dealer INR IRS and FRA and CDS. This has been expanded in 2012 to cover INR FX and client trades. All trades between ADIs/market makers (banks/PDs) and their clients will need to be reported on the CCIL platform for all/ selected FX and interest rates OTC derivatives trades.
	The Foreign Exchange Dealers' Association of India (FEDAI) released a circular on February 28 for an amendment of FEDAI rule 8 that all member banks should join CCIL's Forex forward guaranteed settlement by June 30, 2012 and start routing all eligible forex forward transactions by October 1.
	RBI's Working Group in its Report of May 23, 2011 recommended that CCIL be the designated repository for interest rate and forex derivative transactions. On March 9, 2012, RBI released a notice that all interbank OTC foreign exchange derivatives will be reported on a platform developed by CCIL. On June 22, 2012, RBI issued a circular on the Reporting Platform for OTC Foreign Exchange and Interest Rate Derivatives, mandating all interbank OTC foreign exchange derivatives transactions to be reported onto CCIL's platform.

Key Regulatory Milestones

- On June 22, 2012, RBI issued a circular on the Reporting Platform for OTC Foreign Exchange and Interest Rate Derivatives, which mandates all interbank OTC foreign exchange derivatives transactions to be reported onto CCIL's platform. All Authorized Dealer category-I banks are required to report all their inter-bank OTC USD/INR forwards, FX swaps, and FCY/INR options in hourly batches within 30 minutes from completion of the hour. Trades with a bank's own overseas branch need not be reported. Client trades will be phased-in and RBI will issue guidance at a later date.

- On May 7, 2012, Indian Finance Minister Pranab Mukherjee confirmed in parliament that introduction of the General Anti-Avoidance Rules (GAAR) would be deferred until April 2013. The burden of proof in any suspected case of tax evasion will be on the tax authorities and not the taxpayer. Foreign institutional investment flows into India had fallen sharply following the announcement of the GAAR measures. However, the Finance Ministry still intends to go ahead with plans to allow the retrospective taxation of certain international transactions.

- On May 2, 2012, RBI released the final guidelines on Implementation of Basel III Capital Requirements stating a minimum Common Equity Tier 1 (CET1) ratio at 5.5%, Total Tier 1 capital at 7% and Total capital (Tier 1 + Tier 2) at 9%. A Capital Conservation Buffer (CCB) of 2.5%, comprising of CET1, will be applied. Banks would be required to hold a total of 11.5% of capital. The transitional arrangements will begin on January 1, 2013 in a phased manner and be fully implemented by March 31, 2018.

  Regulatory adjustments will be fully deducted from CET1 by March 31, 2017. The Basel III framework will be applicable to both the consolidated banks (Group) as well as at the stand-alone (Solo) level for banks operating in India. Overseas operations of a bank through its branches will be covered in both scenarios. Some regulatory adjustments or deductions include:

  - Goodwill and all other intangible assets will be deducted from CET1 instead of Tier 1.
  - Deferred Tax Assets (DTAs) will be deducted from CET1 capital as a prudent measure.
  - Cash Flow Hedge Reserve will be derecognized in the calculation of CET1.
  - Gain-on-sale relating to securitization transactions will not be recognized, including cash profits.

  The Current Exposure Method (CEM) will be used to calculate counterparty credit risk.
  - Banks will be required to compute an additional capital charge to cover the risk of mark-to-market losses on the expected counterparty credit risk, i.e., credit valuation adjustments (CVAs).
  - Bilateral netting of counterparty exposures, i.e., mark-to-market values arising from derivative transactions, is not permitted in India.
  - Foreign exchange (except gold) transactions with an original maturity of 14 calendar days or less will be exempted from the capital requirements for counterparty risk.

  At present, the average leverage ratio of the scheduled commercial banks in India is above 5%. During the parallel run period from January 1, 2013 to January 1, 2017, banks should maintain the existing level of leverage ratio which cannot fall below 4.5%. The final leverage ratio requirement will be prescribed by RBI after the parallel run, with consideration of the Basel Committee's prescriptions. Banks will need to disclose their leverage ratios starting from April 1, 2015.

  RBI is working on the operational aspects of implementation of the Countercyclical Capital Buffer and will issue guidance. RBI will also consider the Basel Committee's final proposals on issues including the "Capitalization of Bank Exposures to Central Counterparties" and the "Definition of Capital Disclosure Requirements".

- On April 23, 2012, RBI released a circular on the Guidelines on Credit Default Swaps (CDS) for Corporate Bonds – Permitting All India Financial Institutions. RBI has permitted all India financial institutions, in particular, Export Import Bank of India (EXIM), National Bank of Agriculture and Rural Development (NABARD), National Housing Bank (NHB) and Small Industries Development Bank of India (SIDBI) to participate in the CDS market as users. All other terms and conditions remain unchanged.

- The Finance Bill 2012 has proposed three tax changes that have caused industry concern as to their potential adverse impact on Foreign Institutional Investors (FIIs), offshore derivative instruments or participatory notes and on OTC derivative transactions. The proposed changes are:

  - General Anti-Avoidance Rule (GAAR): GAAR permits revenue authorities to disregard the form of a transaction on the ground that it represents an "impermissible avoidance arrangement" (section 40 of the Finance Bill 2012, introducing Chapter X-A, in particular section 96, of the Income Tax Act). The application of this provision may impact the investment activities of FIIs;
  - Indirect transfer tax: The transfer of a foreign asset may be regarded as the transfer of an Indian asset if it is "an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India… if the share or interest derives, directly or indirectly, its value substantially from the assets located in India" (section 4(a) of the Finance Bill 2012, amending section 9(1) of the Income Tax Act). The application of this provision may affect investors in offshore derivative instruments or participatory notes issued by the FIIs;
  - Services tax: Instead of a list of taxable services, services tax will be levied in respect of all services except the ones specified in a negative list. The proposed changes to the services tax regime may subject OTC derivative transactions (FX and non-FX) to services tax.

- On March 9, 2012, RBI released a notice that all interbank OTC foreign exchange derivatives will be reported on a platform developed by CCIL. All/selective trades in OTC foreign exchange and interest rate derivatives between Category I Authorized Dealer Banks/market makers (banks/PDs) and their clients will report on the CCIL platform, subject to a mutually agreed confidentiality protocol.

- On February 28, 2012, FEDAI released a circular for an amendment of FEDAI rule 8 that all member banks should join CCIL's forex forward guaranteed settlement by June 30 and start routing all eligible forex forward transactions by October 1.

- On February 21, 2012, RBI released the draft guidelines on Liquidity Management and Basel III Framework on Liquidity Standards. RBI will introduce the Liquidity Coverage Ratio (LCR) and the Net Stable Funding Ratio (NSFR) as prescribed by the Basel Committee, with effect from January 1, 2015 and January 1, 2018, respectively. Supervisory reporting of the LCR and NSFR will begin from end of second quarter, 2012. The LCR and NSFR will be applicable to Indian banks on a whole bank level, i.e., on a stand-alone basis including overseas operations through branches, and later on a consolidated level. For foreign banks operating in India, the LCR and NSFR will be applicable on a stand-alone basis.

- RBI's Guidelines on Introduction of CDS for Corporate Bonds (CDS Guidelines) were issued on May 23, 2011 and came into effect on December 1, 2011. Only single-name INR CDS on Indian-resident corporates are allowed. There are a number of other constraints on what CDS can be written. While Restructuring is allowed, this is a modified version that departs significantly from the international market definition of Restructuring. The CDS Guidelines creates two categories of participants – market-makers and users. Currently, only commercial banks and primary dealers that fulfill certain eligibility norms are allowed to be market-makers. Commercial banks, primary dealers, non-banking financial companies, mutual funds, insurance companies, housing finance companies, provident funds, listed corporates and foreign institutional investors are allowed to be users. Market-makers can buy or sell CDS without any underlying position in the bonds. Users can only buy CDS as a hedge for a bond that they hold and must unwind the CDS (or with the consent of the CDS seller, novate the CDS to their bond purchaser) within 10 business days of selling the bond. Participants are required to mark-to-market their CDS positions daily and to margin their CDS positions at least weekly. Market-makers are required to report their CDS trades within 30 minutes through CCIL's trade reporting platform.

- The 2007 Comprehensive Guidelines on Derivatives (Derivatives Guidelines) were amended by RBI on November 2 and August 2, 2011. The November amendments came into effect on January 1, 2012. The Derivatives Guidelines describe the types of generic and structured derivative products that can be offered by market-makers (generally commercial banks and primary dealers). The Derivatives Guidelines also sets out the requirements that must be complied with by market-makers (including risk management practices, conducting a "user appropriateness" and "product suitability" assessment, obtaining Board Resolutions from the user, providing term sheets and risk disclosure statements to the user and making available mark-to-market calculators to the user) before offering derivative products to users (primarily corporates). The requirements differentiate between the offer of generic and structured derivative products, being more rigorous where structured derivative products are concerned.

- On December 15, November 23 and May 16, 2011, RBI amended its Comprehensive Guidelines on Over the Counter (OTC) Foreign Exchange Derivatives and Overseas Hedging of Commodity Price and Freight Risks (FX Guidelines) issued on December 28, 2010. The FX Guidelines set out the categories of persons permitted to participate in the OTC foreign exchange derivatives market in India, the types of products that they can use and the conditions under which they may do so. The FX Guidelines also set out the circumstances in which residents are permitted to hedge commodity price and freight risk overseas. The Derivatives Guidelines also apply *mutatis mutandis* to foreign exchange derivatives. The part of the FX Guidelines that attract great interest deals with the entry into foreign exchange derivatives by Authorized Dealer Category I banks (AD Banks) with persons resident in India that are non-AD Banks under the 'Contracted Exposures' or 'Probable Exposures based on Past Performance' routes. In particular, the FX Guidelines restrict the categories of persons that can engage in cost reduction structures and the types of cost reduction structures that are permitted. The FX Guidelines also clarify the nature and extent of the due diligence that the AD Banks are required to undertake to verify that the user has the underlying exposure.

- The revisions to the FX Guidelines and Derivatives Guidelines were not unexpected given the spate of derivatives litigation post the global financial crisis, including the Public Interest Litigation petition that was filed in the Orissa High Court and that is still pending before the Supreme Court. RBI had also imposed penalties on 19 banks in April 2011 and another 2 banks in September 2011 for non-compliance with its instructions on derivatives.

- On May 23, 2011, RBI's Working Group Report on Reporting of OTC Interest Rate and Forex Derivatives was published. The Working Group noted that India has had arrangements for reporting of various derivative transactions ranging from summary information to transaction level data. However, there is a need for consolidation of the reporting arrangements with a view to improving the transparency of the market, facilitating its comprehensive monitoring by regulators and improving the efficiency of the post-trade processing infrastructure. The Working Group recommended that CCIL be the designated repository for interest rate and forex derivative transactions but that CCIL should, in due course, consider the economic viability of housing the repository services in a separate subsidiary so as to segregate the repository activity from its clearing and settlement activity to ensure better governance and compliance with standards.

- The landscape for the financial services industry is expected to evolve over the coming years. The Financial Sector Legislative Reforms Commission (FSLRC) was set up by the Ministry of Finance to review, harmonize, modernize and streamline all financial sector laws to cater to the requirements of India's economy in tune with the changing financial landscape in an inter-connected financial world. The FSLRC's report is due by March 2013. Draft Guidelines for the issuance of new private sector banking licenses were released by RBI on August 29, 2011 following upon its Discussion Paper of August 2010. The RBI Working Group Report on Introduction of Financial Holding Company Structure was published on May 23, 2011 and on January 21, 2011, the RBI released its Discussion Paper on the Presence of Foreign Banks in India. Given the mandate of the FSLRC, it will be opportune and ISDA intends to make a submission on close-out netting enforceability and bilateral margining, particularly in view of RBI's recent reiteration in its Prudential Norms circular of August 11, 2011 that the "legal position regarding bilateral netting is not unambiguously clear".

- RBI issued its Circular on Implementation of the Advanced Measurement Approach (AMA) for Calculation of Capital Charge for Operational Risk on April 27, 2011. Banks that are calculating operational risk charge under the Basic Indicator Approach (BIA) or the Standardized Approach (TSA)/Alternative Standardized Approach (ASA) can apply for migration to the AMA method for operational risk from April 1, 2012 onwards.

ISDA Submissions (since 2010)

- May 4, 2012: ISDA submission to Ministry of Finance with regards to the service tax in response to the Finance Bill 2012. This submission is not public.
- April 26, 2012: ISDA submission to Ministry of Finance in response to the Finance Bill 2012. This submission is not public.
- March 8, 2011: ISDA submission to RBI on Draft Guidelines on Credit Default Swaps for Corporate Bonds
- October 8, 2010: ISDA submission to the Ministry of Finance on Report of the Working Group on Foreign Investment in India
- October 4, 2010: ISDA submission to RBI on Draft Report of the Internal Group on Introduction of Credit Default Swaps for Corporate Bonds
- June 22, 2010: ISDA submission to the Ministry of Finance Working Group on Foreign Investment in India
- June 11, 2010: ISDA submission to the Ministry of Finance Working Group on Foreign Investment in India
- March 9, 2010: ISDA submission to the Ministry of Finance Working Group on Foreign Investment in India

INDONESIA

AT A GLANCE

Central Bank:	Bank Indonesia (BI) http://www.bi.go.id
Bank Regulator:	BI but scheduled to be transferred to OJK by end-2013
Securities Regulator:	Bapepam-LK http://www.bapepam.go.id but scheduled to be transferred to OJK by end-2012
Fin. Mkts Regulator:	Otoritas Jasa Keuangan (OJK)
Associations:	Perbanas Foreign Banks Association of Indonesia (FBAI)
Legal Opinions:	Netting and collateral opinions by ABNR
Master Agreement:	ISDA with local language translation appended
CCP/TR Status:	No announced plans

Key Regulatory Milestones

- The law setting up the OJK was finally passed in October 2011. Like the UK FSA, the OJK is an independent body set up to regulate and supervise the financial services industry. OJK is supposed to take over the regulation and supervision of capital markets and non-banking financial institutions from Bapepam-LK by end-2012 and the banking supervisory function from BI by end-2013. The OJK law also creates a coordination forum on financial systems, comprising the Minister of Finance, the BI Governor, the Chairman of the Board of Commissioners of the OJK and the Chairman of the Indonesia Deposit Insurance Corporation. In this forum, the OJK is required to monitor and evaluate the stability of the financial system and communicate its findings to other institutions. Given that the passage of the OJK law itself was much delayed, it will be interesting to watch how implementation progresses.

- Law No. 7 of 2011 (Currency Law) came into effect on June 28, 2011. The Currency Law (in particular Articles 21 and 23) creates uncertainty around the use of a currency other than IDR as the settlement currency or the denomination currency for domestic and cross-border transactions. The Directorate General of Treasury at the Ministry of Finance published "Sosialisasi Undang-Undang Nomor 7 Tahun 2011 Tentang Mata Uang" (Socialization Booklet) and together with BI, conducted a briefing session in December 2011. The Socialization Booklet clarifies that the Currency Law is limited to transactions that involve physical payment in bank notes and coins. As OTC derivative transactions rarely involve settlement by physical delivery of bank notes and coins, this would mean that the Currency Law will not apply to OTC derivatives. However, as the Socialization Booklet does not have the force of law, concern remains that neither the enforcement agencies nor the courts are bound by it. Pending legal confirmation of the scope of the Currency Law, it may be prudent to take steps to try to bring a cross-border OTC derivative transaction within the "international trade transactions" exemption in Article 21(2) of the Currency Law or to include explicit 'contracting out' language to bring a domestic OTC derivative transaction within Article 23(2) (though it should be noted that the scope of Articles 21(2) and 23(2) are themselves unclear).

- BI Regulation No. 12/9/PBI/2010 on Prudential Principles in Conducting Offshore Financial Products Agency Activities by Commercial Banks came into effect on June 29, 2010. Commercial banks in Indonesia (including Indonesian branches and subsidiaries of foreign banks) with an FX license can carry out agency activities for offshore financial products (OFP) only if certain conditions are met. Although an OFP is defined as an “investment instrument issued by foreign issuers”, BI has clarified that OTC derivatives could be impacted. OFPs can only be offered to non-retail customers. The issuer of the OFP must be licensed and supervised by a competent authority in the issuer’s home country. For a non-security OFP, the issuer must have a branch in Indonesia. The bank must carry out an analysis of the OFP and provide offering materials to the customer in the Indonesian language.

- BI Regulation No. 11/26/PBI/2009 on Structured Products came into effect on July 1, 2009. OTC derivatives fall within this Regulation. Banks must obtain an in-principle approval from BI before they can offer any structured products. In addition, for non-principal protected structured products, banks must obtain transaction-type approval from BI. Banks with an FX license can offer structured products with FX and/or interest rates as underlying. Non-FX banks can only offer structured products with interest rates as underlying. Foreign currency against IDR structured products are prohibited. The Regulation imposes restrictions on the types of structured products that can be offered to different customer categories. There are other business conduct and disclosure requirements such as a mandatory cooling-off period for non-principal protected structured products and a requirement that term sheets and agreements be in the Indonesian language.

- On July 9, 2009, Law No.24 of 2009 on the National Flag, Language, Seal and Anthem (National Language Law) came into effect. The National Language Law requires that all agreements involving an Indonesian party must be in the national language, Bahasa Indonesian. ISDA has published Indonesian translations of the 2002 ISDA Master Agreement as well as confirmation templates and glossaries for certain plain vanilla FX, currency option, interest rate and cross currency swap transactions.

ISDA Submissions (since 2010)

- January 17, 2012: ISDA submission to the Ministry of Finance and Bank Indonesia on Law No. 7 of 2011 (Currency Law)

KOREA

AT A GLANCE

Central Bank:	Bank of Korea (BOK) http://www.bok.or.kr
Bank Regulator:	Financial Services Commission (FSC) (policy-making) http://www.fsc.go.kr
	Financial Supervisory Service (FSS) (execution of financial market supervision)
	http://english.fss.or.kr
Securities Regulators:	Financial Services Commission (FSC)
	Financial Supervisory Service (FSS)
Other Regulators:	Ministry of Strategy and Finance (MOSF) http://english.mosf.go.kr
Associations:	Korean Financial Industry Association (KOFIA)
	Korean Federation of Banks (KFB)
	Foreign Banks Association
Master Agreement:	ISDA (an "ISDA Lite" Korean version is commonly used between Korean banks and domestic corporate for documenting FX transactions but is not mandated)
Legal Opinions:	Netting and collateral opinions by Kim & Chang
	Opinion on transactions entered into electronically and electronic records by Lee & Co
CCP/TR Status:	FSC published the proposed amendments to Financial Investment Services and Capital Markets Act (FISCMA) Relating to Central Counterparties in August 2011. Korean Won interest rate swaps are expected to be the first products cleared, potentially followed by non-deliverable forwards and CDS at a later date. The enabling legislation is pending passage by the National Assembly and passage is expected before the end of 2012.

Key Regulatory Milestones

- FSC announced proposed amendments to the Enforcement Decree of the Financial Investment Services and Capital Markets Act (FSCMA) on February 24, 2012. The draft amendments will be reviewed by the Regulatory Reform Committee and the Ministry of Government Legislation and are expected to take effect in the first half of 2012. The draft amendments seek to, among other things, clarify the regulations on issuance of derivatives-linked securities (DLS) by foreign financial institutions and exempt the foreign issuers which satisfy certain requirements from the licensing requirement under the FSCMA.

- Korea Exchange issued in December 2011 draft clearing rules and procedures for the CCP it will establish.

- FSC submitted the Amendments for CCP legislation to the National Assembly in November 2011. The Amendments had not been voted as of mid-January 2012.

- FSC published the proposed amendments to Financial Investment Services and Capital Markets Act (FISCMA) Relating to Central Counterparties. Under the proposed amendments, a CCP for OTC derivatives will be set up in time to meet Korea's end-2012 G20 commitment.

- Korea passed legislation earlier 2011 to introduce a new tax on non-deposit foreign currency liabilities held by domestic and foreign banks in Korea. Differentiated levy rates are applied based on the maturity of non-deposit foreign currency liabilities. The levy was implemented in August 2011.

- On June 13, 2010, the MOSF (in a joint statement with the BOK, FSC and FSS) announced it would introduce new ceilings on FX derivatives positions, aimed at reducing the volatility in capital flows. The new rules set limits on FX derivatives contracts (including FX forwards, FX swaps, cross-currency interest rate swaps and non-deliverable forwards) for domestic banks and branches of foreign banks. The measures came into effect with a three-month grace period, but banks with an existing FX derivatives position higher than the new ceilings can maintain their existing positions for a maximum two years.

- In June 2010, KOFIA issued Regulations for the Operation of the OTC Derivatives Review Committee, which reviews certain new types of OTC products. The committee was formally established on June 1, 2010 and commenced operations on June 13, 2010.

- The National Assembly passed the New Product Approval (NPA) bill in the form of an amendment to the FSCMA on February 18, 2010, along with five other amendments. The NPA bill became effective in April, and would cease to have effect on December 31, 2011.

- FSS distributed new FX risk management guidelines, effective as of January 1, 2010. Under these guidelines banks have a much greater responsibility to ensure that corporate end users are hedging real underling exposure rather than speculating. The guidelines contain a new component requiring a commitment letter prior to trading from corporate clients who convert into professional investors. These investors' trades cannot exceed a notional amount pre-set by banks. The guidelines cover OTC FX forwards (including NDFs), FX options and FX swaps.

ISDA Submissions (since 2010)

- September 19, 2011: ISDA submission to FSC on Proposed Amendment to Financial Investment Services and Capital Markets Act (FISCMA) Relating to Central Counterparty
- June 6, 2011: ISDA submission to the Ministry of Strategy and Finance (MOSF) on the Foreign Exchange Prudential-Stability Levy

MALAYSIA

AT A GLANCE

Central Bank:	Bank Negara Malaysia (BNM) http://www.bnm.gov.my
Bank Regulator:	BNM
Fin. Mkts Regulator:	Securities Commission, Malaysia (SC) http://www.sc.com.my
Associations:	Association of Banks in Malaysia (ABM)
	Malaysian Investment Banking Association (MIBA)
	Association of Islamic Banking Institutions Malaysia (AIBIM)
Master Agreement:	ISDA
Legal Opinions:	Netting and collateral opinions by Shearn Delamore & Co
	Opinion on transactions entered into electronically and electronic records by Shearn Delamore & Co
CCP/TR Status:	The CSMA Amendment Act provides the legislative framework for trade reporting but this will come into force at earliest in October 2013.
	On March 26, 2012, PIDM, together with BNM, issued a joint concept paper on Recordkeeping and Reporting Requirement for Over-the-Counter Derivatives. These requirements will apply to banks and insurance companies regulated by BNM and all Member Institutions of PIDM, and are intended as an interim measure pending the establishment of the TR.

Key Regulatory Milestones

- On March 26, 2012, PIDM issued its Response to the Consultation Paper on Criteria for Qualified Third Party. PIDM will now define a Qualified Third Party that would be eligible to assume Qualified Financial Agreements (QFAs), which includes OTC derivatives, from a failing Member Institution or Affected Person as being any of the following entities:

  - an institution, other than a bridge institution, licensed under the Banking And Financial Institutions Act 1989, the Islamic Banking Act 1983, the Insurance Act 1996 and the Takaful Act 1984 or an institution prescribed under the Development Financial Institutions Act 2002 which is in compliance with the capital and prudential requirements of Bank Negara Malaysia (BNM);
  - an institution licensed under the Labuan Financial Services and Securities Act 2010 and Labuan Islamic Financial Services and Securities Act 2010, which is in compliance with capital and prudential requirements of the Labuan Financial Services Authority;
  - a public entity established under its own statutory act; or
  - an entity whose obligations under the QFAs will be guaranteed by the Government of Malaysia, Bank Negara Malaysia or PIDM.

- On March 26, PIDM, together with Bank Negara Malaysia (BNM), issued a joint concept paper on Recordkeeping and Reporting Requirement for Over-the-Counter Derivatives. These requirements will apply to banks and insurance companies regulated by BNM and all Member Institutions of PIDM, and are intended as an interim measure pending the establishment of the trade repository in Malaysia. The paper proposes the potential standardized counterparty identifiers that are being considered. The data proposed to be reported comprises of:

- aggregate level data on both OTC and exchange-traded derivatives used for hedging and non-hedging purposes (reported quarterly);
- participant level data on OTC derivatives (reported quarterly);
- transaction level data on OTC derivatives (reported within 24 hours of request by the regulators);
- qualitative information, including maintained copies of all relevant agreements (reported within 24 hours of request by the regulators).

- The Capital Markets and Services (Amendment) Act 2011 (CMSA) (except the provision amending Section 92 of the CMSA) came into force on October 3, 2011. OTC derivatives now constitutes a regulated activity under the CMSA. However, participants that deal bilaterally on a principal-to-principal basis (as would generally be the case for OTC derivatives under an ISDA Master Agreement) would fall within the exemption in Schedule 3 and licensed banks would also fall within the exemption in Schedule 4. Persons that fall within the Schedule 3 or Schedule 4 exemptions are not required to obtain a Capital Market Services License (CMSL) from the SC. A person falling within Schedule 3 is not subject to the business conduct requirements in the CMSA whilst a registered person under Schedule 4 is subject to the business conduct requirements set out in Section 76(5) to (8) of the CMSA. Other provisions of the CMSA such as Part V (*Market Misconduct and Other Prohibited Conduct*) and the obligation to report trades to a trade repository under Section 107J applies to both a person falling within Schedule 3 and a person falling within Schedule 4.

- BNM's Revised Guidelines on Product Transparency and Disclosure which took effect on June 30, 2011 requires banks to provide documents to customers in plain language and in the Malay language if so requested by the customer. While the ISDA Master Agreement and related ISDA documentation would be subject to the Guidelines, BNM has acknowledged that it recognizes that it may be inefficacious for ISDA documents to be subject to the plain language and Malay language requirements. BNM has also confirmed that the aim of the Guidelines is to establish a consistent and comprehensive disclosure regime for financial service providers in Malaysia when dealing with retail customers.

- The new Perbadanan Insurans Deposit Malaysia (PIDM) or Malaysia Deposit Insurance Act (PIDM Act) came into operation on December 31, 2010. The new PIDM Act represents a significant improvement by protecting close-out netting rights under qualified financial agreements once a short stay period has elapsed without PIDM deciding to transfer the outstanding derivatives positions of the distressed bank. However, there remain certain issues which militate against close-out netting enforceability. These issues center around PIDM's indication that it will impose a stay period of 10 calendar days, the definition of a 'qualified financial agreement' and the criteria to be a 'qualified third party' to whom outstanding derivative positions of the distressed bank can be transferred by PIDM.

ISDA Submissions (since 2010)

- April 30, 2012: ISDA submission to Perbadanan Insurans Deposit Malaysia (PIDM) in response to the Concept Paper on Recordkeeping and Reporting Requirements for Over-the-Counter Derivatives. This submission is not public.
- November 3, 2011: ISDA submission to SC on Capital Markets and Services (Amendment) Act 2011

- September 23, 2011: ISDA submission to SC on Capital Markets and Services (Amendment) Bill 2011
- September 15, 2011: ISDA submission to PIDM regarding Consultation Paper on Criteria for Qualified Third Party
- December 17, 2010: ISDA submission to BNM on Revised Guidelines on Product Transparency and Disclosure
- July 30, 2010: ISDA submission to PIDM on Consultation Paper on Proposed Amendments to the Malaysia Deposit Insurance Corporation Act 2005 Affecting Certain Financial Transactions
- April 30, 2010: ISDA submission to SC on Public Consultation Paper on Review of Sophisticated Investors and Sales Practices for Capital Market Products.

NEW ZEALAND

AT A GLANCE

Central Bank:	Reserve Bank of New Zealand (RBNZ) http://www.rbnz.govt.nz
Bank Regulator:	RBNZ
Fin. Mkts Regulator:	Financial Markets Authority (FMA) http://www.fma.govt.nz
Bank Association:	New Zealand Bankers Association (NZBA)
Master Agreement:	ISDA
Legal Opinions:	Netting and collateral opinions by Bell Gully
CCP/TR Status:	No announced plans.

Key Regulatory Milestones

- On March 23, 2012, the Reserve Bank of New Zealand (Reserve Bank) issued a Consultation Paper on Further Elements of Basel III Capital Adequacy Requirements in New Zealand. The Reserve Bank proposes the adoption of the Capital Conservation Buffer (CCB) to be comprised of 2.5% of Common Equity Tier 1, above the minimum capital requirement and to be fully implemented by January 1, 2014. The paper also introduces a framework for implementing the Countercyclical Buffer (CB) which will be initially applied to registered banks but may extend it to include other lenders, such as non-bank deposit takers, in the future. The Reserve Bank introduces the Basel III requirement that regulatory capital instruments are capable of absorbing losses.

- The Financial Markets Conduct legislation is expected to be enacted in 2012. It represents the most comprehensive reform of New Zealand's securities and financial markets law in decades. OTC derivatives will, for the first time, become a regulated financial product. However, dealings between wholesale market participants will largely be exempted.

- On November 8, 2011 RBNZ released a consultation paper on Implementation of Basel III Capital Adequacy Requirements in New Zealand.

ISDA Submissions (since 2010)

- September 6, 2011: ISDA submission to the Ministry of Economic Development (MED) on Financial Markets Conduct Bill
- August 20, 2010: ISDA submission to MED on discussion paper 'Review of Securities Law'

SINGAPORE

AT A GLANCE

Central Bank:	Monetary Authority of Singapore (MAS) http://www.mas.gov.sg
Bank Regulator:	MAS
Securities/Futures Regulator:	MAS
Associations:	Singapore Foreign Exchange Markets Committee (SFEMC) Association of Banks, Singapore (ABS) Singapore Investment Banking Association (SIBA)
Master Agreement:	ISDA
Legal Opinions:	Netting and collateral opinions by Allen & Gledhill Opinion on transactions entered into "electronically" and electronic records by Allen & Gledhill
CCP/TR Status:	SGX launched the first platform in Asia for central clearing of OTC derivatives in November 2010. The first product to be cleared were US and SGD interest rate swaps. This was extended to non-deliverable Asian Foreign Exchange Forwards in October 2011. The currencies cleared are CNY, IDR, INR, KRW, MYR, PHP and TWD. On July 25, the Singapore Exchange (SGX) announced the enhancement of its rules to strengthen its default management framework to protect against systemically destabilizing events. MAS published its consultation papers on clearing and trade reporting requirements in February, 2012. In May 2012, MAS issued its response to the feedback on the Proposed Regulation of Derivatives and a consultation paper on the Proposed Amendments to the Securities and Futures Act (SFA) on Regulation of OTC Derivatives. In Aug 2012, MAS issued its second consultation paper on the Proposed Amendments to the Securities and Futures Act (SFA) on Regulation of OTC Derivatives. MAS also issued its second response to feedback received on the Proposed Regulation of Derivatives Markets in Singapore published in Feb 2012.

Key Regulatory Milestones

- On August 3, 2012, 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.

- On July 25, 2012, the Singapore Exchange (SGX) announced the enhancement of its rules to strengthen its default management framework to protect against systemically destabilizing events, which may include the possibility of multiple member defaults. This enhancement follows a public consultation issued in September 2011. With the international move towards mandatory OTC derivatives through a CCP by 2013, SGX issued the enhancement of its rules to address the needs of its members. The rule enhancements include:

  - establishing the clearing member's (CM) liabilities in circumstances of multiple defaults
  - allowing SGX to apply the Clearing Fund continually, for a fixed period of 90 days, to meet the losses arising from all defaults in that period
  - various clarifications and refinements to SGX's powers in managing a default, such as SGX's authority to transfer and manage customer positions and margins from a defaulted CM to a non-defaulting CM

- On May 23, 2012, MAS issued its response to the feedback on the Proposed Regulation of Derivatives. In licensing an overseas trade repository, MAS will consider whether the repository, in its home jurisdiction, is subject to regulation and supervision comparable to the standards under MAS's Securities and Futures Act (SFA). The new requirements under the SFA will be in line with international standards.

  The same method for recognizing an overseas clearing facility will be applied. MAS will take a risk-based approach towards the regulation of clearing facilities. MAS will adopt a two-tier regulatory regime, where systemically-important clearing facilities will be regulated as approved clearing facilities and subject to a more rigorous set of standards, while other clearing facilities will be subject to a basic set of obligations more appropriate to the risk they pose. MAS intends to require "living will" policies and procedures for all clearing facilities. A designated clearinghouse may provide segregation of clients' monies and assets on an omnibus basis, however, as the international norms are still evolving, MAS will prescribe the level of segregation at a later stage.

- On May 23, 2012, MAS also released a consultation paper on the Proposed Amendments to the Securities and Futures Act (SFA) on Regulation of OTC Derivatives. The first draft of the legislative amendments addresses extending the current regulatory regime for clearing facilities to OTC derivatives, and introducing a new regulatory regime for trade repositories.

- On March 9, 2012, MAS released a consultation paper on the proposed rules for Issuance of Covered Bonds by Banks Incorporated in Singapore. MAS proposed that banks incorporated in Singapore may issue covered bonds subject to an aggregate value of assets in the cover pool, capped at 2% of the value of total assets of the bank.

- On February 17, 2012, MAS released a consultation paper with proposals to regulate Financial Holding Companies (FHCs) with at least one Singapore-incorporated bank or a Singapore-incorporated insurance company. The proposal does not apply to holding companies with only securities companies or holding companies of exchanges or clearinghouses. Only FHCs designated by MAS will be subject to the proposed regulations.

- On February 13, 2012, MAS released two consultation papers setting out MAS proposals to implement G20 commitments. The key proposal is to extend the ambit of the Securities and Futures Act (SFA) to OTC derivative contracts involving commodities, credit, equities, foreign exchange and interest rates. Also, both central clearing and trade reporting will be mandated. MAS does not propose mandating trading on exchanges or electronic trading platforms at this stage. There will be no domestic location requirement for CCPs and TRs but offshore CCPs and TRs will need to be authorized by MAS.

  All financial institutions regulated by MAS (FIs) and non-FIs resident or having a presence in Singapore above a clearing threshold will be required to clear certain products if one leg of the contract is booked in Singapore and either: both parties are subject to the clearing mandate; or one party is subject to the clearing mandate and the other party would have been subject had it been resident or had a presence in Singapore. In the initial phase, the products will likely be SGD and USD IRS and Asian currency NDFs. FX forwards and swaps will be exempted. FIs with minimal exposures, central banks and governments, and supranationals will be exempted. Intra-group transactions (subject to appropriate collateralization or other requirements) will also be exempted.

  All FIs and non-FIs resident or having a presence in Singapore above a reporting threshold will be required to report all transactions but only if booked or traded in Singapore. However, Singapore-incorporated banks must report on a group-wide basis. Reporting will be phased-in starting with interest rates, FX and oil derivatives. Central banks and governments, and supranationals will be exempted.

  In line with the current SFA regime, non-bank intermediaries dealing in OTC derivative contracts will now be required to obtain a Capital Markets Services (CMS) license. However, brokers that meet certain conditions.

- The final plank of the new regulatory regime for specified investment products (SIPs) (any investment product other than those on a list of Excluded Investment Products (EIPs) – EIPs are less complex products which are already established in the Singapore market and generally well understood by retail customers) came into effect on January 1, 2012. The final plank requires financial advisers to conduct a Customer Knowledge Assessment (in the case of unlisted SIPs) and a Customer Account Review (in the case of listed SIPs) prior to a sale to assess whether the customer has the relevant knowledge or experience to understand the risks and features of the product. The new regime was implemented following MAS' January 2010 consultation paper and MAS' response on October 21, 2010 to the feedback it received. The new regime applies where the products are sold to retail customers who are natural persons. The other planks of the new regime requires ongoing disclosure requirements to be made for unlisted debentures, a mandatory cooling-off period of 7 days for unlisted debentures (that are not exempt from prospectus requirements) with tenures longer than 3 months, a Product Highlights Sheet complying with specific prescribed requirements to be lodged where the offer of the SIP is made in or accompanied by a prospectus, and representatives dealing in or advising on SIPs to pass additional examinations on product knowledge and analysis.

- The Banking (Amendment) Regulations 2011 came into operation on February 14, 2011. The amendment introduces Regulations 7A and 23G and allows banks in Singapore to carry on businesses which are related or complementary to the bank's core financial business, but do not clearly satisfy the legal criteria of being financial or incidental to financial business under Section 30 of the Banking Act, without the need for prior prescription by class or specific case-by-case approval by MAS.

- Banks incorporated in Singapore will be required to meet the Basel III minimum capital adequacy ratio (CAR) standards by January 1, 2013 ahead of Basel's January 2015 timeline. Banks will be required to meet higher standards by January 1, 2015 - Common Equity Tier 1 CAR will be increased from 4.5% to 6.5% and Tier 1 CAR will be increased from 6% to 8%. MAS' existing requirement for Total CAR of 10% (which is higher than Basel III's 8%) will remain unchanged. Additionally, there will be a capital conservation buffer of 2.5% to be comprised of Common Equity Tier 1. This buffer will be phased in from January 1, 2016 to January 1, 2019. The new eligibility criteria for regulatory capital will also be phased in from January 1, 2014 to January 1, 2018. These requirements will apply to both the bank-group and bank-solo levels.

ISDA Submissions (since 2010)

- August 31, 2012: ISDA submission to Monetary Authority of Singapore on Consultation Paper II on Proposed Amendments to the Securities and Futures Act on Regulation of OTC Derivatives. This submission is not public.
- June 22, 2012: ISDA submission to Monetary Authority of Singapore regards to Consultation Paper I on the Proposed Amendments to the Securities and Futures Act on Regulation of OTC Derivatives. This submission is not public.
- March 26, 2012: ISDA submission to Monetary Authority of Singapore (MAS) in response to the Consultation Paper on the Transfer of Regulatory Oversight of Commodity Derivatives from IE to MAS
- March 26, 2012: ISDA submission to Monetary Authority of Singapore (MAS) in response to the Consultation Paper on the Proposed Regulation of OTC Derivatives
- March 12, 2010: ISDA response to the MAS Consultation Paper on the Review of the Regulatory Regime Governing the Sale and Marketing of Unlisted Investment Products

TAIWAN

AT A GLANCE

Central Bank:	Central Bank of China (CBC) http://www.cbc.gov.tw
Bank Regulator:	Banking Bureau of the Financial Supervisory Commission (FSC) http://www.banking.gov.tw
Securities Regulator:	Securities and Futures Bureau of the FSC http://www.sfb.gov.tw
Other Regulators:	Insurance Bureau of the FSC http://www.ib.gov.tw GreTai Securities is a GSE that monitors trading volumes and advises Taiwan's authorities http://www.otc.org.tw
Associations:	Trust Association of the Republic of Taiwan (TAROC) Taiwan Financial Services Roundtable (TFSR)
Legal Opinions:	Netting and collateral opinions by Russin & Vecchi
Master Agreement:	ISDA
CCP/TR Status:	FSC mandated Gretai Securities Market to establish a local trade repository. Taiwan has not proposed any mandatory clearing requirement in respect of OTC derivatives.

Key Regulatory Milestones

- Taiwan's FSC has mandated Gretai Securities Market to establish a local trade repository. Financial institutions are required to report their trades to a local trade repository under a phased approach. Effective on April 1, 2012 (Phase 1), NDF, FX Swap, Vanilla IRS, TWD Equity, and Structured Deposit will be required (an FI can defer the reporting of its overseas branch's transactions until the next phase). Effective on January 02, 2013 (Phase 2), FX Options and Forward must be reported. Reporting of all other derivatives will be required from July 1 2013 onwards (Phase 3). The local trade repository settings are bespoke in terms of reporting format (e.g. MTM, PVBP and Delta are required to be reported monthly, on a transaction-by-transaction basis) and connectivity (it does not support connection from global TR or any confirmation matching platform).

ISDA Submissions (since January 2010)

- August 23, 2011: ISDA submission jointly with ECCT/AmCham Joint Banking Committee to Taiwan Financial Supervisory Commission on trade repository development in Taiwan