

## APAC Monthly Update

**January 2015**

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

### **Regulatory Activities**

#### **Asia-Pacific:**

On January 23, ISDA held a call with the City of London to explain ISDA's work on standard market disruption event definitions for the offshore RMB market.

#### **Hong Kong:**

On January 19, ISDA co-hosted with FIA Asia and ASIFMA and industry meeting with CFTC Chairman Tim Massad in Hong Kong.

On January 20, ISDA joined a European Community-hosted meeting with ESMA Chairman Steve Maijoor.

On January 23, ISDA participated as a member in an HK SFC Product Advisory Committee Meeting.

On January 26, ISDA CEO Scott O'Malia and staff visited HKMA Deputy CEO Arthur Yuen and staff to discuss global regulatory developments. On the same day, ISDA CEO Scott O'Malia and staff visited SFC CEO Ashely Alder and staff to discuss global regulatory developments.

#### **Korea:**

On January 15, ISDA met with the Korean Financial Supervisory Service to discuss Korean trade reporting issues, OTC margining and the ISDA Resolution Stay Protocol. On the same day, ISDA met with the Bank of Korea to discuss Korean trade reporting issues and CCP resolution and recovery.

On January 16, ISDA met with KRX to discuss the progress of their dialogue with the European Commission on equivalence status. Progress of the FISCMA Amendment Act in the National Assembly to change KRX's listed side risk waterfall was also discussed. The expectation remains to be that the National Assembly will pass the Act in Q1 2015.

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

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

On January 27, ISDA held its monthly North Asia Legal and Regulatory Committee meeting in Hong Kong. Topics discussed included the proposed Foreign Investment Law (Draft) in China, the consultation draft of the "Interim Measures on the Trading of Designated Domestic Futures Products by Foreign Persons and Brokerage Firms" issued by CSRC, SAFE's implementing rules on renminbi (RMB) FX sale

and purchase transactions conducted by banks, the amendments to the “Administrative Regulations on Foreign-invested Banks” and the public consultation on bank deposit insurance regime in China, second consultation paper on resolution regime for financial institutions in Hong Kong, ISDA’s submission to SFC and HKMA on the proposed trade reporting obligations and subsequent discussions with the regulators on nexus trade reporting, and the FSS response’s to ISDA’s letter regarding QCCP status of KRX in Korea.

ISDA also discussed with members ISDA’s submission to ASIC regarding draft class instrument, ASX’s consultation paper “Enhanced Derivatives Account Segregation and Portability”, ISDA’s response to CCIL’s consultation paper on “Default Handling: Auction of Trades & Positions of Defaulter”, Bank Negara Malaysia’s responses to the consultation paper on the Netting of Financial Agreements Bill, MAS’s response to the feedback it received on its November 2013 consultation paper on the review of the Banking Act and another consultation on further proposed amendments to the Banking Act.

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

On January 29, ISDA held its monthly South Asia Legal and Regulatory Committee meeting at Credit Suisse in Singapore. The member topic raised was bank response on the retrospective collection of tax on gains from security sales by the Chinese Authority. Some members were not aware of this development.

For Australia, ISDA updated members on its submission to ASIC re draft class instrument. ISDA also notified members on ASX’s consultation paper published on 15 December 2014 on enhancements to client clearing account structures to offer increased collateral protection. The meeting also flagged the Final Report issued by the Australia Financial System Inquiry at the end of 2014.

With respect to India, ISDA highlighted two cooperation initiatives by RBI - (i) an MoU signed between RBI and the European Central Bank and (ii) a statement of cooperation on the exchange of supervisory information between the RBI and the US financial regulators. ISDA updated members on its submission to CCIL’s consultation paper on “Default Handling: Auction of Trades & Positions of Defaulter” on 12 January 2015. ISDA also updated members of RBI’s revised guidelines on leverage ratio framework and attendant disclosure requirements..

On Indonesia, ISDA notified members of the revised Bank Indonesia (BI) Regulation and Circular letter clarifying previous BI Regulations on foreign currency hedging requirements with an Indonesian bank. The meeting also discussed the use of arbitration as a successful tool for dispute resolution with Indonesian counterparties and the requirement for Bahasa Indonesia translation for contracts. ISDA highlighted the Indonesia Working Group as the appropriate forum for discussing these developments in further detail.

For Malaysia, the meeting discussed Bank Negara Malaysia’s response to its consultation paper on the Netting of Financial Agreements Bill (the “Bill”). ISDA updated members on the revised timing of the Bill – ISDA understands that it will be enacted by Q1 of 2015. ISDA also notified members of its upcoming trip to Kuala Lumpur on 4-6 February in which ISDA will be meeting various regulators to discuss, among others, the Bill.

For Singapore, ISDA briefed members on the MAS Singapore Academy of Law Conference held on 23 January 2015 in which ISDA highlighted two key speeches by CFTC Chairman Massad and MAS Managing Director Menon. ISDA notified members of MAS’ response to the feedback it received on its November 2013 consultation paper on the review of the Banking Act. MAS also launched another consultation on the further proposed amendments to the Banking Act which includes, among others, more discretion to MAS with respect to certain banking activities. ISDA was open to responding to that consultation paper if there was sufficient interest from members to do so.

On ISDA's efforts, ISDA discussed its position paper on the proposed recovery and continuity framework for central counterparties as well as its response to the FSB consultation on cross-border recognition. ISDA also updated members on the status of WGMR implementation in Asia. ISDA also notified members of the new definitions to the LBMA Gold Price in the 2005 Commodities Definitions. On Global Efforts, ISDA discussed developments which indicate that the timeline for implementing margin requirements for non-cleared derivatives may be extended.

#### **Members' Meeting:**

On January 16, ISDA held its Korea member's meeting in Seoul. At the meeting, members discussed CFTC issues No-Action Letter for KRX and progress on EC equivalence and ESMA recognition. ISDA also updated members on the current ISDA documentation projects and provided an update on global and Korean regulatory developments.

#### **Other Activities:**

On January 20, ISDA held an industry conference call to discuss concerns about the proposed look-back period and requirement to backload nexus transactions under the final form of the HK trade reporting and recordkeeping rules.

On January 27, ISDA spoke on the topic of the importance of netting and collateral legal infrastructure at an APEC Financial Forum event in Hong Kong.

On January 28, ISDA spoke on the topic of the importance of netting and collateral legal infrastructure at an APEC Business Advisory Council meeting in Hong Kong.

#### **Regulatory Developments**

##### **China: CSRC consults on rules for foreign participation in futures trading**

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On December 26, 2014, the China Securities Regulatory Commission (CSRC) issued a consultation draft of the Interim Measures on the Trading of Designated Domestic Futures Products by Foreign Persons and Brokerage Firms (Chinese only). The draft measures are intended to introduce foreign investors to the domestic futures market, bringing it in line with international practice and improving its price discovery function with more liquidity.

The CSRC will designate the specific futures products available for trading by foreign market participants on a step-by-step basis, taking into consideration the pace of opening up the renminbi capital account, market participation, risk control of the domestic futures market and other factors. The CSRC has designated crude oil futures as the first futures product available for trading by foreign market participants.

According to the draft measures, a foreign person (ie, a foreign entity incorporated or organised in a foreign jurisdiction or a foreign natural person) may trade designated futures products in China either via a domestic futures company or a foreign brokerage firm. A foreign person may also directly trade on a domestic futures exchange, subject to approval by the relevant exchange. A foreign brokerage firm entrusted by a foreign person may, on behalf of its client, trade designated futures products via a domestic futures company or trade directly on a domestic futures exchange subject to approval by the relevant exchange. In addition to some prudential requirements, the CSRC also requires the foreign regulator in

the home jurisdiction of the foreign brokerage firm to enter into a memorandum of understanding with the CSRC before the brokerage firm can trade futures in China.

The draft measures also include detailed provisions on issues regarding account opening, operational requirements, clearing and settlement, margin, large trader reporting, mandatory close-out, default and dispute resolution.

### **Hong Kong: ESMA and SFC sign MOU on CCPs**

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On January 16, the Securities and Futures Commission (SFC) and European Securities and Markets Authority (ESMA) announced they had signed a memorandum of understanding (MOU) on December 15, 2014 on cooperation arrangements for Hong Kong-established central counterparties (CCPs) applying for ESMA recognition in the European Union (EU). The MOU is a precondition for those CCPs being able to offer clearing services to clearing members and trading platforms in the EU. The MOU provides for consultation, cooperation and the exchange of information between the authorities on CCP matters and any other areas of mutual interest (but does not cover EU-based CCP supervision). It follows the European Commission's decision that the legal and supervisory arrangements of Hong Kong ensure that the relevant CCPs comply with requirements that are equivalent to those under the European Market Infrastructure Regulation.

### **India:**

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### **RBI and ECB sign an MOU on cooperation**

On January 14, the Reserve Bank of India (RBI) and the European Central Bank (ECB) signed a memorandum of understanding (MOU) on cooperation in the field of central banking. The MOU provides a framework for regular exchange of information, policy dialogue and technical cooperation between the two institutions. Technical cooperation may take the form of joint seminars and workshops in areas of mutual interest in the field of central banking.

### **RBI revises framework for leverage ratio**

On January 8, the RBI issued revised guidelines on the leverage ratio framework and attendant disclosure requirements, as per paragraph 20 of the fourth bi-monthly monetary policy statement 2014-15, which was announced on September 30, 2014. This replaces the 'Part E: Leverage Ratio Framework' in the Master Circular DBOD.No.BP.BC.6/21.06.201/2014-15, dated July 1, 2014, on Basel III capital requirements. These guidelines will come into effect from April 1.

### **Indonesia: Bank Indonesia clarifies foreign currency hedging regulations**

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Bank Indonesia issued a revised Regulation (No. 16/21/PBI/2014)(in Bahasa only) and Circular Letter (16/24/DKEM/2014)(in Bahasa only) in January to clarify requirements and address concerns raised in the original rules. The new regulation and circular letter will supersede the previous regulations in their entirety.

From January 1, 2017, the hedging requirements set out in the revised regulation and circular letter must be fulfilled with an Indonesian bank, including Indonesian branches of foreign banks. Bank Indonesia has the ability to specify minimum hedging requirements and thresholds, and has confirmed that the long introduction period is meant to assist Indonesian banks prepare for the anticipated increase in demand for hedging transactions.

The definition of 'foreign currency asset' and 'foreign currency liabilities' are specified in detail in the circular letter. For example, 'foreign currency asset' now includes cash, giros, bank deposits, receivables, inventories, marketable securities and payables under forward, swap and option contracts, counted on the basis of the quarterly balance sheet. There is also a new minimum threshold that means net foreign currency liabilities do not need to be hedged if they are less than \$100,000.

The new rules also provide an exemption from certain hedging requirements for non-bank companies that have (a) export revenues exceeding 50% of their total revenues in the preceding calendar year and (b) have permission from the Ministry of Finance to report financial statements in US dollars.

### **Malaysia: BNM issues response on Netting of Financial Agreements Bill consultation paper**

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On January 8, Bank Negara Malaysia issued its response to feedback received from the consultation paper on the Netting of Financial Agreements Bill on September 9, 2014, which proposed to enact a legislation to provide legal certainty for the enforcement of close-out netting arrangements.

### **Singapore: MAS publishes responses Banking Act feedback**

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On January 15, the Monetary Authority of Singapore (MAS) published its response to feedback on its November 2013 consultation paper on the review of the Banking Act. The MAS had previously sought feedback on proposed amendments aimed at:

- Formalising banks' duties to inform the MAS of material adverse developments and information related to the bank, its shareholders and controllers, and key appointment holders;
- Strengthening the MAS's control over banks' key appointment holders and auditors; and
- Formalising banks' duties to implement risk management systems and controls.

The MAS has now launched another consultation on further proposed amendments to the Banking Act. The proposed amendments include:

- Requiring banks to seek the MAS's approval to open a new place of business or change the location of their existing place of business at which they conduct other financial or related activities (for example, money-changing and remittance activities); and
- Empowering the MAS to declare any day or part thereof to be a bank holiday or holidays, and to prescribe either a positive or negative list of activities that banks may or may not conduct during the bank holiday.

The MAS has also invited comments on the draft Banking Act (Amendment) Bill, which is appended at Annex B of the January 2015 consultation paper. The submission deadline is February 13.

### **South Korea:**

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### **FSC revises regulation on supervision on banking business**

On December 24, 2014, the Financial Services Commission (FSC) approved revisions to the Regulation on Supervision of Banking Business, which includes the introduction of the liquidity coverage ratio (LCR). The minimum ratio for commercial banks will begin at 80%, which is higher than the Basel III requirement of 60%, given the current liquidity ratio of domestic banks. The ratio will be raised by 5

percentage points per year over the next four years to meet 100% in 2019. The LCR rules will be implemented from January 1.

#### **FSS revises manual for investment services authorization**

On December 29, 2014, the Financial Supervisory Service (FSS) announced a complete revision of the manual for licensing requirements and procedures for financial investment services business, which was first published in March 2009. The revised manual provides detailed licensing criteria for regulatory approval, and the FSS believes it will contribute to the transparency of the licensing procedure. Specifically, the new manual provides explanations on requirements to be satisfied by an applicant for a business licence, such as a sound business plan, the availability of business assets including human resources and physical facilities, and arrangements for the prevention of conflicts of interest. It also provides various application forms that must be filed as part of the licensing process.

#### **KRX announces major changes**

On January 6, the Korea Exchange (KRX) announced major institutional changes in its securities and derivatives markets in 2015. On derivatives, key highlights include:

- The opening of new derivatives markets to strengthen capital market dynamics: this will include dividend index futures, Chinese yuan futures and short-term interest futures.
- The provision of risk management levers for the capital market: KRX will open the KOSDAQ single-stock futures and KOSDAQ index futures markets, as well as introduce exchange-traded fund futures.
- Improvement in price stability: KRX will take a phased approach to expand the price limit of stocks and index-based derivatives.
- A change in the tick size of KOSPI 200 options and VI futures: the tick size of KOSPI 200 options will be set at 0.01 points and the tick size of volatility index futures will be reduced to 0.01 points.
- Exemption of the Securities Transaction Tax for derivatives market makers: the target taxpayer will be financial investment companies that have concluded market-making contracts with KRX, and target trading will be stock sales trading that is conducted for the purpose of avoiding risks that may occur in the process of market-making for derivatives products with underlying assets of stocks. The target period is the first half 2015 to December 31, 2017.
- Reprioritisation of financial resources for resolving settlement failure: KRX will appropriate its partial reserve first before tapping into the joint clearing fund.

#### **KRX launches carbon emission rights (CERs) market**

On January 6, KRX announced the launch of a carbon emission rights (CERs) market (Korean only), which will commence on January 12. Key details include:

- Eligibility of market participants: companies that are allocated with emission allowances and public financial institutions, such as Korea Development Bank, Industrial Bank of Korea and Export-Import Bank of Korea.
- Trading products: Korean carbon allowance unit (KAU) and offset CERs in each phase.
- Trading period: from the first day of the planned period to the end of June of the year following the year of implementation.
- Trading hours: 10:00am to 12:00pm (two hours).
- The Greenhouse Gas Inventory & Research Center of Korea will conduct the delivery of KAUs upon KRX's settlement instruction.

### **KRX's designation as public institution terminates**

On January 30, the Korea Exchange (KRX) announced that the Committee for Management of Public Institutions under the Ministry of Strategy and Finance had decided to terminate its designation as a public institution. The reason cited for the change was to ensure KRX is best placed to develop the capital market. KRX was designated as a public institution in January 2009.

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

#### **Meetings:**

|                                              |        |
|----------------------------------------------|--------|
| APAC Legal Regulatory Advisory Group Meeting | Feb 10 |
| Market call: transaction identifiers         | Feb 10 |
| APAC Commodity Meeting                       | Feb 13 |
| North Asia L&R Meeting                       | Feb 24 |
| APAC CCP Risk call                           | Feb 25 |
| South Asia L&R Meeting                       | Feb 26 |
| APAC Equity Operation Working Group Meeting  | Feb 26 |

#### **Conference:**

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|-----------------------------------------------------------------------------------------------|-------|
| Understanding ISDA Master Agreement and Credit Support Documents<br>Conference – Kuala Lumpur | Feb 4 |
| Current Issues in the Derivatives Landscape Conference – Kuala Lumpur                         | Feb 5 |

#### **APAC Monthly Update**

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