

## APAC Monthly Update

**May 2013**

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

### **Regulatory Activities**

#### **Australia:**

On May 7, ISDA met with ASIC Chairman and IOSCO Chairman Greg Medcraft. Among the topics of discussion were ESMA recognition of Asian CCPs, mandatory margining of non-cleared swaps and trade data reporting conflict of law issues.

On May 9, ISDA made a presentation to the International Council of Securities Associations on regulatory conflict and extraterritoriality issues.

On May 22, ISDA met with ASIC, Treasury and RBA to discuss ISDA's initiatives such as the 2013 Reporting Protocol, Basel-IOSCO paper on margin for non-centrally cleared derivatives, ESMA's recognition of 3rd country CCPs, the issues surrounding privacy laws and trade reporting, the industry's feedback to the various Australian consultation papers and the proposed trade reporting regime in Australia.

#### **China**

On May 30, ISDA met with the Shanghai head office of the People's Bank of China to discuss issues relating to conflicts between the trading reporting requirements under the Dodd-Frank Act and local privacy laws, ESMA recognition of third-country CCPs and BCBS-IOSCO proposal on margin requirements for unclear derivatives.

On May 31, ISDA met with Shanghai Clearing House to discuss developments of central clearing in China and international markets and the EU requirements regarding recognition of third-country CCPs.

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

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

On May 25, ISDA held its monthly Legal & Regulatory meeting in Hong Kong. Topics discussed in respect of North Asia included ISDA submissions on HKMA consultation on reporting requirements for OTC derivatives transactions, the SFC consultation paper on the "Proposed Amendments to the Professional Investor Regime and the Client Agreement Requirements", RBA, APRA and ASIC publication on clearing mandate in Australia, ISDA submission to ASIC on CP205 on derivatives trade

reporting , ISDA submission on Corporations and Financial Sector Legislation Amendment Act and Juris Corp's memorandum on legal framework for CCPs in India.

The meeting also provided an update on current ISDA efforts and projects including the offshore RMB documentation working group, standardized representations and undertakings relating to Taiwan underliers, the pre-publication draft of ISDA 2013 Standard Credit Support Annex, the 2013 Reporting Protocol and side letters, ISDA's letter to Asian CCPs on CRD4 and the working group on conflicts between mandatory trade reporting requirements and national laws. Members also discussed the impact of Article 25(1) of EMIR on Asian CCPs, the "Practical implementation of the EMIR framework to non-EU central counterparties (CCPs)" issued by the European Commission and the SEC proposed rules on cross-border Security-Based Swap activities.

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

On May 30, ISDA held its L&R Members' meeting in Singapore. Topics discussed included an update on the ISDA 2013 Reporting Protocol and Side Letters, the ISDA 2013 Standard Credit Support Annex, the annotated versions of the ISDA March 2013 Dodd-Frank Protocol, an update on the Working Group on Conflicts between Mandatory Trade Reporting Requirements and National Laws, the publication of the Exclusionary Terms and Keepwell Terms as well ISDA's recent letter to the Asian CCPs on CRD 4. ISDA also provided an update on its submission to IOSCO on proposed Principles for Financial Benchmarks, the adoption by the CFTC of its rules regarding SEFs, the European Commission's paper on practical implementation of EMIR framework to non-EU central counterparties and the SEC's proposed rules on cross-border securities-based swaps.

The meeting also discussed ISDA's recent trip to Sydney, the release of the report by the Senate Committee in Australia on the Corporations and Financial Sector Legislation Amendment Bill 2013 as well as ISDA's submission on the same, the publication of information on the clearing mandate in Australia by the RBA, APRA and ASIC, APRA's release of draft APG 210 and the discussion paper on "Implementing Basel III Liquidity Reforms in Australia", ISDA's submission to ASIC on CP205 on Derivatives Trade Reporting, the determination by the Minister for classes of derivatives required to be reported and the release of ASX's response to the consultation feedback on Draft Operating Feedback. The meeting also considered Juris Corp's Memorandum on Legal Framework for CCPs in India and the FSLRC report to the Indian Government.

The meeting also discussed the IGA which Singapore hopes to conclude with the U.S. to comply with FATCA using Model 1 and ISDA's recent meetings and progress on arbitration clauses. Other topics discussed also included ISDA's recent submissions on the HKMA consultation on reporting requirements for OTC derivatives transactions, the Hong Kong SFC's Consultation Paper on the proposed amendments to the Professional Investor Regime and the Client Agreement Requirements and the announcement by the Treasury Markets Association on plans to launch CNH HIBOR fixing. ISDA also provided an update on the offshore RMB documentation WG and the project of standardizing representations and undertakings for transactions linked to Taiwan underliers.

### **Operations/Market Infrastructure**

On May 2, ISDA held its APAC Interest Rates Derivatives Operations Working Group meeting to brief the latest regional developments on rates. The group also discussed the addition / amendment of floating rate options / matrices, the issues on electronically confirming certain products, novation practice and the upcoming changes in certain rate fixings.

On May 9, ISDA held its APAC Equity Derivatives Operations Working Group meeting to brief the latest confirmation template development for Asian products. The group also discussed the confirmation practice for products involving CNY/USD and the documentation practice upon occurrence of KI/KO and corporate action events.

On May 27, ISDA held its APAC Collateral Management Operations Working Group meeting to brief the latest collateral requirement in US and Europe. The group also discussed the margin survey, CCP collateral operational practice and other global developments.

On May 28, ISDA held its APAC Portfolio Reconciliation sub working group meeting to discuss the latest portfolio reconciliation requirements in US and Europe and the associated challenges to implement in Asia.

On May 2, 7, 14, 28 and 29, ISDA held its AEJ Data and Reporting Compliance Working Group meetings to discuss the HK and Australia trade reporting matters.

## **Member Activities**

### **Australia Members' Meeting**

On May 20, ISDA held its Australian members meeting in Sydney. ISDA updated members on the various ISDA submissions such as ASIC's Consultation Paper CP 205 Trade Reporting Obligations for OTC Derivatives, the Parliamentary Joint Committee on Corporations and Financial Services, ASIC's Consultation Paper CP 201 Derivatives Trade Repositories, ASX's Consultation Paper on Draft Operating Rules, Treasury's Consultation Paper Implementation of Australia's G-20 Over-the-Counter Derivatives Commitments, Treasury's Consultation Paper on Strengthening APRA's Crisis Management Powers and ASX's Consultation Paper Derivatives Account Segregation and Portability. ISDA also updated members on the ISDA Reporting protocol and the rationale for the protocol, the Dodd-Frank Protocols, the working group on conflicts between Mandatory Trade Reporting Requirements and National laws, the ISDA Derivatives/FX PB Business Conduct Allocation protocol, ISDA 2013 EMIR NFC Representation protocol, ISDA letter to Asian CCPs on the extraterritorial implications of EMIR Article 25 and Section 5(b) of the Commodities Exchange Act, the Volcker Rule and FATCA.

### **China Members' Meeting**

On May 31, ISDA held its quarterly China members meeting in Shanghai. At the meeting, members discussed the latest regulations on securities investments by Renminbi Qualified Overseas Institutional Investors, ISDA's letter to Asian CCPs on impact of CRD4 on recognition of their country CCPs by EU, the March 2013 Dodd-Frank Protocol, the Standard Credit Support Annex, the Reporting Protocol and proposed changes to the 2003 Credit Derivatives Definitions.

## **Regulatory Developments**

### **Australia:**

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### **Regulators on mandatory clearing obligations**

On May 8, three members of the Council of Financial Regulators, the Reserve Bank of Australia (RBA), Australian Prudential Regulation Authority (APRA) and Australian Securities and Investments Commission (ASIC) published information on how they will assess the case for a clearing mandate under the new regulatory framework for the OTC derivatives markets.

The information issued addresses:

- the preconditions for central clearing such as liquidity and standardization;
- the benefits for central clearing for products that are widely traded in Australia for the efficiency, integrity and stability of financial markets;
- consideration to the availability of central clearing options to meet the needs of the Australian market participants. Any incremental costs of imposing a mandate will likely be lowered if there is a choice of clearing solutions either domestic or international.

By mandating central clearing of products that have been mandated in other jurisdictions, this would increase the likelihood that the Australian regime will be considered equivalent to relevant overseas jurisdictions.

### **ASX proposes refinements to the draft operating rules**

On May 1, Australian Securities Exchange (ASX) releases its response to the Consultation Paper on Draft Operating Rules. In its response, ASX proposes the following refinements to the Consultation Paper released on Feb 21, 2013:

- ASX will maintain a single default fund, however, ASX will formally review its default fund structure in consultation with the Risk Committee annually;
- The symmetry between the Futures and OTC Commitments will be increased by reducing the Futures Clearing Participants Commitments from AUD\$120 million to AUD\$100 million, in-line with the OTC Clearing Participants Commitments. ASX group will inject a further AUD\$20 million, increasing the “first loss” tranche in the default waterfall to AUD\$120 million. All Secondary Commitments will be removed for Futures Clearing Participants;
- The trigger points for “scaling up” process for the transitional OTC Clearing Participant (“CP”) Commitments were clarified. The Aggregate OTC Commitment will be equal to AUD\$100 million if there are 8 or more OTC CPs. If there are less than 8 OTC CPs, the commitment will be AUD\$12.5 million x Number of OTC CPs, if (1) total OTC initial margin (including offsetting futures) reaches AUD\$500 million, (2) a competent authority directs ASX or (3) all OTC CPs agree, then aggregate OTC Commitment will increase to AUD\$100 million;
- ASX group will provide the next AUD\$100 million, added in increments as required if total Commitment requirements increase beyond AUD\$470 million for the single default fund in the future;
- Voting rights will be one vote per CP rather than one vote per authorization held by a CP;
- Only OTC CPs that fail to bid in the default auctions when they are required to bid will have the OTC Commitment juniorized.

ASX retains the ultimate decision on whether to implement the DMG’s advice. However, ASX will be required to explain its reasons when it does not follow the DMG’s advice.

### **APRA publishes amendments on implementing LCR**

On May 6, the Australian Prudential Regulation Authority (APRA) released a second consultation package, which includes a draft Prudential Standards APS 210 Liquidity (APS 210), a draft Prudential Practice Guide APG 210 Liquidity (APG 210) and a discussion paper on Implementing Basel III Liquidity Reforms in Australia (the Discussion paper). The consultation package outlines APRA’s proposed amendments to its 2011 proposals on the implementation of the Liquidity Coverage Ratio (LCR) in Australia and addresses the main issues raised in submissions, and in dialogue with the industry and other interested parties.

The Basel III liquidity framework introduces two new minimum global standards: a 30-day LCR to address an acute stress scenario and a Net Stable Funding Ratio (NSFR) to encourage longer-term funding resilience. APRA has not made any amendments to its proposed implementation of the NSFR but will ensure that concerns raised in the submissions for the NSFR will be fed to the Basel Committee.

APRA intends to issue the final APS 210 and APG 210 in mid-2013. The new prudential standard is intended to be effective on January 1, 2014. The LCR and NSFR requirements are intended to commence on January 1, 2015 and January 1, 2018, respectively. The LCR will become effective on January 1, 2015 with no phase-in allowed.

The changes to the LCR announced in the Basel III liquidity reforms allowed national authorities to have discretion to include certain additional assets in the new Level 2B category of high-quality liquid assets (HQLA). These assets are:

- residential mortgage-backed securities (RMBS) with a long-term credit rating of AA or higher;
- corporate debt securities with long-term credit rating between A+ and BBB-; and
- certain listed non-financial equities.

APRA is proposing not to exercise this discretion, hence, the definition of HQLA remains unchanged. However, some debt securities included in the definition of Level 2A and level 2B assets are repo-eligible with the RBA for normal market conditions and are eligible collateral for the Committed Liquidity Facility (CLF).

APRA is also proposing to adopt the revised Basel III assumed cash inflow and outflow rates, with only one minor modification for maturing central bank funding transactions. APRA proposes for maturing secured funding transactions with a central bank backed by CLF eligible debt securities, it will have an outflow rate of zero percent. All other maturing secured funding transactions with a central bank not backed by HQLA will have an outflow rate of 100 percent.

Currently, ADIs are subject to a simple quantitative liquidity ratio requirement, the minimum liquidity holdings (MLH) regime. APRA proposes to leave the MLH regime broadly unchanged but to revise the definition of assets that are eligible for inclusion in an ADI's minimum liquidity holdings. Submission deadline is June 17.

### **Hong Kong:**

#### **TMA announces the launch of CNH HIBOR fixing**

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

### **SFC consults on professional investors and client agreements**

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

On May 15, the Securities and Futures Commission (SFC) issued a consultation paper on the Proposed Amendments to the Professional Investor Regime and the Client Agreement Requirements. In it, the SFC seeks views on whether corporate and individual professional investors should continue to be allowed to participate in private placement activities and whether the monetary thresholds set out in the Professional Investors Rules should be increased.

The SFC also proposes to require intermediaries to comply with all requirements in the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (the “Code”), including the suitability requirement, when dealing with all investors who are individuals, their wholly owned investment vehicles and investment vehicles that are wholly owned by family trusts. For institutional professional investors, the SFC proposes to maintain the current position so that intermediaries dealing with them are automatically entitled to all current Code exemptions; and for professional investors that are corporations, the SFC proposes that intermediaries can continue to be exempt from the suitability requirement and other current Code exemptions after conducting a principles-based assessment of knowledge and investment experience and obtaining their consent etc.

The SFC also proposes that amendments be made to the client agreement requirements in the Code. The SFC proposes, in summary, that the Suitability Requirement should be incorporated into client agreements as a contractual term; and client agreements should not contain terms which are inconsistent with the Code and should accurately set out in clear terms the actual services to be provided to the client. Deadline for comment is August 14.

### **Korea: FSC publishes draft regulation on derivatives clearing**

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

On May 15, the Financial Services Commission (FSC) of Korea issued its draft regulation regarding central clearing of OTC derivatives. The regulation mainly deals with CCP licensing process and CCP’s reporting obligation. The addendum of the FSC regulation states that the mandatory clearing obligations will come into force from October 7. Deadline for comment is June 23.

### **Singapore:**

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### **EMA seeks interest in electricity forward trading**

On May 23, the Energy Market Authority (EMA) issued a request for interest document for the Forward Sale Contract Scheme (FSC) to facilitate the development of an electricity futures market in Singapore. The aim of the development of the futures market is to support the trading of “forward” electricity products and complement the existing wholesale and retail electricity markets.

In its public consultation paper released in October 2012, the EMA requested feedback on the FSC scheme, which provides incentives for generators through long term contracts of up to three years (FSCs), in return for them participating as market makers in the electricity futures market. The FSCs are fixed volume indexed price contracts with generators on the sell-side and Market Support Services Licensee (MSSL), i.e. SP Services, on the buy-side. The total volume for the FSC is 8,400GWh over the three year tenure and will be allocated evenly across all time periods in the quarter during the contract duration. The FSC price may be pegged to the prevailing Liquefied Natural Gas Vesting Price (LVP) or Balance Vesting Price (BVP) and generators will not be allowed to switch between the price references during the

tenure of the FSC scheme. The expected launch of the Singapore electricity futures market is in the first half of 2014.

### **ICBC Singapore branch acts as RMB clearing bank**

On February 8, People's Bank of China (PBOC) appointed the Singapore branch of Industrial and Commercial Bank of China (ICBC) as the RMB clearing bank for Singapore (the RMB Clearing Bank). On May 27, ICBC officially launched its RMB clearing services in Singapore. Banks participating in the RMB clearing and settlement services will be able to access the payment systems and financial markets in China through the RMB Clearing Bank. The RMB Clearing Bank will also be able to provide RMB liquidity to banks participating in the RMB clearing and settlement services.

Transactions involving cross-border flow of RMB funds with China will be regulated in accordance with requirements set out by the PBOC regarding cross-border RMB transactions. Transactions not involving cross-border flow of RMB funds with China will not be subject to additional regulatory requirements from PBOC or other regulatory bodies in China. Banks in Singapore will be able to open RMB accounts and carry out RMB business, subject to their licensing conditions and prevailing regulations. Banks in Singapore will be able to make and receive payments in RMB with counterparties in China and will also be able to access the foreign exchange market in China to buy/sell RMB or to square their RMB positions arising from trades with China.

### **Submission**

On May 3, ISDA made submission to Australian Securities and Investments Commission in response to the Consultation Paper 205 on Derivatives Trade Reporting. This submission is not yet public.

On May 16, ISDA made submission to Hong Kong Monetary Authority in response to the HKMA Consultation on reporting requirement for OTC derivatives transactions. This submission is not yet public.

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

#### **Meetings:**

Public Policy Call	Jun 3
Legal and Regulatory Advisory Group Meeting	Jun 4
Malaysia Members' Meeting	Jun 6
APAC IRD Operations Working Group Meeting	Jun 6
India Members' Meeting	Jun 18
North Asia L&R Meeting	Jun 25
South Asia L&R Meeting	Jun 27

#### **Conferences:**

Understanding the ISDA Master Agreements Conference Including Close-outs under the ISDA Master Agreement – Hong Kong	Jun 18
Understanding Collateral Arrangements and the ISDA Credit Support Documents Conference Including Close-outs under the ISDA Credit Support Annex – Hong Kong	Jun 19

#### **ISDA APAC Monthly Update**

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