Asia-Pacific Regulatory Profiles

October 2015

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

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

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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:	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 Australian Securities Exchange (ASX) offers clearing services for OTC interest rate derivatives, including inter-dealer AUD interest rate swaps (IRS) and overnight index swaps (OIS). Subsequently, it plans to expand the product coverage to AUD forward rate agreements (FRA) and to NZD IRS, OIS and FRAs. It also offers client clearing.
	The Council of Financial Regulators (comprising RBA, APRA, ASIC and the Treasury) as well as the individual agencies have released various consultation papers on the implementation of the G20 OTC derivatives commitments.

Key Regulatory Milestones

1. G20 OTC derivatives commitments

- On April 18, 2012, the Treasury published a Consultation Paper on 'Implementation of a framework for Australia's G20 over-the-counter derivatives commitments'. It was proposed that the Minister for Financial Services and Superannuation (Minister) will prescribe a certain class of derivatives as being subject to one or more mandatory obligations for trade reporting, central clearing and trade execution. ASIC would make derivative transaction rules (DTRs), which would require the Minister's consent. ASIC would 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. A new trade repository licensing regime would also be introduced.

- On October 12, 2012, the Corporations Legislation Amendment (Derivative Transactions) Bill 2012 (2012 Bill) was introduced into Parliament. The 2012 Bill would amend the Corporations Act 2001 and introduce a legislative framework to carry out the proposals set out in the Treasury's April 18, 2012 Consultation Paper. The Bill subsequently passed Parliament and received royal assent on December 6, 2012.

2. Central clearing

- On February 27, 2014, the Treasury issued a proposals paper on the G4 IRD central clearing mandate, using information from previous reports on the Australian OTC derivatives market. This proposals paper was the first step in the mandating of central clearing for US Dollars, Euro, British Pound and Japanese Yen interest rate derivatives (G4 IRD). The central clearing mandate would apply to large financial institutions with significant cross-border activity in these products (G4 dealers). The proposed implementation timeline was: 2nd quarter 2014 for the Ministerial determination and for ASIC to consult on rules relating to the details of the central clearing obligation; late 2014 for central clearing rules to be completed and early 2015 for central clearing obligations to commence.

  For trading platforms, no decision would be taken until subsequent reviews by the regulators. However, the Government would also be reviewing the licensing arrangement for financial markets. The review would consider whether the framework is adequate to deal with derivatives trading platforms that would be suitable for mandatory trade execution. This review is ongoing.

- On April 3, 2014, the RBA, APRA and ASIC (the Regulators) released a Report on the Australian OTC Derivatives Market – April 2014. The Regulators recommended the government consider a central clearing mandate for trades between internationally-active dealers for Australian dollar-denominated interest rate derivatives. The Regulators did not see a case for implementing a central clearing mandate for North American, European and Japanese referenced credit index derivatives at this time, and also did not believe it was appropriate to mandate central clearing for non-dealers. There was no specific recommendation regarding a mandatory platform trading obligation at that time.

- On July 8, 2014, the Treasury issued a proposals paper on the AUD-IRD central clearing mandate. The Paper built on the version published in February which proposed the mandating of central clearing for US Dollars, Euro, British Pound and Japanese Yen interest rate derivatives (G4 IRD). The Paper proposed to extend the mandatory requirement for central clearing to include interest rate derivatives in Australian dollars as part of the global reforms on OTC derivatives markets in Australia.

  The Paper proposed that the clearing requirement would only apply to large financial institutions and provided two options for defining the class of entities that would be captured:

  Option A:

  1. any domestic financial entity with $100 billion or more gross notional OTC derivatives outstanding;
  2. any foreign financial entity with $100 billion or more gross notional OTC derivatives outstanding booked or entered into in Australia;
  3. any foreign financial institution with $100 billion or more of gross notional OTC derivatives outstanding with domestic and foreign financial entities subject to the clearing mandate in Australia under the first two rules above; or
  4. any entity that opts in to a mandatory clearing obligation in G4-IRD or AUD-IRD.

  Option B:

  1. any domestic financial entity with $100 billion or more gross notional OTC derivatives outstanding;
  2. any foreign financial entity with $100 billion or more gross notional OTC derivatives outstanding booked or entered into in Australia;
  3. any entity regulated as a swap dealer in the US; or
  4. any entity that opts in to a mandatory clearing obligation in G4-IRD or AUD-IRD.

The threshold would be calculated on a legal entity basis, hence, only outstanding OTC derivatives entered into by the legal entity would be counted. Public entities such as central banks etc., would be out of scope of the central clearing rules.

The Paper also proposed to combine the central clearing mandates for G4 and AUD-IRD in one Ministerial determination with the proposed timetable for implementation: draft Ministerial determination to be released for comments in third quarter 2014; determination and regulations to be made in late 2014; and early 2015 for the clearing mandate to come into force.

- On May 28, 2015, announcements were made by the Australian Treasury and ASIC about the release of exposure drafts of legislative documents, an explanatory guide and a consultation paper to give effect to two proposals, including to introduce mandatory central clearing for certain interest rate derivatives in certain currencies from April 2016 (through the release of a draft Ministerial determination, proposed Treasury amendments to the Corporations Regulations and an ASIC consultation paper).

  The proposals would require certain interest rate derivatives traded between internationally-active dealers in Australian dollars and four global currencies (US dollars, euro, Japanese yen and British pounds) to be cleared through a licensed or prescribed clearing and settlement facility. ASIC consultation paper CP 231 Mandatory central clearing of OTC interest rate derivative transactions (CP 231) set out issues such as the entities which would be subject to the clearing requirements, the cross-border application of the draft derivative transaction rules (clearing) and the transaction and asset classes subject to the clearing requirements.

- On September 8, 2015, the Australian Treasury announced that the Corporations Amendment (Central Clearing and Single-Sided Reporting) Regulation 2015 and the Corporations (Derivatives) Amendment Determination 2015 (No. 1) had been finalised. The Determination formally specifies that clearing requirements may be imposed on interest rate derivatives denominated in Australian dollars, US dollars, euro, sterling and Japanese yen.
  The Regulation covers aspects relevant to central clearing obligations and single-sided reporting for Phase 3 reporting entities when certain conditions are met. For central clearing, the regulation sets out definitions of various types of clearing entities, the list of overseas clearing houses that can be used to meet the central clearing obligation, and the circumstances under which, and persons for whom, clearing requirements can and cannot be imposed.

3. Trade reporting

- On March 15, 2013, ASIC released Consultation Paper 201 on ‘Derivative trade repositories’ (CP 201). CP 201 set out proposed guidance on the process of applying for an Australian derivative trade repository (ADTR) license and the information required; the conditions that ASIC may consider imposing on ADTR licensees; and ASIC’s approach for granting exemptions from all or specified provisions of the Corporations Act 2001.

- On March 28, 2013, ASIC released Consultation Paper 205 on ‘Derivative transaction reporting’ (CP 205) which in summary proposed the following:
  - All Australian entities and foreign subsidiaries of an Australian entity would be subject to the reporting requirements.
  - All foreign authorized deposit-taking institutions (ADIs) with a branch located in Australia or a foreign company registered under Division 2 of Pt. 5B.2 of the Corporations Act 2001 would be

subject to the reporting requirements, but only in respect of transactions booked to the ADI's Australian branch or entered into by the Australian office.

- The derivative contracts that would need to be reported are identified by asset classes (credit derivatives, interest rate derivatives, foreign exchange derivatives, equity derivatives, and commodity derivatives excluding electricity derivatives). Reporting would apply to futures and options as well as cleared and uncleared OTC derivatives.
- Reporting would be phased-in by asset class and reporting entity type. Interest rate derivatives and credit derivatives transactions would be first, followed by foreign exchange derivatives, equity derivatives and commodity derivatives 6 months later. Phase 1 would consist of major financial institutions above the threshold (AUD50 billion notional outstanding in OTC derivatives across all asset classes per legal entity as measured as at September 30, 2013), Phase 2 would consist of major financial institutions below the threshold and Phase 3 would consist of end users. Phase 1 would start on December 31, 2013, Phase 2 would start on June 30, 2014 and Phase 3 would start on December 31, 2014.
- "Two-sided reporting" would apply.

• On June 5, 2013, the Australian Treasury released the Draft Regulation to Facilitate the Operation of Australia's Derivatives Trade Reporting Regime. The purpose of the Corporations Amendment (Derivatives Transactions) Regulation 2013 (the draft regulation) was to implement measures that temporarily restricted ASIC's rulemaking power in relation to end users, and operational measures to ensure the derivatives trade reporting regime has appropriate Regulations governing the enforcement of trade reporting rules and Regulations for confidential information. An end user is defined as a person who is not an authorized deposit taking institution, an Australian financial services licensee (and certain foreign person exempted from requiring a license), and a clearing and settlement facility licensee. The draft regulation commenced the day after it was registered. This regulation ceased to have effect on July 28, 2013.

• On July 10, 2013, ASIC published its final rules, the ASIC Derivative Transaction Rules (Reporting) 2013. An Australian entity is required to report all OTC derivatives contracts to which it is a party, regardless of where the contract is entered into. A foreign Authorised Deposit-taking Institution (ADI) that has a branch in Australia will need to report all OTC derivatives contracts that are booked to the profit and loss account of that branch; or entered into by that branch.

  Australian entities registered as a swap dealer (SD) with the CFTC began reporting all asset classes from October 1, 2013. Australian ADIs, Australian financial services (AFS) licensees, clearing and settlement (CS) facility licensees, exempt foreign licensees and foreign ADIs, which had a total gross notional outstanding position of AUD $50 billion as at December 31, 2013, and were not required to report under Phase 1, began reporting interest rate and credit derivative transactions from April 1, 2014, with transactions in other asset classes to follow 6 months later. Following the granting of relief by ASIC, the commencement of phase 3 was split into 2 sub-phases, with phase 3A (for entities holding AUD 5 billion or more total gross notional outstanding in reportable OTC positions at at June 30, 2014) commencing on April 13, 2015, with transactions in other asset classes to follow as well as phase 3B reporting entities (in all asset classes) commencing on October 12, 2015. Position reporting in each phase commences 6 months after the date of the commencement of the relevant reporting obligation in the relevant asset class.

• On September 15, 2014, ASIC granted an Australian derivative trade repository licence to DTCC Data Repository (Singapore) Pte Ltd (DDRS). Phase 1, 2 and 3 reporting entities that are incorporated or formed in Australia were required to report to a licensed trade repository from October 1, 2014.

Foreign reporting entities may report to trade repositories prescribed under Regulation 7.5A.30 of the Corporations Regulations and the ASIC Prescribed Trade Repositories Determination [15-0591].

- On February 2, 2015, ASIC published a class order setting out an alternative definition of the 'nexus' concept (referring to a requirement to report trades 'entered into in Australia'), which can be used by phase 2 and 3 reporting entities when reporting. The alternative definition allows reporting entities to utilize a definition more broadly aligned with other Asia-Pacific jurisdictions, and requires these entities to 'tag' their trades as ASIC-reportable from February 25, with an earliest reporting start date of May 25, depending on the phase and asset class. The class order further requires reporting entities to opt in to the relief by asset class, and allows for reporting entities to report under the alternative reporting regime.

- On February 9, 2015, ASIC amended its trade reporting rules following industry consultation and feedback on its consultation paper 221 (CP 221).

  The changes include:

  - introducing 'snapshot' reporting instead of 'lifecycle' reporting as a permanent option (but also allowing for ASIC to determine otherwise in the future),
  - introducing a 'safe harbour' from liability for reporting entities using delegated reporting, if certain conditions are met,
  - expanding the abilities of foreign firms to rely on alternative reporting, while also introducing a requirement for firms to 'tag' these trades, and
  - making a number of technical changes to the reporting rules, reflecting the proposals in CP 221 and/or feedback received.

  ASIC further decided not to proceed with the proposal to require the larger subsidiaries of Australian Authorised Deposit-Taking Institutions (ADIs) and Australian Financial Services (AFS) licensees to report OTC trades, after concluding that the regulatory benefit would not outweigh the additional compliance cost.

- On May 28, 2015, announcements were made by the Australian Treasury and ASIC about the release of exposure drafts of legislative documents, an explanatory guide and a consultation paper to give effect to two proposals, including a proposal to enable single-sided reporting by Phase 3B reporting entities under the Australian trade reporting regime from October 2015 (through the release of proposed Treasury amendments to the Corporations Regulations).

  The proposals relating to single-sided reporting related to the Australian Government's announcement in December 2014 that it would provide relief from the trade reporting requirements by allowing 'single-sided reporting' for entities with low levels of OTC derivatives transactions, provided they conclude the transactions with counterparties that are already required or have agreed to report the trade. The relief would be implemented by introducing single-sided reporting for Phase 3B entities as defined in the trade reporting derivative transaction rules made by ASIC. Phase 3B entities as defined in those rules have less than $5 billion gross notional OTC derivatives positions outstanding, calculated on a rolling basis.

- On September 8, 2015, the Australian Treasury announced that the Corporations Amendment (Central Clearing and Single-Sided Reporting) Regulation 2015 and the Corporations (Derivatives) Amendment Determination 2015 (No. 1) had been finalised. The Regulation covers aspects relevant to central clearing obligations and single-sided reporting for Phase 3 reporting entities when certain conditions are met. For single-sided reporting for Phase 3B entities, the regulation sets out the definitions of the various types of reporting entities, the circumstances under which an exemption from double-sided reporting is able to be used, the conditions of single-sided reporting, the dates for determining whether the exemption can continue to be relied upon, and various other provisions in relation to the regime.

- On September 21, 2015, ASIC made the ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844. The Instrument extends relief that already existed under ASIC Instrument 14/0952.

  The changes include:
  - Not requiring transactions entered into on certain listed markets to be reported,
  - Exempting reporting entities from having to report entity and/or name information,
  - Extending relief from reporting identifying information of counterparties, where the counterparty has not provided express consent or if the reporting entity is prohibited from reporting the identifying information by foreign privacy restrictions in certain listed jurisdictions,
  - Creating new relief from having to report identifying information of certain government entities,
  - Extending the relief from being required to provide a universal trade identifier,
  - Extending the relief from being required to report collateral information, and
  - Extending the relief from being required to report FX securities conversion transactions.

- On 9 October 2015, ASIC announced that it had made an amendment to the existing ASIC Class Order 14/0633, embodied in ASIC Corporations (Derivative Transaction Reporting) Amendment 2015/0925, which delays the commencement of Phase 3B transaction reporting until 4 December. This does not prevent Phase 3B reporting entities that are ready for reporting from commencing from an earlier date.

- ESMA and the RBA concluded a Memorandum of Understanding that will allow RBA to have access to data held in European trade repositories according to its mandate. The MoU is effective as of February 18.

  The ESMA-RBA MoU is the second cooperation arrangement established under Article 76 of the European Market Infrastructure Regulation (EMIR). This provision aims at ensuring that third-country authorities that do not have any trade repository in their jurisdiction may access the information on derivatives contracts held in European trade repositories which is relevant for their mandates. The MoU ensures that guarantees of professional secrecy exist. The first MoU of this kind was concluded in November 2014 between ESMA and ASIC.

4. Financial market infrastructure

- On October 21, 2011, the Council of Financial Regulators (CFR) 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 (FMI).

- On March 30, 2012, the Deputy Prime Minister and Treasurer released the CFR Working Group's letter of advice on financial market regulation. Key recommendations included: (i) ensuring ASIC and RBA have appropriate powers to ensure FMIs manage their risk effectively; (iii) ASIC and RBA having explicit powers to impose location requirements in key areas; and (iii) Australian regulators having the power to establish oversight arrangements for overseas-based FMIs.

- On July 27, 2012, the CFR issued a consultation paper on 'Ensuring Appropriate Influence for Australian Regulators over Cross-border Clearing and Settlement Facilities'. This is a supplementary paper to the October 21, 2011 consultation paper. This provides further clarity on the measures that could be applied to cross-border CS facilities and how they may be implemented in practice under current legislative arrangements. The framework will apply to overseas facilities operating in Australia and to domestic facilities looking to move some of their operations offshore.

- The Payments System Board of RBA updated its eligibility requirements for Exchange Settlement Accounts (ESA) on July 31, 2012. The Board created a specific category of ESA for CCPs and has developed a policy for use of these accounts that recognizes 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 CS Facility license.

- On August 29, 2012, RBA released a Consultation Paper on 'New Financial Stability Standards'. The consultation seeks views on a proposal to revoke existing financial stability standards (FSSs) for CCPs and securities settlement facilities (SSFs) and to determine new FSSs for both CCPs and SSFs. The proposed FSSs will also implement key elements of the CFR's framework for ensuring Australian regulators have appropriate influence over cross-border CS facilities. FSSs will only apply to licensed CS facilities and only in matters concerning the stability of the Australian financial system.

- On December 18, 2012, ASIC published its amended regulatory guidance for CS facilities, which takes into account CPSS-IOSCO's 'Principles for financial market infrastructures' (FMI Principles) and the CFR's policy. These changes ensure continuing access to Australian-based CS facilities by overseas participants and also provide an appropriate degree of Australian regulatory influence over foreign-based CS facilities that wish to offer services in Australia. It clarifies the circumstances under which a systemically important overseas CS facility with a strong domestic connection may need to hold a domestic license.

- On February 15, 2013, ASIC and RBA issued a joint statement on implementing the FMI Principles in Australia.

- On May 8, 2013, three members of the CFR (RBA, APRA and ASIC) published information on how they will assess the case for a clearing mandate under the new regulatory framework for the OTC derivatives markets. 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.

- On July 17, 2013, the same 3 regulators issued a Report on the Australian OTC Derivatives Market – July 2013. The regulators recommended that the Government consider a central clearing mandate for USD, EUR, GBP and JPY denominated interest rate derivatives. The initial focus of such a mandate should be dealers with significant cross-border activity in these products. At this time, the regulators do not see a need for mandating North American and European referenced credit derivatives. Before recommending mandatory central clearing, the regulators will monitor for a further period the Australian banks' progress in implementing the appropriate arrangements for Australian dollar denominated interest rate derivatives. The regulators have not made a specific recommendation regarding mandatory platform trading obligation at this time.

- The CFR released a consultation paper on February 11, 2015, as part of its review of competition in clearing Australian cash equities. This follows a similar review of competition in the clearing and settlement of Australian cash equities in 2012, in which the CFR recommended a two-year moratorium on competition in the clearing of cash equities, but promised a review after that. With the two-year period ending in early 2015, the consultation paper sets out the scope of the CFR's review and the issues that will be considered. Following the consultation process, the CFR will consider stakeholder submissions and will advise the government on the findings of its review in due course.

- On March 27, 2015, the CFR released a consultation paper on the licensing regime for overseas clearing and settlement (CS) facilities. The consultation paper sets out a proposal that aims to provide greater clarity on the circumstances in which a CS facility must be either licensed in Australia or exempted from the Australian CS facility licensing regime. It is not expected that the proposed new approach will result in additional CS facilities being within the scope of Australia's CS facility licensing regime, and the rest of the Australian CS facility licensing regime will remain unchanged.

5. ASX

- On October 25, 2012, ASX issued a market discussion paper on 'Derivatives Account Segregation and Portability'. The paper sought market feedback on potential changes to the account structures such as levels of segregation that would meet the regulatory requirements of the Australian regulators as well as the FMI Principles. For derivatives clearing, the paper considered the appropriate level of client protection benefits arising from the CCPs holding client margin monies, and whether cash margins should be held in trust or on the balance sheet of the CCP.

- On February 21, 2013, ASX released a consultation paper on the Draft Operating Rules for its central counterparty clearing services for OTC interest rate derivatives (OTC Clearing Services). ASX would introduce OTC Clearing Services in phases. Phase 1 would be dealer-to-dealer clearing for AUD IRS and OIS, and would be available from July 1, 2013. The consultation paper also stated the product coverage may be extended to include AUD FRAs in Q3 2013. Phase 2 would introduce client clearing and extend product coverage to include NZD IRS, OIS and FRAs.

- On May 1, 2013, ASX released its response to the above consultation paper including, among others:
  - 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 would inject a further AUD 20 million, increasing the "first loss" tranche in the default waterfall to AUD 120 million. All Secondary Commitments would be removed for Futures Clearing Participants.

- On August 28, 2013, ASX released a consultation paper on the Draft Operating Rules for the ASX 24 Exchange Traded Derivatives and OTC Interest Rate Derivatives Client Clearing Service (the Consultation Paper). This was the first of two consultation papers in which ASX sought stakeholders' input on the draft Operating Rules for its Client Clearing Service for ASX 24 Exchange Traded Derivatives and OTC Interest Rate Derivatives. Certain points of the paper are set out below:

  - ASX plans to initially offer 2 different "client account" types: Omnibus Account and Individual Client Account (ICA). A Clearing Participant (CP) may choose whether to offer their clients one account type or both. The ICA structure is modeled on, but is not the same, as 'LSOC without excess'. ASX planned to offer these two client account structures by March 31, 2014.

  - For an Omnibus Account, a client's positions and collateral are held in a single client account of the CP and ASX calculates initial margin (IM) on the net position in that account. In the event of a CP's default, the IM calculated will be protected from losses on the defaulting CP's house positions and on positions in other client accounts, but it will not be protected from losses of other Clients in the Omnibus Account.

- For Individual clients account 'without excess', a client's positions are segregated from those of other Clients and IM is calculated on the basis of the Client's positions exclusively. The aim is to allow ASX to port clients' positions and associated IM in the event of a CP's default. If the client's position is not ported, ASX will close out the positions and return the associated IM to the client directly, less any losses, costs and expenses attributable to closing out the positions. Collateral is not segregated at the ICA level and therefore collateral held by the clearing house in excess of the IM requirement with respect to the client's position cannot be ported with the positions and associated IM.

- Client positions will be netted within each Omnibus Account or ICA for the purposes of calculating the IM requirement with respect to the account. Collateral will be posted to ASX as margin by CP and not by clients directly. As the CP will post collateral to ASX in respect of a single IM obligation for all client accounts maintained by them, ASX will not be able to determine which non-cash collateral (if any) came from which client. Upon a CP default, ASX will liquidate any non-cash collateral in order to realize the IM requirement calculated by ASX in respect of each client account. The cash value of IM that ASX ports or returns in respect of each client account will not include any portion of the value of excess collateral. Excess collateral may be used by ASX to offset the losses incurred upon close-out or termination of positions in any client account and any shortfalls in the liquidated value of non-cash/ cross-currency collateral as a consequence of insufficient collateral haircuts. Under ASX's account structure, end-of-day payments to and from each CP's Client Clearing Account are netted to a single flow per currency per day. This means each CP has only one client collateral account with ASX, irrespective of how many Omnibus and ICA it has.

- On October 17, 2013, ASX released its second consultation paper on the Draft Operating Rules for the ASX 24 Exchange Traded Derivatives and OTC Interest Rate Derivatives Client Clearing Service. This was the second consultation paper in which ASX sought stakeholders' input on the draft Operating Rules.

  Highlights include:

  - This Consultation Paper focussed exclusively on the default of Clearing Participants. There were no changes proposed in the paper for the default of Clients that was published in the first Consultation Paper.
  - The Default Portfolio will comprise all OTC and portfolio-margined ETD transactions of the defaulting OTC Clearing Participant in its own name ("House" transactions) and Client transactions that have not been ported successfully within the porting window, and hedging transactions entered into by ASX following the default. ASX reserves the right to sell/auction the Default Portfolio either as one or more lots comprising either or both House and Client transactions according to the Default Management Process. In the event of multiple contemporaneous or near-contemporaneous defaults, ASX may further combine into a single Default Portfolio House and non-ported Client transactions of multiple defaulting OTC Clearing Participants.
  - If terminated open contracts in a default management process relate to both house and client positions of a defaulted OTC participant or the OTC positions of more than one defaulted OTC participant, then ASX Clear (Futures) may combine any such terminated open contracts such that they are treated as part of one or more portfolios at any time after the commencement of the

default management process; and allocate any loss in conjunction with that default management process between the relevant defaulted OTC participants and between the house accounts, client accounts and client sub-accounts of the relevant defaulted OTC participant (a Relevant Account). This will be done as of the time of combination of such Terminated Open Contracts and will be conducted by allocating any losses to each Relevant Account proportionately to its relative risk as determined by ASX Clear (Futures) using the value of IM calculated with respect to each Relevant Account; and if the Relevant Account is a client sub-account, the loss will be deducted from the guaranteed IM value of that client sub-account.

- ASX Clear (Futures) will establish default management groups (DMG) in respect of each OTC transaction type for the purposes of advising and assisting ASX Clear (Futures) for all DMG matters.

- On October 2, 2014, ASX issued a consultation paper on CCP recovery, which considers uncovered loss allocation and replenishment tools for CP default. The paper sets out proposals to enhance the crisis management capabilities of ASX's CCPs, including how to address credit losses or liquidity shortfalls and how to replenish the default fund in the event of a CP default.

  Some of the new recovery tools in the ASX Clear (Futures) recovery proposal are:
  - Emergency assessments
  - Variation margins gains haircutting
  - Partial termination (this is an existing tool; to be amended)
  - Complete termination
  - Mandatory replenishment

- On December 15, 2014, ASX issued a consultation paper "Enhanced Derivatives Account Segregation and Portability", which sought stakeholders' input on enhancements to ASX's client clearing account structures that will offer derivatives clients the choice of increased collateral protection. ASX sought feedback on the proposed amendments to the operating rules of ASX CCPs, ASX Clear and ASX Clear (Futures), which will enable excess customer collateral for derivatives to be held directly with the ASX CCPs and attributed to an ICA. Introduction of the enhancements is to comply with regulatory guidance from the RBA so that ASX CCPs can gain recognition in the EU.

- On June 3, 2015, CFTC published a request for public comment on a petition by ASX Clear (Futures) Pty Limited for exemption from registration as a derivatives clearing organisation (DCO).

  CFTC was considering for the first time a petition for exemption from registration pursuant to its authority under section 5b(h) of the Commodity Exchange Act, which permits CFTC to exempt a clearing organisation from DCO registration for the clearing of swaps to the extent that CFTC determines that such clearing organisation is subject to comparable, comprehensive supervision by appropriate government authorities in the clearing organisation's home country.

- On August 18, 2015, CFTC issued an order of exemption from registration as a DCO to ASX Clear (Futures) Pty Limited (ASX). The order was the first issued by CFTC based on its authority under Section 5b(h) of the Commodity Exchange Act.

  ASX is able to clear proprietary swap positions for its US clearing members, subject to the terms and conditions of the order, which include the reporting of daily information to CFTC, a requirement to only clear proprietary positions of US clearing persons, open access, the appointment of a US agent, consent to jurisdiction of the US, inspection of books and records, observance of the CPMI-IOSCO Principles for Financial Market Infrastructures, and record-keeping and reporting requirements, among other things.

- On September 10, 2015, RBA released its annual assessment of ASX's four licenced clearing and settlement facilities, including ASX Clear Pty Limited, ASX Clear (Futures) Pty Limited, ASX Settlement Pty Limited and Austraclear Limited, for the year ended June 30, 2015. The principal focus was the progress made in meeting the recommendations and regulatory priorities identified by the RBA in its 2013/14 assessment. These included recommendations related to central counterparty (CCP) model validation – and, in particular, the validation of stress-testing models – and recovery planning across all four facilities.

  RBA also stated that all four facilities had made substantial progress in addressing the regulatory priorities identified in its 2014/15 assessment. Many of these priorities have been fully addressed. As a result, the RBA noted that the four facilities have either observed or broadly observed all relevant requirements under Australia's Financial Stability Standards. The facilities have therefore conducted their affairs in a way that causes or promotes overall stability in the Australian financial system, the RBA said.

  Nevertheless, the assessment made further recommendations on model validation and stress testing, recovery planning, treasury investment policy and cyber resilience.

6. Legislative changes

- On July 1, 2011, the Treasury released a Consultation Paper on the Exposure Draft – Financial Sector Legislation Amendment (Close-out Netting Contracts) Bill 2011 (2011 Bill). The 2011 Bill sought 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 2011 Bill addressed 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 1998 (PSN Act) on the other hand that was introduced when the former Acts were amended in 2008.

- On March 20, 2013, the Corporations and Financial Sector Legislation Amendment Bill 2013 (2013 Bill) was introduced in Parliament. The 2013 Bill amended a number of statutes, in particular, the PSN Act. The amendments to the PSN Act clarified that porting of positions, including associated collateral, in the case of a default or insolvency of a CCP participant is allowed, regardless of provisions in other legislation including the Corporations Act 2001. The proposed amendments to the PSN Act also clarified that a CCP may enforce security that it holds over any type of assets of a defaulting participant.

- On December 20, 2013, the Treasurer announced the final terms of reference for the Financial System Inquiry (FSI). The FSI is charged with examining how the financial system may be positioned to best meet Australia's evolving needs and support Australia's economic growth. By way of background, the FSI is the first major inquiry into Australia's financial system since the Wallis Report in 1997. The FSI's terms of reference were wide in scope and encompassed a wide range of financial activities. The FSI accepted submissions on the issues raised in the terms of reference until March 31, 2014.

- In July 2014, FSI released an Interim Report. The aim of this Interim Report is to elicit comments from interested stakeholders to inform the Final Report to the Treasurer. The report sets out the Committee's views on the objectives of the financial system and discusses the financial system from nine perspectives. For each of these observations, it sets out a range of options for change, including the option of no change.

- The FSI final report was released on December 7, 2014 and FSI has now concluded. FSI has made 44 recommendations relating to the Australian financial system, including (but not limited to):

  - Resilience: Strengthen policy settings that lower the probability of failure, including setting Australian bank capital ratios such that they are unquestionably strong by being in the top quartile of internationally active banks; and reduce the costs of failure, including by ensuring ADIs maintain sufficient loss absorbing and recapitalisation capacity to allow effective resolution with limited risk to taxpayer funds – in line with international practice

  - Regulatory System: Improve the accountability framework governing Australia's financial sector regulators by establishing a new Financial Regulator Assessment Board to review their performance annually; Ensure Australia's regulators have the funding, skills and regulatory tools to deliver their mandates effectively; Rebalance the regulatory focus towards competition by including an explicit requirement to consider competition in ASIC's mandate and conduct three-yearly external reviews of the state of competition; Improve the process for implementing new financial regulations; and Introduce an industry funding model for ASIC and provide ASIC with stronger regulatory tools.

  - Capitalisation: Implement a framework for minimum loss absorbing and recapitalisation capacity in line with emerging international practice, sufficient to facilitate the orderly resolution of Australian authorised deposit-taking institutions and minimise taxpayer support; Develop a reporting template for Australian authorised deposit-taking institution capital ratios that is transparent against the minimum Basel capital framework; and Introduce a leverage ratio that acts as a backstop to authorised deposit-taking institutions' risk-weighted capital positions.

7. Resolution regime

- On September 12, 2012, the Treasury released a consultation paper on 'Strengthening APRA's crisis management powers' to set out a range of options on, among others, strengthening APRA's crisis management powers in relation to ADIs, superannuation entities and general and life insurers and simplifying APRA's regulatory powers across the various statutes it administers in the banking, insurance, and superannuation sectors, given that many firms operate across sectors.

- On February 20, 2015, the Treasury released a consultation paper on the Resolution Regime for FMIs for public comment. Some of the proposals include:
  - Institutional scope: proposes to cover all CS facilities incorporated in Australia and holding a domestic CS facility licence, and all trade repositories incorporated and licensed in Australia and are identified as being systemically important in Australia. Some of the legislative proposals extend to financial markets that are incorporated in Australia and holding a domestic market licence. The institutional scope of the paper does not extend to overseas-based FMIs. Instead, the paper proposes that Australian authorities should have the capacity to take limited action in support of resolution actions by overseas authorities in respect of overseas-based FMIs and financial markets that are licensed to operate in Australia.
  - Resolution powers: (i) statutory management; (ii) moratorium on payments to general creditors; (iii) transfer of operations to a third-party or bridge institution; and (iv) temporary stay on early termination rights.

- Matters relating to the funding of resolution actions.
- Direction powers: enhancements to the direction powers of the regulators and resolution authorities, primarily for the purpose of supporting the successful implementation of recovery and resolution actions. They would introduce a streamlined process for the timely issuance of directions, and also strengthen the sanctions for a failure to comply, including criminal sanctions.

8. Basel III reforms

- On August 10, 2012, APRA released a discussion and consultation paper on implementing the Basel III counterparty credit risk capital reforms, intending to apply this to ADIs, subsidiaries of foreign banks and clearing members of a CCP. APRA's proposals for counterparty credit risk included, among others, the introduction of the Credit Valuation Adjustment (CVA) risk capital charge.

- In September 2012, APRA released a final set of prudential standards and reporting standards that give effect to Basel III capital reforms in Australia. Some key reforms to apply to ADIs include, among others, the introduction of a new definition of regulatory capital under which common equity is the predominant form of Tier 1 capital.

- On May 6, 2013, APRA released a second consultation package, including 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 (Discussion paper). The consultation package outlined APRA's proposed amendments to its 2011 proposals on the implementation of the Liquidity Coverage Ratio (LCR) in Australia and addressed the main issues raised in submissions, 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 issued its final Basel III liquidity reforms in 2013. The new prudential standards became effective on January 1, 2014. The LCR commenced on January 1, 2015 and and NSFR requirements will commence on January 1, 2018.

  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 proposed 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).

- On August 8, 2013, APRA released a note for ADIs with further details on its approach to the implementation of the Basel III liquidity framework, in particular the Committed Liquidity Facility (CLF). Due to the relatively short supply of Australian-dollar high quality liquid assets (HQLA), the

RBA will allow "scenario analysis" ADIs to establish a secured CLF sufficient to cover any shortfall between the ADI's holdings of HQLA and the requirement to meet the liquidity coverage ratio (LCR). The note provides details on APRA's role in determining the appropriate size of the CLF for each scenario analysis ADI. The main steps are:

- ADIs will be required to apply for inclusion of a CLF for LCR calculation purposes on an annual basis;
- ADIs will be required to demonstrate they have taken "all reasonable steps" towards meeting their LCR requirements through their own balance sheet management, before relying on the CLF;
- ADIs must meet relevant qualitative and quantitative liquidity requirements, including having in place a statement of the Board's tolerance for liquidity risk, a robust liquidity transfer pricing mechanism, appropriate remuneration arrangements for those executives responsible for the ADI's funding plan and liquidity management.

- On April 15, 2014, APRA released a letter to inform mutually owned deposit-taking institutions (ADIs) that they will be able to issue Additional Tier 1 capital (AT1) and Tier 2 capital (T2) instruments that provide for conversion into mutual equity interests in the event that the loss absorption or non-viability provisions in these instruments are triggered. Mutual equity interests that result in such a conversion will qualify to be included in common equity Tier 1 (CET1) capital if they comply with the relevant provisions of APS 111. The final form of APS 111 is now available.

- On May 8, 2015, APRA released a response to submissions and final versions of Prudential Standard APS 110 Capital Adequacy (APS 110) and Prudential Standard APS 330 Public Disclosure (APS 330), which incorporated new disclosure requirements for authorised deposit-taking institutions. These requirements took effect from July 1, 2015, and relate to the leverage ratio, the liquidity coverage ratio and the identification of globally systemically-important banks. These requirements were based on revisions to the Basel Committee on Banking Supervision's disclosure framework, which aims to improve the comparability of banking institutions' risk profiles and facilitate market discipline by providing consistent information about key risk metrics to market participants and other interested parties.

- On October 6, the Australian Prudential Regulation Authority (APRA) released the results of its secured Committed Liquidity Facility (CLF) that Authorised Deposit-Taking Institutions (ADIs) have established with the Reserve Bank of Australia (RBA). APRA implemented the Liquidity Coverage Ratio (LCR) on January 1, 2015 to ensure that ADIs have sufficient High Quality Liquid Assets (HQLA) to survive a stress scenario lasting for 30 days. The CLF will be sufficient in size to cover any shortfall between the ADI's holdings of HQLA and the requirement to hold such assets under the LCR. ADIs will be required to demonstrate that they have taken 'all reasonable steps' towards meeting their LCR requirements through balance sheet management, before relying on the CLF. Each LCR ADI that requested a CLF was also required to submit a three-year funding plan to APRA that included, amongst other things, a projection of Australian dollar net cash outflows over the CLF approval period.

  All locally-incorporated LCR ADIs were invited to apply for a CLF to take effect on January 1, 2016. Thirteen ADIs applied for CLFs totalling approximately $272 billion. Following APRA's assessment of the applications, the aggregate Australian dollar net cash outflow of the 13 ADIs projected for end-2016 was approximately $402 billion. The RBA determined that the amount of Australian Government Securities and securities issued by state and territory governments that could reasonably be held by locally-incorporated LCR ADIs in 2016 was $195 billion. On this basis, the CLF was determined to be approximately $207 billion and the total CLF granted (including buffers over 100%) was approximately $245 billion.

9. APRA – Prudential Standards

- APRA will determine whether an ADI is classified as a Liquidity Coverage Ratio (LCR) ADI or an ADI subject to the Minimum Liquidity Holdings (MLH) regime for liquidity by taking into account the ADI's size and complexity with respect to the liquidity risk. An LCR ADI must undertake scenario analysis of domestic and foreign currency liquidity and must complete the following scenarios:
  - the Liquidity Coverage Ratio (from January 1, 2015);
  - the "name crisis" scenario (until December 2014); and
  - the "going concern" scenario.

  An MLH ADI will be required to maintain a minimum holding of 9% of its liabilities in specified liquid assets. An MLH ADI is also required to complete the going concern scenario liquid assets.

- On September 1, 2014, APRA released for consultation an amended Prudential Standard APS 210 (APS 210) Liquidity and amended reporting instructions, relating to the LCR. Some of the proposed amendments are:
  - A proposed amendment to the definition of expected derivatives cash inflows and cash outflows that may be shown on a net basis, and clarifications regarding the reporting instructions relating to this matter. This affects all ADIs classified as 'LCR ADIs'.

  - As the process of assessing applications for a CLF from the RBA has raised a number of challenges in applying the LCR to foreign bank branches in the current form, APRA plans to reassess the nature of, and rationale underlying its application of, liquid asset requirements to foreign bank branches in Australia. APRA intends to publish a consultation on this topic in 2015.

  - In the interim, APRA proposes to apply an LCR with a 15-calendar-day time horizon to branches (rather than the full 30-calendar-day time horizon applied to locally incorporated ADIs). Branches will also be allowed to meet the liquid asset requirements using both assets defined as HQLA, as listed in Attachment A paragraphs 6-11 of APS 210, and assets listed in APS 210 in Attachment C paragraphs 3(c) – (g), subject to paragraph 4 of Attachment C. For clarity, there is no change to the definition of HQLA. It is proposed that minimum liquidity holdings securities comprise an additional asset that will be deemed to form part of the 'stock of high-quality liquid assets' in the numerator of the formula in APS 210.

- On September 18, 2014, APRA released for consultation a discussion paper and draft amendments to APS 110 and APS 330 Public Disclosure (APS 330), which outline APRA's proposed implementation of new disclosure requirements for ADIs.

  Highlights of the proposals:
  - Leverage ratio disclosures: APRA proposes that locally incorporated ADIs, with approval from APRA, use an internal ratings-based approach for credit risk under the risk-based adequacy framework. The ADIs are also required to disclose certain quantitative and qualitative information about their leverage ratios, calculated in accordance with the proposed methodology set out in draft APS 110. At this stage, there is no minimum leverage ratio requirement proposed. Any decision on implementation of a minimum leverage requirement will only be taken by APRA once the BCBS agrees a minimum international standard.

- LCR disclosures: APRA proposes that ADIs subject to the leverage coverage ratio should disclose certain data in relation to their ratios.
- Disclosures for the identification of potential global systemically important banks (G-SIBs): APRA proposes that the four major Australian ADIs disclose the 12 indicators used in the G-SIB identification methodology.

- On July 22, 2015, APRA released a revised version of Prudential Standard APS 330 Public Disclosure (APS 330), which rectified an omission in paragraph 21(b) of the July 2015 version of APS 330. The omission altered the definition of 'material risk-taker' for the purposes of the remuneration disclosure requirements in APS 330. This omission would have imposed quantitative remuneration disclosure requirements on a wider range of persons than APRA intended.

  The revised APS 330 amended paragraph 21(b) to align the definition of 'material risk-taker' with the definition used in the January 2015 version. No other substantive changes were made, although APRA made a number of minor formatting amendments. Revised APS 330 was not subject to public consultation as the correction was in align with APRA's previously consulted upon position. The revised version of APS 330 became effective on August 1, 2015.

- On October 6, 2014, APRA released the results of its secured Committed Liquidity Facility (CLF) that Authorised Deposit-Taking Institutions (ADIs) have established with RBA. APRA implemented the Liquidity Coverage Ratio (LCR) on January 1, 2015 to ensure that ADIs have sufficient High Quality Liquid Assets (HQLA) to survive a stress scenario lasting for 30 days. The CLF will be sufficient in size to cover any shortfall between the ADI's holdings of HQLA and the requirement to hold such assets under the LCR. ADIs will be required to demonstrate that they have taken 'all reasonable steps' towards meeting their LCR requirements through balance sheet management, before relying on the CLF. Each LCR ADI that requested a CLF was also required to submit a three-year funding plan to APRA that included, amongst other things, a projection of Australian dollar net cash outflows over the CLF approval period.

  All locally-incorporated LCR ADIs were invited to apply for a CLF to take effect on January 1, 2016. Thirteen ADIs applied for CLFs totalling approximately $272 billion. Following APRA's assessment of the applications, the aggregate Australian dollar net cash outflow of the 13 ADIs projected for end-2016 was approximately $402 billion. The RBA determined that the amount of Australian Government Securities and securities issued by state and territory governments that could reasonably be held by locally-incorporated LCR ADIs in 2016 was $195 billion. On this basis, the CLF was determined to be approximately $207 billion and the total CLF granted (including buffers over 100%) was approximately $245 billion.

10. Agreement with US for tax compliance and FATCA implementation

- On April 28, 2014, the Treasurer on behalf of the Australian Government, signed an intergovernmental agreement with the United States to improve international tax compliance and implement FATCA. The Government has drafted legislation to give effect to Australia's obligations under this agreement. Effective from July 1, these amendments will require Australian financial institutions to collect information about their customers as necessary.

11. ASX consults on enhanced account structure for client clearing

- On July 14, 2014, ASX issued a consultation paper to seek input on enhancing account structures for client clearing in both ASX 24 exchange traded derivatives (ASX 24 ETD) and OTC interest rate derivatives – the first of 2 planned consultation papers for client clearing accounts. This paper provided some background to possible enhancements to account structures in order to determine the level of collateral protection favored by stakeholders. Based on feedback from this first consultation paper, a second consultation paper would be released in Q4 2014, presenting ASX's proposed solution for an enhanced account structure and its supporting rules framework. The consultation paper proposed the following account structures:

  - Individual Client Account (ICA) with Excess – Value Attribution (applies to cash and non-cash collateral)
  - ICA with Excess - Asset Attribution (applies to non-cash collateral)
  - Full Asset Segregation (applies to cash and non-cash collateral)

- In December 2014, ASX issued the second consultation paper on amendments to the operating rules of ASX Clear and ASX Clear (Futures) for recognition in the EU. The paper sought input on enhancements to ASX's client clearing account structures which would enable excess customer collateral to be held directly with the ASX CCPs, and exposed the amendments to the operating rules to enable these enhancements to take effect in 1H 2015.

12. APRA proposes risk management amendments

- In January 2014, APRA released its final cross-industry Prudential Standard CPS 220 Risk Management (CPS 220) and a consultation draft Prudential Practice Guide CPD 220 Risk Management (CPG 220). On May 8, APRA published a letter outlining responses to several key issues raised during the consultation period – in particular, APRA's use of the word 'ensure' in the prudential standard, the three lines of defence model and the concept of materiality for the risk management declaration. Accordingly, and notwithstanding that CPS 220 was finalised in January, APRA issued a letter on October 7 to all ADIs, general insurers and life companies to propose further amendments to CPS 220 and CPG 220. For CPS 220, APRA sought feedback on the proposed refinements and whether they give rise to any fundamental concerns. CPS 220 and CPG 220 came into effect on January 1, 2015.

13. China–Australia Free Trade Agreement finalised

- On November 17, 2014, the Australian Government Department of Foreign Affairs and Trade announced the conclusion of negotiations with China over the China-Australia Free Trade Agreement (ChAFTA), laying a foundation for the next phase of Australia's economic relationship with China. Both governments have signed a declaration of intent to work towards signing the ChAFTA, after which the agreement will be subject to ratification by parliament. There will also be a process to be followed on the Chinese side.

  Once ratified, the key changes include:
  - Removal and reduction of tariff barriers;
  - Relaxation of Australian regulatory barriers to Chinese investment; and
  - Facilitation of Australian investment into China.

14. Clearing and settlement developments : CFR

- The Council of Financial Regulators (CFR), which includes ASIC, RBA and the Australian Treasury, released a consultation paper on February 11, 2015, as part of its review of competition in clearing Australian cash equities. This follows a similar review of competition in the clearing and settlement of Australian cash equities in 2012, in which CFR recommended a two-year moratorium on competition in the clearing of cash equities, but promised a review after that. With the two-year period ending in early 2015, the consultation paper sets out the scope of CFR's review and the issues that will be considered. Following the consultation process, CFR will consider stakeholder submissions and will advise the government on the findings of its review in due course.

15. CFTC and APRA ink MOU

- On April 13, 2015, CFTC and APRA announced that their respective chairmen had signed a memorandum of understanding (MOU) on cooperation and the exchange of information in the supervision and oversight of regulated firms that operate on a cross-border basis in the US and in Australia. Through the MOU, CFTC and APRA express their willingness to cooperate and consult regularly in the interests of fulfilling their respective regulatory mandates, particularly in the area of derivatives activities and conduct, but also in other areas of mutual supervisory interest. The scope of the MOU includes swap dealers and major swap participants in the US, as well as authorised deposit-taking institutions in Australia.

16. ASIC reports on financial benchmarks

- On July 8, 2015, ASIC released a report on financial benchmarks, highlighting the importance of key indices to Australia's markets and the broader economy. It also described the regulatory reforms and other responses that have occurred internationally and in Australia in response to concerns about poor conduct in connection with financial benchmarks.

  ASIC's report made a number of recommendations for market participants, including measures they should adopt to avoid conduct issues. The report confirmed ASIC is investigating financial institutions to test for conduct and other issues relating to financial benchmarks, such as key interest rate and foreign exchange benchmarks. ASIC's enquiries were informed by the types of benchmark-related conduct and oversight issues that have been observed overseas. Its investigations are ongoing and no conclusions have been drawn yet.

17. APRA releases international capital comparison study

- On July 13, 2015, APRA released the results of a study comparing the capital position of Australia's major banks against a group of international banking peers. The study was conducted by APRA in response to Recommendation 1 of the Financial System Inquiry (FSI). The FSI recommended that APRA should "set capital standards such that Australian authorised deposit-taking institution capital ratios are unquestionably strong".

  In its final report, the FSI suggested banks should have capital ratios that position them in the top quartile of internationally-active banks in order for them to be regarded as 'unquestionably strong'. APRA's study, which adjusts for differences in measurement methodology across jurisdictions and uses a number of different measures of capital strength, found that the Australian major banks are well-capitalised, but not in the top quartile of international peers.

The results of the study would inform, but would not ultimately determine, APRA's approach for setting 'unquestionably strong' capital adequacy requirements. APRA regards the top quartile positioning as a useful indicator of the strength of the Australian framework, but does not intend to tightly tie Australian requirements to a benchmark based on the capital adequacy ratios of international banks.

A final response to the determination of 'unquestionably strong' capital standards would require further consideration by APRA, taking into account the results of this study, changes arising from the Basel Committee on Banking Supervision's current review of the global capital adequacy framework, and the extent of further strengthening in the capital ratios of peer international banks. Taking all of these factors into account, APRA's current judgement is that the major banks would need to increase their capital adequacy ratios by at least 200 basis points, relative to their position in June 2014, to be comfortably positioned in the top quartile of their international peers over the medium- to long-term.

18. APRA increases capital requirements for residential mortgages

- On July 20, 2015, APRA announced an increase in the amount of capital required for Australian residential mortgage exposures by authorised deposit-taking institutions (ADIs) accredited to use the internal ratings-based (IRB) approach to credit risk. This change would mean that the average risk weight on Australian residential mortgage exposures for ADIs accredited to use the IRB approach would increase from approximately 16% to at least 25%.

  The increase in IRB mortgage risk weights addresses a recommendation of the Financial System Inquiry (FSI) that APRA "raise the average IRB mortgage risk weight to narrow the difference between average mortgage risk weights for ADIs using IRB risk-weight models and those using standardised risk weights". The increase is also consistent with the work being undertaken by the Basel Committee on Banking Supervision on changes to the global capital adequacy framework for banks.

  The increased IRB risk weights would apply to all Australian residential mortgages, other than lending to small businesses secured by residential mortgage. The increase is being implemented through an adjustment to the correlation factor used in the IRB mortgage risk-weight function for each affected ADI. In order to provide ADIs sufficient time to prepare for the change, the higher risk weights will come into effect from July 1, 2016.

  The increase in IRB mortgage risk weights is an interim measure. APRA has stated it is not possible to settle on the final calibration between IRB and standardised mortgage risk weights until changes arising from the Basel Committee's broader review of this framework are complete. Further changes to IRB mortgage risk weights will be considered by APRA over the medium term in the context of these broader international developments.

19. ASIC releases enforcement report

- On August 5, 2015, ASIC released its enforcement report for the period January 1, 2015 to June 30, 2015. It secured 323 enforcement outcomes, including criminal as well as civil and administrative actions, and it negotiated outcomes, including enforceable undertakings. The majority of enforcement outcomes were summary criminal prosecutions. The report outlines some important cases and decisions during the first half of 2015 and highlights some of ASIC's ongoing enforcement priorities, including tackling poor culture, poor conduct in the retail margin FX trading industry and illegal phoenix activity.

20. ASIC consults on additional Chi-X products

- On August 20, 2015, ASIC released a consultation paper setting out proposed changes to ASIC market-integrity rules and various instruments to enable Chi-X Australia Pty Ltd (Chi-X) to commence the quotation and trading of warrants and exchange-traded funds (ETFs) on its market.

  The proposals aim to apply a consistent regulatory framework for the quotation and trading of warrants and ETFs for market participants and investors that may seek to trade these products on the Australian Securities Exchange (ASX) and/or Chi-X markets. ASIC's objective is to maintain existing levels of market integrity and investor protection for these products, irrespective of the market on which they are traded. The consultation paper also proposes some minor changes to ASIC market-integrity rules for the ASX market in response to recent amendments to ASX operating rules, and individual relief instruments for ASX-quoted ETFs and managed-fund products.

21. Treasury consults on cost recovery for ASIC

- On August 28, 2015, the Australian Treasury released a consultation paper on a potential industry cost-recovery model to fund ASIC, following on from the government's December 7, 2014 release of the Final Report of the Financial System Inquiry (FSI), which sets out a blueprint for Australia's financial system over the coming decades. In the case of ASIC, the FSI recommended that the government should move to adopt an industry funding model, similar to that already in place for other Australian regulators, which could provide more funding certainty and enhance the transparency of ASIC's costs and funding.

  Submissions on this consultation paper would assist the government's consideration of whether to accept the FSI's recommendation that ASIC's regulatory activities should be funded by the industry. Industry roundtables will also be held during the consultation period.

22. Regulators release corporate plans

- In late August, 2015, APRA, ASIC and RBA released their corporate plans for the next four years. Publication of a corporate plan is a core element of the Public Governance, Accountability and Performance Act 2013 (PGPA Act). In addition, ASIC released its focus for 2015-16, which identifies a number of key areas where it sees particular concerns. These are in the areas of gatekeeper conduct, cyber attacks, poor financial advice, misalignment of retail product design and distribution with consumer understanding, and cross-border businesses, services and transactions.

23. Government to review ASIC's capabilities

- On September 10, the Australian government announced that it has commissioned a review into the capabilities of the Australian Securities and Investments Commission (ASIC). The scope and purpose of the review is to examine how efficiently and effectively ASIC operates to achieve its strategic objectives, including:

- Identification and analysis of immediate and future priorities and risks, including financial system conduct risks;
- Resource prioritisation and responsiveness to emerging issues;
- The skills, capabilities and culture of ASIC and its staff, including in respect of internal review and improvement mechanisms; and
- Organisational governance and accountability arrangements.

The capability review will be forward-looking, and will assess ASIC's ability to meet future regulatory challenges. It will also look to ensure it is equipped with the capabilities – the leadership, strategy, people and processes – to deliver on its remit. The capability review will consult extensively with business, peak bodies and consumer groups through a series of meetings and roundtables by invitation.

ISDA Submissions (since 2010)

- March 16, 2010: ISDA submission to the Treasury on the Financial Sector Legislation Amendment (Prudential Refinements and Other Measures) Bill 2010 (Commonwealth)
- May 26, 2010: ISDA submission to the Attorney General on the Exposure Draft of the Personal Property Securities Regulations 2010
- 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'
- August 1, 2011: ISDA submission to the Treasury on Financial Sector Legislation Amendment (Close-out Netting Contracts) Bill 2011
- August 26, 2011: ISDA submission to RBA on the discussion paper 'Central Clearing of OTC Derivatives in Australia'
- November 28, 2011: ISDA submission to the Treasury on the discussion paper 'Review of Financial Market Infrastructure Regulation'
- January 27, 2012: ISDA submission to the Treasury with regard to the Consultation Paper on 'Handling and use of client money in relation to over-the-country derivatives transactions'
- June 15, 2012: ISDA submission to the Treasury with regard to the Consultation Paper on the 'Implementation of a framework for Australia's G20 over-the-counter derivatives commitments'
- August 20, 2012: ISDA submission to the Treasury on Corporations Legislation Amendment (Derivative Transactions) Bill 2012 - Exposure Draft
- October 18, 2012: ISDA submission to RBA with regard to the Consultation on New Financial Stability Standards
- October 19, 2012: ISDA submission to ASIC with regard to Consultation Paper 186 on Clearing and Settlement Facilities: International Principles and Cross-Border Policy (Update to RG 211)
- December 14, 2012: ISDA submission to ASX with regard to Derivatives Account Segregation and Portability
- December 14, 2012: ISDA submission to the Treasury with regard to Strengthening APRA's Crisis Management Powers
- February 15, 2013: ISDA submission to the Treasury with regard to its proposal paper on 'Implementation of Australia's G-20 Over-the-counter Derivatives Commitments'
- April 5, 2013: ISDA submission to ASX with regard to Draft Operating Rules
- April 12, 2013: ISDA submission to ASIC on Consultation Paper 201 Derivatives Trade Repositories.
- April 19, 2013: ISDA submission to Parliamentary Joint Committee regards to Corporations and Financial Services on Corporations and Financial Sector Legislation Amendment Bill 2013

- May 3, 2013: ISDA submission to Australian Securities and Investments Commission regards to the Consultation Paper 205 on Derivatives Trade Reporting
- June 20, 2013: ISDA submission to The Treasury regards to Corporations Amendment (Derivatives Transactions) Regulation 2013
- November 19, 2013: ISDA submission to ASX Limited on ASX 24 Exchange Traded Derivatives and OTC Interest Rate Derivatives Client Clearing Service Second Consultation Paper on Draft Operating Rules
- March 28, 2014: ISDA submission to the Financial System Inquiry.
- April 17, 2014: ISDA submission to The Treasury to the proposals paper on the "G4-IRD Central Clearing Mandate"
- June 9, 2014: ISDA submission to The Treasury on Financial Sector Legislation Amendment (Netting Contracts) Bill 2013
- June 23, 2014: ISDA submission to Australian Securities and Investments Commission on Australian Securities and Investments Commission Corporation Act – Paragraph 907D(2)(a) - Exemption
- August 1, 2014: ISDA submission to The Treasury on AUD-IRD Central Clearing Mandate
- August 26, 2014: ISDA submission to Australian Securities and Investments Commission regards to Consultation Paper 221 on OTC Derivatives Reform: Proposed Amendments to ASIC Derivative Transaction Rules (Reporting) 2013
- August 26, 2014: ISDA submission to Financial System Inquiry regards to the Interim Report of the Financial System Inquiry
- November 17, 2014: ISDA submission to Australian Securities Exchange regards to the Consultation Paper on Central Counterparty Recovery – Uncovered Loss Allocation and Replenishment Tools for Clearing Participant Default
- March 27, 2015: ISDA submission to The Treasury regards to the Consultation Paper on the Resolution Regime for Financial Market Infrastructures.
- Jul 10, 2015: ISDA submission to Australian Securities and Investments Commission on Consultation Paper 231 Mandatory central clearing of OTC interest rate derivative transactions. This submission is not yet public.

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
Associations:	National Association of Financial Market Institutional Investors (NAFMII, a self regulatory organization on China's interbank market supervised by PBOC) Securities Association of China (SAC, a self-regulatory organization of securities companies supervised by CSRC) China Futures Association (CFA, a self-regulatory organization of futures companies supervised by CSRC) Asset Management Association of China (AMAC, a self-regulatory organization that represents the mutual fund industry of China and is supervised by CSRC)
Master Agreement:	Onshore transactions: NAFMII Master Agreement is mandatory for OTC derivatives transactions linked to currency, rate, bond, credit and gold entered into between participants of China's interbank bond market. SAC/CFA/AMAC Master Agreement is mandatory for certain types of domestic OTC derivatives transactions entered into by securities companies, futures companies and asset management companies. Cross-border transactions: ISDA Master Agreement for cross border trades
Legal Opinions:	Legal memorandum on enforceability of close-out netting of OTC derivatives transactions under the ISDA Master Agreement issued by King & Wood Mallesons
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. According to a circular issued by PBOC in January 2014, mandatory central clearing (including both direct and client clearing) of onshore RMB IRS transactions between financial institutions commenced on July 1, 2014.

Key Regulatory Milestones

1. Associations publish a new master agreement and regulator encourages development of onshore OTC equity and commodity derivatives markets

- On November 18, 2012, CSRC published the revised Provisions on the Investment Scope of the Proprietary Trading Business of Securities Companies and Related Issues (the "Proprietary Trading Regulation").

The amendments to the Proprietary Trading Regulation were intended to expand the scope of investment products of proprietary trading business of securities companies, and clarified the regulatory policies for securities companies' investment in financial derivatives. Under the revised Proprietary Trading Regulation, the securities companies with proprietary securities business qualification would be allowed to trade financial derivatives listed on exchanges and enter into OTC derivatives transactions regardless of whether the transactions are for hedging purpose or not. The securities companies which were not qualified to conduct proprietary securities business could only enter into financial derivatives transactions for hedging purpose.

- On December 21, 2012, SAC issued the Regulation of Securities Company's Over-the-Counter Trading Business (only Chinese is available). "OTC trading" is defined under the Regulation as (i) trading carried out between a securities company and its counterparty on a market other than a centralized exchange, or (ii) services provided by a securities company to investors in relation to transactions effected on a market other than a centralized exchange.

  The products subject to the Regulation include any underlying or derivative financial products which have been approved, authorized by or filed with the relevant regulatory authority and are issued or sold outside a centralized exchange. A security company conducting OTC trading with counterparties must hold a proprietary securities trading license, and a securities company which provides services to investors in relation to OTC trading must hold a securities brokerage license.

  The Regulation also provides that when carrying out a derivatives business, securities companies should execute the SAC Master Agreement in accordance with the applicable requirements; if the derivatives business involves other derivatives markets, securities companies should also comply with the requirements applicable to those markets.

  Securities companies are required to file an application with SAC before commencing OTC trading, and afterwards, monthly and annual reports on its OTC trading business. SAC will supervise and regulate the OTC trading business of securities companies. According to SAC, securities companies' OTC market is designed to be a platform for issuance, transfer and trading of privately offered products and investors will mainly be institutional. To start with, the market will mainly focus on wealth management products issued by securities companies and distribution of financial products.

- On March 15, 2013, as a further step to enable securities companies to carry out their OTC financial derivatives businesses, the Securities Association of China (SAC) published a set of self-regulatory rules (the Regulations), together with a master agreement governing the OTC derivatives businesses of securities companies. The Regulations provide that a securities company which has obtained OTC trading business qualification may trade financial derivatives products subject to a filing with the SAC. The financial derivatives products which a securities company can trade are limited to those which have been approved authorized or filed with the relevant regulator or self-regulatory organization. Under the Regulations, a securities company may only trade with institutional counterparties. A securities company is required to classify its counterparties into professional investors (PI) and non PIs and conduct suitability checks with trading with non-PIs.

  On the same date, SAC also published the China Securities Market Financial Derivatives Master Agreement (2013 Version) (the "SAC Master Agreement"). The SAC Master Agreement adopts the "three pillars" of the ISDA Master Agreement (i.e., "single agreement", "flawed asset" and "close-out netting") and is similar to the ISDA Master Agreement (single jurisdiction) both in structure and substance.

- On August 22, 2014, a new Master Agreement for OTC Derivatives Transactions on China's Securities and Futures Market (the "2014 Master Agreement") were jointly published by SAC, the China Futures Association and the Asset Management Association of China to replace the SAC Master Agreement published in 2013. On the same date, the three associations also published a set of product definitions for onshore OTC equity derivatives transactions. The 2014 Master Agreement has made several improvements to the 2013 SAC Master Agreement, including among others, adding two more Event of Default (i.e., Default under Specified Transaction and Merger without Assumption) and one more Termination Event (i.e., Credit Event upon Merger). The changes bring the new agreement more aligned with the 2002 ISDA Master Agreement.

- On 16 September, 2014, CSRC issued its Opinions on the Further Promotion of Innovative Development of Futures Business Institutions. The Opinions were issued in order to implement the 'Several Opinions of the State Council on Further Promoting the Healthy Development of the Capital Market'. Among other things, the opinions highlight that CSRC will:
  - further expand the pilot program, under which futures companies are allowed to set up companies that focus on providing commodities pricing and risk management services, and that eligible risk management companies will be allowed to trade offshore derivatives;
  - support applications by futures companies for QDII licenses and those QDII license holders may issue asset management products linked to futures and trade offshore derivatives;
  - encourage foreign institutions to invest in onshore futures companies; and
  - support futures companies to engage in OTC derivatives and to this end, the relevant master agreement and rules will be further improved.

2. CBRC Implements Basel III

- On June 7, 2012, CBRC issued the Measures for Commercial Banks' Capital (Trial Implementation) (the Measures). The Measures apply to commercial banks established in China and set 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 wouldl 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 would be applied. Additionally, domestic systemically important banks will have to hold an additional 1% of Core Tier 1 capital. A systemically important bank would 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 set 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.

- On November 29, 2012, CBRC released its guidance on innovative capital instruments of commercial banks (the Guidance). The aim of this Guidance is to promote and regulate commercial banks issuing innovative capital instruments, broaden the forms of capital replenishment and enhance the soundness of the banking system. From January 1, 2013, new capital instruments must have a provision that enables either a write off or a conversion to common stock when a "trigger event" occurs:

- the core equity tier 1 ratio of the commercial bank falls below 5.125% (at which point the additional Tier 1 (AT1) capital instrument will be triggered);
- CBRC determines that a commercial bank will be non-viable and/or the relevant authority determines a commercial bank will become non-viable without a public sector injection of capital or its equivalent support.

For capital instruments containing a write down provision, upon a trigger event occurring, the AT1 instrument should be written down, in full or in part, as per the contractual agreements, in order for the core equity Tier 1 ratio to return above the trigger point. Upon occurrence of a trigger event for Tier 2 capital instruments, the AT1 and Tier 2 capital instruments shall be immediately written down in full, subject to contractual agreements. If a commercial bank is going to compensate investors for their losses, payment should make in the form of ordinary shares to be paid immediately.

For capital instruments containing a conversion clause, upon a trigger event occurring, the AT1 instrument should be converted to ordinary shares, in full or in part, as per the contractual agreements, in order for the core equity Tier 1 ratio to return above the trigger point. Upon occurrence of a trigger event for Tier 2 capital instruments, the AT1 and Tier 2 capital instruments shall be immediately converted to ordinary shares in full, subject to contractual agreements. To issue capital instruments containing a conversion clause, prior authorization are required to ensure the bank is able to issue the corresponding amount of ordinary shares as per the contractual agreement upon the occurrence of a trigger event.

- On September 27, 2013, the Basel Committee on Banking Supervision published a report on the regulations that implement the Basel capital framework in China. China's implementation of the Basel capital framework was found to be closely aligned with the Basel III global standards.

3. CBRC issues guidelines on capital requirements for bank exposures to CCPs and PBOC mandates central clearing of RMB IRS

- On July 19, 2013, CBRC issued a set of documents on regulatory capital requirements for commercial banks in China. These documents include banks' exposures to central counterparties (CCPs); enhancing disclosure requirements for the composition of capital; regulatory policies for implementing IRB for commercial banks and policy clarification of capital rules.

For bank exposures to a CCP, a qualifying CCP (QCCP) is an entity that is licensed to operate as a CCP and is permitted by the regulator to offer such products. If the regulator of the CCP publicly announces the status of a CCP as qualifying, then banks will be allowed to treat exposures to this CCP as a QCCP. If not, a bank will determine if a CCP is qualifying based on the following criteria:

- the CCP is based and is supervised by a regulator who has publicly indicated it applies on an on-going basis, domestic rules and regulations that are consistent with the CPSS-IOSCO Principles for Financial Market Infrastructures (PFMIs);
- if the regulator of the CCP has yet to implement the PFMIs, the bank shall provide to CBRC a list of CCPs it has exposures to and an evaluation of the relevant criteria to determine if the CCP is a QCCP. An important consideration is whether the CCP will be subject to domestic rules and regulations that are consistent with the PFMI principles. This list of QCCPs will be subject to CBRC's approval.

To be considered a QCCP, a CCP must be able to perform the calculations for the various components that are part of the calculation for the default fund exposures. This data should be provided to the clearing members, the regulators and other parties and should be submitted at least on a quarterly basis.

- On January 21, 2014, PBOC and CSRC published the “Notice on Carrying out Evaluation of Financial Market Infrastructures”. In the notice, it was mentioned that the regulators would jointly evaluate a number of China’s financial market infrastructures including CCPs and TRs according to the “Principles for financial market infrastructure Disclosure framework and Assessment methodology” issued by IOSCO and CPSS. The assessment is due to be completed by March, 2014.

- On January 28, 2014, PBOC issued a notice to banks regarding central clearing of RMB interest rate swaps. The notice provides that all RMB interest rate swaps referencing 7-day repo, overnight SHIBOR or 3-month SHIBOR which are entered into after July 1, 2014 between financial institutions and have a tenor of no more than 5 years must be submitted to SCH for central clearing, as long as the transactions satisfy SCH’s requirements regarding counterparties and contracts.

- On May 30, 2014, Shanghai Clearing House (SCH) issued a notice regarding client clearing of RMB interest rate swaps. The Notice stated that SCH would launch client clearing for RMB IRS from July 1, 2014 and eligible clearing members may apply to SCH to become a “comprehensive clearing member” in order to provide clearing services to clients. The Notice requires the clearing members to sign the Agency Client Clearing Agreement regarding Central Clearing of RMB IRS and segregate their proprietary and client positions. The Notice also stipulates that SCH would calculate the settlement payments and margin payments of a clearing member’s proprietary business and client clearing business separately.

  Also, on June 3, SCH issued the revised Business Guidance on Central Clearing of RMB IRS with added provisions on two-way margining, collateral in securities form and client clearing. On July 1, 2014, SCH started mandatory direct and client central clearing of RMB interest rate swaps (IRS). According to the SCH website, on the first day, SCH cleared 66 transactions with a notional amount of RMB 7.22 billion, among which 13 transactions were trades cleared on behalf of clients.

  On October 11, 2014, SCH made further amendments to its Business Guidance on Central Clearing of RMB IRS to introduce real-time validation of the trades submitted for clearing and real-time contract novation for trades which have been validated. The revised Guidance also allows a clearing member to provide eligible debt securities to satisfy up to 50% of its initial margin requirement.

4. SAFE consolidates and relaxes regulation on RMB/FX transactions and issues new rules regarding cross-border security arrangements

- On December 19, 2013, SAFE issued the Notice on Adjusting the Administration of RMB/FX Derivative Business (the Notice) which is intended to facilitate domestic entities’ hedging of foreign exchange risks. The Notice took effect on January 1, 2014. The Notice appeals the filing requirement for conducting currency swap and foreign exchange swap business. Banks and their branches that are qualified to conduct RMB/FX forward transactions before the effective date of the Notice may start conducting currency swap and foreign exchange swap business automatically.

  The Notice also relaxes certain restrictions on banks' currency swap business: banks are now permitted to enter into a currency swap transaction without exchanging principal at the effective date with their clients who have borrowed debts denominated in a foreign currency. The Notice also allows a bank to decide its own reference exchange rate when conducting cash-settled RMB/FX options with clients or on interbank market as long as the rate is a real and effective rate used in the onshore market. Banks are also permitted to use reasonable and appropriate method and parameters at their discretion to calculate the Delta of their RMB/FX option transactions. Under previous regulations, banks had to use the method and parameters set out in the CFETS guidance when calculating the Delta.

- On May 12, 2014, SAFE issued the Regulations on Foreign Exchange Control over Cross-border Security which came into effect on June 1, 2014. Compared with the consultation draft issued on February 13, 2014 which ISDA commented on, the final regulations include several steps further to deregulate cross-border security.

  In order to improve convertibility of RMB under capital account items and simplify administrative approval procedures, the regulations have made a number of significant changes to the current regulatory regime:

  - Abolishing the prior approval requirement and most of the qualification requirements regarding cross-border security;
  - Providing that FX control requirement (such as foreign security registration requirement) will not affect the validity of cross-border security contract;
  - The case-by-case registration requirement is only triggered where the enforcement of a cross-border security will give rise to debts owed to non-residents by residents and vice versa;
  - Except for the two types of security provided in the regulations, a domestic entity may provide or accept a security on cross-border basis without any registration or filing with SAFE - this would cover most security arrangements in respect of derivative transactions between foreign entities and Chinese entities;
  - Allowing PRC individuals to provide cross-border security.

- On December 25, 2014, SAFE issued implementing rules on renminbi (RMB) FX sale and purchase transactions conducted by banks. The rules simplify and repeal 14 regulations regarding entry and exit requirements in respect of banks' RMB FX spot and derivatives businesses, RMB FX spot transactions conducted for banks' own accounts, management of RMB FX derivatives businesses and position limits on banks' FX businesses. Regarding derivatives businesses, the rules reiterate that banks have an obligation to verify clients are entering into derivatives transactions for hedging purposes. The rules came into effect on January 1, 2015.

5. China and U.S. sign FATCA agreement

- On June 27, 2014, China and the US reached an agreement in principle in relation to the implementation of the FATCA. Once the inter-government agreement is executed and comes into effect, foreign financial institutions in China will only be required to report information in relation to reportable US accounts to the Chinese competent authority; information will be exchanged between the competent authorities of China and the US.

6. Shanghai-Hong Kong Stock Connect Stock launched

- On November 10, 2014, SFC and CSRC announced they had approved the launch of the Shanghai-Hong Kong Stock Connect pilot scheme following finalization of all the necessary regulatory approvals and relevant regulatory operational arrangements required for its commencement. Under the joint announcement issued by SFC and CSRC, trading through the Shanghai-Hong Kong Stock Connect will commence on November 17. Stock Connect is a pilot programme for establishing mutual stock market access between Hong Kong and mainland China. ISDA published the Additional Provisions for Stock Connect on October 14, which is intended to be used for cash-settled over-the-counter derivatives transactions referencing certain 'A' shares listed on the Shanghai Stock Exchange traded through Stock Connect.

7. CSRC and foreign participation in futures trading

- On June 26, 2015, CSRC published the Interim Measures on Trading of Designated Domestic Futures Products by Foreign Persons and Brokerage Firms, which marks an important step in the opening up of the domestic commodity market to foreign investors.

  CSRC would 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 product available for trading by foreign market participants, expected to start in three months.

  The measures state that a foreign person (i.e, 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, CSRC also requires the foreign regulator in the home jurisdiction of the foreign brokerage firm to enter into a memorandum of understanding with CSRC before the brokerage firm can trade directly on China's futures exchanges.

  The 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. The measures will come into effect on August 1.

ISDA Submissions (since 2010)

- **A**pril 15, 2010: First ISDA submission to the CSRC and CFFEX regarding index futures trading by the Qualified Foreign Institutional Investors
- May 4, 2010: Second ISDA submission regarding index futures trading by the Qualified Foreign Institutional Investors
- 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.
- February 21, 2011: ISDA submission to CBRC on the revised Provisional Administrative Rules Governing Derivatives Activities of Banking Financial Institutions
- June 5, 2012: ISDA letter to Shanghai Clearing House on clearing proposal regarding interest rate swaps (IRS) denominated in RMB
- December 2013: ISDA letter to PBOC on central clearing and some other issues relating to OTC derivatives transactions. This submission is not public.

- March 10, 2014, ISDA submission to SAFE on the draft Provisions for Foreign Exchange Control over Cross-border Security
- May 20, 2014, ISDA letter to PBOC on mandatory central clearing. This submission is not public.
- January 30, 2015, ISDA submission to CSRC on the draft Interim Measures on the Trading of Designated Domestic Futures Products by Foreign Persons and Brokerage Firms. This submission is not yet public.
- September 19, 2015, ISDA letter to PBOC on central clearing, third country CCP recognition, trade reporting, margin for non-centrally cleared OTC derivatives transactions and close-out netting enforceability issues.

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 Linklaters; Opinion on transactions entered into "electronically" and electronic records by Clifford Chance
CCP/TR Status:	In July and November 2014, 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). HKMA and SFC have 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 Securities and Futures (Amendment) Bill which introduces mandatory trade reporting, central clearing and record keeping obligations was approved by the Legislative Council on March 26, 2014. The new mandatory reporting obligations applicable to certain interest rate swaps and non-deliverbale forwards came into effect on July 10, 2015. Interim reporting requirements for certain OTC derivatives transactions between licensed banks became effective in August 2013, and have been in full force since February 4, 2014 after expiration of the transitional arrangements. Four CCPs in Hong Kong were recognized by ESMA as third country CCPs on April 27, 2015, and thus can provide clearing services to clearing members or trading venues established in the EU.

Key Regulatory Milestones

1. Hong Kong implements Basel III

- 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 were the first in a series of consultation papers for seeking the banking industry's feedback on its proposals to implement Basel III.

- HKMA released a notice on March 9, 2012, that the Banking (Amendment) Bill 2011 was passed by the Legislative Council on February 29, and enacted as the Banking (Amendment) Ordinance 2012 (BAO 2012).

- On October 19, 2012, HKMA released a notice that three rules were published in the Gazette:

- The Banking (Amendment) Ordinance 2012 (Commencement) Notice 2012 amends the powers of HKMA, enabling them to make rules prescribing capital and disclosure requirements for AIs incorporated in HK. The notice also prescribes the procedures for remedial action upon contravention of these requirements;
- The Banking (Capital) (Amendment) Rules 2012 introduced the amendments to the Banking (Capital) Rules to implement the first phase of the Basel III requirements. The new rules revised the capital requirements for locally incorporated AIs scheduled to take effect in January 2013. Under the revised framework, a bank will need to maintain a Common Equity Tier 1 (CET1) capital ratio of 4.5%, a Tier 1 ratio of 6% (both Tier 1 and CET1 to be phased in from January 1, 2013 to January 1, 2015) and total capital of 8% from January 1, 2013.
- The Banking (Specification of Multilateral Development Bank) (Amendment) Notice 2012 amends the Banking (Specification of Multilateral Development Bank) to include the Multilateral Investment Guarantee Agency (MIGA), which is a member of the World Bank, to the list of multilateral development banks to enable it to be eligible for preferential risk-weighting under the Basel capital framework.

• On December 13, 2012, HKMA issued a notice which indicated that the LegCo has completed the negative vetting of the above 3 Acts which were gazetted on Oct 19, 2012.

• On January 17, 2013, HKMA released a memorandum on the revisions to the Liquidity Coverage Ratio (LCR). As Basel recently issued its full text with some changes from the original version published in 2010, HKMA would develop, with industry consultation, a framework for local implementation of the revised LCR. Some issues under consideration included:

- Two-tiered approach: HKMA still maintained the view of adopting a two-tiered approach for Hong Kong banks. Under this approach, only AIs considered at the core of the local banking system would be subject to the LCR. All other AIs will be subject to a modified version of the existing Liquidity Ratio (LR);
- Phase-in of the LCR: HKMA considered the BCBS phase-in arrangement and assessed the need to adhere to the original timetable;
- Level 2B Assets: HKMA would examine the attributes of Level 2B assets to determine their level of liquidity in times of market stress. Specific focus will be placed on assessing the price volatility and market liquidity of these assets based on their historical performance in the local markets in times of stress as well as the potential for incentivizing banks to assume more proprietary risk through increased holdings of particular asset classes;
- Usability of High Quality Liquid Assets (HQLA) in times of stress: HKMA would incorporate into their rules the flexibility of banks to use their HQLA, even to the extent of causing their LCR to fall below the minimum requirement during a period of financial stress. HKMA would develop supervisory guidance to set out the circumstances under which such usage may be allowed and the considerations underlying HKMA's supervisory response in such circumstances;
- Use of alternative liquidity approaches (ALA): As there is limited supply of HQLA denominated in Hong Kong dollars, AIs have been given three ALA options. However, HKMA is most likely to adopt the second ALA option, i.e., the use of foreign currency HQLA to cover local currency liquidity needs for banks subject to the LCR;
- Implications for the modified LR (MLR) regime: HKMA will be reviewing the implementation timetable of the MLR and how this would be affected if a decision is made to phased-in the LCR. Further deliberation is required particularly in areas in which the LR adopts a more stringent approach than the LCR;

- Update of LM-2: In addition to meeting the LCR, banks will need to adhere to the enhanced liquidity standards set out in the BCBS Principles for Sound Liquidity Risk Management and Supervision. These Principles have been incorporated into HKMA's Supervisory Policy Manual (LM-2) which were updated later in the year.

- On March 4, 2013, HKMA released their consultation paper on draft Banking (Capital) (Amendment) Rules 2013 (B(C)(A)R) together with two letters to the Hong Kong Association of Banks and the Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies (the DTC Association) respectively. The consultation paper sought feedback on the refinements to the Banking (Capital) Rules (B(C)R). The additional refinements included:

  - Sections 226 X and 226ZD of the B(C)R have been amended to recognize the credit risk mitigation given to exposures of authorized institutions (AIs) to central counterparties. One of the refinements proposed was where an AI's exposure is covered by a recognized credit derivative contract cleared by a qualifying CCP (QCCP), the AI may allocate to the credit protection covered portion of the exposure a risk weight of 2% if the AI is a clearing member (CM) of the QCCP; the AI may allocate a 4% if the AI is a client of a CM of a QCCP and certain conditions of section 226ZA(6) are met. The attributed risk-weight of the credit protection provider is 2% if the concerned credit derivative is cleared by a QCCP and the AI concerned is a CM of that QCCP, or a risk weight of 4% if the AI concerned is a client of a CM of the QCCP and only certain conditions are met.
  - Sections 265 and 278 of the B(C)R addresses some internal inconsistencies between certain provisions in the IRB approach for AI's non-securitization exposures and the IRB approach for AI's securitization exposures.

  The banking (Capital) (Amendment) Rules 2013 was published on April 12, 2013. The Rules came into operation on June 30, 2013.

- On August 19, 2013, HKMA issued a circular on Basel III implementation, setting out the final version of the standard templates (including associated explanatory text) to be used by locally incorporated authorized institutions for the purpose of making disclosures in relation to their capital base under the Banking (Disclosure) (Amendment) Rules 2013.

- On September 4, 2013, HKMA published a supplementary guidance in the form of Frequently Asked Questions (FAQs) to facilitate a consistent application of the Banking (Capital) Rules and the Banking (Disclosure) Rules (also known as Basel III implementation). These are FAQs on the counterparty credit risk framework under the Banking (Capital) Rules and are intended to be explanatory in nature. They do not seek to introduce any new requirements into, or replace any requirements specified in, the Banking (Capital) Rules.

  Highlights include:
  - When applying to HKMA for approval to use the Internal Models Method (IMM) approach, an AI should discuss and agree with HKMA the approach/ methodology for determining and reviewing the stress period.
  - The standard supervisory haircut applicable in consequence of a currency mismatch (8%) should be applied to each element of the collateral that is provided in a currency different from that of the exposure.
  - The supervisory floors set out in Section 226M are minimum requirements. The actual margin period of risk that should be used in the determination of default risk exposures may be longer than the supervisory minima if the liquidity of the positions concerned warrants it.

- Inter-company transactions between an AI and its subsidiaries subject to consolidation can be excluded from the calculation of the solo-consolidated/ consolidated capital adequacy ratio. These transactions include CVA hedges that are with an internal desk.
- For the purposes of Section 226P(6) paragraph (e) in Formula 23F, as the market convention is to use a fixed recovery rate for CDS pricing purposes, the AI may use this information to calculate the LGDMKT if both a market instrument of the counterparty concerned and an appropriate proxy spread are not available and there is no other information.
- Under Section 226T(1)(e), hedges that depend on cross-default are not eligible CVA hedges.
- It is the primary responsibility of the AI to determine whether a CCP is qualifying. In Hong Kong, HKMA and SFC announced in March 2013 their commitment to comply with the PFMIs. Therefore AIs can regard CCPs overseen by SFC as QCCPs for capital adequacy purposes. If a CCP regulator has not made any public statement about its intention to implement the PFMIs during 2013, or a CCP regulator has yet to implement the PFMIs (regardless of whether a public statement has been made) after 2013, AIs should determine whether a CCP regulated by the CCP regulator is qualifying based on the criteria set out in the definition of “qualifying CCP” in Section 226V(1).
- Although a CCP’s documentation may not prohibit client trades from being carried over and continued, other evidence such as the criteria in Section 226ZA(6)(c) is necessary to make this claim.
- The requirement set out in Section 226ZA(6)(a) means that upon insolvency of the clearing member, there is no legal impediment to the transfer of the collateral belonging to the AI to the CCP, to one or more of the other surviving clearing members or to the AI or the AI’s nominee.

• On April 10, 2014, HKMA released a circular on their intent to implement the final standard that was published by BCBS on March 31, 2014, on the standardized approach for measuring counterparty risk exposures. The new standardized approach (SA-CCR) would replace the existing non-modeled counterparty credit risk (CCR) measurement approaches (i.e., the Current Exposure Method (CEM) and the Standardized Method) in the Basel capital adequacy framework. HKMA’s current intent was to implement the SA-CCR in accordance with the BCBS timetable.

• On April 16, 2014, HKMA released a circular on their intent to implement the final standard published by the Basel Committee on Banking Supervision (BCBS) on April 10, 2014, Capital requirements for bank exposures to central counterparties. This would be implemented through the amendment of the banking (Capital) Rules in accordance with the BCBS timetable. The industry would be consulted on the implementation proposals in due course.

• HKMA announced that the Banking (Disclosure) (Amendment) Rules 2014 to introduce disclosure requirements associated with the second phase of Basel III requirements for authorised institutions was gazetted on December 24, 2014.

  The disclosure requirements relate primarily to:

  - the capital buffers and the liquidity coverage ratio to be implemented via the Banking (Capital) (Amendment) Rules 2014 and the Banking (Liquidity) Rules, respectively, which came into effect on January 1; and
  - the Basel III leverage ratio, which is required to be disclosed by banks with effect from 2015, according to the Basel Committee on Banking Supervision's Basel III implementation timetable.

- On July 20, 2015, HKMA issued a circular regarding a number of frequently asked questions (FAQs) that the Basel Committee on Banking Supervision (BCBS) recently published, which provides technical elaboration and interpretative guidance relating to various areas of the Basel III leverage ratio framework.

  In the circular, HKMA noted that for the purpose of completing the HKMA's Quarterly Template on Leverage Ratio (which involves institutions calculating their leverage ratio according to the BCBS methodology under Basel III outlined in Annex 1 of the reporting package released on May 19, 2014), institutions are expected to take into account the guidance set out in the FAQs in calculating their leverage ratio.

- On August 6, 2015, HKMA issued a revised version of the Supervisory Policy Manual module CA-D-1 (Guideline on the Application of the Banking (Disclosure) Rules) to provide guidance on disclosure in connection with the implementation of Basel III in Hong Kong. These include disclosure requirements on the composition of capital, capital ratios and capital buffers, as well as the liquidity coverage ratio. In addition, the revised module updates earlier guidance to align with recent changes made to the local prudential reporting regimes relating to mainland activities and international claims.

- On September 25, 2015, HKMA issued the Supervisory Policy Manual (SPM) module CA-B-3 (Countercyclical Capital Buffer - Geographic Allocation of Private Sector Credit Exposures) as a statutory guideline by notice in the Gazette under section 7(3) of the Banking Ordinance.

  The SPM module CA-B-3 supplements an earlier SPM module CA-B-1 (Countercyclical Capital Buffer - Approach to its Implementation) and provides further guidance to AIs on how to determine the geographic allocation of private-sector credit exposures for the purposes of calculating their AI-specific countercyclical capital buffer ratio under the Banking (Capital) Rules (BCR).

  As set out in section 3O(1) of the BCR, and explained in Section 2 of SPM module CA-B-1, an AI must determine its own specific countercyclical capital buffer rate as the weighted average of the applicable jurisdictional buffer rates in respect of jurisdictions (including Hong Kong) where the AI has private-sector credit exposures. The weight to be attributed to a given jurisdiction's applicable buffer rate is calculated by reference to the ratio of the AI's aggregate risk-weighted amount for its non-bank private-sector credit exposures in a jurisdiction (RWAj) to the sum of the AI's RWAj across all jurisdictions in which the AI has private-sector credit exposure.

  The new SPM module CA-B-3 sets out the HKMA's expectations on how an AI should allocate its non-bank private-sector credit exposures, and the corresponding risk-weighted amount, to different jurisdictions on an ultimate risk basis (as required under section 3O(2) of the BCR), in order to determine RWAj for the AI's non-bank private-sector credit exposures in each jurisdiction.

2. Hong Kong consultation/implementation of mandatory reporting and clearing requirements

- On June 27, 2012, the securities and futures (futures contracts) notice 2012 made pursuant to section 392 of the Securities and Futures Ordinance (SFO) became effective. It extended the insolvency override provisions under part iii of the SFO to cover also OTC derivatives transactions that are cleared through a recognized local CCP and are subject also to the rules of a recognized exchange. The availability of insolvency override protection is a key consideration for market participants when deciding whether to implement voluntary clearing. The notice is a temporary measure which has the effect of extending insolvency clawback protection to certain cleared OTC derivative contracts. It was not expected to have any impact on the way that an OTC derivatives business is currently licensed or operated or on how the SFC Code of Conduct (and other guidance issued by SFC) would apply to OTC derivatives. It was also not expected to have any impact on how existing futures contracts or securities are traded or cleared or how the futures market or stock market currently operates.

- 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 would 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" would be defined by reference to the term "structured product" (as defined in the 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 would 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 had a "Hong Kong nexus". HKMA TR was proposed to be the only designated TR although market participants could 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 was 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 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 would not impose a mandatory trading requirement at the outset.

  Capital and margin requirements: The regulators 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) would 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 HKMA or SFC but whose positions or activities may nevertheless raise concerns of potential systemic risk.

- On March 28, 2013, HKMA and SFC jointly announced their commitment to comply with the Principles for financial market infrastructures (PFMIs) issued by CPSS-IOSCO in April 2012.

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

- On June 28, 2013, HKMA announced requirements for interim trade reporting. Licensed banks are required to report FX NDF and vanilla single currency interest rate swaps (Fixed vs Floating swaps, basis swaps and overnight indexed swaps) to a trade repository operated by HKMA (HKMA-TR). Trades (including cleared transactions) conducted by a licensed bank and booked in its Hong Kong office (or Hong Kong branch), of which the counterparty is also a licensed bank (or the original counterparty, in the case of cleared transactions), are required to report to HKTR within 2 business days (T+2 basis). Trades remaining outstanding on August 5 or traded on or after such date are subject to the reporting requirements. A grace period of approximately four months was granted to licensed banks to commence reporting by December 9 and a period of six months was granted to backload the transactions (including transactions entered on or before December 8) by February 4, 2014. All licensed banks are required to join HKTR regardless of whether they have any reportable transaction and whether they adopt direct or indirect reporting.

- On September 6, 2013, HKMA and SFC jointly published their conclusions on a joint supplemental consultation regarding the proposed scope of activities to be regulated under the new OTC derivatives regime, and regulatory oversight of systemically important participants. HKMA and SFC's proposals in relation to these two areas were already included in some detail in the Securities and Futures (Amendment) Bill 2013 (the "Bill") introduced to the Legislative Council on June 28, 2013. The Consultation Conclusions explained the regulators' rationale in framing the new regulated activities and summarized their responses to public comments. The new regulated activities, Type 11 RA and Type 12 RA, were proposed to be introduced under Schedule 5 to the Securities and Futures Ordinance (SFO).

  On November 25, 2013, OTC Clearing Hong Kong Limited (OTC Clear) launched its clearing services for inter-dealer interest rate swaps denominated in four currencies: RMB, Hong Kong Dollars, US Dollars and Euros. It also offers clearing services for inter-dealer non-deliverable forwards referencing RMB, Taiwan Dollars, Korean Won and the Indian Rupee. OTC Clear planned to introduce client clearing in 2014 after the new legislation on the Securities and Futures (Amendment) Bill was in place and relevant amendments to OTC Clear rules are approved by the Securities and Futures Commission. In addition, it would expand its clearing services to cover other OTC derivatives when appropriate.

- On December 3, 2013, HKMA published its latest updated AIDG for Reporting Service. The changes made were mainly for reflecting the new developments and clarifications.

- At the Legislative Council meeting on March 26, 2014, the Council passed the Securities and Futures (Amendment) Bill 2013 with amendments moved by Secretary for Financial Services and the Treasury at the Committee Stage.

  The Bill included the framework for the introduction of mandatory reporting, clearing and trading obligations in line with G20 commitments. Asset management and automated trading services provisions would also be expanded to cover OTC derivative portfolios and transactions. The Bill also provided for the regulation of systemically important participants who are not licensed or registered with either HKMA or SFC, but whose positions or transactions in the OTC derivative market are so significant that they may nevertheless raise concerns of potential systemic risks. The amendments introduced at the Committee Stage included, among others, adding a record keeping obligation and some clarificatory language which provided that even if a transaction contravenes the mandatory reporting, clearing, trading or record keeping obligation, this should not of itself affect the validity and enforceability of the transaction.

  In view of the passage of the Bill, it was anticipated that the additional consultation papers to introduce new sub-legislations, codes and/or guidelines will come through in Q2 of 2014.

- On March 31, 2014, HKMA announced that the new phase of the OTC derivatives Trade Repository (HKTR) would be launched in September 2014. In this new phase, 15 products of FX, Rates and Equity would be introduced and institutions could report on a voluntary basis. HKMA also updated the Reference Manual for Reporting Service and the AIDG to accommodate these new products together with some refinements to the existing procedures and technical specifications for reporting. Another batch of products would be added by the end of 2015 to complete the product coverage of the HKTR.

- On July 18, 2014, HKMA and SFC issued a consultation paper on mandatory reporting and recordkeeping obligations under the new OTC derivatives regime. Reporting parties would be required to report certain vanilla interest rate swaps (floating vs. fixed and floating vs. floating) and non-deliverable forward transactions to HKTR. Transactions 'conducted in' Hong Kong would also be reportable, subject to certain conditions. Reporting parties include AIs, AMBs, LCs, CCPs that provide clearing services to persons in HK and other persons (subject to a reporting threshold of US$3billion for IRS and US$1billion for NDF) that are based in or operate from Hong Kong (Hong Kong persons). In particular, Hong Kong persons would cover all Hong Kong residents and all entities established under Hong Kong law (including all partnerships, trusts, companies and other entities established under Hong Kong law), and all overseas companies registered or required to be registered under the Companies Ordinance (non-Hong Kong companies).

  The consultation paper also covered provisions of masking of counterparty information, exemptions and relief and other reporting particulars. The commencement date had not been determined but a 3-6 month grace period was proposed conditionally for reporting new transactions and backloading of transactions.

- On November 28, 2014, HKMA and SFC jointly issued consultation conclusions and a further consultation on the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules. According to the consultation conclusions:

- The first phase of the mandatory reporting requirement would cover certain types of interest rate swap and NDF. The regulators decided to remove precious metal from scope in response to industry feedback;
- The regulators would prepare FAQs to provide further guidance on the requirements to report transactions ‘conducted in’ Hong Kong;
- The regulators now proposed to defer the implementation of mandatory reporting and related record-keeping requirements for Hong Kong persons to a later time;
- The exempt-person relief applicable to small players was amended;
- The concession period for setting up connections to HKTR was extended to six months, and the grace period to backload historical transactions has been extended to a maximum of nine months; and
- Masking relief was extended to cover both historical transactions and new transactions that are entered into within six months after the rules first take effect when counterparty consent is needed;
- The proposed record-retention period was shortened from seven years to five years, and rules on what types of records need to be kept have been clarified.

The regulators asked for further comment regarding: (1) the reporting of valuation-transaction information; (2) the proposed list of jurisdictions to be designated by SFC for the purposes of masking relief; and (3) the proposed list of markets and clearing houses to be prescribed by the Financial Secretary for the purposes of defining ‘OTC derivative product’.

- On February 18, 2015, HKMA sent ISDA two additional documents to assist Hong Kong reporting entities in enhancing their systems to prepare for OTC derivatives trade reporting. The two documents were a set of draft FAQs and supplementary reporting instructions. The documents give additional detail on how to report and populate certain data fields, and deal with various trading and clearing scenarios. HKMA also allowed for a 3-4 month systems enhancement window for firms from 18 February. The documents were provided via memo to ISDA members, and the HKMA asked for comments on these draft documents by mid-March.

- On March 27, 2015, HKMA sent a letter to all authorised institutions giving them an extra two months to report the unique trade ID (TID) as required under EMIR for new transactions, and complete the provision of TIDs for existing transactions. The deadline would now be end-May, having been previously postponed from end-December 2014 to end-March 2015.

- On May 15, 2015, HKMA and SFC released an update on trade reporting. This included a conclusions paper on a consultation on mandatory reporting and related record-keeping obligations under the new OTC derivatives regime, and updated FAQs (which remained in draft form, pending enactment of the reporting rules). Proposals on certain aspects of the reporting regime were revised after taking market feedback into account.

  The revised Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules were gazetted on May 15, and were tabled before the Legislative Council on May 20 for negative vetting, along with a package of related ancillary and subsidiary legislation.

- On July 10, 2015, the mandatory reporting and related record-keeping obligations for regulated entities (ie, authorised institutions, approved money brokers, licensed corporations and central counterparties operating in Hong Kong) set out in the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules came into effect.

- On July 17, 2015, SFC released a consultation paper on proposed changes to the Securities and Futures (Financial Resources) Rules (FRR) relating to capital and other prudential requirements for licenced corporations engaged in over-the-counter (OTC) derivatives activity. The consultation paper also proposes certain changes to non-OTC derivatives-related FRR requirements. The three-month consultation ends on October 16, 2015. The proposals aim to ensure that licenced corporations maintain their capital and liquidity at levels that are commensurate with the risks they undertake pertaining to derivatives businesses, as well as to encourage them to adopt more advanced risk management standards. The proposed FRR treatment can be calibrated to permit different capital approaches for different levels of OTC derivatives activity. The SFC proposes a small number of changes to the FRR treatment applicable to licenced corporations that do not engage in OTC derivatives activity. These include lowering the haircut percentages for certain types of shares and funds, and introducing measures to better facilitate third-party clearing by general clearing brokers. The consultation paper's proposals cover seven key areas:
  - Minimum capital requirements for licenced corporations engaging in OTC derivatives activity;
  - Capital treatment for market risks of OTC derivatives and other proprietary trading positions;
  - Capital treatment for counterparty credit risks arising from OTC derivatives transactions;
  - Introduction of an internal models approach to calculate the capital requirements for market risk for proprietary investments and counterparty credit risk arising from OTC derivatives transactions;
  - Measures to address operational risks of licenced corporations engaging in certain types of regulated OTC derivatives activities or opting into certain capital approaches;
  - Notification and reporting requirements related to OTC derivatives activity; and
  - Miscellaneous technical changes to other areas of the FRR.

- On September 9, 2015, HKMA issued a letter to all authorised institutions (AIs) regarding the linking and matching of derivatives trades reported under interim reporting requirements since August 2013. The letter highlights that approximately 32,000 trades, or 34% of what was reported to the Hong Kong Trade Repository (HKTR), were unlinked. Some of this was due to missing or incorrect information. For linked but unmatched trades because of discrepancies, the letter notes that an AI is required to liaise with its counterparty to resolve the discrepancies within three business days of receiving the discrepancy report from the HKTR. For unlinked trades, AIs should reassess whether they have a reporting obligation for those trades, and report as required. Otherwise, they should use the suppress function by May 9, 2016 for trades where there is no obligation to report.

- On September 30, 2015, HKMA and SFC jointly issued a consultation on introducing the first phase of mandatory clearing and the second phase of mandatory reporting under the over-the-counter (OTC) derivatives regime. The first phase aims to mandate the clearing of certain standardised interest rate swaps between major dealers. The proposals identify:
  - The types of transactions that will be subject to mandatory clearing;
  - The persons who will be subject to the clearing obligation and in what circumstances;
  - The exemptions and reliefs that may apply; and
  - The process for designating central counterparties for the purposes of the clearing obligation.

  The second phase of mandatory reporting aims to expand the existing reporting regime. The key proposals include:

  - Requiring the reporting of transactions in all OTC derivative products;

- Widening the scope of transaction information to be reported, including requiring the reporting of daily valuations; and
- Identifying the specific data fields to be completed under the expanded reporting regime.

3. SFC amends Professional Investor Regime and the Client Agreement Requirements

- On May 15, 2013, SFC issued a consultation paper on the Proposed Amendments to the Professional Investor Regime and the Client Agreement Requirements. In it, SFC sought 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.

  SFC also proposed 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, SFC proposed 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, 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.

  SFC also proposed that amendments be made to the client agreement requirements in the Code. SFC proposed, 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.

- On September 25, 2014, SFC released consultation conclusions on proposed amendments to the professional investor regime and launched a further consultation on client agreement requirements. Having reviewed all of the comments received during the consultation launched in May 2013, SFC decided to proceed with the proposal not to allow intermediaries when serving individual professional investors to be exempt from the suitability requirement and other fundamental requirements that have a significant bearing on investor protection under the Code of Conduct for Persons Licensed by or Registered with the SFC Code. Other features of the revised professional investor regime include:

  - individual professional investors and corporate professional investors would continue to be allowed to participate in private placement activities;
  - the minimum monetary threshold for qualifying as individual professional investors and corporate professional investors would be maintained at the current levels; and
  - a principles-based criteria would replace the specific tests now used to assess whether exemptions to the Code requirements apply when intermediaries serve corporate professional investors.

  The amendments relating to the professional investors regime would become effective on 25 March 2016. In response to market feedback, SFC modified its proposals on client agreement requirements and sought to further consult the public on the wording of a proposed new clause to be incorporated into all client agreements as a contractual term. The comment period ended on December 24, 2014 in relation to the proposed new clause.

4. Resolution regime for financial institutions

- On January 7, 2014, FSTB, together with HKMA, SFC and the Insurance Authority (IA), issued the first-stage public consultation paper on An Effective Resolution Regime for Financial Institutions in Hong Kong.

  Key highlights of the paper included:

  - Initial thinking and proposals on how a "resolution regime" might be established, which provides the authorities in Hong Kong with powers to bring about the orderly resolution of financial institutions (FIs) which could pose systemic risk if they were to become non-viable and, in so doing, complies with the Financial Stability Board (FSB)'s "Key Attributes of Effective Resolution Regimes for Financial Institutions" (Key Attributes) published in November 2011. The Key Attributes are the new international standards for resolution regimes. The FSB indicated that all of its member jurisdictions (including Hong Kong) should implement resolution regimes which are compliant with the Key Attributes by the end of 2015;
  - The Government and regulators' current thinking on legislative changes needed to bring Hong Kong's existing arrangements in line with the Key Attributes were described. A number of gaps were identified in the existing supervisory intervention powers or toolkits of the local regulators when compared to the Key Attributes. To address these gaps and provide the basis for a robust resolution regime, a single cross-sectoral regime was proposed and a case was made for each of the sectoral regulators (HKMA, SFC and IA) to be designated as the resolution authorities for FIs within their purview.
  - Consideration on which FIs should fall within the scope of the regime (taking into account which FIs could pose systemic risk on failure) as well as the conditions under which the regime will be used and the objectives to be advanced in any resolution. The powers which are proposed to be made available to the resolution authorities to stabilize and resolve an FI were those identified in the Key Attributes (namely transfer of the FI or some or all of its business to another FI or to a bridge institution and "bail-in" of liabilities to recapitalize the FI);
  - Discussion on whether a "temporary public ownership" option should be made available;
  - Safeguards that should be available to parties affected by resolution and how the resolution regime might operate in a cross-border context;
  - Discussion on how certain rights of creditors might be temporarily suspended during the initial stages of resolution.

- On June 20, 2014, HKMA issued a new Supervisory Policy Manual (SPM) entitled Module RE-1: Recovery Planning (RE-1), as statutory guidance. RE-I provides guidance to Authorized Institutions (AIs) on key elements of the effective recovery planning and sets out HKMA's approach and expectations in reviewing an AI's recovery plan.

  Some of the key sections of the SPM:

  - require all AIs to undertake some degree of recovery planning which will be proportionate to the nature, scale and complexity of their operations;
  - explain the need for the involvement of the Board and senior management in developing, reviewing, approving and maintaining an AI's recovery plan;
  - outline key requirements on the menu of recovery options which should be included in an AI's recovery plan;

- set out aspects to be considered in identifying triggers for escalation of concerns and activation of the recovery plan;
- provide guidance on how the impact of a recovery action should be assessed;
- provide minimum requirements for stress scenarios; and
- outline the minimum requirements for a communication plan should the recovery plan be activated.

- On January 21, 2015, FSTB, HKMA, SFC and IA launched the second stage of public consultation on establishing an effective resolution regime for financial institutions (FIs), including financial market infrastructures (FMIs) in Hong Kong. The consultation ended on April 20, 2015. The second stage of consultation seeks views on specific aspects of the regime including: further details on the resolution options and powers proposed in the first consultation paper; the governance arrangements and especially the approach to designating resolution authorities; as well as safeguards including a 'no creditor worse off than in liquidation' compensation mechanism. With regard to derivatives transactions, the consultation paper seeks public views on the proposed approach to bail-in of liabilities arising from derivatives as outlined in paragraph 111 of the paper (see question 17). The consultation paper also asks for comment on scope, timing and conditions proposed for temporary stays on early termination rights in financial contracts and on how best to implement a temporary stay of early termination rights in respect of FMIs.

- On October 9, 2015, the Hong Kong government and financial regulators (HKMA, SFC and the Insurance Authority) released a consultation response to the second stage of public consultation on proposals to establish a cross-sector resolution regime for financial institutions (FIs), including financial market infrastructure, in Hong Kong. The consultation response summarises the respondents' views on the proposals and sets out the government's responses along with its refined policy positions on certain aspects of the proposed resolution regime. At the end of the consultation period (January to April 2015), around 30 submissions had been received from a variety of industry associations, FIs, professional bodies and firms.

  The consultation response contains further information regarding certain aspects of the proposed regime, including pre-resolution powers; loss absorbing capacity requirements to facilitate bail-in; resolution funding arrangements; the recognition of cross-border resolution actions; and safeguards for those affected by resolution action, including appeal mechanisms. It is expected that a bill to establish the local resolution regime will be introduced into the Legislative Council by the end of this year. The government and the financial regulators will continue their dialogue with stakeholders throughout the legislative process and thereafter when rules, codes of practice and guidance are developed and issued.

5. OTC Clear ESMA recognition and CFTC exemption

- On January 16, 2015, SFC and 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 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.

- On April 29, ESMA announced that it has recognized ten third-country CCPs established in Australia, Hong Kong, Japan and Singapore, including HKFE Clearing Corporation Limited, Hong Kong Securities Clearing Company Limited, OTC Clearing Hong Kong Limited and SEHK Options Clearing House Limited. The recognition allows these CCPs to provide clearing services to clearing members or trading venues established in the EU. Hong Kong has already been assessed as equivalent by the European Commission with regard to its legal and supervisory arrangements for CCPs. Several other steps led to the recognition of the third-country CCPs, including the conclusion of cooperation agreements with the relevant third-country authorities, as well as the consultation of certain European competent authorities and central banks, as foreseen by EMIR.

- On July 9, 2015, CFTC published a request for public comment on a petition by OTC Clearing Hong Kong Limited for exemption from registration as a derivatives clearing organization (DCO) pursuant to section 5b(h) of the Commodity Exchange Act, which permits CFTC to grant such exemption if it determines that the applicant is subject to comparable, comprehensive supervision by appropriate government authorities in its home country.

ISDA Submissions (since 2010)

- January 27, 2010: ISDA submission in response to the Consultation Paper on the Review of Corporate Rescue Legislative Proposals
- December 2, 2010: JAC submission to the Bills Committee on the Securities and Futures and Companies Legislation (Structured Products Amendment) Bill
- July 8, 2011: ISDA submission to HKMA on the Conceptual Framework of the 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
- 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
- January 29, 2013: ISDA submission to HKMA and SFC with regard to the "originate or execute" definition in the consultation paper on the proposed regulatory regime for the over-the-counter derivatives market in Hong Kong
- April 5, 2013: ISDA submission to HKMA and SFC regards to the "originated or executed" definition in the consultation paper on the proposed regulatory regime for the over-the-counter derivatives market in Hong Kong

1. April 15, 2013: ISDA submission to HKMA regards to HKMA Consultation on reporting requirement for OTC derivatives transactions

- May 16, 2013: ISDA submission to HKMA regarding HKMA Consultation on reporting requirement for OTC derivatives transactions
- June 4, 2013: ISDA submission to HKMA regarding the reporting logic for historical records amendment
- July 5, 2013: ISDA submissions to HKMA on the Reporting Service Agreement.
- July 16, 2013: ISDA submission to Hong Kong Monetary Authority and Securities and Futures Commission on the "originated or executed" definitions under the trade reporting regime
- July 26, 2013: ISDA submissions to HKMA on the Reporting Service Agreement – Follow up letter
- August 30, 2013: ISDA submission to HKMA and SFC on the "originate or execute" definition under the trade reporting regime
- April 4, 2014: ISDA response to the consultation paper on "An Effective Resolution Regime for Financial Institutions in Hong Kong"

- August 18, 2014: ISDA submission to Hong Kong Monetary Authority and Securities and Futures Commission on the Consultation paper on the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping) Rules
- August 30, 2014: ISDA submission to Hong Kong Monetary Authority and Securities and Futures Commission on the "originate or execute" definitions under the trade reporting regime
- September 4, 2014: ISDA submission to HKMA on the mandatory reporting of unique transaction identifiers
- December 23, 2014: ISDA submission to HKMA and SFC on further consultation on the Securities and Futures (OTC Derivative Transactions – Reporting and Record Keeping Obligations) Rules
- March 20, 2015: ISDA submission to HKMA on draft additional trade reporting documentation (draft FAQs and Supplementary Reporting Instructions).
- April 13, 2015: ISDA submission to Financial Services and the Treasury Bureau on an Effective Resolution Regime for Financial Institutions in Hong Kong. This submission is not yet public.

INDIA

AT A GLANCE

Central Bank:	Reserve Bank of India (RBI) http://www.rbi.org.in
Bank Regulator:	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:	The Clearing Corporation of India Ltd (CCIL) clears inter-dealer USD-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 the future. FX forwards mandatory clearing began in June 2014.
	Reporting to CCIL of inter-dealer INR IRS, FRA and credit default swap (CDS) trades and INR and foreign currency FX forwards, swaps and currency options is required. Reporting of client trades in FX forward and options above a reporting threshold is also required.

Key Regulatory Milestones

1. OTC Derivatives Market Reforms

- On March 6, 2014, the Implementation Group on OTC Derivatives Market Reforms released its report on progress in implementing OTC derivatives reform measures in India. In this report, the Group has made a gap analysis with regard to various OTC derivative products and has suggested tentative timelines for reform implementation.

  The report noted that while India was fully committed to achieving the G-20 reform agenda for OTC derivatives, the pace and nature of such reforms depended on domestic market conditions. The recommended roadmap for implementation of reform measures with regard to OTC derivatives in India has been worked out with timelines extending up to March 2015. As some of these milestones might be dependable on variables such as an improvement in liquidity, there was a possibility that timelines might be revisited or revised based on developments in the OTC derivatives market.

2. Trade reporting

- Reporting of inter-dealer transactions in INR IRS and FRAs to CCIL has been required since August 30, 2007.

- Since the launch of the onshore CDS market on December 1, 2011, market-makers have been required to report their CDS transactions with both users and other market-makers.

- In line with the G20 commitments, CCIL was designated as the OTC derivatives trade repository for India and reporting was extended to inter-dealer USD-INR FX forwards and swaps and foreign currency (FCY)-INR options on July 9, 2012. This was expanded to other inter-dealer FX forwards and swaps and currency options (i.e., transactions in 13 FCY other than USD against INR, and FCY against FCY transactions) on November 5, 2012. The FCYs (in addition to USD) are EUR, GBP, JPY, AUD, CAD, CHF, HKD, DKK, NOK, NZD, SGD, SEK and ZAR.

- Reporting of client trades in FX forwards and options commenced on April 2, 2013, subject to a reporting threshold of USD1 million (or equivalent in other currencies). The reporting threshold applies to the base currency of the trade at the time of transacting.

- On December 4, 2013, RBI issued a circular on the Reporting Platform for OTC Foreign Exchange and Interest Rate Derivatives. All/selective trades in OTC foreign exchange and interest rate derivatives between the Category-I AD banks/ market makers (banks/PDs) and their clients should be reported on the CCIL platform, subject to a mutually agreed upon confidentiality protocol.

  CCIL has completed the development of the platform for reporting of the following OTC derivative transactions: Inter-bank and client transactions in Currency Swaps; Inter-bank and client transactions in FCY FRA/IRS; and Client transactions in INR FRA/IRS. Additionally, CCIL has put in place a confidentiality protocol, in consultation, with the market representative bodies. The platform would be operationalized from Dec 30, 2013 for the above OTC derivative transactions.

3. Clearing

- CCIL clears inter-dealer USD-INR FX forwards and plans to launch inter-dealer clearing of INR IRS and FRAs.

- On January 17, 2012, FEDAI issued a notice to its members requiring them to join CCIL's Forex Forward Guaranteed Settlement Segment by June 30, 2012 and to start clearing their eligible FX forward transactions through CCIL by October 1, 2012. The clearing deadline has since been postponed indefinitely.

- CCIL has amended its regulations governing the Forex Forward Guaranteed Settlement Segment with the amendments taking effect on March 31, 2013. The key amendments confer a right upon members to resign and limit the liability of members for losses arising from the default of another member.

- On January 28, 2013, RBI issued a circular on the 'Standardization of Interest rate Swap (IRS) Contracts', which aims to facilitate central clearing and settlement of IRS contracts in the future and to improve tradability. FIMMDA would prescribe the terms regarding minimum notional principal amount, tenors, trading hours, settlement calculations etc., in consultation with market participants. Standardization would be mandatory for INR Mumbai Inter Bank Offer Rate (MIBOR) Overnight

Index Swap (OIS) contracts and for all IRS contracts other than client trades. All new INR MIBOR-OIS contracts executed from April 1, 2013 onwards would need to be standardized.

- On January 1, 2014, RBI granted the status of Qualified Central Counterparty (QCCP) to CCIL. CCIL has qualified as a QCCP on the basis that it is authorized and supervised by the RBI under the Payment and Settlement Systems Act, 2007. It is also subject, on an on-going basis, to rules and regulations that are consistent with the Principles of Financial Market Infrastructures (PFMIs) issued by CPSS-IOSCO. In July 2013, CCIL was designated as a critical Financial Market Infrastructure (FMI) for oversight considering its systemic importance in financial markets regulated by the RBI.

- On February 28, 2014, the Risk Management Department of CCIL released its consultation paper on "the Segregation and Portability Related Changes & Clearing Member Structure". CCIL currently deals directly with all its members, with no indirect participation except in the securities segment. All trades of a member and its constituents are not segregated for margin computation. CCIL is seeking to create a structure so that some of its members, based on agreed criteria, may become Clearing Members (CMs). Indirect participants may access the clearing system via these CMs. The CM structure would be implemented in all segments of CCIL after suitable modification. The aim of the proposals is to meet Principle 14 "Segregation and Portability" of the CPSS-ISOCO PFMIs.

  CCIL seeks to create a basic structure through which it would receive all trades of the indirect participants through their CMs for settlement. These trades would have identifiers to denote those as trades of individual participants. CMs would have the option to allow indirect participants to report their trades through CMs or even directly to CCIL within certain pre-specified limits. CMs would be responsible for any margin deficit or any settlement shortfall in the account of any of the indirect participants which accesses clearing through them.

  Indirect participants would have the option to select fully segregated collateral model or otherwise. If any indirect participant selects fully segregated collateral, it would have full visibility through CCIL system of margins deposited on its behalf by their CMs. This information would be less detailed for indirect participants who select group or omnibus margin accounts. In the CBLO & Forex Segments, indirect participants have to maintain segregated collateral accounts only. However, an indirect participant, when allowed, may clear through multiple CMs.

  The consultation paper covered and sought views on margin shortfall, settlement shortfall, default on account of indirect participant and clearing member default.

- On March 27, 2014, RBI issued a circular on the Exposure Norms for Standalone PDs. With effect from April 1, 2014, as an interim measure, a standalone Primary Dealer's (PD) clearing exposure to a Qualifying Central Counterparty (QCCP) would be kept outside the exposure ceiling of 25% of its net owned funds applicable to a single borrower/counterparty.

- On March 27, 2014, RBI issued a circular on the Exposure Norms for Standalone PDs. Effective April 1, 2014, as an interim measure, a standalone primary dealer's clearing exposure to a Qualifying Central Counterparty (QCCP) would be kept outside the exposure ceiling of 25% of its net owned funds applicable to a single borrower/counterparty.

- On June 2, 2014, mandatory clearing through CCIL Forex Forward Guaranteed Segment commenced.

- On December 8, 2014, the Risk Management Department of CCIL released its Consultation Paper on the Default Handling: Auction of Trades & Positions of Defaulter etc.

The Consultation Paper proposed the following:

1. Auction for close-out of Defaulter's positions: CCIL is considering introducing the possibility of auctioning trades of the defaulter.
2. Default classification: CCIL will categorize the event of default into large and small default depending on the impact to other clearing market participants. The classification may be based on the amount involved at a netted position level as compared to the aggregate net outstanding positions being cleared in the institutional segment of the market. Based on a pre-decided scale, a default may be classified based on such ratio and a subsequent course of action be adopted.
3. Committee of Clearing Participations for Default Handling: For large-sized defaults, CCIL is proposing to form a Committee of Clearing Participants. This committee will advise CCIL on handling large-sized defaults and will assist CCIL on close-out positions either through direct sale or auction.
4. Segment-wise approach: The default handling in each segment is different as the default of a market participant for each segment should be handled separately. However, a clearing participant may default in more than one segment. CCIL is proposing to handle such defaults at a consolidated level instead of through a segment-based approach.
5. Compression of Portfolio of defaulter or of all (including non-defaulters): CCIL is proposing a mandatory compression of trades of all clearing participants before the default process begins.
6. Sale of positions in the market: In the instance of a small-sized and medium-sized default, CCIL may choose to close-out such positions through a sale in the market either through its anonymous trading systems or through a private sale by inviting quotes from at least three of the large non-defaulting clearing participants. The residual positions may be closed out following the approach as described in paragraph 2.5.5 of the Consultation Paper. In the instance of a large-sized default, the Default Management Committee of clearing participants may be shown the portfolio of the defaulted clearing participant. This Committee, in consultation with CCIL, may be required to decide on the auction size of the defaulter's portfolio. This Committee may also decide to sell the defaulter's portfolio in the market based on pre-determined rules and via the anonymous trading systems of CCIL.
7. Auction Model: All non-defaulting clearing participants will have an obligation to bid in the auction and buy positions up to a portion of the auctioned position that is equal to the ratio of their contributions to the default fund for the segment to the total contributions of non-defaulting clearing participants to the same default fund. For each tranche, CCIL will declare a minimum price based on its MTM price.
8. Positions carried forward: If some positions of the defaulter could not be immediately closed-out in the market or through the auction, such positions will be carried forward.
9. Residual Loss from Default: Any loss not recovered from the handling of a default will be met in terms of the Default Waterfall described in the respective segment.

- On July 17, 2015, CCIL issued a Consultation Paper on Integrated Risk Information System (CCIL IRIS): Additional Functionalities. This Consultation Paper considers additional functionalities to be included in CCIL's web based real time application called CCIL IRIS which provides information ot members related to among others, their liquidity exposures, margin and collateral related information, contributions to default fund, iimposition of margin and settlement status of trades in different segments.

- On July 24, 2015, CCIL issued a Consultation Paper on the integration of Forex Forward and Forex Settlement Segment . This Consultation Paper covers considers the process of integration of these two segments. CCIL has considered that the risks to CCIL for both segments are the same and the clearing participants to these segments are more or less the same. The Consultation Paper also considers that the integration will bring significant benefits to the clearing participants.

- On July 31, 2015, CCIL issued a Consultation Paper on CCP Recovery and Resolution Mechanism (Consultation Paper). In this Consultation Paper, CCIL considered the Principles for Financial Market Infrastructures (PFMI) developed by the Committee on Payment and Settlement Systems and the International Organization of Securities Commissions (CPSS-IOSCO) in April 2012 and carried out an analysis of the PFMI in relation to the development and maintenance of a viable recovery or orderly wind-down plan for CCIL.

  <u>Critical Services</u>
  CCIL is of the view that the critical services which it offers in the clearing space relate to it being a CCP in securities, CBLO, Foreign Exchange (Rupee/US Dollars), Forward Foreign Exchange (Rupee/US Dollars) and Rupee Derivatives segments. It is to be noted that CCIL also offers non-CCP clearing and settlement of daily cashflows in rupee derivatives segment and in the CLS segment. CCIL has also considered that it is the only CCP offering the clearing services as described above; therefore, these may be considered to constitute critical services for the financial market participants in the Indian market. \

  <u>Principal Risks</u>
  Aside from defaults by participants, CCIL has identified and described the following major risks to the clearing risks run by CCIL in the Consultation Paper:
  (a) Settlement Bank Risk;
  (b) Investment Risk;
  (c) Operations Risk;
  (d) Legal Risk; and
  (e) Reputation Risk

  <u>Liquidity Risk</u>
  CCIL highlights that in order to manage liquidity risk on a day to day basis, maximum liquidity limits are proposed to be set across segments for members. This has presently been imposed in the Forex Settlement Segment in both INR and in USD. CCIL is of the view that this will ensure that the liquidity shortfall will not be faced with the first default, even by the largest participant with its affiliates. CCIL also considers that liquidity risks from settlement bank failures, if any, would have to be shared by the clearing participants which settles through such bank and is required to share the credit loss as stipulated.

  <u>Allocation of Losses</u>
  With respect to allocation of losses, CCIL has considered and proposes to follow the PFMIs and as well as the report on the *Recovery of Financial Market Infrastructures* issued by the Committee on Payments and Market Infrastructures and IOSCO (CPMI-IOSCO) in October 2014.

Losses not caused by participant default

CCIL sets out its considerations with respect to losses not caused by participant default. In this regard, CCIL considers its approach as follows: to combine managing these risks in a manner which is optimum and transparent to the participants and having loss sharing principles where appropriate incentives are available for the participants to manage and minimize this risk. CCIL also states that initial losses up to a threshold could be borne out of CCIL's own resources clearly earmarked for this purpose.

4. Onshore CDS market

- 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. Revisions were made via the Guidelines on 'Credit Default Swaps (CDS) for Corporate Bonds – Permitting All India Financial Institutions' (AIFIs) on April 23, 2012 and via Revised Guidelines on January 7, 2013.

  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 as a Credit Event, 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 fulfil 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, and AIFIs, namely, 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) 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 with their original protection seller at a mutually agreeable or FIMMDA price. If no agreement is reached, then unwinding will be done at the FIMMDA price.

  Participants are required to mark-to-market their CDS positions daily and to margin their CDS positions at least weekly.

5. Financial Sector Legislative Reforms Commission

- The Financial Sector Legislative Reforms Commission (FSLRC) issued its final report in March 2013. FSLRC was constituted by the Ministry of Finance to review and recast the legal and institutional structures of the financial sector in India in tune with the contemporary requirements of the sector.

  In determining the financial legal framework, FSLRC identified 9 areas that needed to be covered by such framework:

  - consumer protection,
  - micro-prudential regulation,
  - resolution of failing financial firms,
  - capital controls,
  - systemic risk,
  - development and redistribution,

- monetary policy,
- public debt management, and
- contracts, trading and market abuse.

On June 6, 2013, the Ministry of Finance also invited comments on the FSLRC Report to be submitted by July 15, 2013.

- On July 23, 2015, the FSLRC released its Revised Draft Indian Financial Code. The modifications mainly relate to the strengthening of the regulatory accountability of financial agencies, removing the provision empowering the Financial Sector Appellate Tribunal (FSAT) to review Regulations, rulemaking and operational aspects of capital controls, monetary policy framework and composition of the Monetary Policy Committee, regulation of, for instance, systematically important payment systems. The Revised Draft Indian Financial Code also considers the enactments made subsequent to the submission of the FSLRC report; namely The Pension Fund Regulatory and Development Authority Act, 2013 (PFRDA Act) and Securities Laws (Amendment) Act, 2014. However, the FSLRC states that the modifications in the revised Draft Indian Financial Code remain consistent with the overall structure and philosophy of the FSLRC Report.

6. Implementation of Basel III

- On February 21, 2012, RBI released the draft guidelines on Liquidity Management and Basel III Framework on Liquidity Standards. RBI would 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 would begin from the end of the second quarter, 2012. The LCR and NSFR would 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 would be applicable on a stand-alone basis.

- 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, would be applied. Banks would be required to hold a total of 11.5% of capital. The transitional arrangements would begin on January 1, 2013, in a phased manner and be fully implemented by March 31, 2018.

- On September 1, 2014, RBI issued guidelines on amendments to the implementation of Basel III. These guidelines refer to certain specific eligibility criteria of non-equity regulatory capital instruments by banks under the Basel III framework and become applicable with immediate effect.

  - Non-equity regulatory capital instruments (additional Tier 1 and Tier 2) – loss absorption mechanism

    - Banks may now issue additional Tier 1 capital instruments with the principal loss absorption through either: (1) conversion into common shares; or (2) write-down mechanism (temporary or permanent) that allocates losses to the instruments.

    - The terms and conditions of all non-equity capital instruments (both additional Tier 1 and Tier 2) issues by banks must have a provision that requires such instruments, at the option of RBI, to either be permanently written off or converted into common shares upon the occurrence of a ‘point of non-viability’ trigger event.

  - Banks need to ensure that all non-common equity capital instruments issued by them meet all the eligibility criteria, such as legal, accounting and operational, for such instruments to be recognised as regulatory capital instruments.

- Additional Tier 1 capital instruments – exercise of call option
  - The call option on additional Tier 1 instruments (perpetual non-cumulative preference shares and perpetual debt instruments (PDIs)) will be permissible at the initiative of the issuer after the instrument has run for at least five years.

- Tier 2 capital instruments – maturity period
  - Banks are allowed to issue redeemable non-cumulative preference shares and redeemable cumulative preference shares as part of Tier 2 capital with a minimum original maturity of at least five years. All other criteria relating to maturity period of Tier 2 instruments remain unchanged.

- Non-equity regulatory capital instruments (additional Tier 1 and Tier 2) – issuance to retail investors
  - Banks may issue other forms of Tier 2 capital instruments to retail investors, such as perpetual cumulative preference shares/redeemable non-cumulative preference shares/redeemable cumulative preference shares. Such issuances should be subject to the approval of the Board and conditions as required under paragraph 1.17 of Annex 5 of the master circular.
  - Banks may now issue additional Tier 1 capital instruments to retail investors, subject to Board approval. However, banks should adhere to the investor protection requirements analogous to those contained in paragraph 1.17 of Annex 5 of the master circular.

- Coupon discretion on additional Tier 1 debt capital instruments
  - Paragraph 1.8(e) of Annex 4 of the master circular has been amended, such as payment of coupons on PDIs, which must be paid out of current year profits. If current year profits are not sufficient, then the balance amount of the coupon may be paid out of revenue reserves and/or credit balance in the profit and loss account, if any. However, the payment of coupons on PDIs from revenue reserves is subject to the bank meeting the minimum regulatory requirement for core equity Tier 1, Tier 1 and total capital ratios at all times and subject to the requirements of the capital buffer frameworks (capital conservation buffer, countercyclical capital buffer and domestic systemically important banks).

- On January 8, 2015, 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 would come into effect from April 1, 2015.

- On May 28, 2015, RBI released its draft guidelines on the net stable funding ratio (NSFR) under Basel III. These draft guidelines are based on the final NSFR rules published by the Basel Committee on Banking Supervision in October 2014, and take into account Indian conditions. The deadline for comments is June 26. RBI proposes to impose these requirements on banks in India from January 1, 2018.

- On June 15, 2015, BCBS published a report assessing the implementation of the Basel risk-based capital framework and the Liquidity Coverage Ratio (LCR) for India. This is part of a series of reports on the Basel Committee members' implementation of Basel standards under the Committee's Regulatory Consistency Assessment Programme (RCAP). A key component of the RCAP is to assess the consistency and completeness of a jurisdiction's adopted standards and the significance of any deviations from the regulatory framework. The RCAP does not take into account a jurisdiction's bank supervision practices, nor does it evaluate the adequacy of regulatory capital and high-quality liquid assets for individual banks or a banking system as a whole.

Overall, the assessment outcome for India is highly positive and reflects various amendments to the risk-based capital and LCR rules undertaken by the authorities. Domestic implementation of the risk-based capital framework is found to be "compliant" with the Basel standards as all 14 components are assessed as "compliant". Regarding the LCR, India is overall assessed as "largely compliant", reflecting the fact that most but not all provisions of the Basel standards were satisfied. In addition, the implementation of the LCR regulation's component is assessed as "largely compliant" and the implementation of the LCR disclosure standards' component is assessed as "compliant".

The Basel Committee further noted that several aspects of the domestic rules in India are more rigorous than required under the Basel framework.

7. Regulation and Supervision of Financial Market Infrastructures

- On July 26, 2013, RBI released a policy document on Regulation and Supervision of Financial Market Infrastructures. The policy document describes in detail the criteria for designating an FMI, the applicability of the Principles for Financial Market Infrastructures (PFMIs) to the FMIs, oversight of FMIs and other related aspects. The financial market infrastructures regulated by RBI include Real Time Gross Settlement (RTGS), Securities Settlement Systems (SSSs), CCIL and Negotiated Dealing System (NDS). RBI also stated in the policy document that as a member of the Financial Stability Board (FSB) and the Committee on Payment and Settlement Systems (CPSS), it is committed to the adoption of the PFMI issued by CPSS and the International Organisation of Securities Commission (IOSCO) in April 2012.

8. RBI issues guidelines on capital requirements for bank exposures to CCPs

- On January 10, 2013, RBI issued draft Guidelines on Capital Requirements for Bank Exposures to Central Counterparties which differs from the Basel Committee on Banking Supervision (BCBS)'s interim framework in the following respects:
  - The RBI capital framework treats a CCP as a financial institution while the BCBS framework does not;
  - Only the Current Exposure Method (CEM) can be used by a bank clearing member to calculate its trade exposures to the CCP;
  - Bank clearing members of CCIL may calculate their total replacement cost to CCIL on a net basis. For all other CCPs, banks must calculate their total replacement cost on a gross basis; and
  - A clearing member exposure to clients is treated as a bilateral trade. However, under the BCBS framework, in addition to the clearing member exposure being treated as a bilateral trade, a margin period of risk is calculated by multiplying the exposure at default by a scalar of no less than 0.71 if a bank adopts either the CEM or the Standardized Method.

- On July 2, 2013, RBI issued finalized guidelines on Capital Requirements for Banks' Exposures to Central Counterparties. Exposures from the settlement of cash transactions (e.g. equities, spot FX, commodity etc.) will not be subject to these requirements.

  Capital requirements will be dependent on whether the CCP is a qualifying CCP (QCCP) or a non-Qualifying CCP. If a bank acts as a clearing member (CM) of a QCCP, the risk weight of 2% applies. The exposure amount will be calculated by using the Current Exposure Method (CEM). Banks will need to demonstrate via a legal opinion the legal certainty of netting exposures to a QCCP. If a bank is a client of a CM of a QCCP, it may apply the same risk weight as a CM's exposure to a QCCP. The client must obtain a legal opinion that, in the event of a legal challenge, the relevant courts and administrative authorities will find that the client will bear no losses on account of the insolvency of an intermediary under the relevant laws. If a client is not protected from losses in the event of a CM and another client of a CM jointly defaulting, but all other conditions are met, a risk weight of 4% will apply.

  Collateral posted by a CM that is held by a custodian and is bankruptcy remote from the QCCP will have a 0% risk weight. Collateral posted by a client that is held by a custodian and is bankruptcy remote from the QCCP, CM and other clients, will also apply a 0% risk weight, otherwise it will apply a 2% or a 4% risk weight depending on the degree of protection the client has from a default.

- On January 7, 2014, RBI issued a circular on the interim arrangements for Banks' Exposure to Central Counterparties (CCPs). As an interim measure, a bank's clearing exposure to a Qualifying CCP (QCCP) will be excluded from the exposure ceiling of 15% of its capital funds for a single counterparty. The clearing exposure will include trade exposure and default fund exposure. Other exposures to QCCPs such as loans, credit lines, investments in the capital of the CCP, liquidity facilities etc. will remain within the existing exposure ceiling of 15% of capital funds to a single counterparty. All exposures of a bank to a non-QCCP will fall within the 15% exposure ceiling to a single counterparty.

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

9. RBI releases circular on prudential norms for off-balance sheet exposures of banks

- On June 18, 2013, RBI released its circular on Prudential Norms for Off-balance Sheet Exposures of Banks – Deferment of Option Premium. By way of background, banks are permitted to defer, at their discretion, the premium on plain vanilla options sold by them to users subject to certain prescribed conditions, with effect from January 25, 2012. This facility has now been extended to cost reduction forex option structures in which the liability of the users never exceeds the net premium payable to the bank under any scenario. Certain conditions have been prescribed such as deferral of the payment of premium for option structure with maturity of more than 1-year, provided that the premium payment period does not extend beyond the maturity date of the contract. Banks will also need to carry out the necessary due diligence with regard to the ability of users to adhere to the premium payment schedule.

10. RBI releases capital and provisioning requirements for bank exposures

- On July 2, 2013, RBI released its draft guidelines on Capital and Provisioning Requirements for Exposures to Unhedged Foreign Currency Exposure. RBI proposed to introduce incremental provisioning and capital requirements for bank exposures to corporates that have unhedged foreign currency exposures. RBI proposes the following calculation methodology:

  - determine the amount of unhedged Foreign Currency Exposure (UFCE);
  - estimate the extent of likely loss;
  - estimate the riskiness of unhedged position.

  This loss may be calculated as a percentage of EBID per the latest quarterly results certified by statutory auditors. The higher the percentage, the higher the incremental capital and provisioning requirements would apply.

11. RBI issues circular on Risk Management and Interbank Dealings relating to PN/ODI

- On August 1, 2013, RBI issued a circular on Risk Management and Interbank Dealings. RBI referred to its earlier circular issued on June 26 which provided that if a foreign institutional investor (FII) wishes to hedge the rupee exposure of one of sub-account holders, it should be done on the basis of a mandate from the sub-account holder for this particular purpose. In the August 1 circular, RBI clarified that if an FII wishes to enter into a hedge contract for the exposure relating to that part of the securities held by it against which it has issued any Participatory Notes (PN) / Overseas Derivative Instruments (ODI), it must have a mandate from the PN /ODI holder for this specific purpose of hedging. AD Category banks are expected to verify such mandates. In cases where this is rendered difficult, they may obtain a declaration from the FII regarding the nature/structure of the PN/ODI establishing the need for a hedge operation and that such operations are being undertaken against specific mandates obtained from their clients.

12. RBI allows exporters and importers to cancel and rebook forward contracts

- On September 4, 2013, RBI issued a circular on Risk Management and Inter Bank Dealings. With a view to providing operational flexibility to importers and exporters to hedge their foreign exchange risk, RBI has reviewed market conditions and decided to allow exporters to cancel and rebook forward contracts to the extent of 50 percent of the contracts booked in a financial year for hedging their contracted export exposures. Additionally importers are now allowed to cancel and rebook forward contracts to the extent of 25 percent of the contracts booked in a financial year for hedging their contracted import exposures.

13. Companies Bill 2013

- On August 8, 2013, the Upper House of the Indian Parliament passed the Companies Bill, 2013 which had previously been passed by the Lower House of the Indian Parliament on December 18, 2012. The Bill received the President’s assent on August 29, 2013. The Bill is intended to replace the Companies Act 1956. The provisions of the Bill would be enforced in phases. A notification in the Official Gazette announced the coming into force of 98 sections of the Bill. The Ministry of Corporate Affairs would facilitate the setting up of the National Company Law Tribunals (NCLTs). In parallel, the draft rules of the Bill would be finalized through a process of consultation with stakeholders. The Bill brings about significant changes to existing corporate law and procedures. The changes are varied in nature and range from issues relating to the formation of companies, corporate social responsibility, governance, transparency as well as mergers and acquisitions.

14. RBI framework for foreign banks' wholly owned subsidiaries

- On November 6, 2013, RBI released the framework for setting up of Wholly Owned Subsidiaries (WOS) by foreign banks in India. The policy is guided by the two cardinal principles of reciprocity and single mode of presence. As a locally incorporated bank, the WOSs will be given near-national treatment which will enable them to open branches anywhere in the country at par with Indian banks (except in certain sensitive areas where the RBI's prior approval would be required). They would also be able to participate fully in the development of the Indian financial sector. The policy creates an incentive for existing foreign bank branches which operate within the framework of India's commitment to the WTO to convert into WOS, due to the attractiveness of near-national treatment.

  Key features of the framework include:

  - Banks with complex structures, banks which do not provide adequate disclosure in their home jurisdiction, banks which are not widely held, banks from jurisdictions having legislation giving a preferential claim to depositors of home country in a winding up proceedings, etc., would be mandated entry into India only in the WOS mode;
  - Foreign banks in whose case the above conditions do not apply can opt for a branch or WOS form of presence;
  - A foreign bank opting for branch form of presence shall convert into a WOS as and when the above conditions become applicable to it or it becomes systemically important on account of its balance sheet size in India;
  - Foreign banks which commenced banking business in India before August 2010 shall have the option to continue their banking business through the branch mode;
  - To prevent domination by foreign banks, restrictions would be placed on further entry of new WOSs of foreign banks/capital infusion, when the capital and reserves of the WOSs and foreign bank branches in India exceed 20 per cent of the capital and reserves of the banking system;
  - The initial minimum paid-up voting equity capital for a WOS shall be Rs5 billion for new entrants. Existing branches of foreign banks desiring to convert into WOS shall have a minimum net worth of Rs5 billion.

  The issue of permitting WOS to enter into M&A transactions with any private sector bank in India subject to the overall investment limit of 74 per cent would be considered after a review is made with regard to the extent of penetration of foreign investment in Indian banks and functioning of foreign banks (branch mode and WOS).

15. Financial Benchmarks

- On January 3, 2014, RBI released its Draft Report of the Committee on Financial Benchmarks. The Report considered different measures recommended by various international bodies/committees and reforms which were already underway in key benchmarks, and provided an in-depth analysis of the existing methodology and governance framework of the major Indian Rupee interest rate and foreign exchange benchmarks.

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

- On February 7, 2014, the Final Report of the Committee on Financial Benchmarks was released. The Committee had finalized its report after taking into account the feedback received from market participants and other stakeholders.

- RBI complied and published on a daily basis reference rates for spot USD/INR and spot EUR/INR. On August 7, 2014, RBI announced the following changes in the existing methodology:

  - The rate for spot US dollar against Indian rupee will be polled from the select list of contributing banks at a randomly chosen five minute window between 11.30 a.m. and 12.30 p.m. every week day (excluding Saturdays, Sundays and Bank Holidays in Mumbai).
  - The other three rates, viz. EUR/INR, GBP/INR and JPY/INR would be computed by crossing the USD/INR reference rate with the ruling EUR/USD, GBP/USD and USD/JPY rates.
  - The daily press release on RBI reference rate for US dollar will be issued every week-day (excluding Saturdays, Sundays and bank holidays in Mumbai) at around 1.30 p.m.

  These changes shall be effective from September 1, 2014.

  Under the existing methodology, the rates are arrived at by averaging the mean of the bid/offer rates polled from a few select banks at a randomly chosen five minute window between 11.45 am and 12.15 pm every week day (excluding Saturdays, Sundays and bank holidays in Mumbai). The contributing banks are randomly selected from a large panel of banks, identified on the basis of their standing, market-share in the domestic foreign exchange market and representative character.

- By way of background, on June 28 2013, RBI constituted a committee on Financial Benchmarks to consider various issues relating to financial benchmarks in India. Apart from other existing benchmarks, the committee also reviewed the process of computation and dissemination of Rupee reference rate published by RBI and made some recommendations in this regard.

16. RBI releases guidelines on intra-group transactions and exposures

- On February 11, 2014, RBI released its "Guidelines on Management of Intra-Group Transactions and Exposures" (Guidelines). RBI decided to prescribe these Guidelines based on, among others, comments received on its draft guidelines issued on August 14, 2012. These Guidelines contain certain quantitative limits on financial intra-group transactions and exposures (ITEs) and prudential limits for non-financial ITEs to ensure that banks engage in ITEs in a safe and sound manner in order to contain concentration and contagion risks arising out of ITEs. The Guidelines set out that banks should adhere to the following intra-group exposure limits:

  Single Group Entity Exposure
  - 5% of paid-up capital and reserves in the case of non-financial companies and unregulated financial services companies; or
  - 10% of paid-up capital and reserves in the case of regulated financial services companies.

Aggregate Group Exposure

- 10% of paid-up capital and reserves in the case of all non-financial companies and unregulated financial services companies taken together; or
- 20% of paid-up capital and reserves in the case of the group i.e. all group entities (financial and non-financial) taken together.

Banks should also put in place a board approved comprehensive policy on monitoring and managing of ITEs. The policy should lay down effective systems and processes to identify, assess and report risk concentrations and material ITEs. The policy should also be reviewed at least annually.

The Guidelines also provide that banks should not enter into cross-default clauses whereby a default by a group entity on an obligation (whether financial or otherwise) is deemed to trigger a default of the bank on its obligations. This requirement would be applicable from the effective date of the Guidelines. Such agreements which have already been executed by banks would be exempted from this requirement. However, the existing agreements should not be renewed by banks.

The Guidelines became effective from October 1, 2014. Banks should accordingly submit data on intra-group exposures to RBI from the quarter ending December 31, 2014. In the event a bank's current intra-group exposure is more than the limits stipulated in the Guidelines, it should bring down the exposure within the limits at the earliest but not later than March 31, 2016. The exposure beyond permissible limits subsequent to March 31, 2016, if any, would be deducted from Common Equity Tier 1 capital of the bank.

17. CCIL amends its bye-laws and regulations of voluntary winding-up

- On April 23, 2014, CCIL made certain amendments to its Bye-Laws and Regulations. A new Chapter XV was inserted in the Bye-Laws providing for, among others, that in the event of CCIL filing for voluntary winding-up or if any insolvency proceeding is admitted against CCIL before any court or tribunal, all outstanding trades with CCIL under all segments shall be terminated by way of close-out at a predetermined price as may be notified. A new Bye-Law 16 was also inserted to provide that in the event of any default or insolvency of CCIL, a non-defaulting member shall have the right of set-off of the net payables or net receivables across all segments of CCIL that have become due and payable resulting in a net pay-in or net pay-out position.

  The Forex Forward Regulations of CCIL were also amended to provide that on receipt of a notice seeking termination and close out, CCIL shall at its discretion, not later than two business days thereafter, by notifying all members of this segment to effect close-out of outstanding trades of such member or to close-out all outstanding trades in the segment.

- On August 14, 2015, certain amendments to Chapter XV Bankruptcy of Clearing Corporations of CCIL's Bye-Laws and Regulations were made to reflect that in the event of CCIL filing for voluntary winding-up or if any insolvency proceeding is admitted against CCIL before any court or tribunal, all outstanding trades with CCIL under all segments shall be terminated forthwith by way of close-out at the mark to market prices of CCIL as at the end of the previous business day. On such close-out, the member-wise mark-to-market loss or gain (as the case may be) in respect of the trades shall be determined and notified to each member.

18. IRDA issues new guidelines on IR derivatives

- On June 11, 2014, the Insurance Regulatory and Development Authority (IRDA) in India issued its Guidelines on Interest Rate Derivatives, replacing earlier IRDA guidelines on the same subject. These guidelines set out that insurers are allowed to deal as users with forward rate agreements (FRAs), interest rate swaps (IRS) and exchange traded interest rate futures.

Participants can also undertake different types of plain vanilla FRAs and IRS transactions; however it should be noted that IRS having explicit /implicit option features are prohibited. Participants must also meet requirements relating to, among others, the permitted purpose of dealing in interest rate derivatives and regulatory exposure and prudential limits. Of interest is the requirement that insurers are advised to ensure documentation requirements are met and completed in all aspects as per relevant guidelines of the Reserve Bank of India and using ISDA documentation.

The guidelines further state that in order to settle the mark to market profits/losses and maintenance of collateral, counterparties should enter into suitable two-way Credit Support Annex in order to mitigate counterparty risk. The guidelines also note that derivative contracts shall be subject to Indian law and the jurisdiction of the Indian courts and be consistent with relevant guidelines and regulations.

19. India and US sign FATCA agreement

- On June 27, 2014, RBI issued a circular on the inter-governmental agreement (IGA) with the United States for the implementation of FATCA. India and the US have reached an agreement in substance and India is now treated as having an IGA with effect from April 11.

  The IGA would only be signed however after the approval of Cabinet. Indian financial institutions would have until December 31, 2014 to register with the US authorities and obtain a Global intermediary Identification Number (GIIN). Indian financial institutions having overseas branches in Model 1 jurisdictions, including those jurisdictions where an agreement under Model 1 has been reached in substance would have up to December 31 to register with US authorities and obtain a GIIN. Overseas branches of Indian financial institutions in a jurisdiction having an IGA under Model 2 or in a jurisdiction that does not have an IGA in place but permits financial institutions to register and agree to an FFI agreement may register with US authorities and obtain a GIIN before July 1 to avoid potential withholding under FATCA.

20. RBI designate domestic systemically important banks

- On July 22, 2014, RBI released its Framework for dealing with Domestic Systemically Important Banks (D-SIBs). The Framework considers the methodology to be adopted by RBI in identifying D-SIBs as well as promulgating additional regulatory or supervisory policies which D-SIBs will be subject to.

  RBI has based its assessment methodology primarily on the Basel Committee on Banking Supervision (BCBS) methodology for identifying Global Systemically Important Banks (G-SIBs). Indicators which would be used for assessment include size, interconnectedness, substitutability and complexity. Based on the sample of banks chosen for computation of their systemic importance, a relative composite systemic importance score of the banks will be computed. RBI will then determine a cut-off score beyond which banks will be considered as D-SIBs.
  RBI noted that based on data as at March 31, 2013, it was expected that about four to six banks may be designated as D-SIBs under various buckets. D-SIBs would be subject to differentiated supervisory requirements and higher intensity of supervision, taking into account the risks they pose to the system. The computation of systemic important scores would be carried out at yearly intervals. The names of the banks classified as D-SIBs would be disclosed in August of every year starting from 2015.

- On August 31, 2015, RBI announced the designation of State Bank of India and ICICI Bank Ltd as domestic systemically important banks (D-SIBs).

  RBI issued the framework for dealing with D-SIBs on July 22, 2014, which requires the RBI to disclose the names of banks designated as D-SIBs every August, starting from August 2015. The framework also requires D-SIBs to be placed in four buckets depending upon their systemic importance scores. Based on the bucket in which a D-SIB is placed, an additional common equity tier 1 (CET1) requirement has to be applied to it. ICICI Bank Ltd has been placed in the first bucket (additional CET1 of 0.2%), while State Bank of India has been placed in the third bucket (additional CET1 of 0.6%).

  The additional CET1 requirements for D-SIBs would be applicable from April 1, 2016 in a phased manner, and would become fully effective from April 1, 2019. The additional CET1 requirement would be in addition to the capital conservation buffer.

21. RBI and ECB signed an MOU on cooperation

- On January 14, 2014, RBI and ECB signed a 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.

22. Guidelines for Implementation of Countercyclical Capital Buffer

- On February 5, 2015, RBI issued its guidelines for implementation of Countercyclical Capital Buffer (CCCB). The CCCB may be maintained in the form of Common Equity Tier 1 (CET1) capital or other fully loss absorbing capital only and may vary from 0-2.5% of total risk weighted assets (RWA) of the banks. The CCCB decision would normally be pre-announced with a lead of four quarters. However, depending on the CCCB indicators, the banks may be advised to build up requisite buffer in a shorter span of time.

  The credit-to-GDP gap will be the main indicator in the CCCB framework in India and will be used in conjunction with GNPA growth. The CCCB framework will have two thresholds, a lower and an upper threshold, with respect to the credit-to-GDP gap. The lower threshold of the credit-to-GDP gap where the CCCB is activated shall be set at 3%. The upper threshold where CCCB reaches its maximum shall be kept at 15% of the credit-to-GDP gap. In between the 3- 15% of the credit-to-GDP gap, the CCCB shall increase gradually from 0-2.5% of RWA of the bank but the rate of increase would be different based on the level/position of credit-to-GDP gap.

23. RBI issues draft guidelines on covered options

- On June 25, 2015, RBI issued its draft guidelines on the writing of covered options by resident exporters and importers against their contracted exposures. Persons resident in India are currently permitted to buy plain vanilla European call or put options to hedge foreign currency exposures. The RBI now intends to permit resident exporters and importers of goods and services to sell standalone plain vanilla European call or put options against their contracted export or import exposures to any

AD Cat-I bank in India, subject to certain operational guidelines and prescribed terms and conditions as set out in the draft guidelines.

24. RBI releases annual report

- On August 27, 2015, RBI released its annual report for the year ended June 30, 2015. Part one of the report includes a review of the economy and its prospects, while part two addresses the working and operations of RBI, including monetary policy operations, credit delivery and financial inclusion, regulation of financial markets and foreign exchange management, regulation, supervision and financial stability, public debt management, currency management, payment and settlement systems and IT, governance, human resources and organisational management, and RBI's accounts for 2014-15.

25. SEBI Developments

- On September 1, 2015, the Securities And Exchange Board of India (SEBI) announced that its Committee on Clearing Corporations had tabled a report. The committee was established in November 2012 with the following broad terms of reference:

  - The viability of introducing a single clearing corporation (CC) or interoperability between different CCs;
  - Investment by a recognised CC and the manner of utilisation of CC profits;
  - To examine and review the existing regulation of transfer of profits every year by recognised stock exchanges to the fund of a recognised CC;
  - To define 'the liquid assets' of CCs for the purpose of calculating the net worth of a CC; and
  - Any other matter that the committee considers relevant or incidental to this. The issue of transfer of depositories' profits to their investor protection fund (IPF) was referred to the committee.

  SEBI also announced it would seek public comments on the recommendations of the committee. These include:

  - On the interoperability/viability of a single CC, the committee recommended that maintaining separate CCs for each exchange would be prudent at this stage. However, the SEBI may keep the interoperability option open and consider the proposal for implementation when conditions are met, which include clear intent of the participants coming together and having a suitable framework in place to the satisfaction of the SEBI.
  - On investments by CCs, the committee recommended that CCs be permitted to invest in fixed deposits and central government securities. However, CCs may not invest in instruments like non-convertible debentures (NCDs), commercial paper (CP) and money-market mutual funds, as these instruments carry credit/liquidity risks.
  - As the requirement of a core settlement guarantee fund (SGF) has already been met, it was recommended that the requirement to transfer 25% of every recognised stock exchange's profits to the fund of the recognised clearing corporation may no longer be required. However, the risk management review committee of the SEBI may review the stress-test model used to determine the minimum required corpus of the core SGF before making such a departure.
  - The 'liquid assets' of CCs for the purpose of calculating net worth shall comprise fixed deposits/central government securities. Other instruments like NCDs, CP and money-market mutual funds carry credit/liquidity risks and so cannot be considered in the calculation.

- With regards to the transfer of profits by depositories, it was recommended they may transfer 5%, or such percentage as may be prescribed by the SEBI, of their profits from depository operations every year to the IPF since the date of amendment of the SEBI (Depositories and Participants) (Amendment) Regulations 2012 requiring transfer of profits.

- On September 8, 2015, SEBI issued the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) (Amendment) Regulations, 2015. The regulations impose requirements on clearing members, including self-clearing members, such as:

  - Prohibiting a stock broker carrying on the activity of buying, selling or dealing in securities (other than commodity derivatives) from the activity of buying, selling or dealing in commodity derivatives unless permitted by SEBI, and vice-versa;
  - Imposing fees on members dealing in securities, other than commodity derivatives;
  - Imposing non-refundable fees for applications made under the regulations;
  - Imposing new net-worth and deposit requirements for members dealing in securities other than commodity derivatives and members dealing in commodity derivatives.

- On October 6, 2015, SEBI released a circular announcing a medium term framework for Foreign Portfolio Investor (FPI) limits in Government securities in consultation with the Government of India.

  Key notable changes include:
  - limits for FPI investment in debt securities shall henceforth be announced/fixed in rupee terms;
  - limits for FPIs in Central Government securities (Government debt, Long-term Government debt and State Development Loans (SDLs)) will be increased in 2 stages, on 12 October 2015 and 1 January 2016;
  - a security-wise limit of 20% of the amount outstanding under each Central Government security. Existing investments in the Central Government securities where aggregate FPI investment is over 20% may continue. However, fresh purchases by FPIs in these securities shall not be permitted until the corresponding security-wise investments fall below 20%;
  - all future investments by Long Term FPIs shall be required to be made in Central Government securities and SDLs which have a minimum residual maturity of 3 years;
  - investment of coupons received by FPIs on their existing investments in Central Government securities as well as SDLs shall continue to be outside the applicable limits; and
  - depositories shall put in place the necessary systems for the daily reporting by the custodians of the FPIs and shall also disseminate on their websites the negative investment list, the aggregate security-wise holdings by FPIs and the coupon investment data along with the daily debt utilization data.

  The circular is with immediate effect.

26. RBI liberalises booking of FX contracts

- On October 8, 2015, RBI announced the liberalisation of the Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000 for Authorised Dealers Category-I (AD Cat-I) banks, regarding Booking of Forward Contracts – Liberalisation, in terms of which resident individuals, firms and companies, to manage / hedge their foreign exchange exposures arising out of actual or anticipated remittances, both inward and outward, are allowed to book forward contracts, without production of underlying documents, up to a limit of USD 250,000 based on self-declaration. The RBI has decided to allow all resident individuals, firms and companies, who have actual or anticipated foreign exchange exposures, to book foreign exchange forward and FCY-INR options contracts up to USD 1,000,000 without any requirement of documentation on the basis of a simple declaration. While the contracts booked under this facility would normally be on a deliverable basis, cancellation and rebooking of contracts are permitted. Based on the track record of the entity, the concerned AD Cat-I bank may, however, call for underlying documents, if considered necessary, at the time of rebooking of cancelled contracts.

ISDA Submissions (since 2010)

- March 9, 2010: ISDA submission to the MOF Working Group on Foreign Investment in India
- June 11, 2010: ISDA submission to the MOF Working Group on Foreign Investment in India
- June 22, 2010: ISDA submission to the MOF Working Group on Foreign Investment in India
- October 4, 2010: ISDA submission to RBI on the draft Report of the Internal Group on Introduction of Credit Default Swaps for Corporate Bonds
- October 8, 2010: ISDA submission to the MOF on Report of the Working Group on Foreign Investment in India
- March 8, 2011: ISDA submission to RBI on the draft Guidelines on Credit Default Swaps for Corporate Bonds
- April 26, 2012: ISDA submission to MOF in response to the Finance Bill 2012
- May 4, 2012: ISDA submission to MOF with regard to service tax in response to the Finance Bill 2012
- October 12, 2012: ISDA submission to RBI, MOF and the FSLRC on 'Consistency of netting application to spur financial market growth'
- October 16, 2012: ISDA submission to RBI on the draft Guidelines on Management of Intra-Group Transactions and Exposures
- January 31, 2013: ISDA submission to RBI on the draft Guidelines on Capital Requirements for Bank Exposures to Central Counterparties
- March 20, 2013: ISDA submission to RBI, the Ministry of Finance (MOF) and CCIL on CCIL's Forex Forward Guaranteed Segment
- July 15, 2013: ISDA submission to The Ministry of Finance on Report of the Financial Sector Legislative Reforms Commission
- February 28, 2014: ISDA submission to CCIL on USD/INR Segment - Procedure to be adopted for allocation of funds shortage if shortage exceeds available resource
- March 14, 2014: ISDA submission to CCIL on Intra-day Mark-to-Market Margin Collection in CCIL's CCP Cleared Segments
- March 21, 2014: ISDA submission to CCIL on Segregation and Portability Related Changes & Clearing member Structure
- June 6, 2014: ISDA submission to Reserve Bank of India regards to the Report of the Working Group on Resolution Regimes for Financial Institutions
- January 19, 2015: ISDA submission to The Clearing Corporation of India Ltd. regards to the Consultation Paper on Default Handling: Auction of Trades & Positions of Defaulter. This submission is not yet public.
- September 25, 2015: ISDA submission to The Clearing Corporation of India Limited with regards to the Consultation Paper on CCP Recovery and Resolution Mechanism. This submission is not yet public.

INDONESIA

AT A GLANCE

Central Bank:	Bank Indonesia (BI) http://www.bi.go.id
Bank Regulator:	BI but scheduled to be transferred to OJK beginning end-2013
Capital & Fin. Mkts Regulator:	Otoritas Jasa Keuangan (OJK) http://www.ojk.go.id
	Bapepam-LK http://www.bapepam.go.id (in the interim)
Associations:	Persatuan Bank-Bank Umum Nasional (Perbanas) http://www.perbanas.org
	Foreign Banks Association of Indonesia (FBAI) http://www.fbai.or.id
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

1. OJK

- The law setting up the OJK was passed in October 2011. Pak Muliaman D Hadad (formerly a BI Deputy Governor) was appointed as the first OJK Chairman. Like the UK FSA, the OJK is an independent body set up to regulate and supervise the financial services industry. OJK has started to take over the regulation and supervision of capital markets and non-banking financial institutions from Bapepam-LK at the beginning of 2013. OJK is to start taking over the banking supervisory function from BI at the end of 2013. The OJK law also creates a Coordinating Forum for Financial System Stability, 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.

2. Currency Law

- 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 would 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).

3. National Language Law

- 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.

- In June 2013, the West Jakarta District Court in PT Bangun Karya Pratama Lestari v Nine AM Ltd case ruled that a loan agreement governed by Indonesian law and written only in English to be void for being in violation of Law No. 24 of 2009.

- In August 2015, the Indonesian Supreme Court announced that it had rejected an appeal filed by Nine AM Ltd in connection with the annulment of the loan agreement described above. The announcement indicates that previous judgments handed down by the West Jakarta District Court and subsequently by the Jakarta High Court, have been upheld by the Indonesian Supreme Court.

4. Regulations impacting OTC derivatives

- BI Regulation No. 11/26/PBI/2009 on 'Structured Products' (SP Regulation) 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 currencies against IDR structured products are prohibited. The SP 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.

- 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.

  On September 18, 2014, Bank Indonesia organized socialization activities to announce amendments to Bank Indonesia regulations concerning foreign currency transactions in order to deepen financial markets. Bank Indonesia would promulgate several provisions that summarize and elaborate upon a number of existing regulations regarding foreign exchange transactions amended to provide increased flexibility and a more precise explanation to market participants when conducting foreign exchange transactions. The amendment covers, amongst others, relaxing and clarifying underlying assets, clarifying netting to settle a transaction, as well as restrictions on extending credit or financing in a foreign currency and/or the rupiah for derivative transactions. The amended regulation officially supersedes the following six Bank Indonesia Regulations:

1. PBI 10/28/PBI/2008 concerning the Purchase of Foreign Exchange against the Rupiah.
2. PBI 10/37/PBI/2008 and PBI 11/14/PBI/2009 concerning Foreign Exchange Transactions against the Rupiah.
3. PBI No.7/14/PBI/2005; PBI No.14/10/PBI/2012; and PBI No.16/9/PBI/2014 concerning Restrictions on Rupiah Transactions and the Extension of Foreign Currency Credit by a Bank.

Bank Indonesia would also issue an amended regulation concerning hedging transactions between a bank and Bank Indonesia, representing efforts to augment hedging liquidity on the domestic foreign exchange market through the expansion of underlying assets, increase flexibility and assurance for market participants by allowing the extension of hedging contracts, as well as provide flexibility over swap transaction tenor extensions.

- In May 2015, Bank Indonesia announced that it together with State Institutions and fund-related agencies will continue to coordinate and cooperate to support the application of hedging transactions in order to provide optimal contribution in maintaining the stability of the Indonesian rupiah exchange.

5. Bank Indonesia amended regulation on FX transactions

- On September 18, 2014, Bank Indonesia announced certain amendments to existing Bank Indonesia regulations relating to foreign currency transactions against the Indonesia rupiah. These amendments were made in relation to foreign exchange transactions against the rupiah that are settled between banks and their domestic customers, banks and a foreign party, as well as banks and Bank Indonesia. These amendments are intended to deepen the financial markets, bolster economic activity and minimise speculative transactions against the rupiah. The amendments cover certain key elements including clarifying netting for the purposes of settling a foreign exchange transaction against the rupiah.

6. Bank Indonesia clarified foreign currency hedging regulations

- 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 would supersede the previous regulation 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.

7. Bank Indonesia introduces regulation on obligation to use Rupiah in Indonesia

- On March 31, 2015, Bank Indonesia issued Regulation No. 17/3/PBI/2015 on the Obligation to use Rupiah in the Territory of Indonesia. This regulation contains certain provisions which require, among others, that the Indonesian rupiah be used to settle certain financial obligations and other payment transactions taking place in the Territory of Indonesia (unless exemptions apply). These requirements would apply to both cash and non-cash transactions. This new regulation appears aimed at supporting the stability of the Indonesian rupiah and is also intended to assist in effectively implementing the provisions in Law No. 7 of 2011 on Currency. Law No. 7 of 2011 had imposed the general requirement to use the Indonesian Rupiah for certain transactions in Indonesia.

- On June 5, 2015, Bank Indonesia issued SE No17/11/DKSP regarding the Obligation to Use Rupiah in the Territory of the Unitary State of the Republic of Indonesia. The regulation contains technical guidance in implementing Bank Indonesia Regulation (PBI) Number 17/3/PBI/2015 concerning the Obligation to Use Rupiah in the Territory of the Unitary State of the Republic of Indonesia (NKRI) which was issued on March 31, 2015. SE No17/11/DKSP governs the Obligation to specify the prices of goods and/or services in rupiah, the Implementation of obligation to use rupiah for strategic infrastructure projects agreed in writing, the implementation of obligation to use Rupiah for non-cash transactions for business actors with certain characteristics, reports related to the use of Rupiah in the territory of Indonesia and sanctions for violators of the obligation to use Rupiah.

- On July 1, 2015, the mandatory use of the Indonesian rupiah came into force in the Territory of Indonesia.

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)
- January 28, 2014: ISDA submission with regards to the West Jakarta District Court decision in PT Bangun Karya Pratama Lestari v Nine AM Ltd on Law No 24 of 2009 concerning the National Flag and Emblem

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:	On March 5, 2013, the Revision Bill of the Financial Investment Services and Capital Markets Act (FSCMA) passed the plenary session of the National Assembly, following approval by the Legislation and Judicial Committee of the National Assembly the previous day. The legislation creates central counterparty clearinghouses (CCPs), to deal with clearing for OTC transactions in financial investment products. On September 11, 2013, KRX was authorized as a CCP in Korea for OTC clearing services by the FSC. Mandatory clearing of Korean Won interest rate swap commenced on June 30, 2014. On August 17, 2015, the FSC announced that KRX had been designated as a TR.

Key Regulatory Milestones

1. Korea plans to impose mandatory clearing requirements

- KRX issued in December 2011 the first draft central clearing proposal for public consultation and the second draft in March 2012.

- On March 5, 2013, the Revision Bill of the Financial Investment Services and Capital Markets Act (FSCMA) passed the plenary session of the National Assembly, following approval by the Legislation and Judicial Committee of the National Assembly the previous day. The final steps for this amendment to come into force require only that the government promulgate the Amendment and a grace period be given prior to implementation.

  The legislation creates a new business sector, central counterparty clearinghouses (CCPs), to deal with clearing for OTC transactions in financial investment products. While clearinghouse operators would be approved depending upon the types of financial products they deal with, KRX is believed to be the only institution currently considered as a CCP for OTC clearing in Korea. The FSC press release also states that "Over-the-counter (OTC) derivatives whose default could deliver significant impact to the market would be mandatorily cleared through a CCP."

- On May 15, 2013, FSC issued its draft regulation regarding central clearing of OTC derivatives. The regulation mainly deals with CCP licensing process and CCP's reporting obligation.

- On July 3, 2013, after consulting with market participants, FSC decided to postpone the enforcement date of mandatory clearing obligations under the amended Financial Investment Services and Capital Markets Act from October 2013 to June 30, 2014.

- On September 11, 2013, KRX received authorization on over-the-counter (OTC) derivatives clearing business from FSC. KRX would be the central counterparty for both exchange traded and OTC market products. The mandatory clearing of KRW-denominated interest rate swaps would come into effect on June 30, 2014.

- Effective from March 3, 2014, KRX started to provide a voluntary clearing service of Korea Won (KRW)-denominated interest rate swap (IRS) contracts to meet the G20 mandate on OTC derivatives clearing. KRX has indicated that the service is temporarily offered to 35 members on a voluntary basis until June 30, 2014. Thereafter, all KRW-IRS contracts would be cleared through the KRX on a mandatory basis.

- On June 3, 2014, the KRX published the amended rules of OTC Derivatives Clearing and Settlement Business Regulation. With these rules, KRX intends to:

  - revise clearing member admission criteria to reflect the capital regulations under Basel III and the Net Capital Ratio (NCR) revised by the Financial Services Commission (FSC);
  - improve clearing efficiency and align with international standards in view of the demands generated from its voluntary clearing service.

  Key amendments include:

  - Change of the capital ratio criteria for clearing member admission under Article 11 to correspond to the capital ratio criteria pursuant to both Article 3-26(1) of the Financial Investment Business Regulation and Article 34(1) of the Regulation on Supervision of Banking Business;

  - Change of hours for requesting and accepting the assumption of obligation under Article 49 and 98;
    - To extend by 30 minutes the hours for requesting and accepting the assumption of obligation from current hours of 9:00 - 15:50 to become 9:00 - 16:20
    - To extend by 20 minutes the hours for requesting the cancellation of assumption of obligation from current hours of 9:00- 16:00 to become 9:00 to 16:20
    - To reduce by 20 minutes the period for requesting the change of contracts of cleared transactions from current hours of 16:00 to 17:00 to become 16:20 to 17:00

  - Additional reasons for close-out are added including KRX's default, its suspension of payment, its request for commencement of rehabilitation procedures and its filing of bankruptcy under Article 111 on the Commencement of Close-out Netting Procedures;
  - Deletion of Article 123 in relation to the designation of an employee that is responsible for the clearing operation, and an employee that performs the tasks related to the clearing operation;
  - Other, less material, amendments were made to Articles 2, 29, 31, 35, 58 and 122.

  The revised rules came into effect on June 30, 2014.

- On June 13, 2014, KRX announced the revised provisions of Enforcement Rules of OTC Derivatives Clearing and Settlement Business Regulation.

  Key amendments include:

  - The period for clearing membership reapplication under Article 4(2) is deleted;
  - A new provision is added to Article 7 stating that when there is a change of major stakeholders, the review of clearing membership application would be suspended;
  - The criteria for settlement banks and custodian banks under Article 15 and 43 respectively are revised;
  - Period of Registration of Assumption of Obligation under Article 27 is shortened from 5 business days currently to 2 business days;
  - A new provision is added to Article 32 stating that KRX can claim necessary expenses and remuneration from clearing members in relation to task delegation;
  - Requirements for the committee member of Default Management Group under Article 78 are relaxed;
  - The bid price is defined under Article 84 and the Article 84(3) which relates to bid abort price is deleted;
  - Article 86(1) which relates to the allocation and early termination of a cleared transaction of a default clearing member is deleted;
  - A new provision stating that eligible margin securities, foreign currency or foreign currency securities deposited by a clearing member in KRX are subject to close-out netting is added to Article 88;
  - Article 88-2 is newly added to define the method of the close-out netting notification;
  - Article 93(3) in relation to the Cap Period is deleted;
  - Articles 97, 98 and 99, which relate to the designation of an employee that is responsible for the clearing operation and an employee that performs the tasks related to the clearing operation, are deleted;
  - The interest rate for the calculation of late payment penalty is stipulated under Article 101;
  - Other, less material, amendments were made to Articles 35, 50-54, 56, 60-62, 77 and 85.

  The revised rules came into effective on June 30, 2014.

- On June 26, 2014, CFTC Division of Clearing and Risk (DCR) issued a time-limited no-action letter stating that it would not recommend that the Commission take enforcement action against KRX for failing to register as a derivatives clearing organization (DCO) pursuant to Section 5b(a) of the Commodity Exchange Act (CEA).

  The no-action relief is limited to KRX's clearing of the proprietary Korean Won-denominated interest rate swaps trades of US clearing members, and is effective until the earlier of December 31, 2014, or the date upon which the CFTC either registers KRX as a DCO under Section 5b(a) of the CEA or exempts KRX from registration under Section 5b(h) of the CEA. This no-action letter is consistent with earlier no-action letters granting relief with respect to the clearing of proprietary trades of US clearing members.

- Effective from June 30, 2014, KRX started to provide a mandatory clearing service for Korea Won–denominated IRS contracts to meet the G20 mandate on OTC derivatives clearing. The KRX's clearing service was previously offered to 35 members on a voluntary basis from March 3. During this period, the accumulated number of cleared transactions was 427 and accumulated notional amount was $11.5 billion (KRW 11.8 trillion as of June 26, 2014). As of June 27, 24 securities firms and 28 banks (12 domestic banks and 16 foreign banks) have submitted their applications for this mandatory clearing service and only two securities firms among these clearing members are general clearing members able to offer client clearing service. Going forward, all KRW-IRS contracts would be cleared through the KRX-CCP on a mandatory basis.

- On September 30, 2014, FSS announced revised regulations on supervision of banking business (Korean only) to implement the Basel Committee on Banking Supervision's rule on capital requirements for bank exposures to CCPs (BCBS 282).

  Key amendments include:

  - Introduction of the internal models method (IMM) to calculate counterparty credit risk and credit valuation adjustment, alongside the current method of calculation (Basel II's current exposure method and standardised method).
  - Revision of capital requirements for CCP exposures:
    - Qualifying CCP (QCCP): the FSS plans to grant QCCP status to KRX, and stipulates that banks must calculate and distribute data required to calculate capital requirements against CCP default fund contributions.
  - Calculation method of risk weight: OTC derivatives transactions cleared through QCCPs would receive a preferential capital treatment. In particular, trade exposures would receive a risk weight of 2%. Foreign bank branches in Korea should calculate counterparty risk based on Basel II standards in the same manner as domestic banks.

  Implementation date for domestic banks is September 30, 2014. For foreign banks with their financial year ending on December 31, the implementation would start on October 1, 2014. Otherwise, it would start on November 1, 2014.

- On October 6, 2014, KRX established a default management committee (DMC) in order to enhance the stability and efficiency of CCP clearing services. The DMC consists of a chairman from KRX and six committee members from clearing members of the CCP. These six members include Korea Development Bank, Standard Chartered Bank Korea, Deutsche Bank, BNP Paribas, Daewoo Securities and Samsung Securities, which were appointed based on positions and volumes of OTC derivatives transactions. The DMC would mainly provide advice on hedging and the auction of remaining positions following the default of a clearing member.

- On November 11, 2014, KRX announced standards for the calculation and distribution of data required to compute bank capital requirements for central counterparty (CCP) default-fund contributions. These were issued as subsidiary rules of the Enforcement Rules of OTC Derivatives Clearing and Settlement Business Regulation. KRX aims to incorporate this key requirement for a CCP to be considered a qualifying CCP following the amendment of Detailed Regulations on Supervision of Banking Business, which FSS announced on September 30, 2014.

  Key points include:

  - Based on the last business day of every month, the CCP should calculate capital-requirements factors, such as the hypothetical capital requirement of the CCP, the aggregate capital requirement for all clearing members and the c-factor. These factors should be provided to clearing members through OTC derivatives clearing terminals within seven business days from the base date;

- The CCP should examine the adequacy of capital-requirements factors, recalculate them depending on the results of its analysis, and inform clearing members of them every month;
- The CCP should report details of the calculation/recalculation to the FSS. The regulators of a foreign clearing member may also request this information

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The standards would become effective from November 12, 2014.

- On November 13, 2014, KRX announced an amendment of the enforcement rules of the OTC Derivatives Clearing and Settlement Business Regulation.

  Key issues include:

  - KRX would prevent deposit of the cash and foreign-currency contribution to the OTC derivatives joint compensation fund and members' margin in a particular financial institution;
  - KRX would let independent and qualified external institutions examine the adequacy of its calculation methods and the management systems of members' margin if necessary. As such, it intends to be accordance with international standards, such as the Principles for Financial Market Infrastructures and relevant rules in EU and US;
  - KRX would conduct crisis response training and the Risk Management Committee would be notified of the results.

  The amendment would be effective from November 17, 2014.

- On June 30, 2015, KRX published a brief report analysing the performance of the KRX-CCP over one year. Since the launch of mandatory clearing, the total cleared notional amount and volume have reached KRW 404 trillion ($354 billion) and 14,674, respectively, as of June 26.

  As of June 2015, 55 financial institutions (32 banks and 23 securities companies) had participated in the central counterparty (CCP) as clearing members. Forty-four per cent of interest rate swaps trading took place between banks and securities firms, 40% was between banks, and 16% was between securities firms.

  KRX also revealed that the scope of OTC derivatives clearing would be expanded to include longer maturities (from 10 years to 20 years). In addition, clearing services for non-deliverable forwards would be promoted to strengthen the transparency of the OTC derivatives market.

- On August 18, 2015, CFTC published a request for public comment on a petition by KRX for an exemption from registration as a derivatives clearing organization (DCO) pursuant to section 5b(h) of the Commodity Exchange Act, which permits CFTC to grant such exemption if it determines that the applicant is subject to comparable, comprehensive supervision by appropriate government authorities in its home country.

2. South Korea implements Basel III

- On May 30, 2013, FSC issued a press release to announce Korea's plan to implement Basel III rules as of December 1. On July 31, 2013, FSC issued a press release announcing the Basel III Implementation for Bank Holding Companies to begin in December. The revision of the banking supervision rules and regulations had been completed in July 2013. Common Equity Tier 1 ("CET1") must be at least 4.5% of the risk-weighted assets and Tier 1 capital must be at least 6% of risk-weighted assets. Tier 1 and Tier 2 capital must be at least 8%. The new rules would incorporate the new CET1 capital and Tier 1 capital requirement from 2015. The new rule also introduces a capital conservation buffer of 2.5% of risk-weighted assets to be phased-in from Jan 11, 2016.

- On November 25, 2013, FSC issued a press release announcing the capital regulations under Basel III, which would be phased in for domestic banks from December 1, 2013. The Tier 1 Capital Ratio would increase from 4.5% to 6% from December 2013 to December 2015. Common Equity Tier 1 (CET1) would increase from 3.5% to 4.5% from December 2013 to December 2015. 90% of non-qualifying instruments as contingent capital already issued would be recognized as regulatory capital under Basel III from December 1, 2013. This percentage would be gradually reduced by 10% per year. Capital Conservation Buffer would start from 0.625% in January 2016 and gradually increased to 2.5% in December 2019. The total Capital Ratio and the Capital Conservation Buffer would be 10%.

  FSC planned to introduce the Liquidity Coverage Ratio (LCR) in 2015 and the Countercyclical Capital Buffer in 2016. Domestic systemically important banks (D-SIFIs) would be required to hold capital surcharges from 2016.

- On August 26, 2014, FSC announced its plan to introduce the liquidity coverage ratio under Basel III to banks operating in the country. Key points include:
  - Domestic banks are required to meet the minimum ratio of 100%, starting from January 2015.
  - For domestic branches of foreign banks, the minimum ratio starts at 20% in 2015, and would gradually increase by 10 percentage points a year to reach 60% in 2019.
  - For specialised banks or policy banks, the minimum ratio begins at 60% in 2015, and would rise by 10 percentage points a year to reach 100% in 2019.

  Institutions have until October 6, 2014, to prepare for implementation of the revisions to the regulation on the supervision of banking business. Revisions to the regulation would take effect following approval by Korea's Regulatory Reform Committee and the FSC.

- On December 24, 2014, 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 would begin at 80%, which is higher than the Basel III requirement of 60%, given the current liquidity ratio of domestic banks. The ratio would be raised by 5 percentage points per year over the next four years to meet 100% in 2019. The LCR rules became effective on January 1, 2015.

- On June 5, 2015, FSS announced that regulatory measures are set to be taken for full implementation of Basel Pillars II and III in 2016. Under the proposals for Pillar II, the current dual system of CAMEL-R and RADARS used for supervisory assessment and rating is to be integrated into CAMEL-R, and the risk items under each of the CAMEL-R components are to be aggregated and rated on a scale of one to five for use as a Pillar II rating. Supervisory action, including a capital surcharge for unsatisfactory Pillar II ratings, is expected. The application of the Pillar II rating is set to cover 18 banks and eight bank holding companies (BHC).

  For Pillar III implementation, the FSS noted that the key elements of Pillar III standards have already been incorporated into the Common Banking Disclosure Standards (CBDS) that are set by the Korea Federation of Banks.
  FSS would revise the CBDS in order to ensure the inclusion of disclosures that currently fall short of the Basel requirements, particularly disclosures with respect to credit risk, securitisation and credit risk mitigation.

- On June 4, 2015, FSS announced its plan to implement domestic systematically important banks (D-SIBs) regulation for the domestic banking community, starting January 2016. FSS would require D-SIBs to increase loss absorbency by a quarter of 1% every year over the four-year period, from 2016 to 2019.

  To identify D-SIBs, FSS would assess five banks, eight bank holding companies (BHCs) and 21 foreign bank branches for their degree of systemic importance, except the Export-Import Bank of Korea, which does not take deposits, and small foreign branches with less than KRW5 trillion in assets.

  The assessment would be based on available year-end data. According to the implementation schedule, the first group of D-SIBs would be identified and announced later this year.

  The methodology would involve: i) scoring a bank or BHC for its degree of systemic importance based on weighted averages for each of five assessment categories, including size, interconnectedness, substitutability, complexity and country-specific factors; and ii) identifying those that score above a cut-off point as a D-SIB. This methodology would be reviewed every three years to capture developments in the banking sector.

3. FSC

- On January 15, 2014, FSC together with FSS, KRX and KOFIA announced a plan to improve the security of derivatives transactions. The introduction of a “shutdown switch” and price banding limits is intended to prevent the recurrence of large scale losses from erroneous orders, and to mitigate settlement risk and violent price fluctuations of derivatives. FSC would implement the measures before the end of the first half of 2014 by amending the related rules and improving systems.

  Key highlights of the plan included:

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

- On April 8, 2014, FSC announced its plan to amend the net capital ratio (NCR) rules for securities companies as part of its effort to revitalize the country’s capital markets. Key changes include a modification to the NCR formula:
  - Current NCR(%) = (net operating capital/gross risks)*100

- Revised NCR(%)=[(net operating capital -gross risks)/sum of equity capital required to maintain each business unit's license]*100

Until the end of 2015 securities firms can use either the current or revised NCR formula. From 2016 onwards, all securities should apply the revised NCR formula.

FSC would also introduce consolidated computations of NCR for all securities firms with subsidiaries under the K-IFRS in 2016. Prior to the full implementation, the consolidated NCR rule would be applied to large securities companies in 2015 as a pilot scheme. In addition, securities companies' corporate loans would be reflected into credit risks, instead of being subtracted from net operating capital. This adjustment would be implemented as soon as relevant regulations were revised in the third quarter of 2014.

- On April 29, 2014, FSC announced its plan to establish rules for the implementation of FATCA. This followed the signing of the intergovernmental agreement on March 17 between the Ministry of Strategy and Finance and the United States, which aimed at improving the international tax compliance and implementing FATCA.

  FSC would set out further details of the agreement such as the confirmation procedure and the relevant form of clients' account information in order to help financial institutions and their clients in reporting.

- On June 17, 2014, FSC announced its roadmap for further development of Korea's derivatives market.

  For the Exchange-Traded Derivatives Markets:

  - Greater autonomy in market operation with the condition that stable operation of the markets and investor protection would not be undermined;
  - Introduction of new derivatives markets in high demand such as V-KOSPI 200 futures, sector index futures and night time trading of US dollar futures, which would provide professional investors with risk hedging instruments;
  - Introduction of qualified retail investors with two entry barriers to prevent retail investors from reckless investments and huge losses;
  - Expanding the participation of professional investors by allowing banks to directly trade treasury bond and currency derivatives on KRX;
  - Enhancing settlement stability by giving KRX greater authority to monitor and supervise default risks of security firms, and by considering the revision of the default waterfall in accordance with the PFMI;
  - Enhancing transaction stability by introducing price banding limits on futures and options trading to mitigate excessive price fluctuation, and allowing KRX to take remedies for huge losses incurred by erroneous transactions;
  - Strengthening the regulations and tightening the monitoring of high-frequency trading to prevent market manipulation and unfair trading.

  For the OTC Derivatives Market:

  - The scope of derivatives contracts subject to the CCP clearing would be gradually expanded from IRS to NDF to CDS and other derivatives.
  - Trade Repository (TR) would be introduced in accordance to the G20 after considering domestic conditions and international standards.

For the Derivatives-Linked Securities (DLS) Market:

- Exchange-trade note (ETN) would be introduced to be listed and traded on KRX.
- Issuance structure of equity-inked securities (ELS) would be diversified.
- Public disclosure and sales method of ELS and DLS would be improved to make it easier for investors to compare and choose products.
- Issuance terms of equity linked warrant (ELW) would be standardized.

- On June 18, 2014, FSC approved the Implementation Rules for Korea-U.S. Tax Information Exchange of Agreement, which would be effective from July 1, 2014.

  Key rules include:

  - Financial institutions which include depository institutions, custodial institutions, investment entities and insurers and, financial accounts which include depository account, custodial account, fund account, insurance contract and annuity contract, are subject to FATCA reporting obligation;
  - Implementation: A financial institution is required to identify U.S.-related financial accounts through reviewing the electronic records of financial accounts; If a financial account is identified as U.S.-related, the financial institution is required to report the NTS information about the financial account including account holder's name, account number, account balance, and interest payments.

- On July 10, 2014, FSC announced its plan for financial regulatory reform to create new opportunities and growth drivers for Korea's financial industry and economy.

  Key points with regards to new business opportunities for the financial industry included:

  - If a financial company is granted a business license for financial investment business, the company would be allowed to add a new business within the licensed category with registration only;
  - For banks, FSC would allow sales of OTC derivatives of currency, interest rate, commodity and credit as part of efforts to integrate different sectors of the financial industry to boost efficiency;
  - Domestic financial companies would be permitted to operate overseas businesses which are not allowed under the Korean law in a foreign country as long as such businesses are permitted under the country's law;
  - Non-banking financial institutions such as insurers and brokerage firms would be allowed to own overseas banks.

- On July 15, 2014, FSC announced its plan to ease regulations on license system for financial investment business, which includes integrating business units for license, currently overly subdivided, and simplifying license process. A draft bill to revise relevant laws and supervision regulations would be submitted to the National Assembly by the end of this year. Measures that can be taken without law revision would be implemented in September.

- On September 4, 2014, FSC announced its plan to revise the regulations on financial investment business, and the issuance and public disclosure, etc. of securities, in order to support its roadmap for the development of Korea's derivatives market (announced on June 17) and financial regulatory reform (announced on July 10).

On derivatives, FSC stated that financial investment business entities would have to establish internal control standards that limit maximum losses by derivatives proprietary trading to 50 percent of net working capital to avoid risk by excessive derivatives proprietary trading.
Institutions had until October 14 to prepare for implementation of the revisions, which would take effect following approval by Korea's Regulatory Reform Committee and the FSC.

- On September 25, 2014, FSC set out its plan to improve prudential regulations for the asset management industry. The plan includes the abolishment of the net capital ratio (NCR) rules and management evaluation, and reform of the prompt corrective action scheme.

  The plan includes:

  - A plan to replace the NCR rules with a minimum capital requirement. Asset management companies would be required to hold equity capital that exceeds the minimum capital requirement, which is the sum of the regulatory capital requirement, the capital requirement for client asset management and the capital requirement for proprietary investments.
  - The current management evaluation system would be abolished for the asset management industry. Instead, operational risk evaluation would be introduced to evaluate asset management companies' internal controls and risk management.

  A public hearing session would be held in October to discuss the details. A preliminary announcement on the revision to the related acts would be made in November. The plan would come into force in April 2015.

- On November 26, 2014, FSC announced its plan to revitalise South Korea's stock market. On derivatives, the FSC would allow the listing of new derivatives products such as mini futures and RMB futures in one to two years. The listing of V-index options or ETF futures would be also considered, depending on the commodity market situation.

- On March 20, 2015, FSC released business guidelines for financial market infrastructures (FMIs), which adopt the principles for financial market infrastructures (PFMIs), published by the Committee on Payment and Settlement Systems and International Organization of Securities Commissions in 2012. The guidelines have immediate effect.

  The guidelines reorganize provisions related to financial market infrastructures, which were scattered through the Financial Investment Services and Capital Markets Act. The 24 key principles of the PFMIs are reorganized into 14 principles in accordance with domestic circumstances, and provide detailed standards for implementation.

  FMIs need to self-evaluate on a regular basis whether their internal rules and business operations are in compliance with international standards and disclose the results of self-evaluation. The Financial Supervisory Service would adopt the guidelines as supervisory principles in its supervision on FMIs. The guidelines would serve as guiding principles for new FMI entrants when devising internal rules.

- On April 23, 2015, FSC announced its policy direction for capital market reform, which contains several measures to enhance the country's derivatives market. The measures include:

  - Mini KOSPI 200 futures and options: Trading units for KOSPI 200 derivatives products would be downsized and the trading units of Mini products would be cut to one-fifth of the level of KOSPI 200 futures and options. For example, if KOSPI 200 futures are KRW130 million per unit, then Mini KOSPI 200 futures would be KRW26 million per unit. If KOSPI 200 options are KRW30 million, then Mini options would be KRW6 million.

- KOSDAQ individual equity futures: New futures products would be developed with individual stocks listed on KOSDAQ as the underlying.
- Dividend index futures: New futures products would be developed and introduced with a dividend index as the underlying in response to a growing demand for dividend investments.
- RMB currency futures: Chinese renminbi (RMB) futures would be introduced.

A tentative listing schedule for the above products is: July for Mini KOSPI 200 products and KOSDAQ futures; August for dividend index futures; and September for RMB futures.

- On June 9, 2015, FSC announced a 20-day notice period (June 10 – July 1) for the revision of the regulation on financial institutions' outsourcing of data processing and IT facilities, with the aim of complying with global standards. Korea established the regulation in June 2013 to allow for the outsourcing of data processing.

  Key contents include:

  - Streamline regulatory system: the requirement for approval in regards to IT facilities outsourcing would be abolished. Under the revised regulation, financial firms would be required to report the outsourcing of their data processing business to FSS.
  - 'Ex post' reporting of data outsourcing: financial institutions would be allowed to outsource their data processing business with the principle of 'ex post customers' financial transaction information. This information would be required to be reported to FSS prior to the outsourcing of data processing.
  - Abolish restrictions on offshore outsourcing: the provision that restricts offshore outsourcing to a financial firm's head office, branch and affiliates would be eliminated to allow outsourcing to a third party, including a professional IT company.
  - Abolish the obligatory use of standard contract form: the obligatory use of a standard contract form would be abolished to allow financial institutions to reflect sector-specific conditions as long as the contract form includes basic requirements such as obligations to receive the regulator's supervision and inspection or responsibility for a customer's loss.

- On July 2, 2015, FSC outlined its plan to strengthen the competitiveness of Korea's exchange market and boost capital markets. Key elements include:

  - The structure of KRX would be converted into a holding company, and KOSPI, KOSDAQ and derivatives markets would be spun off;
  - The spun-off KOSDAQ would compete with KOSPI by attracting listings of innovative companies and introducing new products and services;
  - KRX holding company (tentatively named 'KRX Holding Company') would pursue an IPO;
  - Relevant regulations would be eased to facilitate the establishment of an alternative trading system.

  The revision to the FSCMA to convert KRX into a holding company would be discussed at the National Assembly's regular session in the second half of 2015.

- On September 25, 2015, CFTC announced that CFTC chairman Timothy Massad signed a memorandum of understanding with chairman Yim Jong-Yong of FSC and governor Zhin Woong-Seob of FSS regarding cooperation and the exchange of information in the supervision and oversight of clearing organisations that operate on a cross-border basis in the US and Korea.

4. FSS

- On June 17, 2013, FSS issued the Best Practices for Managing Settlement Risk in Foreign Exchange Transactions.

  Key recommendations included:

  - A comprehensive internal risk management framework that ensures all FX settlement-related risks are properly identified, measured, monitored and controlled;
  - A bank should maximize the use of PVP to eliminated principal risk when settling FX transactions, where practicable;
  - In non-PVP settlements, a bank should set exposure limits for FX trading and settlement on a counterparty basis. A bank should use legally enforceable netting agreements and legally enforceable collateral arrangements;
  - A bank should conduct stress tests on a regular basis and develop contingency plans to address possible liquidity shortfalls due to a counterparty's failure to settle. A bank should maximize the use of STP to control operational risks and ensure that netting and collateral agreements are legally enforceable for each aspect of its activities in all relevant jurisdictions;
  - A bank should consider including principal risk and replacement cost risk among all FX settlement-related risk. A bank should ensure it has sufficient capital held against these potential exposures, as appropriate.

  The best practices were implemented on October 1, 2013.

- On August 18, 2014, FSS set forth a comprehensive plan to prepare for the Regulatory Consistency Assessment Programme (RCAP) of the Basel Committee on Banking Supervision (BCBS). In this plan, the FSS stated that they would complete a self-assessment and preparation of relevant documents in English until the first half of 2015. Currently, FSS has been running a task force team which consists of staff from relevant departments in FSS in order to get ready for RCAP.

- On September 1, 2014, FSS announced its measures to ensure effective compliance at financial companies. FSS stated that compliance should be considered a profit centre with a high level of confidence, not a cost centre, and compliance would be included in the performance measurement of the financial company.

  Key contents of the measures include:

  - The chief compliance officer would be given the appropriate standing, authority and independence within the organisation;
  - the bank's senior management and internal auditor would take more responsibility for the effective compliance function;
  - compliance would be connected to performance measurement of the financial company;
  - the government would step up infrastructure for preventing financial incidents;

- efforts to reduce the cost of compliance would be stepped up.
- Measures requiring amendments to the current laws and regulations to incorporate changes would be implemented this year, while changes that can be made through amendments to best practices for the compliance function would come first.

- On December 15, 2014, FSS announced its revised risk management standards on FX derivatives transactions. FSS inspected the compliance of domestic banks and foreign bank branches with the risk management standards on FX derivatives transactions that were established in January 2010 to restrict over-hedging and encourage sound FX risk management practices. The findings of the inspection pointed to the need to further fine-tune and reinforce the standards, including the calculation methods used to determine the maximum transaction amount permitted for an FX derivatives transaction.

  The revised standards would take effect on January 1, 2015 following an inter-agency review and assessment of the proposed enhancements to the standards by Regulatory Reform Committee.

- On December 29, 2014, 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 FSS believes it would 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

- On June 24, 2015, FSS announced it has developed best practices for the management of country risk to strengthen the management of external risks by domestic banks and financial holding companies, and to bring domestic supervisory rules in line with global standards.

  The best practices reflect Principle 21 (Country and Transfer Risks) of the Core Principles for Effective Banking Supervision established by the Basel Committee on Banking Supervision, and present detailed guidelines to enable financial companies to file comprehensive reports on their risk exposure and profile.

  The best practices apply to 18 domestic banks and eight bank holding companies, except for local branches of foreign banks. The key recommendations involve detailed guidelines for analysing country risk, assigning credit ratings and setting exposure limits.

  Financial company risk management units, such as the board of directors and risk management committee, should permit and review exposure limits on a regular basis. Financial companies should assign credit ratings to each country on the basis of risk analysis, and use the ratings to set exposure limits. They should also monitor their compliance with country-specific exposure limits, conduct stress tests and have relevant internal control and audit procedures in place.

  The best practices are set to be implemented on October 1, 2015, to allow financial companies time to establish internal standards and relevant IT systems. FSS is scheduled to monitor how the best practices are being reflected in companies' risk management during the fourth quarter of the year.

- On September 16, 2015, FSS published new guidelines on bank internal control and compliance functions. FSC and FSS will implement the new guidelines on September 17, 2015 to ensure the effectiveness of internal controls in the banking sector. This is a follow-up to the "measures to ensure effective compliance at financial companies" that the FSS introduced in August 2014 to restore public confidence in the financial sector in the wake of a series of financial incidents.

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5. Bank of Korea

- On August 26, 2015, BOK published the English version of an annual report on its payment and settlement systems, following publication of the Korean version on April 15, 2015. Key elements include:
  - Payment and settlement trends and settlement risk management;
  - Payment and settlement system oversight and policy responses; and
  - Future policy directions.

6. MOSF, National Assembly, and other government offices

- On November 11, 2013, MOSF issued a press release announcing the easing of regulations by the Korean government in regard to foreign exchange transactions. The revised regulations would expand the scope of FX transaction-related businesses by non-bank financial institutions and promote the use of the won in foreign exchange related settlements.

  The revised regulations would take effect in 2014 and include:
  - Foreign exchange transactions between securities brokerages would be allowed;
  - Investment banks would be allowed to lend securities denominated in a foreign currency by notifying the Bank of Korea following the transaction, instead of reporting it beforehand;
  - Trust companies would be allowed to deal with derivatives and credit derivatives. However, credit derivatives which have high capital movement risks should be reported to the Bank of Korea before transactions;
  - Borrowing the won from the Korea-China swap currency line would be made easier with the fund to be made available by opening won accounts in Chinese branches of Korean banks instead of having won accounts in Korea;
  - Accessing won deposits in foreign banks would be made easier with transactions through domestic banks' accounts to be allowed.

- On February 17, 2014, the Tax Reform Subcommittee, under the umbrella of the Strategy and Finance Committee, announced that the ruling and the opposition parties agreed to levy a capital gains tax on derivatives. Though there would be further discussions, the plan to include a 10 percent capital gains tax rate on derivatives with an exemption for the first Won 2.5 million of annual capital gains is most likely. This plan would be ratified in a provisional session of the National Assembly in April after simulations for its alignment with the policy direction, effects on tax revenue and impacts on Korean economy and stock market.

- In response, KRX's CEO and Chairman Choi Kyoung Soo recommended delaying the derivatives tax until after the market recovers. Given the stagnant Korean derivatives market, it would be best not to impose tax on derivatives. However, if it is unavoidable for tax fairness, such taxation should be delayed until 2016 or 2017 when the stock market may bounce back.
- FSC would be preparing their opinions on this plan after analyzing the background of this consensus and gleaning market participant views. FSC would also announce a plan to revitalize the Korean derivatives market in March and it is unknown how FSC would be dealing with this capital gains tax in their plan.

- On April 8, 2014, the Enforcement Decree of the Covered Bond Act was approved by the Korea cabinet and would come into force starting from April 15, 2014.

  Key contents include:

  - Eligible Issuers: financial institutions are required to meet both institutional and eligibility requirements to issue covered bonds and institutions are designated by Enforcement Decree;
  - Cover Pool: the minimum ratio of collateralization is 105%. Underlying assets in a cover pool need to be evaluated by market prices if there are credible market prices as a reference price. In the absence of market prices, the assets can be evaluated by book value or acquisition prices;
  - Issuance Cap: covered bond issuance is limited to 4% of the issuer's total assets.

- On August 12, 2014, the Ministry of Strategy and Finance (MOSF) announced 'Measures to Stimulate Investment: Fostering Promising Service Industries,' at the 6th Trade Investment Promotion Meeting chaired by President Park.

  To promote the listing of enterprises with strong growth potential, the government plans to double the daily price movement limit on stocks listed from between ± 15 percent to ± 30 percent. In responding to excessive price fluctuations, such transactions would be stopped for a certain period of time in order to maintain price stability.

- On December 2, 2014, an amendment to the Income Tax Law, which would impose a capital gains tax on profits from certain derivatives transactions, was passed in the plenary session of the National Assembly of the Republic of Korea.

  Key points include:

  - Basic tax rate: 20% (+/- 10% is flexible);
  - An exemption for the first Won 2.5 million of annual capital gains;
  - Gains from the transfer of derivatives products are not to be aggregated with other capital gains but computed separately;
  - The scope of derivatives products subject to capital gains tax would be stipulated under Presidential Decree.

  The amendment would be effective from January 1, 2016.

7. KRX

- On June 3, 2014, KRX announced the revised rules of Derivatives Market Business Regulation. The KRX intends to:

- improve the stability of derivatives transactions by preventing huge losses to investors and excessive price fluctuations through the implementation of real-time quotation price limit as well as improving the methodology for error trade adjustments;
- improve the stability of settlement by stipulating that once KRX issues payment instructions, trades can no longer be amended.

Key amendments include:

1. Implementation of real-time quotation price limit under Article 70-2(new),74,and 82-8
   - the real-time upper limit price is equal to the most recent execution price plus a specified range of change in price, or the real-time lower limit price is equal to the most recent execution price minus a specified range of change in price
   - Where deemed executions prices deviate from the band of the real-time limit prices while connecting to trading system, the real-time upper limit price(bid) and the real-time lower limit price(ask) shall be converted into the limit quotation.

2. Improvement of the method for adjusting trading errors
   - Introduction of Ex-officio Adjustment of Erroneous Transactions under Article 81-2
   - Introduction of cancellation of transaction by KRX under Article 81-3(new)
   - Adjustment of settlement amount by Ex-officio Adjustment of Erroneous Transactions under Article 103 and 149

3. Stipulating the completion time of settlement in the Derivatives Market under Article 104-2
4. Other, less material, amendments were made to Articles 2(1)4, 2(1)5, 60 and 104-3

The revised rules would be effective from June 13, 2014.

- On September 1, 2014, KRX introduced real-time price-band and modified error-trade policies for settlement stability of the derivatives market. The real-time price band was introduced to prevent market fluctuations resulting from sudden price changes during trading sessions caused by error trades of investors or members. In addition, KRX would introduce improved policies on error trades to minimize the negative impact of large-scale error trades.

  Key contents of the plan:

  - Real-time price band: when a quotation that deviates from the upper or lower limit of the real-time price band is received, the quotation would be rejected.
  - Improved policies on error trades: when a loss exceeding a certain amount occurs due to consecutive erroneous orders despite the real-time price band, KRX would amend the matched price of the relevant transactions into a notation price that represents the upper or lower limit of resolution range of error trades. A party responsible for the error trade would have 30 minutes after the trade execution of the first error trade to request error-trade treatment.

- On September 22, 2014, the Ministry of Environment (MOE) and KRX announced they would start a mock emission trading system from September 29, 2014, ahead of the opening of an official emission trading market in January 2015. The mock market would be operated in two phases until December 24, based on an emission trading system to be developed by KRX.

- On November 13, 2014, KRX announced an amendment of the Enforcement Rules of Derivatives Market Business Regulation.

  Key issues include:

  - KRX would let independent and qualified external institutions examine the adequacy of its calculation methods and the management systems of members' margin if necessary. As such, it intends to be in accordance with international standards, such as the Principles for Financial Market Infrastructures (Principle 6: Margin) and relevant rules in the EU and US;
  - KRX would prevent deposit of the cash and foreign-currency contribution to members' margin in a particular bank or securities finance company;
  - KRX would conduct crisis response training to ensure immediate and appropriate actions, such as suspension of trading and suspension of delivery, are performed if a settlement failure occurs. The risk management committee would be notified of the results.

- On November 14, 2014, KRX announced an amendment of the Enforcement Rules of Membership Regulation.

  Key issues include:

  - KRX would conduct stress testing of its management system for calculating and monitoring the amount of the CCP's contributed capital and the joint compensation fund for the listed derivatives market required to make up for losses caused by settlement failure. The risk management committee would be notified of the results.
  - KRX would prevent deposit of cash to the joint compensation fund in a particular bank or securities finance company.

  The amendment came into effect from November 14.

- On December 10, 2014, MOE announced that Korea's emission trading market would officially launch on January 12, 2015. The opening date was decided through consultation with relevant agencies, including the Greenhouse Gas Inventory & Research Center of Korea (GIR) and KRX. MOE designated KRX as the official emission permits exchange in January 2014, and KRX subsequently announced the Emission Trading Market Business Regulation on December 2, 2014.

  Key highlights include:
  - Member requirement: 525 business entities eligible for allocation and three government-owned financial institutions (Korea Development Bank, Industrial Bank of Korea, Korea Exim Bank);
  - Trading items: emissions allocation permit and emissions offset permit;
  - Trading hours: 10:00am – 12:00pm;
  - Price limit: base price +/- 10%;
  - Trading unit: one emission permit (= 1tCO2-eq);
  - CCP: KRX.

  Before the official opening day, user registration of business entities eligible for allocation and over-the-counter transactions of emission permits commenced on January 2, 2015.

- On January 6, 2015, KRX announced the launch of a carbon emission rights (CERs) market (Korean only), which commenced on January 12, 2015. 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 would conduct the delivery of KAUs upon KRX's settlement instruction.

• On January 6, 2015, 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 would include dividend index futures, Chinese yuan futures and short-term interest futures.
  - The provision of risk management levers for the capital market: KRX would open the KOSDAQ single-stock futures and KOSDAQ index futures markets, as well as introduce exchange-traded fund futures.
  - Improvement in price stability: KRX would 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 would be set at 0.01 points and the tick size of volatility index futures would be reduced to 0.01 points.
  - Exemption of the Securities Transaction Tax for derivatives market makers: the target taxpayer would be financial investment companies that have concluded market-making contracts with KRX, and target trading would 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 would appropriate its partial reserve first before tapping into the joint clearing fund.

• On January 30, 2015, 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.

• On February 11, 2015, KRX announced its revised OTC Derivatives Clearing and Settlement Business Regulation.

  Key contents include:
  - In terms of capital ratio among the admission criteria of a clearing member, the net capital ratio would be applied to investment traders and investment brokers, and the net operating capital ratio would be applied to the remaining financial investment business entities under Article 11(1):
    - o The net capital ratio = (net operating capital – gross risks)/sum of equity capital required to maintain each business unit's license
    - o The net operating capital ratio = net operating capital/gross risks

- In the event that clearing members transfer the net cash settlement amount from their bank accounts to the settlement bank account of KRX, clearing members shall be prohibited from cancelling under Article 62-2.
- In case of receiving the notification on member assessment from KRX, the clearing member shall deliver the concerned amount in cash by 12:00PM of the next business day under Article 114.
- To compensate quick losses incurred as a result of a clearing member's non-fulfillment of settlement, KRX shall enforce its pledge provided as collateral from the defaulting member without a legal procedure (the method of execution as provided for in the Civil Execution Act) under Article 123.

The revised Article 11(1) would be implemented on January 1, 2016 and other revisions became effective on February 26, 2015.

- On February 11, 2015, KRX announced its revised Derivatives Business Market Regulation. KRX intended to provide a legal basis for disposing the underlying asset balance or securities held under the payment suspension according to the method set forth by KRX. Without a legal procedure, this is necessary to compensate quickly losses incurred as a result of a clearing member's non-fulfillment of settlement. The revised regulation became effective on February 26, 2015.

- On March 12, 2015, KRX amended its Enforcement Rules of the Derivatives Market Business Regulation. Key contents include:

  - Delta for market-makers of single-stock futures and options amended to implement the securities transaction tax exemption (Article 90-3 and Annex 27, with effective date on March 13):
  - Single-stock futures: (buying) 1; (selling) -1
  - Single-stock options: set based on arrival of the last trading day, type of call and put options, etc (specified in Annex 27)
  - Change of institution for calculating the final settlement price of mini-gold futures (Article 30 and 32-2, with effective date on March 20)
  - (Current) The London Gold Market Fixing Ltd
  - (Revised) InterContinental Exchange Benchmark Administration Ltd (IBA)

- On March 13, 2015, KRX announced its implementation of the securities transaction tax exemption for market-makers of single-stock futures and options based on the amended Restriction of Special Taxation Act.

  Going forward, the securities transaction tax (0.3%) would not apply to the portion of underlying stocks that are sold for the purpose of hedging against the risk of price fluctuations that may occur in the course of market-making for single-stock futures and options by the market-makers concerned. The tax exemption was implemented for KOSPI single-stock futures and options market-makers from March 13, and would be expanded to include KOSDAQ's single-stock futures, which would be listed by the end of 2015.

- On April 23, 2015, KRX published an updated version of its disclosure framework on the Committee on Payment and Settlement Systems and International Organization of Securities Commission's Principles for Financial Market Infrastructures (CPSS-IOSCO PFMIs), which is a self-assessment report on the PFMIs. This report, in line with the CPSS-IOSCO disclosure template, contains major changes since the last update of the disclosure framework in July 2013, including OTC clearing services.

In this report, KRX also announced it would establish a technological platform for disclosure in 2015, and would start disclosing quantitative information (including the C-factors for both exchange-traded and OTC products) in 2016, in accordance with the public quantitative disclosure standards for CCPs published by CPMI-IOSCO.

- On April 29, 2015, KRX announced its revised business regulations for securities and derivatives markets to improve market stabilisation facilities and expand daily price limits in these markets.

  For the derivatives markets, key elements include:

  - Improved price stabilisation safeguards: In line with circuit breakers that have been strengthened with interval-based triggering in the stock markets, the trading of derivatives products would also be suspended by intervals accordingly.
  - Expansion of daily price limits: An interval-based price limit would be introduced for equity-related derivatives products in line with the expansion of daily price limits in the stock markets.
  - Introduction of intraday additional customer margin: As a result of the expanded range of price limits for underlying assets, intraday additional customer margin would be introduced to ensure proactive risk management. In cases where underlying assets change beyond a certain level, additional customer margin must be demanded by a clearing member to customers when their total deposit amount falls short of the intraday customer maintenance margin. When a call for intraday additional customer margin has been made, clearing members should reject orders placed by the customer until they check the deposit of the requested margin, but allow the customer to send offsetting orders for reducing requested margin deposit amounts (or relevant risk).

  KRX plans to revise relevant enforcement rules including details and timeline for the implementation of the revised regulations.

- On May 26, 2015, KRX announced revised enforcement rules of derivatives market business regulation to introduce intraday additional member margin and intraday additional customer margin.

  Key elements are:
  - Intraday additional member margin is equal to the intraday member margin,which is calculated at noon during trading hours or when it is deemed necessary for market management (both are called ‘time t’), minus the total amount of deposit, which is calculated at time t or time t plus one hour. This intraday additional member margin would be imposed if: i) the price rate of change ([the underlying asset price at time t – the base price of the underlying asset on previous day] / the base price of the underlying asset on previous day) of the KOSPI 200 is greater than or equal to 0.5 times the member margin rate of KOSPI 200 futures; and ii) intraday member margin is greater than or equal to 1.2 times the total amount of deposit at time t.

  - KRX would determine one hour from time t whether to imposethe intraday additional member margin and would notify members immediately. Members need to deposit their intraday additional member margin within two hours of being notified by KRX. However, this intraday additional member margin would be cancelled if the intraday member margin calculated 30 minutes after being imposed is less than or equal to the total amount of deposit calculated one hour after being imposed.

- Members shall impose intraday additional customer margin on their clients when the underlying-asset change is greater than or equal to 80% of the intraday customer maintenance margin rate of KOSPI 200 futures.

The revised rules are effective on June 15, 2015.

- On June 24, 2015, KRX announced an amended Derivatives Market Business Regulation (DMBR) (Korean only) in order to launch mini KOSPI 200 futures and options and renminbi (RMB) currency futures, following the FSC's announcement on policy direction for capital markets reform on April 23.

  Key highlights include:

  - Mini KOSPI 200 futures and options: underlying asset (KOSPI 200), multiplier (100,000), contract months (the four non-quarterly months plus two quarterly months), position limit (10,000 contracts for institutions and 5,000 contracts for individuals);
  - RMB currency futures: underlying asset (RMB), contract size (100,000 yuan) and multiplier (100,000);
  - Article 154(1)2 of the DMBR regarding position limits of 10-year KTB futures would be abolished.

  The amendment is effective on July 20, 2015.

- On June 29, 2015, KRX announced it had selected 10 KOSDAQ-listed stocks as underlying assets for single-stock futures, which would be listed on August 3. In addition, KRX selected new underlying assets through the regular change of existing single-stock futures and options based on stocks listed on the KOSPI market. The number of underlying stocks for single-stock futures was expanded to 10 KOSDAQ stocks and 80 KOSPI stocks.

  KRX noted that the listing of KOSDAQ single-stock futures would enable investors to risk manage KOSDAQ blue-chip stocks. It would also promote the participation of institutional and foreign investors in the KOSDAQ market, the exchange said.

- On July 3, 2015, KRX announced its amended enforcement rules of the DMBR (Korean only), with additional details on mini KOPSI 200 futures and options. Key contents include:
  - Mini KOSPI 200 futures and options: tick size (0.02P), final settlement price (the closing value of KOSPI 200), strike price interval (mini KOSPI 200 option only, 25 strike prices with 2.5P interval);
  - Article 111 was amended to restrict designation of settlement banks to banks that satisfy the condition of a minimum liquidity coverage ratio of 110%.

  The amendment will be implemented on July 20, 2015, when mini KOSPI 200 futures and options are launched.

- KRX announced its plan to launch mini KOSPI 200 futures and options starting from July 20, 2015. Key details of the product specifications include:

  Mini KOSPI 200 futures

  - Underlying assets: KOSPI 200;
  - Multiplier: 100,000;
  - Tick size: 0.02 point;

- Type of order: limit order but real-time price banding is not applicable;
- Delivery months: designed to have consecutive six delivery months with maturity of six months, so a delivery month arrives every month;
- Settlement price: the closing contract price. In the case where a KOSPI 200 futures contract and a mini KOSPI 200 futures contract have been listed simultaneously, the settlement price of KOSPI 200 futures is applied;
- Base price: the settlement price on previous day. In the case where a KOSPI 200 futures contract and a mini KOSPI 200 futures contract have been listed simultaneously, the quotation price unit shall be adjusted after the settlement price of KOSPI 200 futures is applied;
- Last trading day: the second Thursday of each delivery month;
- Last settlement day: next trading day of the last trading day.

Mini KOSPI 200 options

- Underlying assets: KOSPI 200;
- Multiplier: 100,000;
- Tick size: 0.02 points for order price less than 10 points and 0.10 points for order price of 10 points or more;
- Type of order: limit order but real-time price banding is not applicable
- Expiration months: consecutive four non-quarterly months and two quarterly months;
- Strike price interval: 25 strike prices with 2.5p interval;
- Base price for member margin: borrowing base price for member margin of KOSPI 200 options;
- Base price: base price of KOSPI 200 options is applied. If it is not consistent with the quotation price unit (tick size), the nearest price to the tick size would be applied;
- Last trading day: the second Thursday of each expiration month;
- Last settlement day: next trading day of the last trading day.

- On July 6, 2015, FSC announced that the revision bill on the amendment of the Financial Investment Services and Capital Markets Act (FISCMA), including changes to KRX's default waterfall, was passed at the plenary session of the National Assembly of Korea. Going forward, KRX would use its own allocated settlement reserve prior to the default fund contributions of non-defaulting clearing members – commonly referred as skin-in-the-game. FSC also noted it would modify other regulations such as the Enforcement Decree and the Enforcement Rule of the FSCMA in July in order to implement this amendment smoothly. In addition, the KRX Membership Regulation specifying the details of the revised default waterfall is expected to be amended accordingly.

- On August 7, 2015, KRX amended its guidelines on the connection to member systems to ease concerns about maximum capacity and the application for additional communication lines that may be allocated to members for the derivatives market (Korean Only). Key elements include:

  - The number of communication lines that may be allocated to members in case of requests for additional main, back-up and disaster recovery lines would be expanded to five, respectively. The implementation date would be announced later.

- In a case where a member system has changed due to office relocation, as well as a merger or split, the member may request KRX to allocate additional communication lines. The implementation date is August 17.

- On August 17, 2015, FSC announced that KRX had been designated as a trade repository. For this designation, a task-force was set up comprising FSC, FSS and experts from the industry in the second half of 2014, in order to study global standards and current trends of TRs, operational cases of overseas TRs and TR requirements. Based on this study, FSC subsequently formed a committee for the designation of TRs, and established specific standards for TR designation in July.

  FSC expects the TR to centrally collect and efficiently manage large amounts of data and information regarding over-the-counter derivatives trades, improving derivatives market monitoring and transparency. Specific action plans, including details on the transaction information that would be centrally collected and the development of an IT system, would be set out by KRX.

- On August 20, 2015, KRX released a new fee schedule regarding trading and clearing and settlement (stock, bond, futures and options), and a processor user fee. The new fee schedule is effective from June 26, 2015.

- On September 2, 2015, KRX amended its membership regulation in response to a Financial Services Commission (FSC) decision to allow banks to obtain a licence to engage in the trading of exchange-traded derivatives based on currency or interest rate. Key elements include:

  - Definition of currency/interest rate derivatives member: a member that is entitled to take part in trading of exchange-traded derivatives based on currency or interest rate in the derivatives market.
  - The amount that a clearing member that is a currency/interest rate derivatives member contributes to the joint compensation fund: basic contribution (KRW 0.5 billion) plus intermittent contribution. The intermittent contribution is calculated by multiplying the ratio of a clearing member's average daily margin relative to that of all clearing members obliged to contribute to the fund for a retroactive one-year period from the end of the previous quarter, by the difference obtained by subtracting the total basic contribution from the total amount of the joint compensation fund.
  - The rules for postponement or cancellation of the measures imposed due to unsatisfactory financial conditions shall be stipulated in the enforcement rules.

- On September 10, 2015, KRX amended the Enforcement Rules of the Disclosure Regulations of the KOSPI and KOSDAQ markets as a follow-up measure after the Regulatory Reform for the Corporate Disclosure System (FSC, June 1, 2015), which became effective on September 7, 2015.

  Summary of the amendment;
  - Enhancement of autonomy of corporate disclosure;
  - Reinforcement of disclosure responsibility of listed corporations;
  - Reinforcement of incentives for the outstanding disclosure companies, etc.

  On September 22, 2015, KRX released a revised fee schedule regarding trading and clearing and settlement (stocks, bonds, futures and options), and a processor user fee. The revised fee schedule is effective from October 5.

8. KOFIA

- On March 18, 2014, KOFIA amended the "Financial Investment Company Model Rules for Preventing Financial Accidents" to prevent any future recurrence of disastrous financial incidents like the default of HanMag Securities.

  This rule, among others, was implemented to limit daily order amounts of self-account transaction by financial investment companies to the ratio which they set up within 50% of their net working capital which is calculated based on #3-11 in the rulebook for Financial Investment Business of FSC. Members of KOFIA must comply with this rule which would take immediate effect.

9. Korea Securities Depository

- On October 9, 2014, FSC announced that the Regulatory Oversight Committee endorsed the Korea Securities Depository (KSD) as a pre-local operating unit under the sponsorship of the FSC. Accordingly, domestic companies and financial institutions that previously received legal entity identifiers (LEIs) from authorised issuers in the US or Germany for their over-the-counter derivatives transactions in overseas markets would be able to obtain LEIs from the KSD from January 2015, once its system for issuing LEIs is ready.

10. International Organizations

- On May 20, 2014, IMF issued its report, Financial System Stability Assessment of the Republic of Korea, based on the work of the Financial Sector Assessment Program (FSAP) mission conducted in 2013. The FSAPs are designed to assess the stability of the financial system as a whole and to help countries identify and remedy weakness in their structure in order to enhance their resilience to macroeconomic shocks and cross-border contagion.

  In this report, IMF used six core assessment parameters: soundness of the financial sector and potential risks; macroprudential framework; financial sector supervision; sectoral regulation and supervision; systemic liquidity; and crisis management and resolution framework.

  On the same day, IMF also published the Report of the Observance of Standards and Codes on the Republic of Korea as a background document to this Financial System Stability Assessment report. The analysis was based on core principles such as Basel core principles for effective banking supervision (BCP) and CPSS-IOSCO principles for financial market infrastructures (PFMI).

- On September 25, 2015, CFTC announced that its chairman Timothy Massad had signed a memorandum of understanding with chairman Yim Jong-Yong of FSC and governor Zhin Woong-Seob of FSS regarding cooperation and the exchange of information in the supervision and oversight of clearing organisations that operate on a cross-border basis in the US and Korea.

ISDA Submissions (since 2010)

- June 3, 2011: ISDA submission to the Ministry of Strategy and Finance (MOSF) on the Foreign Exchange Prudential-Stability Levy
- September 19, 2011: ISDA submission to FSC on Proposed Amendment to Financial Investment Services and Capital Markets Act (FSCMA) Relating to Central Counterparty

- June 24, 2013: ISDA submission to FSC on the draft FSC regulation on central clearing counterparties
- March 17, 2014: ISDA submission to KRX on OTC clearing house risk management procedures.
- September 30, 2014: ISDA submission to FSC/FSS on QCCP status of KRX
- November 17, 2014: ISDA submission to Financial Services Commission ("FSC") regards to regard to amendments of Article 399 of the Financial Investment Services and Capital Markets Act ("FISCMA"). This submission is not yet public.

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 Capital Markets and Services (Amendment) Act 2011 provides the legislative framework for trade reporting but this will come into force at earliest in October 2013. The SC, Perbadanan Insurans Deposit Malaysia (PIDM) and BNM issued a joint consultation paper on trade reporting requirements in November 2013.

Key Regulatory Milestones

1. Developments relating to close-out netting enforceability

- The Financial Services Act (FSA) and the Islamic Financial Services Act (IFSA) rationalize the legislative regime for institutions, payment systems and markets under the purview of BNM. The FSA repeals the Banking and Financial Institutions Act 1989, the Exchange Control Act 1953, the Insurance Act 1996 and the Payment Systems Act 2003 and the IFSA repeals the Islamic Banking Act 1983 and the Takaful Act 1984. The FSA and the IFSA introduces the concept of a "qualified financial agreement" (QFA) (please refer to the Annex for the definition) and provides a safe harbor for QFAs when BNM exercises its powers under these statutes to issue directions to institutions or when exercising its intervention powers over distressed institutions (but subject in this case to a temporary stay before the safe harbor operates) or when taking measures relating to international and domestic transactions. The FSA and the IFSA came into force on June 30. 2013.

- The Central Bank of Malaysia (Amendment) Act 2013 (CBA 2013) which has come into force on February 8, 2013 introduces a comparable safe harbor for QFAs into the Central Bank of Malaysia Act when powers under Sections 31, 32 (read with the Third Schedule) and 77 are exercised by BNM.

- On October 25, 2013, the Malaysian Prime Minister and Minister of Finance Datuk Seri Najib Tun Razak tabled the 2014 Malaysia Budget Speech at the Dewan Rakyat and made the following statements:

  "Currently, the domestic bond market is the largest in South-East Asia with a value exceeding RM1trillion, while daily transactions in the foreign exchange and money markets are more than RM30 billion. To ensure efficient operations of financial markets, a clear regulatory framework is required.

"In this regard, amendments would be made to existing laws and Bank Negara Malaysia would lead the initiative in formulating the Netting Act to protect enforcement rights of close-out netting under the financial contract. This is to reduce credit risk and promote the derivatives market, thereby reducing systemic risks in the domestic financial market as well as reduce the cost of doing business."

- On September 9, 2014, BNM released its consultation paper on the Netting of Financial Agreements Bill. The initiative follows the 2014 budget speech given by the Prime Minister in October 2013. The Bill introduces a definition of 'netting provision' under certain 'qualified financial agreements' in order to address close-out netting mechanisms that are typically embedded in financial contracts. The scope of the Bill would extend to certain 'qualified financial transactions' which include OTC derivatives, Islamic financial instruments such as Islamic derivatives, repurchase transactions and a securities borrowing and lending of unlisted debt securities under the real time electronic transfer of funds and securities systems. The consultation paper also provides an overview of the key concerns relating to close-out netting in Malaysia. BNM envisages that the legislation would provide legal assurance for the enforceability of close-out netting mechanisms under certain types of financial agreements by removing legal impediments or uncertainties to netting in existing legislation.

- On January 8, 2015, BNM 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.

- The Netting of Financial Agreements Act came into force on March 30, 2015. BNM, Perbadanan Insurans Deposit Malaysia and Pengurusan Danaharta Malaysia Berhad also announced that a stay period of two business days under the Act became effective on March 30, 2015.

2. Trade reporting

- The Capital Markets and Services (Amendment) Act 2011 (CMSA 2011) in Subdivision 4 of Division 3 of Part III introduces the legislative framework for the licensing and regulation of OTC derivatives trade repositories by the SC. It also empowers the SC to impose mandatory trade reporting for OTC derivatives (except transactions to which BNM or the Government of Malaysia is a party). This Subdivision came into operation in October 2013 (and may be deferred for up to another year).

- 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 were to apply to banks and insurance companies regulated by BNM and all member institutions of PIDM, and were intended as an interim measure pending the establishment of the trade repository in Malaysia and mandatory trade reporting under the CMSA 2011.

- On April 3, 2013, PIDM and BNM announced that they had decided not to proceed with the proposals set out in the March 26, 2012 joint concept paper. Instead, they would work with the SC on the implementation of the trade repository. The detailed requirements for the trade repository were expected to be substantially similar to the transaction-level data requirements set out in the joint concept paper. Although an appropriate transitional arrangement would be considered, PIDM and BNM note that it was important that reporting institutions plan their system enhancements at a sufficiently early stage to ensure readiness in meeting the future requirements under the trade repository. PIDM and BNM also noted that the readiness of reporting institutions to report the required data would allow PIDM and BNM to reduce the temporary suspension period before the safe harbor for qualified financial agreements comes into operation under the PIDM Act 2011, FSA and IFSA (each as defined below).

- On November 20, 2013, SC, BNM and PIDM issued a joint public consultation paper on requirements for the reporting of OTC derivatives trading activity to a trade repository in Malaysia.

  The regulatory agencies would look to leverage on the trade repository as a single point of access to OTC derivatives information for the purpose of performing their respective mandates. Accordingly, the interim reporting of aggregated level data on OTC derivatives implemented by BNM would be phased out when the trade repository has been established.

  The Consultation Paper highlights include:

  - Reportable Transactions: All OTC derivative contracts (which may include a swap, forward or option with an underlying reference to foreign exchange, interest rates, credit, commodity or equity, conventional or Islamic derivatives, and of any remaining maturity) must be reported, subject to certain exemptions. Foreign exchange spot transactions are not deemed to be an OTC derivative contract and therefore would not be required to be reported to the trade repository.
  - Exempted Transactions: A structured product is not a reportable transaction. However, the reporting entity must report these OTC derivative transactions to the trade repository if it enters into an OTC derivative or hedging transaction as a principal party to manufacture the underlying economics of a structured product or if it enters into a hedging transaction as a principal party to manage risks arising from the portfolio of structured products sold to their customers. BNM or SC may also require a reporting entity to report information on structured products that they offer separately on a need to basis. Transactions where BNM or the Government of Malaysia is a party are exempted from reporting requirements under Section 107J(2) of the Capital Markets and Services Act 2007 (CMSA). In addition, PIDM's "member institution" means a financial institution or any person that is deemed to be or prescribed as a member institution under the Malaysia Deposit Insurance Corporation Act 2011. The reporting obligation shall not apply to BNM or the Government of Malaysia.
  - Principal Party: Each reporting entity who is a principal party to an OTC derivative transaction has an obligation to report the required information directly to the trade repository.
  - Branches: Each reporting entity must ensure that their reporting covers all transactions to which the reporting entity is a principal party, including transactions which are originated from, negotiated, arranged or booked by its domestic or foreign branches.
  - Treatment of subsidiaries of CMSL holders and BNM licensed entities: The reporting obligation would apply to a subsidiary company of a CMSL holder or an entity licensed by BNM under the FSA 2013 and IFSA 2013 only if the subsidiary is a "reporting entity" as set out above. The reporting obligation does not extend to a subsidiary which is incorporated in a foreign jurisdiction.
  - Phase-in-reporting: Reporting would be implemented in three phases. Phase 1 would involve the investment banks licensed by the SC and BNM. Phase 2 would include the CMSL holders other than those captured in Phase 1. Phase 3 would involve any registered person or any other persons who deals in OTC derivative transactions and have exceeded certain reporting thresholds, not captured in Phase 1 or Phase 2. The specific type of entity, the reporting threshold and an appropriate commencement date for reporting to the trade repository would be determined at a later date by the regulatory agencies.

  Reporting entities with mandatory reporting obligations include:

  - Investment banks licensed by SC under the CMSA and by BNM under the Financial Services Act (FSA) 2013;

- Holders of a Capital Markets Services Licence (CMSL) under the CMSA. These include derivatives brokers, stockholding companies and fund management companies;
- Institutions licensed by the Bank under the FSA and the Islamic Financial Services Act (IFSA) 2013. These include conventional and Islamic commercial banks, international Islamic banks, insurance and reinsurance companies, as well as takaful and re-takaful operators; and
- Any other person dealing in OTC derivatives as prescribed by the SC. The SC would further define the scope of these entities and consult the industry before prescribing any person for this purpose.

3. Regulation of OTC derivatives activity

- The CMSA 2011 (except the provision amending Section 92 of the Capital Markets and Services Act (CMSA)) which came into force on October 3, 2011 makes OTC derivatives a regulated activity. 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.

4. Offer of unlisted capital market products

- The Capital Markets and Services (Amendment) Act 2012 (CMSA 2012) which came into force on December 28, 2012, introduces a new approval framework intended to facilitate the offering of a broader array of capital market products. The definition of "capital market products" has been amended and includes, among others, derivatives and any product or arrangement which is based on securities or derivatives or any combination thereof. The framework distinguishes between listed and unlisted capital market products, taking into account their characteristics and risk profiles and seeks to apply the appropriate level of regulation for these products. In particular, authorization of the SC is required for an unlisted capital market product or in the case of a foreign unlisted capital market product, recognition by the SC.

- The SC also issued Guidelines on Sales Practices of Unlisted Capital Market Products (Guidelines) which applies to all capital market products (other than shares, debentures and sukuks) that are not listed on a stock exchange or derivatives exchange in Malaysia, regardless of whether they are manufactured within or outside Malaysia. Investors are divided into two main classes of investors, namely retail investors and non-retail investors comprising of high net-worth individuals, high net-worth entities and accredited investors.

  The Guidelines require, among others, that a Product Highlights Sheet be prepared providing certain prescribed information and a Suitability Assessment be conducted to ensure that any product recommendation provided by a product distributor is made on a reasonable basis. Additionally, the Guidelines include principles on treating investors fairly which require that product issuers and product distributors have in place certain policies and processes that give due regard to the interests of the investors. The requirements relating to Product Highlights Sheet and Suitability Assessment would apply to all retail investors and high net-worth individuals. These requirements would also apply to high net-worth entities, unless they opt out. They would not however apply to accredited investors. The principles on treating investors fairly would apply to all categories of investors.

- The SC also released the Guidelines on Private Debt Securities, the Business Trusts Guidelines, the Guidelines on Sukuk, the Guidelines on Real Estate Investment Trusts, the Guidelines on Unlisted Capital Market Products: Structured Products and Unit Trust Schemes, the Prospectus Guidelines and the Guidelines on Disclosure Documents.

5. BNM's revised guidelines on product transparency and disclosure

- 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 Revised 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 Revised Guidelines is to establish a consistent and comprehensive disclosure regime for financial service providers in Malaysia when dealing with retail customers.

6. PIDM Act 2011

- The revised Perbadanan Insurans Deposit Malaysia or Malaysia Deposit Insurance Act 2011 (PIDM Act 2011) came into operation on December 31, 2010. The PIDM Act 2011 represents a significant improvement by protecting close-out netting rights under qualified financial agreements once a temporary stay period has elapsed without PIDM deciding to transfer the outstanding derivatives positions of the distressed bank. However, there remain certain concerns which militate against close-out netting enforceability. These concerns center around the definition of a "qualified financial agreement" (which is significantly different from the definition under the FSA, IFSA and the CBA 2013) which requires the "derivative" to be the "subject of recurrent dealings in the over-the-counter derivatives markets" and the duration of the temporary stay period. Pursuant to the Malaysia Deposit Insurance Corporation (Temporary Suspension Period) Regulations 2012, the temporary stay period has been set at 10 days. One other concern was the nature of a "qualified third party" to whom outstanding derivative positions of the distressed bank could be transferred by PIDM and the terms of such transfer. However, in its below response, PIDM has narrowed the scope of who can be a qualified third party, in particular, removing as a qualified third party foreign financial institutions without a license in Malaysia in relation to a transfer of the positions of a PIDM member institution and anyone in relation to a transfer of the positions of an Affected Person (as defined in the PIDM Act 2011).

- On March 26, 2012, PIDM issued its Response to the Consultation Paper on Criteria for Qualified Third Party. PIDM would define a "qualified third party" 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 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 qualified financial agreements would be guaranteed by the Government of Malaysia, BNM or PIDM.

7. SSM releases consultation document on the Proposed Companies Bill

- On July 2, 2013, the Companies Commission of Malaysia (SSM) released its consultation document on the proposed Companies Bill. This Bill sets out the new legal framework to replace the existing Companies Act 1965. The provisions in in this Bill were drafted primarily on the basis of policies which had been approved by the Cabinet on June 18, 2010 and derived from a four-year comprehensive corporate law review conducted by the SSM's Corporate Law Reform Committee (CLRC) as well as the recommendations by the Accounting Issues Consultative Committee (AICC).

8. BNM consults on liquidity coverage ratio

- On September 30, 2014, BNM released a concept paper on the liquidity coverage ratio (LCR). The concept paper outlined BNM's approach to implementing the LCR, specifically covering areas such as the scope and level of application of the LCR, the implementation timeline and the relevant transition arrangements, the eligible stock of high-quality liquid assets, and the treatment for cashflow items for the purposes of LCR calculation.

9. SC announced amendments to securities laws come into force

- On September 22, 2015, SC announced the coming into force of the Capital Markets and Services (Amendment) Act 2015 (CMSA) and Securities Commission (Amendment) Act 2015 (SCMA) on September 15. The amendments to the securities laws were made to facilitate new fundraising structures, enhance investor protection, clarify responsibilities of issuers and advisers, and expand the scope of the SC's supervisory powers.

  The CMSA Amendment introduced a new recognised market framework to facilitate the establishment of alternative trading platforms, including equity crowd-funding (ECF) platforms. Under this framework, private companies that are hosted on a registered ECF platform are provided a safe harbour from provisions in the Companies Act 1965, which prohibit private companies from offering shares to members of the public. The introduction of ECF is in line with the SC's objective to promote capital-market inclusion and widen avenues for capital-raising.

  To promote a more conducive environment for the issuance and subscription of corporate bonds, the CMSA Amendment has clarified the roles and responsibilities of persons in charge of preparing disclosure documents. Minority shareholder protection in relation to takeovers and mergers transactions is also strengthened, with the SC now empowered to appoint an independent adviser where the offeree fails to do so. The CMSA Amendment also seeks to preserve netting provisions of market contracts and strengthen crisis management of market institutions, such as exchanges and clearing houses.

The SCMA Amendments were amended to align securities laws with International Organization of Securities Commissions principles. To elevate the standards of auditors and quality of financial statements, the Audit Oversight Board's regulatory reach is extended to capital market institutions, scheduled funds and reporting accountants. The SC's examination powers have also been expanded to include persons performing outsourced functions for regulated entities, including branches and subsidiaries.

10. Capital Adequacy Framework

- On July 15, 2015, Bank Negara Malaysia released its concept paper which sets out its proposals on the computation of the weighted average Countercyclical Capital Buffer requirements for private credit exposures held in jurisdictions where the national authority has announced the Countercyclical Capital Buffer rate for that jurisdiction, in line with the requirements set out under Basel III.

  On the same day, it also released its concept paper on the same topic for Islamic banks.

- On October 13, 2015, Bank Negara Malaysia finalized the revisions to the Capital Adequacy Framework (Capital Components and Basel II – Risk-Weighted Assets) and the Capital Adequacy Framework for Islamic Banks (Capital Components and Risk-Weighted Assets).

  The revised policy documents:
  - Extend the capital adequacy requirements to financial holding companies which are engaged predominately in banking business; and
  - Detail the formula to incorporate the countercyclical capital buffer requirements into the calculation of the capital adequacy ratios.

ISDA Submissions (since 2010)

- April 30, 2010: ISDA submission to SC on Public Consultation Paper on 'Review of Sophisticated Investors and Sales Practices for Capital Market Products'
- 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'
- December 17, 2010: ISDA submission to BNM on Revised Guidelines on Product Transparency and Disclosure
- September 15, 2011: ISDA submission to PIDM regarding Consultation Paper on Criteria for Qualified Third Party
- September 23, 2011: ISDA submission to SC on Capital Markets and Services (Amendment) Bill 2011
- November 3, 2011: ISDA submission to SC on CMSA 2011
- April 30, 2012: ISDA submission to PIDM in response to the Concept Paper on Recordkeeping and Reporting Requirements for Over-the-Counter Derivatives
- January 20, 2014: ISDA submission to Securities Commission Malaysia, Bank Negara Malaysia and Perbadanan Insurans Deposit Malaysia on Joint Public Consultation Paper on Trade Repository Reporting Requirement for Over-the-Counter Derivatives

Annex

Qualified financial agreements

(5) For the purposes of this Act—

(a) "qualified financial agreement" means—

(i) a master agreement in respect of one or more qualified financial transactions under which if certain events specified by the parties to the agreement occur—

(A) the transactions referred to in the agreement terminate or may be terminated;

(B) the termination values of the transactions under subparagraph (i) are calculated or may be calculated; and

(C) the termination values of the transactions under subparagraph (i) are netted or may be netted, so that a net amount is payable, and where an agreement is also in respect of one or more transactions that are not qualified financial transactions, the agreement shall be deemed to be a qualified financial agreement only with respect to the transactions that are qualified financial transactions and any permitted enforcement by the parties of their rights under such agreement;

(ii) an agreement relating to financial collateral, including a title transfer credit support agreement, with respect to one or more qualified financial transactions under a master agreement referred to in subparagraph (i); or

(iii) any other agreement as prescribed under section 4;

(b) "qualified financial transaction" means—

(i) a derivative, whether to be settled by payment or delivery; or

(ii) a repurchase, reverse repurchase or buy-sell back agreement with respect to securities;

(c) "financial collateral" means any of the following that is subject to an interest or a right that secures payment or performance of an obligation in respect of a qualified financial agreement or that is subject to a title transfer credit support agreement:

(i) cash or cash equivalents, including negotiable instruments and demand deposits;

(ii) security, a securities account or a right to acquire securities; or

(iii) futures agreement or futures account;

(d) "title transfer credit support agreement" means an agreement under which title to property has been provided for the purpose of securing the payment or performance of an obligation in respect of a qualified financial agreement.

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

1. Financial Markets Conduct Bill

- The Financial Markets Conduct Bill passed the Third Reading on August 27, 2013 and received the Royal Assent on September 13, 2013. It represents the most comprehensive reform of New Zealand's securities and financial markets law in decades. OTC derivatives would, for the first time, become a regulated financial product. However, dealings between wholesale market participants would largely be exempted. The new Act would be brought into force progressively from April 2014. Much of the detail would be established through regulations with consultation on drafts to begin in October 2013.

2. Basel III

- On November 8, 2011, RBNZ released a consultation paper on 'Implementation of Basel III Capital Adequacy Requirements in New Zealand' and followed up on March 23, 2012, with a Consultation Paper on 'Further Elements of Basel III Capital Adequacy Requirements in New Zealand'. The RBNZ proposed the adoption of the Capital Conservation Buffer 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 introduced a framework for implementing the Countercyclical Buffer which would be initially applied to registered banks but may extend it to include other lenders, such as non-bank deposit takers, in the future. The RBNZ intends to introduce the Basel III requirement that regulatory capital instruments be capable of absorbing losses.

3. Derivatives regime overhaul with FMCA implementation

- New Zealand's derivatives regime would be overhauled from 2015 by the full implementation of the Financial Markets Conduct Act 2013 (FMCA), with major implications for participants that transact OTC derivatives in New Zealand. The last stage before the new regime came into effect would be the publication of the FMC regulations. A near-final draft was published on September 26, 2014.

  The FMCA would replace the Securities Markets Act 1988 (SMA), along with several other pieces of legislation, including New Zealand's outdated 'futures contract' and 'futures dealers' regime.

Derivatives would be one of a number of classes of financial products under the FMCA. In a move away from the current approach, the regulation of disclosure for derivatives offered to retail investors would be substantially aligned with securities regulation. The FMCA definition of derivatives would cover most generally recognized market categories of cash-settled derivatives. The legislation gives New Zealand's financial markets regulator, the Financial Markets Authority, the authority to rule on the status of particular agreements.

The FMCA sets out a disclosure regime that would apply when derivatives are offered to retail investors (termed a 'regulated offer' under the legislation). The most important component of the new disclosure regime is a product disclosure statement (PDS), and specific requirements for the PDS have recently been published through regulation (it should be noted that this is not the same as the PDS currently used by New Zealand-registered banks). In addition to the disclosure regime, the new legislation imposes general 'fair-dealing' obligations that would apply to all dealings in derivatives in New Zealand, whether with retail or wholesale counterparties.

The FMCA also creates a regime for licensing derivatives 'issuers' that make regulated offers to enter into derivatives, with the FMA acting as licensing authority and the supervisor of licensed derivatives issuers. While dealings with wholesale counterparties and most dealings in exchange-traded derivatives would be excluded from being deemed regulated offers, any market participant that is in the business of offering derivatives to retail investors would need to consider whether it requires a licence. Transitional provisions in the FMCA provide an interim licence for persons who are authorised or approved as futures dealers under the SMA and who would require a licence under the new regime. The licensing regime under the FMCA would cover prudential and systems and controls matters, as well as conduct of business (with a carve-out for registered banks and other entities subject to Reserve Bank oversight). In addition to these requirements for licensed derivatives issuers, the FMCA regime also sets out new rules for dealing with client funds that would apply to all derivatives issuers, whether or not they hold a licence from the FMA.

The transition process would be complex, and a recently announced delay to its implementation (other categories of financial product would come under the new regime from December 1, 2014) meant this would be a major concern for participants in New Zealand's OTC markets for some time to come. Derivatives issuers would need to assess whether they need a licence under the new legislation and apply for one as soon as possible if they would not have a transitional licence. Those derivatives issuers that would have a transitional licence would have more time to obtain a licence (until December 2016), but would need to prepare new offering documentation during 2015.

4. RBNZ consults on outsourcing

- On August 26, 2015, the RBNZ released a consultation paper with proposals for an updated outsourcing policy for banks. The current outsourcing requirements date back to 2006, and apply to all locally incorporated banks with New Zealand liabilities exceeding $10 billion. The current policy is mainly focused on underpinning the provision of liquidity to the financial system in the event of stress or the failure of a bank or a service provider to a bank. The main proposals (subject to the outcome of consultation) are:

  - An explicit requirement for a separation plan for subsidiaries of foreign-owned banking groups;
  - A list of functions that are not relevant for the outsourcing policy;
  - A list of functions that cannot be outsourced;
  - A clearer process for obtaining non-objection from the RBNZ for outsourcing proposals;
  - A compendium of outsourced functions; and

- A possible alignment of the threshold used for deciding which banks the outsourcing policy should apply to, with the threshold used for the RBNZ's open bank resolution (OBR) policy.

RBNZ further notes that outsourcing can produce efficiency benefits for banks, and provides access to state-of-the-art technology and practices that are not necessarily available internally or within New Zealand. The proposed new policy does not prevent banks from realising those benefits. The policy also does not prohibit the use of outsourcing arrangements. Comments on the consultation paper are due by November 4, 2015.

ISDA Submissions (since 2010)

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

PHILIPPINES

AT A GLANCE

Central Bank:	Bangko Sentral Ng Philipinas (BSP) http://www.bsp.gov.ph
Bank Regulator:	BSP
Securities Regulator:	Securities and Exchange Commission (SEC) http://www.sec.gov.ph
Associations:	Bankers Association of the Philippines
Legal Opinions:	Netting and collateral opinions by SyCip Salazr Hernandex & Gatmaitan
Master Agreement:	ISDA
CCP/TR Status:	No announced plans

Key Regulatory Milestones

1. Basel III

- On December 26, 2012, the Monetary Board approved the implementing guidelines for the January 1, 2014 adoption of the revised capital standards under the Basel III Accord. BSP maintained the minimum Capital Adequacy Ratio at 10%. The revised Common Equity Tier 1 (CET1) would be 6% and the Tier 1 ratio would be at a minimum of 7.5%. The new guidelines also introduce a capital conservation buffer of 2.5%, which would be comprised of CET1 capital. Banks that have issued capital instruments from 2011 would be allowed to count these instruments as Basel III-eligible until end-2015.

2. BSP announces leverage ratio guidelines

- On June 9, 2015, BSP announced its implementing guidelines on the Basel III leverage ratio framework. The leverage ratio shall not be less than 5%, computed on both a solo (head office plus branches) and consolidated (parent bank plus subsidiary financial allied undertakings but excluding insurance companies) basis.

  The guidelines implementing the leverage ratio are provided in Appendix 111 of the Manual of Regulations for Banks (MORB) and in Appendix Q-65 of the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI), respectively. The guidelines would apply to universal banks and commercial banks and their subsidiary banks/quasi-banks (QBs).

  Specific guidelines on the mode and manner of submission of the leverage ratio reporting and disclosure templates would be covered by a separate memorandum issuance. During the monitoring period, BSP would continue to assess the calibration and treatment of the components of the leverage ratio. Final guidelines would be issued in view of the changes to the framework, as well as migration from monitoring of the leverage ratio to a Pillar I requirement from January 1, 2017.

  Public disclosure of information on the leverage ratio would not be required during the monitoring period (ie, December 31, 2014 to December 31, 2016).

Banks (or QBs) would not be penalised for any breach of the 5% minimum leverage ratio during the monitoring period. However, late and/or erroneous reports would be subject to penalties provided under Subsection XL92.2 of the MORB and Subsection 4192Q.2 of the MORNBFI.

3. BSP publishes guidelines on the electronic submission of leverage ratio report

- On July 16, 2015, BSP published guidelines on the electronic submission of the Basel III leverage ratio (BLR) report. Further to the guidelines on the Basel III leverage ratio framework published on June 9, 2015, the submission guidelines would be observed for the BLR report starting with the reporting period ending December 31, 2014 and every quarter thereafter until December 31, 2016. The submission guidelines include: 1) a link to where the prescribed data entry template (DET) and the corresponding control prooflist (CP) of the BLR report can be downloaded; 2) prescribed reporting periods and corresponding submission deadlines; 3) formatting for electronic submission; and 4) the mailing address in case banks are unable to submit electronically.

4. SEC approves 2015 SRC Rules

- On August 6, 2015, the Philippines Securities and Exchange Commission (SEC) announced that it had approved the 2015 Implementing Rules and Regulations of the Securities Regulation Code (2015 SRC Rules). The 2015 SRC Rules enhance existing requirements, including the ability of companies to raise funds in the domestic market. It also addresses regulatory gaps, strengthens market and regulatory structures, and adopts global best practices to ensure participants are able to meet the challenges posed by increasing market sophistication and regional integration.

  The initial draft of the proposed amendments was opened for public comment in 2011. Following that, SEC conducted a series of consultations with market participants and various stakeholders. The final draft of the rules was adopted after reviewing and considering responses. Some key features of the rules are:
  - An expansion of shelf registration;
  - A new definition for commercial paper;
  - A new category of exempt security;
  - A registration exemption for public offerings that have a limited character;
  - Loosening of underwriting requirements;
  - Relaxed requirements for qualified buyers; and
  - A facelift of the mandatory tender offer rules.

5. BSP issues client asset guidelines

- On August 11, 2015, the Monetary Board of BSP approved new guidelines for segregating customer funds received by banks under a securities brokering arrangement from the deposit-taking activities of these banks. The segregation is undertaken by introducing a new account in the books of the banks, called 'broker customer accounts'. Under prior practice, banks would book as deposits the money they receive from clients that wish to purchase securities. The bank is acting as a securities broker for the client under this transaction.

  The broker customer account makes clear that funds recorded under this item are not to be classified as deposits. They are transactional in nature because there is an instruction to use them to purchase securities. In this context, the broker customer account would not be subject to bank reserve requirements and would not be covered by the Philippine Deposit Insurance Corporation.

Broker banks are required to submit a monthly report of their weekly balances of securities and cash they receive from their customers, starting from October 2015.

As a step towards the segregation of banking activities from other business activities, the current Financial Reporting Package of the BSP was also amended to introduce reporting of the amount of securities broking transactions of its supervised financial institutions.

6. SEC issues corrections to SRC rules

- On October 8, 2015, the Philippines Securities and Exchange Commission (SEC) issued a series of corrections to the recently-promulgated 2015 Rules and Regulations of the Securities Regulation Code, or SRC Rules. The SEC approved the SRC Rules on August 6, 2015.

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 in 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 products to be cleared were USD and SGD interest rate swaps. This was extended to non-deliverable Asian FX forwards in October 2011. The currencies cleared are CNY, IDR, INR, KRW, MYR, PHP and TWD. The Securities and Futures Act (SFA) was amended in November 2012 to introduce the legislative framework for the regulation of OTC derivatives trade repositories and clearing facilities and to empower MAS to implement mandatory reporting and clearing of OTC derivatives.

Key Regulatory Milestones

1. G20 OTC derivatives commitments

- On February 13, 2012, MAS released two consultation papers setting out MAS' proposals to implement G20 commitments. The key proposal was to extend the ambit of the SFA to OTC derivative contracts by implementing a legislative framework for the regulation of OTC derivatives trade repositories (TRs) and clearing facilities (CCPs), OTC derivatives intermediaries and derivative market operators and empowering MAS to mandate reporting, clearing and execution of OTC derivatives on exchanges or electronic trading platforms.

  This was followed on:

  - May 23, 2012 by its 1st Response to feedback received and its Consultation Paper I on proposed amendments to the SFA dealing with the regulation of TRs and CCPs; and
  - August 3, 2012 by its 2nd Response to feedback received and its Consultation Paper II on proposed amendments to the SFA dealing with mandatory reporting and clearing of OTC derivatives.

- On November 15, 2012, the Securities and Futures (Amendment) Bill 2012 was enacted. This introduces the following new Parts to the SFA:

  - Part IIA – regulation of TRs,
  - Part III – regulation of CCPs,

- Part VIA – mandatory reporting of OTC derivatives, and
- Part VIB – mandatory clearing of OTC derivatives.

* On January 10, 2013, MAS issued a Consultation Paper on the draft Securities and Futures (Trade Repositories) Regulations and the Securities and Futures (Clearing Facilities) Regulations which would operationalize the new Part IIA and Part III of the SFA respectively.

  In summary:

  <u>TRs and CCPs</u>

  - A single-tier regulatory regime applies to TRs with Singapore-incorporated TRs being regulated as licensed trade repositories (LTR) and foreign-incorporated TRs being regulated as licensed foreign trade repositories (LFTR).
  - A two-tier risk-based regulatory regime applies to CCPs with a "lighter touch" regime applicable to RCHs (as defined below). Entities (which must be Singapore-incorporated) operating clearing facilities that are systemically-important would be regulated as approved clearing houses (ACH) and entities (which can be Singapore- or foreign-incorporated) operating clearing facilities that are not systemically-important would be regulated as recognized clearing houses (RCH).
  - One can establish or operate a TR without being licensed but reporting to a non-licensed TR would not fulfil any Singapore mandatory reporting requirement. However, it is an offence to hold oneself out as an LTR or LFTR if one is not licensed as such.
  - In contrast, it is an offence to establish or operate a CCP or hold oneself out as operating a CCP unless one is an ACH or RCH.

  <u>Reporting</u>
  All financial institutions regulated by MAS (FIs) and non-FIs resident or having a presence in Singapore above a reporting threshold are required to report all transactions (except FX spots) but only if booked or traded (based on trader location) in the Singapore office. However, Singapore-incorporated banks must report on a group-wide basis though there is no need for consolidated reporting.

  - Single-sided reporting would apply. Where an FI faces a non-FI that is below the reporting threshold, the FI must still report the trade.
  - However, where one party to the transaction is a central bank or government or a supranational organization, the other party (if otherwise subject to the reporting obligation) need not report the transaction.
  - Outstanding contracts with a remaining maturity of more than one year on the relevant implementation date would need to be reported. However, this would be phased-in at a later stage.
  - Transactions would need to be reported by the next business day.
  - Reporting by an agent is permitted but the party subject to the mandate remains responsible.
  - Reporting would be phased-in by asset class and reporting entity type.

  <u>Clearing</u>

  - All FIs and non-FIs resident or having a presence in Singapore above a clearing threshold would be required to clear certain products if one leg of the contract is booked in Singapore and either (i) both parties are resident or have a presence in Singapore and are subject to the clearing mandate; or (ii) one party is resident or has a presence in Singapore and is subject to the clearing mandate and the other party would have been so subject had it been resident or had a presence in Singapore.

- The products to be cleared would be identified through a bottom-up and top-down approach. FX spots and deliverable FX forwards and swaps would be exempted.
- FIs with minimal derivatives exposures in aggregate and by asset class, central banks and governments, and supranational organizations would be exempted. Intra-group transactions (subject to appropriate safeguards) and possibly pension schemes would also be exempted.

This was followed by:

- On July 25, 2013, MAS published the Securities and Futures (Trade Repositories) Regulations 2013 which came into operation on August 1. An applicant for a trade repository (TR) license needs to demonstrate to MAS that it is able to meet the obligations of, and comply with the requirements imposed on, a licensed TR; and the applicant is able to maintain a minimum base capital of at least $10 million. The TR would have the obligation to notify MAS of certain matters, such as any civil or criminal legal proceeding instituted against the licensed TR, whether in Singapore or elsewhere; and any disruption of or delay in, or any suspension or termination of any systems relating to, the reporting of transactions, including those from any system failure.

  A licensed TR (LTR) shall seek approval prior to commencing any linkage, arrangement or co-operative arrangements. The LTR would need to submit periodic reports to MAS. The LTR shall maintain confidentiality except in certain circumstances, such as where the disclosure of user information is necessary for the making of a complaint or report under any written law for an offence. An LTR would need to maintain at all times a business continuity plan and a recovery and resolution plan as well as procedures and systems to maintain the integrity and security of the transmission and storage of all information reported to the LTR. An LTR would also need prior approval from MAS to impose any reporting fee on its participants for any services provided by the LTR; or modify, restructure or otherwise change any existing reporting fee imposed on its participants.

- On July 25, 2013, MAS also published the Securities and Futures (Clearing Facilities) Regulations 2013, which came into operation on August 1 as well. An approved clearinghouse needs to comply with the requirements imposed for an approved clearinghouse and would need to maintain a minimum base capital of at least $10 million. A recognized clearinghouse would need to comply with the requirements imposed for a recognized clearinghouse and would need to maintain a minimum base capital of at least $5 million.

  MAS may approve a Singapore corporation as an approved clearinghouse if MAS is satisfied that a disruption in the operations of a clearing facility could (a) trigger, cause or transmit further systemic disruptions to the financial system; or (b) affect public confidence in the financial system. A Singapore corporation would be a recognized clearinghouse if the above two conditions do not apply.

  An approved clearinghouse would have the obligation to notify MAS of certain matters, such as any civil or criminal legal proceeding instituted against the approved clearinghouse, whether in Singapore or elsewhere; any disruption of or delay in any clearing or settlement procedures of the approved clearing house, including system failures. An approved clearinghouse would need to seek approval from MAS prior to making any change to its risk management frameworks, including the types of collateral accepted, the methodologies for collateral valuation and determination of margins, and the size of the financial resources available to support a member's default. An approved clearinghouse would need to maintain at all times a business continuity plan and a recovery and resolution plan as well as procedures and systems to maintain the integrity and security of the transmission and storage of its user information.

- On June 26, 2013, MAS released its consultation paper on Draft Regulations Pursuant to the Securities and Futures Act for Reporting of Derivatives Contracts (SF(RDC)R).

  MAS proposed to require derivatives contracts which are traded in Singapore and/or booked in Singapore by specified persons to be reported to a licensed trade repository (LTR) or licensed foreign trade repository (LFTR). The term "traded in Singapore" means the execution of the specified derivatives contract by any trading desk (of a specified person) located in Singapore.

  MAS proposed to subject non-financial specified person (NFSP) to the reporting obligation only when his aggregate gross notional amount of specified derivatives contracts traded in Singapore or aggregate gross notional amount of specified derivatives contracts booked in Singapore exceeds the reporting threshold of S$8 billion. Once an NFSP exceeds the reporting threshold, he must notify MAS no later than one calendar month from the end of the quarter the threshold is exceeded. An NFSP ceases to be subject to the reporting obligation when both his aggregate gross notional amount of specified derivatives contracts traded in Singapore or aggregate gross notional amount of specified derivatives contracts booked in Singapore falls below the reporting threshold for four consecutive quarters. However, an NFSP would still be required to continue reporting any amendment, modification, variation or change to the information of all specified derivatives contracts that it had previously reported to the LTR or LFTR, even after it has stopped being subject to the reporting obligation. The Singapore Government and statutory boards; central banks; foreign central banks or agency of central government not incorporated for commercial purposes and; certain multilateral agencies, such as the Asian Development Bank, the Bank for International Settlements, the African Development Bank to name a few, would be exempt from the reporting obligation.

  All asset classes would be reportable, however, it would be subject to a phased implementation process. Reporting began on October 31, 2013 for interest rate derivatives contracts and credit derivatives contracts. This would be followed by foreign exchange, equity and commodity derivatives contracts on April 1, 2014. FX spots would not be reported.

  Reporting would also be subject to a phased implementation process by the type of reporting party which includes banks/merchant banks; other FIs and NFSPs. Banks/merchant banks would have a transition period of one month from the Date of Listing. Other FIs would have three months from the Date of Listing and NFSPs would have six months from the Date of Listing. Each of these dates were set out in the fourth schedule of the SF(RDC)R. Contracts with a remaining maturity of not less than one year as of the Date of Listing would need to be back-loaded. Firms would have six months from the reporting commencement date to do so. Contracts entered into on/ after the Date of Listing and before the reporting commencement date would need to be reported and given six months to do so from the reporting commencement date.

  MAS has the power under Section 128 of the SFA to allow specified persons who are complying with a comparable reporting regime in foreign jurisdictions to be deemed as having complied with Section 125 of the SFA. MAS would await further international consensus before exercising such power.

- On October 30, 2013, MAS published the Securities and Futures (Reporting of Derivatives Contracts) Regulations 2013, which came into operation on October 31, 2013. Reporting would begin on April 1, 2014 for licensed banks and merchant banks for credit and interest rate derivatives. All other financial entities began reporting for credit and interest rate derivatives on July 1, 2014, followed by significant derivatives holders on October 1, 2014.

A significant derivatives holder is prescribed as a Singapore resident person with an aggregate gross notional exceeding SGD 8billion over 4 consecutive quarters. A specified derivative contract would need to be reported if it is any interest rate or credit derivative contract which is traded in Singapore or booked in Singapore to a licensed trade repository or licensed foreign trade repository.

- On March 26, 2014, MAS published the Securities and Futures (Reporting of Derivatives Contracts) (Amendment) Regulations 2014, which came into operation on March 31, 2014.

  Some of the changes included:

  - a specified person or a specified person who enters into a specified derivatives contract as agent of a part to the specified derivatives contract, need not report counterparty information before November 1, 2014 if he is prohibited from reporting of counterparty information under the laws of any jurisdiction, or requirements imposed on him by any authority of any jurisdiction or is required to attain client consent and has made all reasonable efforts but was unable to attain such consent;
  - for uncleared contracts that are not electronically confirmed and entered into on or after April 1, 2015, counteparties would need to agree on the UTI to be reported;
  - for counterparties that are not specified persons, if the counterparty does not have a LEI or a pre-LEI, the SWIFT BIC code, AVOX ID, any identifier issued by a licensed trade repository or licensed foreign trade repository, or client code may be used;
  - reporting of interest rate contracts and credit derivatives "traded in Singapore" would start on April 1, 2015 instead of April 1, 2014.

- On July 1, 2014, MAS published the Securities and Futures (reporting of Derivatives Contracts) (Exemption) Regulations 2014. These regulations came into effect on July 1 and exempted certain entities below a $8 billion threshold from Section 125 of the SFA. The exemptions are as follows:

  - A holder of a capital services license to carry on the business of fund management or real estate investment trust management is exempted from section 125 of the Act if the total value of the holder's managed assets as at the last day of its most recent completed financial year does not exceed $8 billion; or where the holder has not held the capital markets services license for a full financial year, the total value of the holder's managed assets does not exceed $8 billion;
  - An approved trustee under section 289 of the Act of a collective investment scheme managed by (a) a holder of a capital markets services license who is exempt from section 125 of the Act under paragraph (1); (b) a Registered Fund Management Company; or (c) a person (but not a specified person) who carries on the business of fund management, is exempted from section 125 of the Act in respect of a specified derivatives contract which it enters into in its capacity of a trustee.

- On July 10, 2014, MAS released a consultation paper on the draft regulations for reporting of foreign exchange derivatives contracts. The draft regulations proposed the following on FX derivatives requirements:

  - The reporting of FX derivatives would be phased-in. The first phase would be FX derivatives booked in Singapore by banks on April 1, 2015. The draft amendment regulations were expected to come into effect by September 30, 2014, providing banks with a 6 month transition period. The second phase would be FX derivatives traded in Singapore by banks by October 1, 2015;
  - Banks are to report information in Part I, IA and IV of the First Schedule by April 1, 2015. This would be followed by the information in Part IB of the First Schedule by October 1, 2015;

- For the other specified derivatives contracts that were previously prescribed for reporting, MAS proposed for banks to report the additional information in Part IA of the First Schedule by April 1, 2015 and information in Part IB of the First Schedule by October 1, 2015. Part IA of the First Schedules are data fields relating to information for all classes of specified derivatives contracts while Part IB of the First Schedule are data fields relating to collateral;
- FX derivatives are forwards, swaps and options that are related to currencies or currency indices, or whose cash flows are determined by reference to currencies or currency indices. This would include non-deliverable forwards (NDFs), non-deliverable options (NDO) and non-deliverable exotic options. Information regarding the execution, termination, amendments, modifications, variations to a FX derivative must be reported within 2 business days after the execution, termination, amendment, modification, variation or change.
- MAS did not intend to require the reporting of transactions that are considered by the market to be spot transactions. MAS proposed not to require the reporting of transactions settled by the actual delivery of the underlying currency within 2 business days of execution. MAS would assess the readiness of non-bank entities to report FX derivatives at a later stage and provide a transition period as appropriate.

On 'traded in' Singapore, MAS proposed to tie the execution of the transaction to a trader as opposed to a trading desk. MAS further proposed to consider any transaction that is executed by a trader who is generally employed in Singapore, regardless of the trader's physical location at the time of transaction, as having been traded in Singapore. Additionally, MAS proposed to consider a trader to be employed in Singapore if he conducts, or is authorized to conduct on behalf of specified persons, activities relating to the execution of derivatives contracts in Singapore for more than half the preceding quarter.

On masking relief for counterparty information, specified persons would not need to report counterparty information before November 1, 2015, subject to the condition as stated in the Draft Regulations. However, this masking relief would not be extended to EU countries. MAS proposed to remove all EU countries from the Fifth Schedule.

- On September 17, 2014, the Australian Securities and Investments Commission (ASIC) and MAS entered into a memorandum of understanding (MOU) to allow trade repositories licenced in one jurisdiction to provide relevant data to the authority in the other jurisdiction. Through this MOU, ASIC and MAS would cooperate with each other to fulfil their respective responsibilities and mandates by facilitating each authority's access to relevant trade repository data, while ensuring the confidentiality of the information is appropriately protected.

- On October 31, 2014, MAS released the Securities and Futures (Reporting of Derivatives Contracts) (Amendment) (No.2) Regulations and their response to the feedback received on the consultation paper for the Securities and Futures (Reporting of Derivatives Contracts) Regulations (Amendment) 2014 (SF(RDC)R). Key changes included:

    - the regulations exclude certain categories of FX contracts from the reporting requirements;
    - the refined definition of "traded in Singapore" to include contracts executed by traders located in Singapore who have been executing or have been authorized to execute contracts for at least the last 30 days prior to the date of the contract;
    - the reporting commencement date for credit, interest rate and FX derivatives contracts traded in Singapore would commence on November 1, 2015;

- the reporting commencement date for FX derivative contracts booked in Singapore would commence on May 1, 2015;
- the requirement to report the additional data fields would commence from November 1, 2015; and
- Masking relief was extended to November 1, 2015.

- MAS and ESMA also signed an MOU to establish cooperation arrangements regarding CCPs in Singapore that have applied for recognition under EMIR. The MOU fulfils a pre-condition for ESMA to recognise CCPs in Singapore providing clearing services to European Union (EU) participants and trading venues. This would allow ESMA-recognised CCPs in Singapore to be used by EU market participants to satisfy their mandatory clearing obligations under EU law and would allow EU banks to enjoy lower capital charges for their clearing exposures to such recognised CCPs.

- On July 1, 2015, MAS issued a Consultation Paper on Draft Regulations for Mandatory Clearing of Derivatives Contracts. The draft Securities and Futures (Clearing of Derivatives Contracts) Regulations provided the implementation details of the initial set of product and persons subject to clearing obligations under the Securities and Futures Act, Chapter 289 of Singapore.

  Key highlights of the policy proposals include:

  - MAS intends to commence mandatory clearing by asset class, beginning with interest rate derivatives contracts. This includes Singapore dollar fixed-to-floating swaps based on the Singapore swap offer rate and US dollar fixed-to-floating swaps referenced to LIBOR. MAS is also considering interest rate swaps denominated in euro, sterling and yen.
  - MAS seeks views on subjecting transactions that are booked in the Singapore-based operations of both transacting counterparties (ie, a Singapore-incorporated company or a Singapore branch of a foreign entity) to clearing obligations.
  - MAS proposes to exempt all banks from clearing obligations, as long as they do not exceed a maximum threshold of S$20 billion in derivatives gross notional outstanding booked in Singapore for each of the past four calendar quarters.
  - The paper proposes to exempt intra-group transactions from the scope of clearing obligations. MAS also proposes to exempt public bodies from clearing requirements, including all central banks and governments, as well as international multilateral organisations such as the Bank for International Settlements, the International Monetary Fund and the World Bank.
  - MAS intends to issue regulations by the end of 2015, and would provide at least six months notice before the clearing obligations take effect.

2. MAS issues monograph on 'Supervision of Financial Market Infrastructures in Singapore'

- On January 14, 2013, MAS issued a monograph on 'Supervision of Financial Market Infrastructures in Singapore'. This monograph updates and replaces the monograph on 'MAS' Roles and Responsibilities in Relation to Securities and Clearing and Settlement Systems in Singapore' issued in 2004; and complements earlier MAS monographs which set out MAS' overall approach to financial supervision.

3. SGX releases consultation paper on proposed amendments to SGX-DC clearing rules

- On October 3, 2012, SGX released a consultation paper on the proposed amendments to the SGX-DC clearing rules for client clearing of OTC financial derivative contracts (OTCF contracts) and enhanced customer collateral protection.

4. SGX enhances default management framework

- On July 25, 2012, 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 followed a public consultation issued in September 2011.

- On November 6, 2013, SGX issued a consultation paper on the Proposed Refinements to the SGX-DC Clearing Fund and OTCF Default Management Procedures. SGX aims to implement the proposed amendments in February 2014. Singapore Exchange Derivatives Clearing Limited (SGX-DC) is proposing refinements to its Clearing Fund structure and improvements in the auction process for managing a default of a member that clears OTC financial derivatives. The proposed rule amendments specify the appointment and sequence of use of resources in the event of a default.

5. Amendments to MAS Act

- On March 15, 2013, the Monetary Authority of Singapore (Amendment) Bill 2013 (MAS(A) Bill) and the Financial Institutions (Miscellaneous Amendments) Bill 2013 were passed (but have not yet come into force). They expand the powers of MAS to exercise control over and to resolve distressed financial institutions. The new resolution regime would cover more financial institutions (other than banks and insurance companies) including CCPs.

  One concern that had arisen from the original MAS(A) Bill was its potentially adverse impact on the enforceability of close-out netting. On January 12, 2013, ISDA made a submission to MAS highlighting its concerns. In its response to feedback received, MAS stated that:

  "MAS agree that the legal framework governing contractual netting should be clear and transparent during resolution of regulated entities, and not hamper implementation of resolution measures. In light of the comments, the MAS(A) Bill would be amended to expressly reflect that the exercise of resolution powers is not intended to defeat bilateral netting arrangements. MAS would also provide in the MAS(A) Bill, a general power to prescribe safeguards to the exercise of the resolution powers. This would enable the Minister to expressly provide in subsidiary legislation that bilateral netting arrangements, as well as other similar arrangements warranting carve-out, would not be affected by the exercise of resolution powers under the MAS Act."

  The MAS(A) Bill that has been passed has been revised accordingly. In particular, Section 30AAZN has been significantly amended to empower the Minister through subsidiary legislation to create the appropriate safe harbors for bilateral netting arrangements.

6. Basel III commitments

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

- On August 16, 2013, MAS issued a consultation paper on Local Implementation of Basel III Liquidity Rules – Liquidity Coverage Ratio. MAS is proposing to replace the existing Minimum Liquid Assets (MLA) with the Liquidity Coverage Ratio (LCR) framework. Locally incorporated banks, foreign bank branches and finance companies in Singapore would be required to comply with the LCR requirement. Additionally, MAS is proposing that merchant banks be subject to the LCR requirement as well.

  MAS is proposing to impose an individual LCR requirement on an entity level for financial institutions in Singapore, however, MAS is prepared to consider proposing a collective LCR requirement on an aggregated country level where the related entities in Singapore can justify and demonstrate that their liquidity needs are managed on a country level basis; governed by clear and common liquidity management frameworks, policies and processes. MAS is also prepared to vary the LCR requirement for foreign bank branches under certain conditions and would be assessed on a case-by-case basis.

  MAS proposes to impose a SGD LCR requirement of 100%, to be implemented by Jan 1, 2015. MAS proposes to impose a USD LCR requirement and this would be set at 80%. Bank-specific requirements would be imposed on a case-by-case basis if prudential concerns warrant them. The USD LCR would start at 40% on Jan 1, 2015 and rise in equal annual steps to reach 80% on Jan 1, 2019.

- On August 6, 2014, MAS released its response to feedback received from the consultation paper on Local Implementation of Basel III Liquidity Rules – Liquidity Coverage Ratio (LCR), issued on August 16, 2013. The revised framework for banks would be implemented in a new MAS notice, which have been appended in Annexes A and B of this paper.

  In the draft MAS notice, MAS proposes to adopt a two-tiered liquidity requirement framework. Banks and related entities assessed by MAS to be systemically important to Singapore would be required to adopt the LCR framework. Smaller, niche institutions whose operations in Singapore are simpler than the larger banks would be given a choice to comply with either the LCR or a modified Minimum Liquid Assets (MLA) framework. MAS would not impose a separate US dollar liquidity requirement but would monitor how institutions manage prudently their liquidity risks by currency on a supervisory basis.

- On August 6, 2014, MAS issued its proposed amendments to Parts II, IV, XI and XII of MAS Notice 637 on Risk Based Capital Adequacy Requirements for Banks Incorporated in Singapore (the Notice) to implement the leverage ratio disclosure requirements for Singapore-incorporated banks that are consistent with the requirements issued by the Basel Committee on Banking Supervision (BCBS). The proposed amendments would take effect from Jan 1, 2015. The draft amendments to the Notice are appended in Annex 1.

- On July 31, 2015, MAS issued its consultation paper on the proposed notice (Proposed MAS Notice) on liquidity coverage ratio (LCR) and minimum liquid assets (MLA) requirements for merchant banks. MAS issued two consultation papers on Local Implementation of Basel III Liquidity Rules in August 2013 and August 2014.

Responses to the consultation feedback described revisions to the liquidity regulatory framework in Singapore, which includes the introduction of the LCR rules in Singapore and a revision of the MLA rules. Another key revision to the framework was the expansion of the scope of liquidity requirements, in particular, which means that merchant banks would therefore be subject to the same liquidity requirements as banks from January 1, 2016. The revised framework for banks was implemented through MAS Notice 649, which was published in November 2014. The Proposed MAS Notice (as set out in Annex A of the consultation paper) prescribes equivalent requirements for merchant banks in Singapore. The corresponding reporting forms are set out in Annex B of the consultation paper.

- On October 9, 2015, MAS issued its consultation paper on Liquidity Coverage Ratio (LCR) disclosure requirements. The Paper contains a set of proposed disclosure requirements which are intended to complement the LCR requirement as set out in MAS Notice 649.

  The LCR requirement was introduced for domestic systemically important banks in Singapore (D-SIBs). These proposed disclosure requirements closely mirror the requirements promulgated by the Basel Committee on Banking Supervision (BCBS) for internationally active banks. A common LCR disclosure template has been provided in order to promote consistency and comparability of liquidity disclosures by banks, and accompanying qualitative disclosures to help users understand the information published by banks. Guidance is also provided on additional qualitative and quantitative disclosures that banks are encouraged to disclose in order to provide market participants with a broader understanding of the reporting banks' liquidity risk profile and management. These requirements are intended to take effect on January 1, 2016. Banks are required to comply with these disclosure requirements from the date of the first reporting period after January 1. MAS also identified specific areas for comment, in particular the scope of application, the retention period, the reporting currency and treatment of country-level groups. MAS proposed that the LCR disclosure requirements not apply to D-SIBs that are foreign branches.

  Deadline for submission is November 9, 2015.

- On October 9, 2015, MAS issued its consultation paper on proposed amendments to MAS Notice 637 to implement revisions to the Basel III Capital Framework. The Notice sets out the risk based capital adequacy requirements for banks incorporated in Singapore.

  The proposed amendments are intended to implement requirements for Singapore-incorporated banks that are consistent with the final standards issued by the Basel Committee on Banking Supervision (BCBS). In particular, proposed amendments to Part VII of the Notice will enhance the risk capture of banks' equity exposures and counterparty credit exposures (including exposures to central counterparties). Revised Pillar 3 disclosure requirements will enable market participants to better compare banks' disclosures of risk-weighted assets and improve consistency of disclosures. Technical revisions were also made to Part VI of the Notice to clarify the regulatory capital treatment for investments in unconsolidated entities.

  Other than the proposed amendments to Part XI of the Notice, the proposed amendments are intended to take effect on January 1, 2017. Singapore-incorporated banks are to publish their first standalone Pillar 3 report, which complies with the revised disclosure requirements from the publication date of their first set of financial statements relating to a balance sheet on or after December 31, 2016.

  Deadline for submission is December 4, 2015.

7. EMA develops electricity forward trading

- On May 23, 2013, 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 would 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 would 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.

8. Financial benchmarks

- On June 14, 2013, the Associations of Banks in Singapore (ABS), in consultation with the Singapore Foreign Exchange Market Committee (SFEMC), announced the following changes to the ABS financial benchmarks:

  - Ceasing publication on July 12, 2013 - USD/VND spot rate, SGD IRS rate, THB SOR rate and IDR SOR rate;
  - Ceasing publication on August 5, 2013 - USD/MYR spot rate. This would be replaced with benchmarks in other jurisdictions;
  - Ceasing publication on September 30, 2013 - SGD SOR rate (1wk, 2mths, 9mths and 12mths) and SGD SIBOR rate (2mths and 9mths);
  - Ceasing publication on December 31, 2013 - USD SIBOR rate. This would be replaced with benchmarks in other jurisdictions.

  The USD/VND spot rate benchmark, SGD IRS, IDR SOR and THB SOR rate benchmarks and the SGD SOR and SGD SIBOR rate benchmarks for the discontinued maturities are being discontinued due to the lack of liquidity in the underlying rates.

  In order to facilitate a smooth transition to the new benchmarks, SFEMC has made a number of recommendations including:

  - Rate swap and other contracts referencing the SGD SOR rate benchmarks for the continuing maturities of overnight, 1 month, 3 months or 6 months that may be entered into on or after October 1, 2013 should apply the corresponding new benchmarks;
  - Parties should mutually agree to amend rate swap and other contracts referencing the existing SGD SOR rate benchmarks for the continuing maturities of overnight, 1 month, 3 months or 6 months that remain outstanding on October 1, 2013 to reference the new SGD SOR rate benchmark for the corresponding maturity;

- Parties should mutually agree to amend rate swap and other contracts referencing the existing SGD SOR rate benchmark for the discontinued maturities of 1 week and 2 months that remain outstanding on October 1, 2013 to reference a linearly interpolated rate using rates determined by reference to the new SGD SOR rate benchmarks for the maturities of overnight and 1 month, and 1 month and 3 months respectively;
- Parties should mutually agree to amend rate swap and other contracts referencing the existing SGD SIBOR rate benchmarks for the discontinued maturities of 2 months or 9 months that remain outstanding on October 1, 2013 to reference a linearly interpolated rate using rates determined by reference to the SGD SIBOR rate benchmarks for the continuing maturities of 1 month and 3 months, and 6 months and 12 months respectively;
- Parties should mutually agree to amend rate swap and other contracts referencing the existing USD SIBOR rate benchmark that remain outstanding on January 1, 2014 to reference the USD LIBOR rate benchmark;
- NDF and other relevant contracts referencing the USD/SGD, USD/THB or USD/IDR spot rate benchmarks that may be entered into on or after August 6, 2013 should apply the corresponding new benchmarks;
- NDF and other relevant contracts referencing the USD/MYR spot rate benchmark that may be entered into on or after August 6, 2013 should apply the onshore USD/MYR spot rate benchmark published on Reuters Screen MYRFIX2 Page;
- Parties should mutually agree to amend NDF and other relevant contracts referencing the existing USD/SGD, USD/THB, USD/IDR or USD/MYR spot rate benchmarks that remain outstanding on August 6, 2013 to reference (as applicable) the new spot rate benchmarks for USD/SGD, USD/THB or USD/IDR or to reference the onshore USD/MYR spot rate benchmark published on Reuters Screen MYRFIX2 Page.

• On June 14, 2013, MAS released a consultation paper on the Proposed Regulatory Framework for Financial Benchmarks, which aims to deter and penalize attempts to manipulate any financial benchmark, and to safeguard the credibility and reliability of key financial benchmarks in Singapore. MAS proposed to introduce a regulatory framework for the setting of financial benchmarks. The framework would be affected via amendments to the Securities and Futures Act (SFA).

  The key elements of the proposed framework include:
  - Introduce criminal and civil sanctions for manipulation of any financial benchmark;
  - Provide legal powers to designate key financial benchmarks and subject their Administrators and Submitters to regulation;
  - Issue best practice guidance for other benchmarks consistent with IOSCO Principles;
  - Provide legal powers to compel entities to be Submitters to designated benchmarks.

  MAS proposes that the Singapore Interbank Offered Rate (SIBOR) and the Swap Offer rate (SOR), administered by the Association of Banks in Singapore (ABS), be designated as financial benchmarks. As ABS also administers foreign exchange spot benchmarks (FX Benchmarks), which are largely used in the Non-Deliverable Foreign Exchange Forwards (NDFs) market, MAS is also proposing to include FX Benchmarks as designated benchmarks.

• On July 5, 2013 ISDA, together with EMTA, published the 2013 Multilateral Amendment Agreement for Certain Asian Currency Non-Deliverable FX and Currency Option Transactions with Non-Deliverable Swap Transactions Supplement and Other Transactions Supplement Thereto (FX-MAA) to assist parties wishing to make the amendments referred to above. The closing date for signing up to the FX-MAA was August 2, 2013.

- On August 29, 2013 ISDA published the 2013 Multilateral Amendment Agreement for Certain Rate Swap and Other Transactions (Rates-MAA) to assist parties wishing to make the amendments referred to above. The Rates-MAA would apply to OTC derivatives and other financial transactions such as repos. In addition, the Rates-MAA would apply to the ISDA English or New York law governed Credit Support Documents. As between any two parties to the Rates-MAA, the relevant transactions or Credit Support Documents between them would be amended only if and to the extent that such transactions or Credit Support Documents have a fixing of an affected rate that is to take place (i) on or after October 1, 2013 and (ii) after the date of discontinuation of the affected rate (i.e. September 30, 2013 for the SGD-SOR and SGD SIBOR rate benchmarks and December 31, 2013 for the USD SIBOR rate benchmark. The closing date for signing up to the Rates-MAA was September 26, 2013.

- On August 29, 2013, ISDA also published Supplement Nos. 35 and 36 to the 2006 ISDA Definitions. Supplement No. 35 provides for the deletion of "IDR-SOR-Reuters", "SGD-SOR-Reuters", "SGD-SOR Reference Banks", "SGD-SONAR-OIS-COMPOUND" and "THB-SOR-Reuters" and the addition of "SGD-SOR-VWAP", "SGD-SOR-VWAP-Reference Banks" and "SGD-SONAR-OIS-VWAP-COMPOUND" under Section 7.1(j), (t) and (aa) and for consequential amendments to Section 6.2 (g). Supplement No. 36 provides for the deletion of "USD-SIBOR-SIBO" under Section 7.1 (ab).

- On February 18, 2014, ABS Benchmarks Administration Co Pte. Ltd. (ABS Co), in consultation with SFEMC, that it would discontinue the USD/IDR spot rate benchmark (denoted as "IDR VWAP" or "IDR03" in the 1998 FX and Currency Option Definitions). The last day of publication of IDR VWAP (IDR03) would be 27 March 2014. ABS Co, together with the SFEMC, has decided that it is no longer necessary to continue IDR VWAP (IDR03) given the development of an onshore USD/IDR spot rate benchmark. The onshore USD/IDR spot rate benchmark is reported by Bank Indonesia and published on its website and would be denoted as "IDR JISDOR" or "IDR04" in the 1998 FX and Currency Option Definitions. The SFEMC has recommended that market participants apply IDR JISDOR (IDR04) to NDF and other relevant contracts that have trade dates on or after 28 March 2014. The SFEMC has also recommended that parties mutually agree to amend legacy outstanding contracts that reference IDR VWAP (IDR03) to instead reference IDR JISDOR (IDR04).

  To facilitate such amendments, on 4 March 2014, ISDA published the 2014 Multilateral Amendment Agreement for IDR Non-Deliverable FX and Currency Option Transactions, Non-Deliverable Swap Transactions and Certain Other Transactions (IDR-MAA). The closing date for signing up to the IDR-MAA was March 26, 2014.

- On July 29, 2014, MAS released a consultation paper on legislation to introduce a regulatory framework for financial benchmarks which would bring the regulation of benchmark setting activities into the regulatory ambit of MAS. This follows MAS consultation in June 2013 which had set out certain policy proposals for introducing a regulatory framework for financial benchmarks. MAS has also issued a response paper to the 2013 consultation.

  The proposed legislation provides, among others, that the manipulation of any financial benchmark in Singapore would be made liable to criminal and civil sanctions under the Securities and Futures Act. This would apply to acts of manipulation occurring within Singapore and in respect of financial benchmarks administered in Singapore. Additionally, administrators and submitters of financial benchmarks designated by MAS would be subject to regulation, including licensing requirements. MAS would designate key financial benchmarks, taking into account their systemic importance and susceptibility to manipulation. Presently, MAS intends to designate the SIBOR and SOR as key benchmarks.

9. MAS enhances safeguards for the sale of financial products at retailers and public places

- On September 17, 2013, MAS released the Consultation Paper on Draft Regulations pursuant to the Securities and Futures Act (SFA) and Financial Advisers Act (FAA) to effect certain policy proposals arising from the review of the regulatory regime governing the sale and marketing of listed and unlisted investment products as set out in MAS' consultation papers dated 12 March 2009 and 28 January 2010. In order to strengthen safeguards for retail investors, the Securities and Futures (Amendment) Act 2012 empowers MAS to prescribe Regulations in relation to requirements relating to:
  - A Products Highlights Sheet to be issued in a prescribed format for certain offers of securities under Part XIII of the SFA;
  - Issuers of unlisted debentures to provide timely and ongoing disclosures to investors; and
  - Advertisements of certain offers of securities to give it a fair and balanced view of the product and comply with certain restrictions.

- On March 14, 2014, MAS issued its Consultation Paper on Draft Regulations to Enhance the Regulatory Framework for Unlisted Margined Derivatives Offered to Retail Investors (the 2014 Paper). In the 2014 Paper, MAS is consulting on the Draft Regulations pursuant to the Securities and Futures Act Chapter 289 of Singapore (SFA) which would effect the policy proposals set out in the 2012 Consultation Paper as well as the MAS Response to the 2012 Consultation Paper .

  Highlights of some proposed amendments are:
  - Presently, banks which are licensed under the Banking Act are not caught under the SFA for the regulated activity of LFX trading. MAS proposes certain amendments to the Second Schedule to the SFA to remove the regulatory carve-out in order to effect the proposals set out in the 2012 Policy Paper in relation to banks carrying on LFX trading with retail customers.

  - MAS also proposes certain amendments to the Securities and Futures (Licensing and Conduct of Business) Regulations to require Capital Markets Services License holders ("CMSL holders") and entities exempted under section 99(1)(a), (b) and (c) of the SFA (collectively the "derivative holders") who offer CFDs and/or LFX to:
    (a) maintain separate trust accounts for retails customers' transactions in listed and unlisted products;
    (b) maintain retail customer moneys in trust accounts with a bank in Singapore;
    (c) not use retail customer moneys/assets in trust/custody accounts for meeting other obligations incurred by the derivative dealer in connection with the retails customer's unlisted margined derivative transactions;
    (d) perform daily computation of all retail and non-retail customer money/assets which are deposited in a trust/custody account; and
    (e) act as a principal to the trade when dealing in unlisted margined derivatives with retail customers.

  - MAS proposes certain amendments to the Securities and Futures (Financing and Margin Requirements for Holders of Capital Markets Services Licences) Regulations to:
    (a) Impose minimum margin requirement of 5 % on CMSL holders dealing in CFDs on FX and other LFX contracts with retail customers; and

(b) Require a base capital requirement of S$5 million for CMSL holders dealing in unlisted derivatives with retail customers.

- MAS also proposes to introduce a new set of regulations being the Securities and Futures (Margin Requirements for Exempt Financial Institutions) Regulations which would prescribe margin requirements for exempt financial institutions as set out under Section 99(1)(a), (b) and (c) of the SFA.

• On July 21, 2014, MAS released its consultation paper on proposals to enhance regulatory safeguards for investors in the capital markets after reviewing its regulatory framework in light of recent market developments. The proposals consult on three key areas:

  - extending to investors in non-conventional investment products the current regulatory safeguards available to investors in the capital markets;
  - requiring investment products to be rated for complexity and risks, and for these ratings to be disclosed to investors; and
  - refining the investor classes under the Securities and Futures Act (SFA) and the Financial Advisers Act (FAA).

  By way of background, MAS has taken into account, among others, that the pace of development of the capital markets necessitates continual review of the regulatory framework to ensure that it remains relevant and effective in achieving its regulatory objectives. Additionally, the myriad pieces of product information being pushed out to investors as a result of more complex features underscore the need for better means of illustrating the risk-return trade-offs associated with each product.

  Part I of the paper proposes to modify the scope of capital markets products under the SFA and FAA. MAS proposes to subject the offer and distribution of products and schemes that exhibit similar features as regulated capital markets products to the same treatment under the SFA and FAA.

  Part II of the paper tackles regulated investment products which are offered to retail investors by introducing a framework by which all investment products can be rated for their complexity and the risk that investors may lose some or all, or more than their principal investment amount. It also requires product issuers to rate their products and discloses these ratings in regulated offering documents and through other stipulated channels.

  In Part III, MAS notes that while the existing tiered level of regulator protection is appropriate for safeguarding the interest of retail investors, it has nonetheless set out proposals to refine and streamline classes of non-retail investors.

• On July 23, 2015, MAS published a consultation paper on Market Conduct Guidelines outlining measures to safeguard consumers' interests when buying financial products and services at retailers and public places. These measures include ensuring that there are adequate controls for a proper sales and advisory process. MAS also proposes to require financial institutions to notify the MAS of their marketing and distribution activities at retailers and public places. The proposals seek to address the risk of consumers making purchases of financial products that may be unsuitable for them when they are prospected at retailers or public places. The proposed Guidelines complement existing rules and practices, and ensure consistency and alignment of standards across the financial industry.

• On September 22, 2015, MAS announced that it will proceed with enhancements to its regulatory framework for safeguarding investors' interests, taking into account feedback received on its consultation paper which was published on July 21, 2014 (described above).

Key changes include:

- Retail investors in non-conventional investment products will be accorded the same regulatory safeguards as investors in capital markets products.
- Investors who meet prescribed wealth or income thresholds to qualify as accredited investors (AIs) will have the option to benefit from the full range of regulatory safeguards that are applicable for retail investors.

Amendments to the SFA to implement these changes will be tabled in Parliament in 2016. MAS will also extend its capital markets regulatory framework to non-conventional investment products that share features similar to capital markets products. These are currently not subject to MAS' regulations. In future, such non-conventional investment products will be regulated either as debentures or investment funds, depending on their features. Examples given include precious metals buy-back arrangements and collectively managed investment schemes.
Under the current regulatory regime, investors who meet prescribed wealth or income thresholds are classified as AIs by default. They are accorded a lower level of regulatory protection as they are considered to be better able to protect their own interests. This may not be true for all investors who meet the prescribed wealth or income thresholds.

MAS intends to refine the regulatory regime to empower AI-eligible investors to choose the level of regulatory safeguards best suited to their individual circumstances:

- Financial institutions (FIs) will have to treat new customers who are AI-eligible as retail investors by default, unless the customers choose to "opt-in" to AI status.
- FIs can continue to treat existing customers who are AI-eligible as AIs, unless the customers choose to "opt-out" of AI status to benefit from the full range of capital markets regulatory safeguards available to retail investors.

AI-eligible customers who choose to "opt-in" to, or retain their, AI-status may be those that are willing to forgo the benefits of stronger regulatory safeguards available to retail investors, in return for the ability to more easily access a wider range of complex and risky products.

Also, MAS notes that it is still reviewing feedback on the remaining proposal to introduce a complexity-risk ratings framework for investment products and will issue a separate public response later.

10. MAS releases Consultation Paper on Amendments to Corporate Governance Regulations

- On September 20, 2013, MAS released the Consultation Paper on Amendments to Corporate Governance Regulations. By way of background, the Securities and Futures (Corporate Governance of Approved Exchanges, Designated Clearing Houses and Approved Holding Companies) Regulations 2005 (the "2005 Regulations") were introduced in 2005 and are applicable to approved exchanges, approved clearing houses and approved holding companies regulated under the Securities and Futures Act (SFA). In this consultation paper, MAS proposes amendments to the 2005 Regulations, taking into account developments in the corporate governance requirements as well as recent amendments to the SFA.

The proposals in this consultation paper cover the following areas:

- Director independence;
- Board and board committees;
- Appointment of key management officers

MAS also proposes to extend the 2005 Regulations to licensed trade repositories ("LTRS") in view of their status as systematically important financial market infrastructure. The proposed Securities and Futures (Corporate Governance of Approved Exchanges, Approved Clearing Houses, Licensed Trade Repositories and Approved Holding Companies) Regulations 2013 is intended to replace the 2005 Regulations. Compliance by approved exchanges, approved clearing houses, approved holding companies and licensed trade repositories with the regulations would be reviewed by MAS as part of its ongoing supervisory programme. The deadline for submission is October 21, 2013.

11. Review on bankruptcy, insolvency regimes

- On October 4, 2013, the Insolvency Law Review Committee submitted its report reviewing the existing bankruptcy and corporate insolvency regimes in Singapore to the Ministry of Law, which has invited comments through December 2.

  The aims of the review were to:
  - unify the bankruptcy and corporate insolvency regimes into a single piece of legislation;
  - modernize the law of bankruptcy and corporate insolvency as well as adopt practices best suited to Singapore;
  - make the attendant processes user-friendly and accessible for individuals and corporations alike;
  - where appropriate, take into account the relevant recommendations made by the Companies Regulation Framework Steering Committee in 2002.

  The main recommendation in the report is for the enactment of a new Insolvency Act. This new act would consolidate and update the core areas of Singapore's personal and corporate insolvency regime, as well as set out common principles and procedures. This is intended to provide greater consistency certainty on various concepts that are common to the various insolvency regimes; and better support the transition and coordination between these regimes.

  The report also considers the various corporate insolvency regimes in Singapore including private receivership, liquidation, judicial management and schemes of arrangement.

12. SGX-DC registration as a DCO

- On October 25, 2013, SGX issued a consultation paper on the proposed SGX-DC Remote Membership and Derivatives Clearing Organization Rules. The Singapore Exchange Derivatives Clearing Limited (SGX-DC) has applied for registration with the CFTC as a derivatives clearing organization (DCO). Consequently, SGX-DC would be required to comply with the applicable US laws and regulations as well as the CFTC Commodity Exchange Act (CEA) requirements for a DCO.

  Under Section 4d(f)(1) of the CEA, an intermediary accepting collateral from a US person for a swaps contract cleared through a DCO must be a futures commission merchant (FCM) registered with the CFTC. SGX-DC proposes to allow remote clearing members (RCMs). FCMs based in the US or otherwise may apply to become members of SGX-DC as a RCM in order to clear swap contracts for their US customers through SGX-DC. A RCM must be regulated and licensed by a recognized regulator and governed by the laws of a jurisdiction acceptable to SGX-DC. SGX-DC would consider the comparability of laws of the foreign jurisdiction and the regulatory standards with Singapore laws and regulations; the licensing and supervision of OTC activities by an independent statutory regulator; and the existence of information sharing arrangement between MAS and the statutory foreign regulator or between SGX-DC and any foreign self-regulatory organization responsible for the supervision of the RCM.

A RCM clearing Non-Relevant market contracts and/or customers OTCF contracts is required to have, or have a parent entity who has a long term credit rating indicating strong overall creditworthiness supporting fulfillment of its financial obligations. RCMs would have reporting, access to records, appointment of management personnel, segregation of positions and collateral and default management requirements that are similar to those of the General Clearing Members (GCMs). There would be additional membership criteria, for example: RCMs must have the ability to conduct its clearing activities during SGX-DC's business hours and maintain adequate contactable staff and RCMs should not have a business presence in Singapore related to the provision of financial services or serve Singapore-domiciled customers.

- On December 27, 2013, CFTC issued an Order granting Singapore Exchange Derivatives Clearing Limited (SGX-DC) registration as a derivatives clearing organization (DCO) pursuant to Section 5b of the Commodity Act. SGX-DC, which is a subsidiary of Singapore Exchange Limited and is organized under the laws of Singapore, is also regulated by MAS. Subject to the terms and conditions of the Order, SGX-DC is authorized to provide clearing services for swaps that SGX-DC currently clears and such other swaps that CFTC determines SGX-DC is eligible to clear. This Order was effective on December 31, 2013.

13. MAS requirements for assessing systemically important banks

- On October 4, 2013, MAS issued the Proposed Amendments to MAS Notice 637 on Disclosure and Submission Requirements for Assessing Global Systemically Important Banks and Point of Non-Viability Requirements. The proposed disclosure and submission requirements in the Consultation Paper aim to allow BCBS to assess the systemic importance of Singapore-incorporated banks. The methodology is based on the BCBS' framework "Global systemically important banks: updated assessment methodology and the higher loss absorbency requirement".

  The Consultation Paper would require Singapore-incorporated banks to make publicly available the 12 indicators used in the BCBS assessment methodology for identifying "G-SIBs"; and submit to MAS the full set of data required by the BCBS' data collection exercise. The Consultation Paper also proposes requirements to ensure loss absorbency at the point of non-viability, for example: whether the assets of a Bank, in MAS's opinion, are sufficient to provide adequate protection to the bank's depositors and creditors. The proposed amendments would be effective from Jan 1, 2014.

- On June 25, 2014, MAS issued a consultation paper on the proposed Framework for Systemically Important Banks in Singapore. In this paper, MAS seeks to develop a D-SIB framework that achieves the objectives of updating MAS' diagnostic toolkit for assessing systemic importance and identifying D-SIBs as well as establishing a range of policy measures that may be applied to D-SIBs.

  The proposed D-SIB framework builds on MAS' existing impact assessment framework to assess a bank's systemic importance to Singapore's financial system and broader domestic economy. It would also establish other relevant policy measures that may apply to D-SIBs to address the specific negative externalities that they pose. In terms of scope, MAS proposes to assess locally-incorporated banks, including subsidiaries of foreign banks, and foreign bank branches under the D-SIB framework. The D-SIB framework would also assess locally-incorporated banks at the consolidated group level. In addition, the D-SIB assessment of foreign banks would take into account the activities of all related banking entities in Singapore.

MAS also proposes:

- to adopt an indicator-based approach to assess banks' systemic importance based on size, interconnectedness, substitutability and complexity;
- to set out appropriate policy measures with respect to each type of D-SIB;
- to require D-SIBs to undertake recovery and resolution planning;
- to publish the initial list of D-SIBs, which would include D-SIB branches (if any), by the first quarter of 2015, in order to provide banks with sufficient time to comply with relevant D-SIB policy measures;
- to review the D-SIB framework, including the methodology and indicators, every three years.

• On April 30, 2015, MAS published its framework for identifying and supervising domestic systemically important banks (D-SIBs) in Singapore, and the inaugural list of seven D-SIBs.

MAS would apply additional supervisory measures on banks designated as D-SIBs. Banks that have a significant retail presence in Singapore would be required to locally incorporate their retail operations. Locally-incorporated D-SIBs would need to meet higher capital requirements – a minimum common equity Tier 1 capital adequacy ratio (CAR) of 6.5%, Tier 1 CAR of 8% and total CAR of 10%, compared with the Basel III minimum requirements of 4.5%, 6% and 8%, respectively. Other measures, such as recovery and resolution planning, liquidity coverage ratio requirements and enhanced disclosures, would also apply, depending on the bank's operating model and structure. MAS would allow a transition period for affected banks to comply with the requirements that are currently not in effect, such as the local incorporation requirement.

14. MAS review of the Banking Act

• On November 28, 2013, MAS released a Consultation Paper on the Review of the Banking Act. MAS proposes several changes to the Banking Act (BA) to strengthen its supervisory oversight over banks and codify its expectations regarding the risk management practices that banks should implement.

Key proposed amendments include:
Duty to inform MAS of material developments:

- MAS proposes that banks be required to notify MAS as soon as they become aware of any material adverse developments affecting the bank (including the head office and branches) or any entity in its group.
- Material adverse developments include, at a minimum, the breach (or possible breach) of any laws or regulations, business rules or codes of conduct in Singapore or elsewhere.
- Locally incorporated banks are currently required to obtain MAS' prior approval for the appointment of directors, chief executive officers, deputy chief executive officers, chief financial officers and chief risk officers. MAS proposes banks to notify them when they become aware of any material information which may negatively affect the fitness and propriety of any officer whose appointment was approved by MAS.

- Sections 15A and 15B of the BA require the Minister's approval before any person becomes a substantial shareholder of a bank incorporated in Singapore. MAS proposes to require banks incorporated in Singapore to notify them when they become aware of persons who have become shareholders or controllers without obtaining approval. MAS also proposes that banks be required to notify MAS as soon as they become aware of any material information that may negatively affect the suitability of their substantial shareholders and controllers.

MAS' control over key officers and auditors:

- Currently, under section 54(2) of the BA, MAS may direct the removal of a director of a locally incorporated bank or an executive officer of any bank in Singapore if the director or officer has (a) wouldfully contravened or wouldfully caused the bank to contravene any provisions of the BA; (b) without reasonable excuse, failed to secure the bank's compliance with the BA or the MAS Act; or (c) failed to discharge any duties of his office where MAS thinks such removal is necessary in the public interest or for the protection of the depositors of the bank.
- MAS proposes replacing the current grounds for removal in section 54(2) with a single criterion of the director or the executive officer ceasing to be fit and proper.
- MAS further proposes to include "interest of the Singapore financial system" as an additional premise for the removal of a bank director or executive officer. This would allow MAS to consider the reputation of and stakeholder confidence in the financial system when determining whether to exercise its power of removal.

Duty to implement adequate risk management systems and controls:

- MAS proposes to codify its expectation that all banks institute and maintain adequate risk management systems and controls in the BA. Banks would be required to establish a comprehensive risk management framework and internal controls. MAS would determine whether the risk management systems and controls are adequate.

- On January 15, 2015, MAS published its response to feedback on its November 2013 consultation paper on the review of the Banking Act. MAS had previously sought feedback on proposed amendments aimed at:

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

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

  - Requiring banks to seek 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 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.

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

15. MAS consults on transaction requirements for banks

- In December 2013, MAS released a consultation paper on Related Party Transaction Requirements for Banks. The consultation paper sets out the proposed changes to MAS' requirements on banks' transactions with their related parties (RPTs) as set out in MAS Notice 643 "Transactions with Related Parties" and in the Banking Act (BA).

  Key highlights include:

  - Exemption of RPTs below SGD $100,000. Exemption of all other staff transactions, besides staff loans, from the requirements that RPTs be conducted on no more favorable terms, provided that these transactions are granted as part of the officer or employee's overall remuneration package, in accordance with the staff remuneration policy that has been approved by the board;
  - Views on whether a bank's majority-owned subsidiaries should be excluded from the bank's list of related parties and the scope of MAS Notice 643. The paper consults on the level of majority shareholding in subsidiaries for the subsidiaries to qualify for the exclusion;
  - For a bank incorporated outside Singapore, the consultation paper seeks views on whether the definition of "senior management" should be confined to the senior management of the bank in Singapore;
  - For the list of banks' related parties, the consultation paper seeks comments on whether this list should be expanded to include firms, LLPs and companies of which banks are directors, partners, executive officers, agents, guarantors or sureties;

16. CFTC, MAS sign MoU on supervision of cross-border entities

- On December 27, 2013, CFTC and MAS signed a Memorandum of Understanding (MoU) regarding the cooperation and the exchange of information in the supervision and oversight of regulated entities that operate on a cross-border basis in the United States and Singapore. The MoU was signed by former CFTC Chairman Gary Gensler and MAS Deputy Managing Director, Financial Supervision, Ong Chong Tee.

  CFTC and MAS expressed their willingness though this MoU to cooperate in the interest of fulfilling their respective regulatory mandates regarding derivatives markets, particularly in the areas of protecting investors and customers, fostering integrity of and maintaining confidence in financial markets and reducing systemic risk. The scope of the MoU includes markets and organized trading platforms, central counterparties, trade repositories, and intermediaries, dealers and other market participants.

17. MAS opens applications for RQFII

- On January 24, 2014, MAS announced that eligible financial institutions may submit applications for the Renminbi (RMB) Qualified Foreign Institutional Investor (RQFII) license. The RQFII license would allow these institutions to offer RMB investment products and invest offshore RMB into China's securities markets. The applications are made to the China Securities Regulatory Commission (CSRC) via approved custodian banks. All Singapore-incorporated financial institutions that are approved by MAS to conduct fund management activities may apply for the license. Singapore was allocated an aggregate quota of RMB 50 billion under China's RQFII programme.

18. MAS consults on MAS Act and Trust Companies Act amendment

- On June 5, 2014, MAS released a consultation paper on the proposed amendments to the MAS Act and Trust Companies Act. The aim of the consultation paper is to strengthen the regulatory framework for combating money laundering (ML) and terrorism financing (TF) through enhancing the effectiveness of Singapore's AML/CTF regime, in particular international cooperation. These enhancements would align Singapore's regime with the revised Financial Action Task Force (FATF) Recommendations as well as other international standards such as the Basel Committee on Banking Supervision. MAS is also currently developing subsidiary legislation to amend the definition of 'financial institutions' in the MAS Act to include designated financial holding companies, which would subject these companies to the appropriate AML/CFT regulation.

19. Authorities consult on FATCA regulations

- On September 22, 2014, the Ministry of Finance, MAS and the Inland Revenue Authority of Singapore released a public consultation on proposed regulations to help financial institutions in Singapore to comply with the US Foreign Account Tax Compliance Act (FATCA). In order to ease the compliance in relation to FATCA, Singapore has now substantially concluded a Model 1 Intergovernmental Agreement (IGA) with the US.

  The FATCA IGA would be signed in the fourth quarter of 2014. The public consultation invites feedback on the draft Income Tax (International Tax Compliance Agreements) (United States of America) Regulations 2014 and the draft FATCA e-Tax Guide. The draft regulations set out the due diligence and reporting obligations of Singapore-based financial institutions in relation to the FATCA IGA, whereas the draft e-Tax Guide provides further explanation of those obligations. The public consultation would be from September 22 to October 17.On March 17, 2015, MOF, IRAS and MAS published their responses to public feedback on the draft income tax regulations and e-tax guide relating to the implementation of the Singapore-US Foreign Account Tax Compliance Act (FATCA) Intergovernmental Agreement (IGA).

  A total of 567 suggestions were received from the public consultation, held between September 22 and October 17, 2014. They covered areas such as the information reporting obligations of trusts, the applicability of US regulations and the exemption of supplementary retirement scheme accounts (SRS) and SRS investment accounts. More than 200 suggestions that helped advance the policy objectives for implementing the Singapore-US FATCA IGA were accepted and incorporated into the regulations and e-tax guide. The remaining suggestions were felt to be inconsistent with Singapore's policy on the implementation of the IGA or with the provisions of the IGA.

20. Singapore and China strengthen financial cooperation

- MAS announced on October 27, 2014 that Singapore and China have reached an agreement on financial cooperation in offshore RMB market, capital markets and insurance.

  In particular, two initiatives were agreed:

  - Direct currency trading between Chinese Yuan and SGD would commence on October 28, 2014. This would lower foreign exchange transaction costs and encourage the greater use of the two currencies in cross border trade and investment; and

- China-incorporated financial institutions can issue RMB-denominated debt instruments in Singapore directly. This would help to diversify long-term funding for Chinese financial institutions by allowing them to tap into the international institutional investor base in Singapore.

MAS indicated further that the two countries would explore measures to strengthen cooperation in the areas of derivatives and catastrophe risk insurance.

21. MAS consults on amendments to the Securities and Futures Act

- On February 11, 2015, MAS released a Consultation Paper on Proposed Amendments to the Securities and Futures Act (SFA). In this Consultation Paper, MAS proposes certain amendments to the SFA in order to complete the expansion of its scope to regulate OTC derivatives (including the transfer of regulatory oversight commodity derivatives from the Commodity Trading Act (CTA) (Cap. 48A)).

The proposed amendments are set out in the following parts of the Consultation Paper:
- Part A – Amendments arising from the OTC Reforms;
- Part B – Transfer of Regulation of Commodity Derivatives from CTA to SFA; and
- Part C – Other Amendments to the SFA

The Consultation Paper also includes four annexes, which set out the draft amendments to the SFA as well as to the Second Schedule to Securities and Futures (Licensing and Conduct of Business) Reuglations (SF/(LCB)R).

Certain key amendments proposed in the Consultation Paper include, among others:
- Amendments to the product definitions in Part I of the SFA;
- Amendments to Part II of the SFA to extend the markets regime to OTC derivatives;
- New provision in Part VIA of the SFA to ensure that banking confidentiality does not restrict the efficacy of the trade reporting regime;
- New Part VIC of the SFA to introduce powers to set out the requirements under the trading obligation;
- Amendments Part IV and the Second Schedule to the SFA, and the Second Schedule to the SF/(LCB)R to extend the capital markets services licensing regime to OTC derivatives; and
- Consequential amendments to the remaining parts of the SFA, the Financial Advisers Act (FAA) and the CTA arising from the proposals.

MAS also proposes a revised principles-based definition of a “derivative contract”, which aims to describe the key elements of derivatives. This also provides flexibility for MAS to regulate OTC derivatives, which may evolve in complexity and structure.

22. AML/CTF bill moves to parliament

- On April 13, the Monetary Authority of Singapore (Amendment) Bill 2015was moved for a first reading in the Singaporean Parliament. The proposed amendments to the Monetary Authority of Singapore Act (MAS Act) would clarify MAS’s powers in relation to anti-money laundering (AML) and countering the financing of terrorism (CFT) supervision and enhance the effectiveness of

Singapore's AML/CFT regime, particularly in relation to international cooperation. The enhancements would also align the regime with international AML/CFT standards set by the Financial Action Task Force (FATF) and Core Principles for Effective Banking Supervision issued by the Basel Committee on Banking Supervision.

The MAS Bill would:

- set out requirements for financial institutions (FIs) to conduct customer due diligence and retain such records;
- set out the MAS's powers to conduct AML/CFT inspections on FIs and to approve such inspections by home AML/CFT supervisors;
- subject to strong safeguards, enable the MAS to provide information to:
  a) foreign AML/CFT supervisors, in connection with the AML/CFT supervision of foreign FIs carrying on financial activities in that country; and
  b) domestic authorities, in connection with the investigation or enforcement action of an offence, or any supervisory action taken against a person regulated by that authority for the contravention of AML/CFT requirements;
- clarify that the scope of the AML/CFT regime extends to designated financial holding companies and non-bank credit card or charge card issuers.

The MAS conducted a public consultation on the proposed enhancements in June 2014. The consultation paper and the MAS responses to comments received are published on the MAS website.

23. MAS and RBA sign MOU

- On April 14, 2015, MAS and RBA entered into a memorandum of understanding (MOU) on cooperation arrangements to facilitate access by the RBA to information on derivatives contracts held in trade repositories in Singapore. The MOU is meant to enable RBA to fulfil its responsibilities and mandates, while ensuring the privacy of the information is appropriately protected. The MOU also provides for derivatives trade data to be disclosed to an Australian governmental entity, subject to strict conditions.

24. MAS releases policy consultation paper on intermediaries dealing in derivative contracts

- On June 3, 2015, MAS released its Policy Consultation paper on Regulatory Framework for Intermediaries Dealing in OTC Derivative Contracts, Execution-related Advice and Marketing of Collective Investment Schemes. Part A of the consultation considers the proposed regulatory framework for intermediaries dealing in OTC derivatives. This includes considerations relating to admission criteria, business conduct requirements, capital and financial requirements and transitional arrangements. Part B considers proposed amendments to the Securities and Futures Act (SFA) and Financial Advisers Act (FAA), in relation to execution-related advice and marketing of collective investment schemes, among other things.

  As background and as described earlier, on February 11, 2015, MAS issued a consultation paper that proposed amendments to the SFA in order to complete the expansion of the scope of the SFA to regulate derivatives contracts. This included the expansion of the capital markets services licensing requirement to OTC intermediaries.

25. MAS issues consultation on resolution

- On June 23, 2015, MAS released its Consultation Paper on Proposed Enhancements to Resolution Regime for Financial Institutions in Singapore. In this paper, MAS proposes to enhance its resolution regime by strengthening its powers to resolve distressed institutions while maintaining continuity of their critical economic functions. The policy proposals cover:

  - Recovery and resolution planning;
  - Temporary stays and suspensions;
  - Statutory bail-in powers;
  - Cross-border recognition of resolution actions;
  - Creditor safeguards; and
  - Resolution funding

The proposed policy changes would be introduced primarily through amendments to the MAS Act, supported by the necessary regulations. MAS would also consult on the legislative amendments, after considering the feedback received on the policy proposals in this consultation.

26. MAS issues notice on FMI standards

- On August 31, 2015, MAS issued its Notice on Financial Market Infrastructure Standards (Notice). The notice applies to licensed trade repositories and approved clearing houses. MAS had previously released its Monograph on Supervision of Financial Market Infrastructures (Monograph). MAS also administers the Securities and Futures Act (Cap. 289) (SFA) in respect of the supervision and oversight of trade repositories and clearing houses in accordance with the Committee on Payment and Settlement Systems and International Organization of Securities Commissions Principles for Financial Market Infrastructures (PFMIs), as set out in the monograph. Some of the principles of the PFMIs are set out in the SFA and subsidiary legislation issued under the SFA. The notice sets out the remaining principles in the PFMIs that an FMI has to comply with.

  The notice sets out the standards that are applicable to FMIs. These standards apply to:
  - Legal risk management;
  - Governance arrangements;
  - Credit risk management;
  - Framework for the comprehensive management of risks;
  - Collateral;
  - Margin;
  - Liquidity risk;
  - Settlement finality;
  - Money settlements;
  - Physical deliveries;
  - Exchange-of-value settlement systems;
  - Participant-default rules and procedures;
  - Segregation and portability;
  - General business risk;
  - Custody and investment risk;
  - Operational risks;
  - Access and participation requirements;
  - Tiered participation arrangements;

- FMI links;
- Efficiency and effectiveness;
- Communication procedures and standards;
- Disclosure of rules, key procedures and market data; and
- Disclosure of market data by trade repositories.

The notice takes effect on August 31, 2015.

27. MAS paper on removing DBU-ACU divide

- On August 31, 2015, MAS released its Consultation Paper on Removing the DBU-ACU Divide – Implementation Issues. All banks in Singapore currently have to maintain two accounting units – the domestic banking unit (DBU) and the Asian currency unit (ACU). Transactions in Singapore dollars can be booked only in the DBU, whereas transactions in foreign currencies are typically booked in the ACU. In June, the MAS announced that it will remove the DBU-ACU divide. Therefore, banks will no longer need to maintain two separate accounting units.

  This consultation paper considers the proposed amendments to regulatory requirements that will be required following the removal of the DBU-ACU divide. As many of the prudential limits in Singapore are calibrated based on the DBU-ACU divide, the removal will require changes to certain regulatory provisions, including:

  - Priority of specified liabilities in insolvency (Section 62(1) of the Banking Act);
  - Asset maintenance requirements (MAS Notice 640);
  - Anti-commingling limits (regulations 23F and 23G of the Banking Regulations);
  - Equity investment limits (Section 31 of the Banking Act) and immovable property limit (Section 33 of the Banking Act); and
  - Concentration limits (MAS Notice 639)

  MAS is also working separately with industry participants on proposed amendments to the regulatory returns based on the DBU and ACU, as set out in MAS Notice 610 –Submission of Statistics and Returns.

28. MAS proposes amendments to financial market legislation

- On September 18, 2015, MAS issued a consultation paper on proposed amendments to the Securities and Futures Act (SFA), Financial Advisers Act (FAA) and Trust Companies Act (TCA). The MAS had conducted a review of these acts and their subsidiary legislation to identify areas where the MAS's supervisory powers should be further enhanced, as well as strengthen business conduct requirements applicable to entities regulated under these acts. This is in line with the MAS's ongoing review of the Banking Act, and it is intended that these proposed enhancements will harmonise similar requirements across the various acts where appropriate.

  The proposed amendments would also ensure that the MAS is apprised of specified adverse developments in financial institutions, provide for suitable powers of regulatory oversight, and align requirements for these financial institutions with those applicable to banks where appropriate. The proposed amendments will apply to financial institutions including SFA-regulated entities comprising capital markets services licence holders and market infrastructures consisting of approved exchanges and recognised market operators, approved clearing houses and recognised clearing houses, licenced trade repositories and licenced foreign trade repositories and approved holding companies.

In the consultation, the MAS also proposes to provide an option for investors to more conveniently pledge securities held in their central depository direct accounts to their brokers. This would facilitate investors using these securities to meet collateral requirements. To promote financial prudence, securities brokers will be required to collect a minimum of 5% of collateral from their customers for the trading of listed securities.

29. MAS proposes margin requirements for non-centrally cleared derivatives

- On October 1, 2015, the MAS issued its Policy Consultation on Margin Requirements for Non-Centrally Cleared Derivatives (Consultation). These policy proposals will be effected by way of new rules, which MAS will consult on after considering feedback received from this Consultation.

  A summary of the key proposals are set out below:

  <u>Product Scope</u>
  MAS proposes to subject all OTC derivative contracts that are not centrally cleared by a qualifying central counterparty (QCCP) to margin requirements. Physically-settled foreign-exchange (FX) forwards and swaps shall be exempted from the margin requirements. However, entities are expected to appropriately manage the risks associated with such FX transactions.

  <u>Entity Scope</u>
  MAS proposes to apply margin requirements on entities conducting regulated activities under the SFA. MAS also proposes to adopt a phased-in approach to give affected entities time to operationalize the proposed margin requirements. For a start, MAS proposes to apply margin requirements only to the following entities (being MAS Covered Entities):

  - Banks licensed under the Banking Act (Cap. 19);
  - Merchant banks approved as financial institutions under Section 28 of the Monetary Authority of Singapore Act (Cap. 186); and
  - Other licensed financial institutions (which include entities licensed under the Finance Companies Act (Cap. 108), the Insurance Act (Cap. 142), the SFA and the Trust Companies Act (Cap. 336). Fund Managers shall be subject to MAS' proposed margin requirements for uncleared derivatives if they are legal counterparties to the transaction.)

  MAS is also considering a limited exemption for licensed financial institution (as described above) from margin requirements, should the exposure of their uncleared derivative transactions booked in Singapore fall below a certain threshold.

  MAS proposes to exempt counterparties such as central banks, sovereigns, public sector entities, multilateral development banks and the Bank for International Settlements from margin requirements.

  MAS is also considering whether to require investment funds domiciled in Singapore to comply with the proposed margin requirements, if these funds have exposure in uncleared derivatives in excess of the exemption threshold. For purposes of calculating the threshold, MAS is considering treating an investment fund as distinct and separate only if the fund is:

  - a distinct segregated pool of assets for the purposes of fund insolvency or bankruptcy; and
  - not collateralized or guaranteed by any other person.

  <u>Margin Obligations on MAS Covered Entities</u>

MAS proposes that an MAS Covered Entity is subject to both initial margin (**IM**) and variation margin (**VM**) requirements when all of the following conditions are met:

- the MAS Covered Entity is a legal counterparty to the transaction;
- the transaction is booked in Singapore; and
- the transaction is entered into with a counterparty which is either:
  (i) an MAS Covered Entity; or
  (ii) an overseas regulated financial firm.

With respect to the exchange of IM and VM on a bilateral basis (post-and-collect), MAS is considering an alternative of imposing a collect-only requirement on MAS Covered Entities. It should also be noted that while transactions booked in foreign subsidiaries or foreign branches of locally-incorporated MAS Covered Entities are not subject to MAS' margin requirements, MAS will closely monitor the extent of risk build-up in such entities.

VM: All MAS Covered Entities are to calculate their VM obligations at least on a daily basis. The full amount of VM (i.e. a zero threshold) must be exchanged (if MAS adopts a post-and-collect regime) or collected (if MAS adopts a collect-only regime) from counterparties within two business days following the execution of a new uncleared derivative contract.

IM: All MAS Covered Entities are to calculate their IM obligations (i.e. no netting of IM payments between the two counterparties) at least on a sufficiently regular basis to reflect changes in risk positions and market conditions.

MAS proposes that the exchange or collection of IM shall only be required if the cumulative IM exposure from the counterparty exceeds S$80 million. The threshold of S$80 million is to be calculated at the group-consolidated level and is based on all uncleared derivatives between the two consolidated groups. MAS also proposes that IM requirements only apply to transactions between two entities, each belonging to a group whose aggregate gross notional uncleared derivatives exposure, including physically-settled FX forwards and swaps, exceeds the IM phase-in thresholds as outlined in the Consultation. At the end of the phase-in period, the minimum level of uncleared derivative activity necessary for MAS Covered Entities to be subject to IM requirements shall be set at S$13 million.

All margin transfers shall be subject to a *de minimis* minimum transfer amount. This shall not be higher than S$800,000.

The Consultation Paper also provides information on the following areas:
- Margin Calculations and Methodologies;
- Eligible Collateral and Haircuts;
- Treatment of Collateral;
- Treatment of Intra-Group Transactions;
- Treatment of Cross-Border Transactions; and
- Implementation Schedule

To further understand the potential impact of the proposed margin rules, MAS will be engaging the industry to undertake another study of the impact of the proposed margin requirements.

ISDA Submissions (since 2010)

- March 12, 2010: ISDA submission to MAS on the Consultation Paper on 'Review of the Regulatory Regime Governing the Sale and Marketing of Unlisted Investment Products'
- March 26, 2012: ISDA submission to MAS on the Consultation Paper on 'Proposed Regulation of OTC Derivatives'
- March 26, 2012: ISDA submission to MAS on the Consultation Paper on 'Transfer of Regulatory Oversight of Commodity Derivatives from IE to MAS'
- June 22, 2012: ISDA submission to MAS on the Consultation Paper I on 'Proposed Amendments to the Securities and Futures Act on Regulation of OTC Derivatives'
- August 31, 2012: ISDA submission to MAS on the Consultation Paper II on 'Proposed Amendments to the Securities and Futures Act on Regulation of OTC Derivatives'
- November 7, 2012: ISDA submission to SSGX with regard to the Consultation Paper on 'Client Clearing in OTCF Contracts and Enhanced Customer Collateral Protection for OTC Contracts and OTCF Contracts'
- January 12, 2013: ISDA submission to MAS on the Consultation Paper on 'Proposed Amendments to the MAS Act regarding the resolution of Financial Institutions'
- February 8, 2013: ISDA submission to MAS on the Consultation Paper on 'Draft Regulations pursuant to the Securities and Futures Act for Trade Repositories and Clearing Facilities'
- July 24, 2013: ISDA submission to Monetary Authority of Singapore regards to the Consultation Paper on Draft Regulations Pursuant to the Securities and Futures Act for Reporting of Derivatives Contracts.
- August 7, 2013: ISDA submission to Monetary Authority of Singapore on Feedback on the data fields in Schedule 2 of the Consultation Paper on Draft Regulations Pursuant to the Securities and Futures Act for Reporting of Derivatives Contracts.
- November 5, 2013: ISDA letter to MAS on Over-the-Counter Derivatives Trade Reporting in Singapore
- November 15, 2013: ISDA submission to Singapore Exchange Limited on Proposed Amendments to SGX-DC Remote Clearing Membership and Derivatives Clearing Organization Rules.
- March 7, 2014: ISDA submission to The Monetary Authority of Singapore on MAS Relief Letter.
- August 8, 2014: ISDA submission to Monetary Authority of Singapore on the data fields in the First Schedule of the Consultation Paper on the Draft Securities and Futures (Reporting of Derivatives Contracts) (Amendment) Regulations 2014.
- August 15, 2014: ISDA submission to Monetary Authority of Singapore regards to the Consultation Paper on Draft for Reporting of Foreign Exchange Derivatives Contracts.
- March 31, 2015: ISDA submission to Monetary Authority of Singapore with regards to MAS's Consultation Paper on Proposed Amendments to the Securities and Futures Act.
- July 10, 2015: ISDA joint submission with FIA Asia and ASIFMA to Monetary Authority of Singapore with regards to Policy Consultation on Regulatory Framework for Intermediaries Dealing in OTC Derivative Contracts, Execution-Related Advice, and Marketing of Collective Investment Scheme. This submission is not yet public.
- July 29, 2015: ISDA submission to Monetary Authority of Singapore with regards to Consultation Paper on Proposed Enhancements to Resolution Regime for Financial Institutions in Singapore. This submission is not yet public.
- July 31, 2015: ISDA submission to Monetary Authority of Singapore with regards to Consultation Paper on Draft Regulations for Mandatory Clearing of Derivatives Contracts. This submission is not yet public.

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

1. Taiwan implements mandatory trade reporting

- 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 are required to be reported. Effective on January 02, 2013 (Phase 2), FX options and forwards must be reported. Reporting of all other derivatives started 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). Effective on January 2, 2013, reporting firms are required to separately confirm the uploaded details of the single-sided deals (trades to which uploaded by one party only) by T+1 and Gretai started to perform sample checking for those confirmed single-sided deals from March 18, 2013.

2. FSC imposes Chinese language translation requirement for OTC derivatives transactions with non-professional investors

- On June 17, 2014, FSC approved that revised "Self-regulatory Rules governing Banks' Financial Derivatives Business" issued by the Bankers Association, a SRO in Taiwan. Under the revised rules, onshore banks selling OTC derivatives to non-institutional investor including all corporates and individuals must provide Chinese translation of the agreements. FSC has given banks a 3-month grace period (and in the case ISDA documentation, 6-month) to comply with the new language requirement.

3. Taiwan: FSC publishes new rules on liquidity coverage ratio

- On November 4, 2014, FSC issued new rules to implement the liquidity coverage ratio (LCR) and liquidity risk monitoring. From January 1, 2015, domestic Taiwanese banks would be required to submit monthly reports on their LCR to FSC and the central bank. Additionally, a phase-in period would be implemented whereby Taiwanese domestic banks would be required to maintain a minimum LCR of at least 60% from January 1, 2015. The LCR percentage would be raised by 10 percentage points per annum until it reaches a 100% by January 1, 2019.

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

THAILAND

AT A GLANCE	
Central Bank:	Bank of Thailand (BOT) http://www.bot.or.th/english/Pages/BOTDefault.aspx
Bank Regulator:	BOT
Securities Regulator:	Securities and Exchange Commission http://www.sec.or.th/view/view.jsp?lang=en
Associations:	The Thai Bankers' Association
	Foreign Banks' Association
Legal Opinions:	Netting and collateral opinions by Baker & McKenzie
Master Agreement:	ISDA
CCP/TR Status:	No announced plans

Key Regulatory Milestones

1. Basel III commitments

- On December 14, 2012, BOT issued a notification on capital adequacy framework under Basel III. Thai banks would be required to maintain a minimum Common Equity Tier 1 (CET1) ratio of 4.5%, Tier 1 capital ratio of 6% and Total capital ratio of 8.5%, the latter of which remains unchanged from the Basel II ratio. Under the new Basel III capital framework, foreign bank branches would now be required to maintain a Total capital ratio of 8.5%, which is in line with the Thai banks. The new requirement became effective on January 1, 2013. BOT would assess the developments and impact studies on the Leverage ratio and Liquidity risk framework before adoption in Thailand.

2. Legislation on collateral

- On August 7, 2015, the National Legislative Assembly formally greenlighted the Business Security Act. This new Act will address the obstacles and concerns in the existing Civil and Commercial Code (CCC) that presently prevent the taking of security in Thailand. For instance under the CCC, only mortgages and pledges can be used as security to ensure performance under contracts.This new Act introduces a new ype of security interest under Thai law to be referred to as "business security". As security interest, the creditor in whose favor the business security is created is recognized as the secured creditor under bankruptcy law. The Act describes the persons eligible to use assets as security under the Act, the types of collateral, the creation of the business security and certain features relating to the business security as well as the enforcement of such business security. The Act will be proposed by the Prime Minister to the King for royal endorsement and will be subsequently announces in the Royal Gazette. The Act will be effective after 240 days from the date it is announced in the Royal Gazette. It should be noted that accompanying rules and regulations will also be required in order to implement the Act.

Vietnam

AT A GLANCE	
Central Bank:	The State Bank of Vietnam (SBV) http://www.sbv.gov.vn
Bank Regulator:	The State Bank of Vietnam
Securities Regulator:	State Securities Commission http://www.ssc.gov.cn
Associations:	
Legal Opinions:	
Master Agreement:	ISDA
CCP/TR Status:	

Key Regulatory Milestones

1. Derivatives Market Regulations

- In May 2015, The Vietnamese government issued a new decree 42/2015/ND-CP (Decree 42), which is understood to provide general provisions on the establishment of a derivatives market in Vietnam. Decree 42 provides information on the types of instruments that may be traded in Vietnam, as well as the participants that are expected to take part in this market. The scope of Decree 42 does not cover interest rate swaps or foreign currency swaps – these continue to be regulated by the State Bank of Vietnam. Decree 42 is the first set of regulations that are expected to be released this year aimed at developing the Vietnamese market.

2. SBV announces new administrative procedures

- On August 5, 2015, the governor of SBV issued Decision No. 1548/QĐ-NHNN to publicise new administrative procedures.

  The new administrative procedures cover the establishment and operations of credit institutions, including:

  - the procedure applicable to commercial banks and foreign bank branches requesting the renewal of a licence;
  - the procedure applicable to commercial banks and foreign bank branches requesting additional operations;
  - the procedure applicable to commercial banks and foreign bank branches requesting the renewal of a licence and additional operations.

  The new administrative procedures are formulated as stipulated in Circular No. 08/2015/TT-NHNN dated June 30, 2015, revising several articles of Circular No. 40/2011/TT-NHNN dated December 15, 2011 on granting licences and the operational structure of commercial banks, foreign bank branches and representative offices of foreign credit institutions and other foreign institutions with banking operations in Vietnam.

At the same time, SBV announced new administrative procedures for revising, providing additional operations and scope of operations of foreign branches, joint-venture banks and wholly foreign owned banks.