

APAC Monthly Update

August 2011

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

Regulatory Activities

Hong Kong:

On August 4, ISDA and ISDA board member Nitin Gulabani from Standard Chartered visited the Hong Kong Monetary Authority (HKMA) and the Securities and Futures Commission (SFC) to discuss global banks' perspectives on CCP and trade repository developments in HK and across the APAC region.

Malaysia:

On Aug 17, ISDA met with members of Malaysia Investment Banking Association (MIBA) to discuss the potential impacts of the Malaysia Capital Markets and Services (Amendment) Act 2011.

On Aug 18, ISDA met with the Securities Commission Malaysia to discuss the Malaysia Capital Markets and Services (Amendment) Act 2011, trade repository and clearing of products. On the same day, ISDA met with members of Association of Islamic Banking Institutions Malaysia (AIBIM) to discuss the netting issues in Malaysia.

Singapore:

On August 1, ISDA made a full day presentation to the Monetary Authority of Singapore (MAS) on the impact of global regulatory changes on financial institutions. Over 40 staff from MAS attended, including from legal, banking supervision and the monetary policy departments.

Committee/Working Group Activities

AsiaPacific:

On Aug 8, ISDA held the Advisory Group meeting to discuss various issues in the Asia Pacific region.

India:

On Aug 10, ISDA held a call with Juris Corp and Allen & Overy to discuss some outstanding points on the Indian CDA MCA template for market makers. A follow-up call with the same

parties was held on Aug 22 to discuss the amended final draft of the prior to the call with the larger group.

On Aug 24, ISDA held a call with FIMMA and its members to discuss the amended final draft of the MCA for market maker and user for the Indian CDS market.

New Zealand:

On Aug 19, ISDA held a call to discuss the “big picture” points and drafting comments on the draft New Zealand Financial Markets Conduct Bill.

Singapore:

On Aug 24, ISDA held its commodity working group meeting. Members were given an overview of the differences between LNG and oil contracts; the use of UCP or ISP in SBLCs and an update on the roundtable held by CFTC and SEC regarding the Dodd-Frank Act.

North Asia L&R

On August 30, ISDA held its L&R North Asia meeting with members. At the meeting, ISDA briefed members on the latest regulatory and documentation developments. Topics discussed regarding North Asia include CBRC consultation on implementation of Basel 3 guidelines, HKMA circular on Renminbi business, HKMA consultation on logistical and technical arrangements for reporting to trade repository, CNH transaction disruption event definitions, Korean CCP proposal and ISDA submission on Taiwan trade repository. The recent UK Supreme Court judgment on the flip clause (*Belmont Park Investments PTY Limited v BNY Corporate Trustee Services Limited and Lehman brothers Special Financing Inc. (LBSF)*) was also discussed at the meeting.

South Asia L&R

On Aug 25, ISDA held its L&R SA meeting with members. Topics discussed were the Australian Financial Sector Legislation Amendment (Close-out Netting Contracts) Bill 2011 submission, the draft New Zealand Financial Markets Conduct Bill, the draft of the Indian CDS MCA for market makers and users, RBI’s circular on Prudential Norms for Off-balance Sheet Exposures of Banks, RBI’s Comprehensive Guidelines on Derivatives: Modifications (Amendments), the new Indonesian Commodities Futures Trading Law, update on ISDA’s visit to KL and Malaysia’s Capital Markets and Services (Amendment) Act 2011.

Regulatory Developments

China:

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The China Banking Regulatory Commission (CBRC) has begun to seek public opinion on the draft capital rules which introduce the Basel 3 guidelines. CBRC's aim is to bring the banking regulatory framework in-line with the international standards, promote the banking sector's development and to maintain the long-term viability of the banking sector. CBRC will take into account the international standards and national practice in its implementation process. The new capital adequacy ratios for core Tier 1, Tier 1 and total capital will be 5%, 6% and 8% respectively. A further 1% will be added on for systemically important banks and a 2.5% capital conservation buffer will be applied. Additionally, a 2.5% countercyclical buffer may be applied as the need arises.

CBRC believes the higher capital requirements will have little impact on domestic banks as they have long upheld the principle of quantity and quality of capital. Banks will be given a grace period of two years for systemically important banks, and five years for non-systemically important banks to comply with the new regulations. After the regulations are implemented, not meeting the minimum capital requirements will be regarded as a serious violation. CBRC did not elaborate further on what type of punishment would be meted out.

India:

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The 2007 Comprehensive Guidelines on Derivatives were amended by the Reserve Bank of India on August 2. Market-makers (commercial banks and primary dealers) were required by the Derivatives Guidelines to conduct a "user appropriateness" and "product suitability" assessment before offering derivative products to users (primarily corporates). The amendments clarify the nature and extent of the required assessment.

Significant clarifications include that Board resolutions must:

- certify that the user has a Risk Management Policy approved by the Board dealing with inter alia the revaluation and monitoring of positions, disclosure of MTM valuations, accounting treatment, and separation of duties between front, middle and back office;
- certify that the user has guidelines for conducting derivative transactions and institutionalized arrangements for periodic review of operations and annual audit of transactions to verify compliance with the Derivatives Guidelines;
- articulate the specifics of the products that can be transacted, identify the persons authorized to transact and the trading limits assigned to such person, identify the persons authorized to sign the ISDA and similar agreements, and identify the persons to whom transactions should be reported by the market-maker (such persons must be different from the authorized traders);
- be certified by a person different from the authorized traders. One important point that has been clarified is that the market-maker is not obliged to cite the actual Risk Management Policy – it only has to obtain a Board resolution that certifies the existence of such policy.

Additionally, a bank cannot be a market-maker in a product if it cannot price such product independently. This also applies to foreign banks in India, which must have the ability to price the products locally in India. A bank's compliance officer must submit a monthly report to its Board certifying that the Derivatives Guidelines have been followed for all derivative transactions undertaken by the bank during the period under reference.

Indonesia:

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Indonesia's Currency Law came into effect on June 28. The law (in particular Articles 21 and 23) creates uncertainty around the use of a currency other than Indonesian Rupiah (IDR) as the settlement currency or the denomination currency for domestic and cross-border transactions. Although far from clear, the following appears to be the positions of the law:

- The prohibitions relate only to the currency in which actual payment is to be made. They do not prevent parties from using a foreign currency as the base or reference currency and using an agreed exchange rate to convert such amount into IDR for the purpose of making payment in IDR;

- The prohibitions extend to cross-border derivative transactions, but such transactions would fall within the exemptions from the mandatory use of IDR found in Article 21(2), specifically under "international trade transactions";
- The prohibitions apply to domestic derivative transactions but under Article 23(2), parties may agree in writing for payments to be made in a foreign currency. It is unclear whether the Currency Law applies to outstanding transactions entered into before June 28. Thus, as a matter of prudence, members should consider whether they should amend legacy outstanding domestic transactions as well as domestic transactions entered into on or after June 28.

Korea:

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In August, the Financial Supervisory Commission (FSC) published the proposed amendments to Financial Investment Services and Capital Markets Act (FISCMA) Relating to Central Counterparties. Under the proposed amendments, a CCP for OTC derivatives will be set up in time to meet Korea's end-2012 G20 commitment. The National Assembly is expected to take up discussion of proposed amendments this month. Once passed into law, further details to the proposed amendments will be added in a Presidential Decree is expected to be written by the FSC.

The proposed amendments do not provide great detail on the scope of clearing, though Korean Won swaps are expected to be the first products cleared, potentially followed by non-deliverable forwards and CDS at a later date. Items such as eligible collateral and clearing membership criteria are not covered in any detail in the proposed amendments, nor is the scope of who must clear what mandatorily. These details are expected in the Presidential Decree. ISDA is preparing a bilingual submission to the FSC and the National Assembly on issues that members would like to see addressed in the legislation and the Presidential Decree.

New Zealand:

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The Ministry of Economic Development (MED) has released an Exposure Draft of the Financial Markets Conduct Bill. This follows a comprehensive review of the securities law that commenced in 2010. Derivatives will now be included as a financial product and persons "acting as a derivatives issuer in respect of a regulated offer of derivatives" will need to be licensed. The deadline for submitting comments is September 6.

Submissions

On Aug 1, ISDA made a submission to the Treasury of Australia on Financial Sector Legislation Amendment (Close-out Netting Contracts) Bill 2011.

On Aug 26, ISDA submitted a comment to Reserve Bank of Australia on discussion paper 'Central Clearing of OTC Derivatives in Australia'.

On Aug 23, ISDA made a submission jointly with ECCT/AmCham Joint Banking Committee to Taiwan Financial Supervisory Commission on trade repository development in Taiwan over the inconsistencies between the global TR and local TR developments.

Upcoming committee and working group meetings/conferences

Meetings:

APAC Equity Ops Working Group Meeting – Hong Kong	Sep 15
L&R North Asia Meeting – Hong Kong	Sep 27
India Working Group Meeting – New Delhi	Sep 27
L&R South Asia Meeting – Singapore	Sep 29

ISDA APAC Monthly Update

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