

APAC Monthly Update

September 2015

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

Regulatory Activities

Australia:

On September 4, ISDA, FIA Asia and AFMA held an industry call with ASIC to discuss issues around the nexus requirement for central clearing.

On September 10, ISDA facilitated an industry call with ASIC to discuss the draft relief instrument extending certain existing trade reporting reliefs.

On September 15, ISDA participated on an industry call with ASIC on the proposed definition of Government Entities for masking relief purposes.

On September 16, ISDA held a call with ASIC to discuss counterparty consent issues for masking relief.

On September 23, ASIC held a call with ISDA to discuss its revised position on nexus requirements for mandatory clearing.

China:

On September 8:

- ISDA visited CBRC to discuss resolution and recovery issues and PBOC to discuss CCP risk management and equivalence issues.
- ISDA held a conference in Beijing "Current Issues in Derivatives" attended by 29 Chinese regulators.

On September 9, ISDA made a presentation to Dalian Commodities Exchange on OTC Derivatives Clearing.

Korea:

On September 21, ISDA met with:

- Korea Exchange to discuss updates on ESMA recognition for Korea, G-20 regulatory reform implementation including WGMR and TR, and recovery and resolution regime for CCP.
- Financial Supervisory Service to discuss BRRD's impact to Asian CCPs, G-20 regulatory reform implementation including WGMR and TR, and updates on ESMA recognition for Korea

- Bank of Korea to discuss global regulatory issues, recovery and resolution regime for KRX, and updates on ESMA recognition for Korea
- Financial Services Commission to discuss global regulatory issues, updates on ESMA recognition for Korea, and composition of KRX's risk management committee

On September 22, ISDA held a conference in Seoul on current issues in the derivatives landscape: margin, collateral, CCPs, SEFs and global swap regulations.

Philippines:

On September 10, ISDA made a presentation on netting and collateral enforceability at the 2015 APEC Finance Ministers Meeting in Cebu.

Singapore:

On September 2, ISDA met with MAS to discuss WGMR implementation issues.

On September 4, ISDA held a call with the MAS to discuss the extension of masking relief.

Committee/Working Group Activities

North Asia L&R:

On September 29, ISDA held its Asia-Pacific Legal & Regulatory Committee Meeting (North Asia) in Hong Kong.

ISDA provided the following updates on North Asia developments: ISDA's trip to Beijing, ISDA's letter to PBOC, NDRC's notice on offshore bond issuance, circular released by SSE, SZSE and CFFEX on circuit breaker, FSDC's report on enhancing HK's role as a booking centre, HKMA's letter on unmatched/unlinked trades, HKMA's circular on reporting of OTC derivatives, ISDA's trip to Seoul, ESC's equivalence decision for South Korea, the MOU between CFTC and FSC, and FSS' guidelines on bank compliance.

ISDA also provided the following updates on Australia: ASIC's trade reporting relief instrument, RBA's annual assessment of ASX clearing and settlement facilities, Treasury's capability review of ASIC, ministerial determination on central clearing and finalized regulation on central clearing/single-sided reporting, and Australian regulators' 4-year corporate plans.

The meeting also discussed the following South Asia updates: ISDA's submission to CCIL on CCP recovery and resolution mechanism, SEBI's new fee and other requirements for clearing members, SEBI's report of Committee on Clearing Corporations, RBI's designation of State Bank of India and ICICI Bank as D-SIBs, RBI's annual report, enhancements to MAS' regulatory framework for safeguarding investors' interests, MAS' consultation paper on proposed amendments to the Securities and Futures Act, Financial Advisers Act and Trust Companies Act, MAS' consultation paper on removing DBU-ACU divide, Thailand's new Business Security Act.

ISDA updated members on the following latest ISDA initiatives: ISDA Model Clause relating to Article 55 of BRRD, ISDA Opinions Questionnaire, Australian single-sided reporting letter, ISDA's new industry initiative for derivatives product identification standard, WGMR legal and documentation work, deletion of rate source definition for the SFEMC PKR Indicative Survey Rate and SFEMC VND Indicative Survey Rate, revised ISDA European Gas Annex, client clearing opinions related to EU Addendum "third wave jurisdictions".

South Asia L&R:

On October 1, ISDA held its Asia-Pacific Legal & Regulatory Committee Meeting (South Asia) in Singapore. The meeting began with a presentation on the SFTR by Clifford Chance. Members topics were then raised which included MAS masking relief. ISDA updated the meeting on the following developments in Australia: ASIC's release of the finalized trade reporting relief instrument, RBA's annual assessment of ASX clearing and settlement facilities, Treasury's capability review of ASIC, Treasury's release of Ministerial determination on central clearing and finalized central clearing/single sided reporting regulation, APRA's minor clarification on CcyB, the Australian regulators' release of their 4-year corporate plans and Treasury's consultation on cost recovery for ASIC.

The following India matters were also discussed: ISDA's submission to CCIL on its Consultation Paper on CCP Recovery and Resolution Mechanism, SEBI's new fees, net worth, and minimum deposit requirements for clearing members and self-clearing members, SEBI's Report of Committee on Clearing Corporations, RBI's designation of State Bank of India and ICICI Bank as D-SIBs and RBI's release of its annual report. The meeting also considered the recent Indonesian Supreme Court decision in the PT Bangun Karya Pratama Lestari v Nine AM Ltd case. The following Singapore developments were also considered: MAS enhancements to its regulatory framework for safeguarding investors' interests, MAS' consultation paper on proposed amendments to the Securities and Futures Act, the Financial Advisers Act and the Trust Companies Act and MAS' consultation paper on removing the DBU-ACU divide – implementation issues. Also discussed was the MAS policy consultation on margin requirements on for non-centrally cleared derivatives, which was released during the course of the meeting.

ISDA highlighted the meeting the Business Security Act in Thailand and provided updates on the following China matters: the recent ISDA trip to Beijing, the ISDA letter to PBOC, the NDRC notice to reform administration regime if offshore bond issuance and the circular released by SSE, SZSE and CFFEX seeking public comments on the introduction of the circuit breaker. The following Hong Kong developments were also discussed: the FSC report on enhancing Hong Kong's role as a booking centre for financial institution operations, the HKMA letter on reviewing/resolving unmatched/unlinked trades, HKMA's circular on the reporting of OTC derivative transactions and the ISDA response to the SFC consultation on Financial Resources Rule.

ISDA also updated the meeting on these Korea developments: an update on ISDA's recent trip to Seoul, the ESC draft implementing act for an equivalence decision for South Korea, the CFTC MoU with the FSC, KRX's revised fee schedule, FSS's guidelines on bank compliance, KRX amended membership regulations and BOK's annual report on payment and settlement systems.

ISDA also updated the meeting on the following ISDA efforts: an update on Article 55 BRRD, the 2015 ISDA Questionnaire, the ISDA Australian single-sided reporting letter, the ISDA industry initiative for a derivatives product identification standard, an update on WGMR legal and documentation work, the EMTA, ISDA FXC amendment deleting the rate source definition for the SFEMC PKR Indicative Survey Rate and SFEMC VND Indicative Survey Rate and work done on the ISDA client clearing opinions.

The meeting also considered certain global developments including recent FSB reports to G20 ministers and Central Bank Governors on data gaps and work on foreign currency exposures.

Other Working Groups:

Asia Identifiers and Delegated Reporting Sub-WG:

The Sub-WG had a call on 25 September. Discussions centred around the recent consultations by CPMI-IOSCO on UTI and other data elements (other than UTI/UPI) and ISDA's responses, confirmed synchronisation of Australian UTI relief with that of Singapore and Hong Kong, historical UTI pairing and sharing, a recent letter from the HKMA on unlinked trades in the HKTR, UTI linking of structured trades, ISDA's new initiatives on product symbology, recent masking relief from ASIC and an update on Singaporean masking relief, additional data to be reported under the Singaporean regime from 1 November, and the recent finalisation of the ASIC Phase 3B single-sided reporting regime and related implementation arrangements.

Members' and Other Activities:

On October 7, ISDA held a call to provide members with an overview of the MAS' Consultation Paper on OTC Margining Regulation. ISDA planned to make a submission by the October 30 deadline.

Regulatory Developments

Australia:

Contact: Keith Noyes - knoyes@isda.org / Rishi Kapoor - rkapoor@isda.org

APRA consults on changes to countercyclical buffer

On September 2, the Australian Prudential Regulation Authority (APRA) released for consultation a draft version of Prudential Standard APS 110 Capital Adequacy (APS 110). The proposed minor amendments address some potential ambiguity that APRA identified in the wording of the countercyclical capital buffer requirements in APS 110, which commence on January 1, 2016. The proposed changes are consistent with, and do not alter, APRA's policy intent in relation to the countercyclical capital buffer requirements, as set out in the September 2011 Discussion Paper and March 2012 and September 2012 Responses to Submissions: Implementing Basel III Capital Reforms in Australia.

The closing date for submissions is October 2, 2015. APRA intends to finalise the revisions to APS 110 and provide guidance to authorised deposit-taking institutions on the calculation of the countercyclical capital buffer in late 2015.

Treasury finalises clearing and reporting

On September 8, 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.

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.

RBA releases annual assessment of ASX facilities

On September 10, the Reserve Bank of Australia (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.

The 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 makes further recommendations on model validation and stress testing, recovery planning, treasury investment policy and cyber resilience.

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. Other written submissions should be submitted by September 25.

Hong Kong:

HKMA issues letter on unlinked trades

Contact: Keith Noyes - knoyes@isda.org / Rishi Kapoor rkapoor@isda.org

On September 9, the Hong Kong Monetary Authority (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.

HKMA issues module on countercyclical buffer

Contact: Keith Noyes - knoyes@isda.org / Claire Kim - ckim@isda.org

On September 25, the Hong Kong Monetary Authority (HKMA) issued its Supervisory Policy Manual (SPM) 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 Banking (Capital) Rules (BCR) provide for regulatory capital requirements in respect to the countercyclical capital buffer. An earlier SPM module (CA-B-1 Countercyclical Capital Buffer – Approach to its Implementation) explains the HKMA’s approach towards implementing the buffer as part of the capital adequacy framework for authorised institutions (AIs) incorporated in Hong Kong. The SPM module CA-B-3 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 BCR.

As set out in section 3O(1) of the BCR, and explained in Section 2 of SPM 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 (RWA_j) to the sum of the AI’s RWA_j across all jurisdictions in which the AI has private-sector credit exposure.

The new module 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 RWA_j for the AI’s non-bank private-sector credit exposures in each jurisdiction.

India:

Contact: Keith Noyes - knoyes@isda.org / Rishi Kapoor - rkapoor@isda.org

Clearing committee report tabled

On September 1, 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.

The 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.

SEBI issues regulations for clearing members

On September 8, the Securities and Exchange Board of India (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.

Malaysia: Amendments to securities laws come into force

Contact: Keith Noyes - knoyes@isda.org / Rishi Kapoor - rkapoor@isda.org

On September 22, the Securities Commission Malaysia (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.

Singapore: MAS proposes amendments to financial market legislation

Contact: Keith Noyes - knoyes@isda.org / Erryan Abdul Samad - eabdulsamad@isda.org

On September 18, the Monetary Authority of Singapore (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. The deadline for submissions is October 16.

South Korea:

Contact: Keith Noyes - knoyes@isda.org / Claire Kim - ckim@isda.org

KRX amends membership regulation

The Korea Exchange (KRX) amended its membership regulation on September 2 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.

The amended rules are effective from September 3.

FSS publishes guidelines on bank compliance

On September 16, South Korea's Financial Supervisory Service (FSS) published new guidelines on bank internal control and compliance functions. The Financial Services Commission (FSC) and FSS will implement the new guidelines on September 17 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.

KRX amends the enforcement rules

On September 10, the Korea Exchange (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.

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.

KRX revises fee schedule

On September 22, the Korea Exchange (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.

Submissions:

September 25 - 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.

Upcoming committee and working group meetings/conferences

Meetings:

Asian Public Policy Meeting	Oct 6
APAC Legal & Regulatory Advisory Group Meeting	Oct 6
AEJ Data and Reporting Compliance Working Group Meeting	Oct 7
APAC IRD Operations Working Group Meeting	Oct 14
APAC Equities Ops Working Group Meeting	Oct 15
Industry meeting with SEC Commissioner Michael Piwowar	Oct 17
FRTB Mtg – FSS, Seoul	Oct 20
FRTB Mtg – BOK, Seoul	Oct 20
Regulatory Meeting – Sydney	Oct 21
Members' Meeting - Sydney	Oct 21
Asian Steering Committee Meeting with CFTC Commissioner Giancarlo	Oct 27
Industry meeting with CFTC Commissioner Giancarlo	Oct 27
APAC CCP Risk call	Oct 28
AEJ Data and Reporting Compliance Working Group Meeting	Oct 28
South Asia L&R Meeting	Oct 29
Asia Identifiers and Delegated Reporting Sub-Working Group Call	Oct 30

Conferences:

2015 ISDA Annual Australia Conference – Sydney	Oct 22
WGMR, Bank Resolution and Resolution Stay Protocol Conference – Sydney	Oct 23
2015 ISDA Annual Australia Conference – Hong Kong	Oct 26
WGMR, Bank Resolution and Resolution Stay Protocol Conference – Hong Kong	Oct 27

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