

APAC Monthly Update

July 2011

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

Regulatory Activities

Hong Kong

ISDA hosted an Asia Pacific Regulators Workshop on July 21 with supervisors and policymakers from 19 regulatory bodies across the Asia Pacific region. The one-day session, which was a follow-up to the ISDA Asia Pacific Regulators Summit held in May, addressed specific challenges related to the implementation of over-the-counter (OTC) derivatives regulatory reform in the region. Topics discussed included the current status of central clearing and trade repository developments in Asia Pacific, implications of market-by-market regulatory and infrastructure solutions, and the impact of Financial Stability Board and G20 standards.

India

At the request of RBI, ISDA ran a one-day training seminar on Basel III on July 19 with speakers from ISDA, Citibank, HSBC, Deloitte and KMPG presenting on different aspects of Basel 3. The audience consisted of about 100 guests that RBI had invited and staff from various departments of RBI.

Committee/Working Group Activities

Australia

ISDA held a Working Group call on July 11 regarding the Australian Council of Regulator's consultation paper on CCPs. This call was for the 2nd draft of the response paper to be submitted to the Australian Treasury.

ISDA held a Working Group call on July 12 on the Australian Netting Act to finalize the details for the submission. ISDA submitted its response on Aug 1.

North Asia L&R

On July 26, ISDA held the monthly legal and regulatory meeting in Hong Kong at which ISDA briefed members the latest regulatory and documentation developments. Issues discussed at the meeting include SASAC regulations governing central state-owned enterprises' derivatives trading, CCP and trade repository developments in Hong Kong and draft disruption event language for offshore deliverable CNY trades.

South Asia L&R

On July 28, ISDA held the Asia-Pacific Legal and Regulatory ("L&R") Committee Meeting (South Asia) in Singapore. At the meeting, a member raised the issue of collateral and the CSA in Indonesia and asked

the membership for their opinion in this area. Members were also updated on Malaysia's Capital Markets and Services (Amendment) Act 2011, ISDA's trip to Malaysia and ISDA's session on the issues and impacts surrounding netting. Other topics discussed were Singapore's adoption of the FSB recommendation for trade repository and mandated clearing, Australia' Financial Sector Legislation Amendment (Close-out Netting Contracts) Bill 2011, Australia's central clearing of OTC derivatives, RBI's circular on facilitating rupee trade and Indonesian Currency law.

Market Infrastructures

ISDA held the APAC Interest Rates Derivatives Operations Working Group meeting on July 7 to discuss floating rate options amendment and settlement practice of INR.

ISDA held the APAC Equity Derivatives Operations Working Group meeting on July 14 to address a number of confirmation practices in the AEJ market.

Regulatory Developments

Australia:

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The Treasury has released a consultation paper on the Exposure Draft – Financial Sector Legislation Amendment (Close-out Netting Contracts) Bill 2011. The Bill looks to amend the Banking Act 1959 (Banking Act), the Insurance Act 1973 (Insurance Act), the Life Insurance Act 1995 (Life Insurance Act) and the Payment Systems and Netting Act 1998 (PSN Act) to address an inconsistency between Acts related to close-out netting contracts. The proposal seeks to find an appropriate balance between legal certainty and market confidence in close-out netting contracts and protecting authorized deposit-taking institutions' (ADI) depositors and insurance holders in Australia. Amendments to the Banking Act and the PSN Act would enable:

- Prohibition on exercising close-out rights for a defined period (proposed as 48hrs) after a statutory manager takes control. If the statutory manager gives notice within this defined period that the ADI will cease to meet its liabilities, close-out netting may be exercised in accordance to the contractual terms;
- Section 15C of the Banking Act will not apply after the defined period following the appointment of a statutory manager. This will allow parties to exercise their contractual rights of close-out netting except where the statutory manager has given notice that the liabilities under the contracts will continue to be met as and when that become due and payable. For example, this notice may be given where contracts have been/will be transferred to another ADI or a new entity authorized as an ADI to meet the liabilities under the contracts and in the interim, the ADI has obtained sufficient funds to continue to meet its liabilities under the contracts.

Where notice has been given that the liabilities under the contract will continue to be met, section 15C will continue to apply and parties cannot exercise rights of close-out netting merely upon appointment of a statutory manager. The same approach is proposed for the general and life insurance judicial management.

China:

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The Interim Measures for the Supervision and Administration of Overseas State-owned Assets of Central State-owned Enterprises (the Measures) issued by the State-owned Assets Supervision and

Administration Commission of the State Council (SASAC) came into effect on July 1. The Measures govern the overseas investments of central state-owned enterprises (Central SOEs) and their subsidiaries and regulate the business activities of the offshore subsidiaries of the Central SOEs.

Article 14 of the Measures provides that an SOE should centrally manage its financial derivative business, clarify decision-making process and authorization and operational procedures, and specify annual trade volume, trade authority and trading process which should be filed with or approved by SASAC according to relevant rules. Article 14 further provides that overseas financial derivative business (such as futures, options, forwards and swaps) should strictly comply with the hedging requirement and speculative activities are prohibited.

Article 29 of the Measures requires an offshore subsidiary of a Central SOE to seek approval from its parent for some significant corporate changes and business activities, including matters such as issuances of corporate bonds or stocks, acquisitions, equity investment, carrying out wealth management or financial derivative transactions, provision of security and donation, material assets disposals and transfers.

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The China Banking Regulatory Commission (CBRC) has published Administrative Measures on the Leverage Ratio of Commercial Banks, which will come into effect on January 1, 2012. The leverage ratio is defined as the relationship between Tier 1 capital and the unadjusted on- and off-balance sheet assets of a commercial bank. It cannot be lower than 4%. If a commercial bank does not meet the leverage ratio, CBRC may take the following corrective measures: provide a deadline for commercial banks to add capital; control the off-balance sheet asset growth; and require commercial banks to reduce their off-balance sheet assets.

Systemically important banks must meet the requirements by end of 2013 and non-systemically banks by end of 2016. The measures will be applied to commercial banks including Chinese-funded banks, wholly foreign-funded banks and joint venture banks incorporated in China as well as policy banks.

Hong Kong:

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On July 14, ISDA participated in a meeting convened by the Treasury Market Association (TMA) about the development of a CCP and trade repository in Hong Kong. The meeting concluded with the formation of sub-groups to address the development of a local repository, a local CCP and the regulatory framework for the OTC derivatives market in Hong Kong. ISDA was asked to be the co-chair of the CCP sub-group and will also be an active contributor to the other sub-groups.

Malaysia:

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The Malaysian Capital Markets and Services (Amendment) Act 2011 (CMSA) is awaiting Royal Assent before publication in the Gazette, after being passed by both the Senate and the House. The CMSA enables the appointment of different dates for the coming into operation of different provisions of the CMSA, or in respect of different classes or categories of persons, securities or derivatives.

Under the CMSA, the scope of regulated activities has been expanded to include "dealing in derivatives." The CMSA appoints the Securities Commission (SC) as a trade repository for over-the-counter derivatives; imposes a reporting obligation upon license-holders, registered persons (as defined in Section

76) and any other person dealing in derivatives to report such information as prescribed by the SC. Derivatives whose market price, value, delivery or payment obligations are derived from, referenced to or based on exchange rates (but excluding derivatives where Bank Negara Malaysia (BNM) or the Government of Malaysia is a party) must be reported. The CMSA also imposes a statutory duty of secrecy and prescribes circumstances in which disclosure is permitted. Breach of these duties is an offence punishable by fine and/or imprisonment.

The CMSA empowers the SC to request any person to provide any information or document considered necessary for the purposes of monitoring, mitigating and managing systemic risks in the capital market, or upon request from BNM pursuant to section 30 of the Central Bank of Malaysia Act 2009. It also empowers the SC to issue a directive that requires any person to take measures considered necessary for the purposes of monitoring, mitigating or managing systemic risk in the capital market, in the interest of financial stability. Where the person concerned is solely under the supervision or oversight of BNM, the written notice is to be issued through BNM, and the SC will recommend to BNM that the written directive be issued. Non-compliance is an offence punishable by fine and/or imprisonment.

The SC may for the purposes of monitoring, mitigating and managing systemic risk in the capital market or contributing towards financial stability enter into arrangements with other supervisory authorities including those outside Malaysia. The SC or a derivatives exchange with the SC's approval is empowered to impose position limits on standardized derivatives. A license-holder carrying on the business of dealing in derivatives or fund management in relation to derivatives cannot trade standardized derivatives on a market outside Malaysia unless the derivatives market is a Specified Exchange, or the standardized derivative is of an approved class. The SC shall enter into arrangements with BNM to coordinate the regulation of markets for OTC derivatives and financial instruments in the money market.

Singapore:

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On July 5, the Monetary Authority of Singapore (MAS) released its response to feedback on its proposed amendments to revised MAS Notice 637 relating to capital requirements and disclosures for market risk and securitizations which will be implemented on December 31. Some of the issues MAS clarifies:

- Stressed VaR will be applied to both general and specific market risk;
- Reporting banks are expected to run stress tests on their portfolios to discover portfolio vulnerabilities on an ongoing basis;
- Reporting banks are expected to ensure they have enough capital to meet market risk capital requirements on a daily basis;
- Incremental risk charge is in addition to specific risk capital charge;
- Reporting on Schedule 3-2A should be done on both group and solo levels.

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On July 21, Ravi Menon, Managing Director of the Monetary Authority of Singapore (MAS), gave a speech at MAS's Annual Report press conference. The speech indicated MAS will adopt four key thrusts from the FSB's recommendations on OTC derivatives clearing. First, MAS will work with the Singapore Foreign Exchange Markets Committee (SFEMC) to promote further standardization of derivatives products. Second, central clearing will be mandated for all standardized contracts. MAS will provide further details on how mandatory clearing will be implemented. Third, where appropriate, trading will be moved onto organized platforms for trading. Lastly, trades will need to be reported to a trade repository. MAS is currently assessing the need for a local trade repository and appropriate regulatory regime and aims to find a practical and efficient system that avoids duplication.

Taiwan:

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Taiwan's Financial Securities Commission (FSC) has mandated Gretai Securities Market to establish a local trade repository. Gretai has circulated a draft proposal in Chinese calling for a very detailed reporting across all derivative product asset classes (including the names of the traders for each transaction and deltas) by April 2012. During an ISDA call on July 13, members expressed concern over the required reporting fields, which are more detailed and harder to produce than ODRF recommended fields, as well as the aggressive schedule. ISDA will submit a comment to the regulator addressing industry concerns.

Submission

On July 8, ISDA submitted a comment to the Hong Kong Monetary Authority (HKMA) in response to the soft consultation paper on the conceptual framework of the trade repository. The trade repository, which will first cover interest rates derivatives and non-deliverable forward products, is scheduled to go live before end of 2012.

Upcoming committee and working group meetings/conferences**Meetings:**

APAC Credit Ops Working Group Meeting – Hong Kong	Aug 3
APAC IRD Ops Working Group Meeting – Hong Kong	Aug 4
L&R Advisory Meeting – Hong Kong & Singapore	Aug 8
APAC Equity Ops Working Group Meeting – Hong Kong	Aug 11
APAC Commodity Meeting – Singapore	Aug 24
L&R South Asia Meeting	Aug 25
L&R North Asia Meeting	Aug 30

Conferences:

Impact of US and European Regulations on Global Institutions – Singapore	Aug 2
Impact of US and European Regulations on Global Institutions – Hong Kong	Aug 4
New 2011 ISDA Equity Derivatives Definitions: Documenting and Confirming an Equity Derivatives Transaction – Singapore	Aug 22
New 2011 ISDA Equity Derivatives Definitions: Key Provisions – Singapore	Aug 23
New 2011 ISDA Equity Derivatives Definitions: Key Provisions – Hong Kong	Aug 24

ISDA APAC Monthly Update

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