

APAC Monthly Update

July 2013

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

Regulatory Activities

Japan:

On July 9 and 10, ISDA attended APEC Financial Forum and ABAC meetings in Kyoto. ISDA has been asked to prepare the first draft of an APEC capital markets development paper for submission at the APEC Financial Ministers conference in September in Bali.

Korea:

On July 16, ISDA met with the Korean Financial Services Commission (FSC) to discuss issues relating to central clearing, trading reporting and extraterritorial impact of the US and EU regulations on the OTC derivatives market in Korea. On the same day, ISDA also had a separate meeting with another department of the FSC to discuss issues relating to rehypothecation of Korean won denominated collateral.

On July 16, ISDA met with the Bank of Korea to discuss issues relating to global regulatory reforms in respect of OTC derivatives and related documentation issues.

Malaysia:

On July 23, ISDA met with representatives from Bank Negara Malaysia (BNM), Securities Commission Malaysia (SC), Perbadanan Insurans Deposit Malaysia (PIDM), Prokhas Sdn Bhd (Prokhas) and Shearn Delamore & Co. to discuss issues relating to enforceability of close-out netting in Malaysia.

Singapore:

On July 17, the industry met with MAS to discuss the consultation paper for trade reporting regime.

Committee/Working Group Activities

North Asia L&R

On July 30, ISDA held its North Asia Legal and Regulatory Committee meeting in Hong Kong. Topics discussed included the Securities and Futures (Amendment) Bill 2013 in Hong Kong, HKMA's response to ISDA's submissions on the reporting service agreement, the definition of "Qualifying CCP" under the "Rules on capital requirements for exposures to central counterparties" issued by CBRC, the delay of the mandatory central clearing in Korea, ASIC's final guidance on "Derivative Transaction Rules (Reporting) 2013", RBI's guidelines on Capital Requirements for Banks' Exposures to Central Counterparties, changes to ABS financial benchmarks and MAS' consultation paper on Draft Regulations Pursuant to the Securities and Futures Act for Reporting of Derivatives Contracts.

At the meeting, members also discussed ISDA coordinated Asian regulator outreach on CFTC NAL 13-41, the final cross-border Interpretive Guidance and Policy Statement and Exemptive Order issued by CFTC and ESMA 's draft technical standards regarding OTC derivative transactions by non-EU counterparties.

South Asia L&R

ISDA held its monthly Asia-Pacific Legal & Regulatory Committee Meeting (SA) in Singapore on Thursday, July 25. Topics discussed included the Report on the Australian OTC Derivatives Market issued by RBA, APRA and ASIC on July 17 and the final guidance issued by ASIC on July 10 on "ASIC Derivative Transaction Rules (Reporting) 2013". The meeting also discussed ISDA's submission to the FSLRC on Section 182 of the draft Indian Financial Code, as set out in the FSLRC Report presented to the Indian Government in March 2013, RBI's guidelines on Capital Requirements for Banks' Exposure to Central Counterparties issued on July 2 and RBI's draft guidelines released on July 2 on Capital and Provisioning Requirements for Exposure to Unhedged Foreign Currency Exposure.

ISDA provided an update on its recent trip to Kuala Lumpur and also discussed the release by the SSM of its public consultation document on the proposed Companies Bill as well as the coming into force of the Financial Services Act 2013 and the Islamic Financial Services Act 2013 in Malaysia. The meeting considered the changes to the ABS financial benchmarks and discussed the transitioning process for NDF, NDO, NDS and other contracts referencing the FX benchmarks as well as the transitioning process for rate swap and other contracts referencing the rate benchmarks. Also discussed was the release on June 26 of the MAS consultation paper on Draft Regulations pursuant to the Securities and Futures Act for Reporting of Derivatives Contracts.

The meeting went on to consider the PBOC decision announced on July 22 to further promote market-based interest rate reform, the circular released by the CBRC on implementing policies related to capital regulation for commercial banks, the HKMA response to the ISDA submission on the reporting service agreement, the HKMA announcement of rules for interim trade reporting and the gazetting on June 28 of the Securities and Futures (Amendment) Bill 2013. ISDA provided an update on its recent trip to Seoul and discussed the postponement by the FSC of the enforcement date of mandatory clearing obligations and the FSC's Best Practices for Managing Settlement Risk in Foreign Exchange Transactions.

The meeting also discussed the ISDA survey on disruption event document in respect of offshore RMB derivative transactions, the publication of the ISDA 203 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol and Reporting Guidance Note, the call hosted by ISDA on CFTC Swap Execution Facilities (SEFs) regulations and the ISDA coordinated Asian regulators outreach on CFTC NAL 13-41 Time Limited No-Action Masking Relief. ISDA updated the meeting on the consultation released by ESMA on July 17 on draft technical standards regarding OTC derivative transactions by non-EU counterparties, the Common Path Forward on Derivatives reached by the EC and CFTC on July 11 as well as the release of four No-Action Letters by the CFTC on the same day. The meeting also considered the release by the CFTC on July 12 of the final cross-border Interpretive Guidance and Policy Statement and a limited extension of its Exemptive Order.

Operations/Market Infrastructure

On July 9, ISDA held its APAC Interest Rates Derivatives Operations Working Group meeting to brief the latest regional developments on rates. The group also discussed the addition / amendment of floating rate options / matrices, novation practice and the upcoming changes in certain rate fixings.

On July 11, ISDA held its APAC Equity Derivatives Operations Working Group meeting to discuss the confirmation matching requirements in US and Europe and the documentation practice upon occurrence of corporate action events.

On July 24, ISDA held its APAC Portfolio Reconciliation Sub Working Group meeting to discuss the impact of the US and EU requirements to Asia members.

On July 3, 4, 12, 16, 22 and 24, ISDA held its AEJ Data and Reporting Compliance Working Group meetings to discuss the trade reporting matters in the region.

Members' Activities

On July 16, ISDA held its bi-annual Korean members meeting in Seoul. At the meeting, members discussed issues relating to KRX draft clearing rules, Korean law governed CSA and various Dodd-Frank compliance issues.

Regulatory Developments

Australia:

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ASIC publishes derivatives reporting final guidance

On July 10, the Australian Securities and Investments Commission (ASIC) published its final guidance, ASIC Derivative Transaction Rules (Reporting) 2013. An Australian entity will be 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.

An Australian entity that is registered as a swap dealer (SD) with the CFTC will begin reporting from October 1. An Australian ADI, an AFS Licensee, a CS Facility Licensee, an exempt Foreign Licensee or a foreign ADI, which has a total gross notional outstanding position of AUD \$50 billion as at December 31, 2013, and is not required to report under Phase 1, will begin reporting from October 1, 2014 onwards. An Australian ADI, an Australian financial services (AFS) Licensee, a CS Facility Licensee, an exempt Foreign Licensee or a foreign ADI that did not begin reporting in Phase 2 will begin reporting in Phase 3. Reporting will commence for credit derivatives and interest rate derivatives from October 1, 2014 to March 31, 2015. From April 1, 2015 onwards, these reporting entities will report all OTC transactions.

Position reporting will also be phased-in started with Phase 1 on October 1, 2014 for Australian entities that are registered as a SD with the CFTC. Phase 2 will apply to an Australian ADI, an AFS Licensee, a CS Facility Licensee, an exempt Foreign Licensee or a foreign ADI, which has a total gross notional outstanding position of AUD \$50 billion as at December 31, 2013; and is not required to report under Phase 1, on October 1, 2014 for credit and interest rate products. This will be followed by equity, foreign exchange and commodity derivative from April 1, 2015. Phase 3 will apply to those entities that did not begin reporting in Phase 2 and will begin on April 1, 2015 for interest and credit derivatives, followed by equity, foreign exchange and commodity derivative from October 1, 2015.

Regulators issue report on OTC derivatives market

On July 17, the Reserve Bank of Australia (RBA), the Australian Prudential regulation Authority (APRA) and the Australian Securities and Investment Commission (ASIC) (collectively known as “the regulators”) issued a Report on the Australian OTC Derivatives Market – July 2013. The regulators recommended that the Government considers 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. A further report is expected in early 2014.

China: CBRC issues documents on commercial bank capital requirements

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On July 19, 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.

India:

RBI publishes capital requirements final guidelines

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On July 2, 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. 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.

RBI releases capital and provisioning requirements for bank exposures

Contact: Keith Noyes (knoyes@isda.org) / Jacqueline Low (jlow@isda.org)

On July 2, RBI released its draft guidelines on Capital and Provisioning Requirements for Exposures to Unhedged Foreign Currency Exposure. RBI proposes 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 will apply. Deadline for comments is August 2.

Korea: FSC postpones mandatory clearing

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On July 3, after consulting with market participants, the Korean Financial Services Commission 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.

Singapore: ISDA comments on consultation on draft reporting regulations

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On July 24, ISDA submitted comments on the proposed amendments to the consultation paper on Draft Regulations Pursuant to the Securities and Futures Act for Reporting of Derivatives Contracts released by the Monetary Authority of Singapore (MAS) on June 26.

In the comment letter, ISDA listed the challenges and bottlenecks the industry will face in meeting the October 31 reporting commencement date. It also requested the deferment of collateral reporting until six months after it has been implemented in EMIR to allow issues to be worked out in Europe prior to implementation in Singapore.

Submission

On July 15, ISDA made a submission to India's Ministry of Finance on Report of the Financial Sector Legislative Reforms Commission. This submission is not yet public.

On Jul 16, ISDA made a submission to Hong Kong Monetary Authority and Securities and Futures Commission on the "originate or execute" definitions under the trade reporting regime. This submission is not yet public.

On July 24, ISDA made a 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.

Upcoming committee and working group meetings/conferences

Meetings:

APAC Commodity Meeting	Aug 1
APAC L&R Advisory Group Meeting	Aug 6
APAC IRD Operations Working Group Meeting	Aug 6
AEJ Data and Reporting Compliance Working Group Meeting	Aug 14
Thailand Members' Meeting (Bangkok)	Aug 20
India Members' Meeting (New Delhi)	Aug 26
North Asia L&R Meeting	Aug 27
South Asia L&R Meeting	Aug 29

Conferences:

Fundamentals of OTC Derivatives Clearing – Singapore	Aug 1
Advanced OTC Derivatives Clearing – Singapore	Aug 2

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