



# Implementation of OTC derivatives transaction reporting in Australia



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**Financial Services Council**  
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Presented by Laurence White  
Senior Manager  
OTC Derivatives Reform Unit, ASIC

Introduced by Oliver Harvey, Senior Executive Leader  
Financial Markets Infrastructure, ASIC

# Agenda



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- **Introduction**
  - G20 commitments for OTC derivatives reform
  - ASIC's role in implementation
- **Derivatives transaction reporting**
  - Details of the obligation
  - Who must report
  - Delegated reporting
  - Implementation process
  - Transitional issues, including relief
- **Other G20 mandates**
  - Central clearing and trading platforms mandate
  - Bilateral risk mitigation
  - International aspects
  - Next steps
- **Questions**

# Introduction – GFC and OTC derivatives

- GFC:
  - Collapse of Lehman Brothers and bailout of AIG
  - a lack of transparency in OTC derivatives markets hampered crisis resolution efforts of authorities and increased market uncertainty
  - Exposures between market participants not fully understood by regulators
- G20 objectives with regards to OTC derivatives markets:
  - improved transparency
  - mitigation of systemic risk
  - protection against market abuse



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# Introduction – G20 OTC derivatives reform commitments



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## Trade reporting

- All OTC derivative transactions to be reported to trade repositories

## Central clearing

- All standardised OTC derivatives transactions to be centrally cleared

## Platform trading

- All standardised OTC derivatives transactions to be traded on exchanges or electronic trading platforms, “where appropriate”

## Bilateral risk mitigation

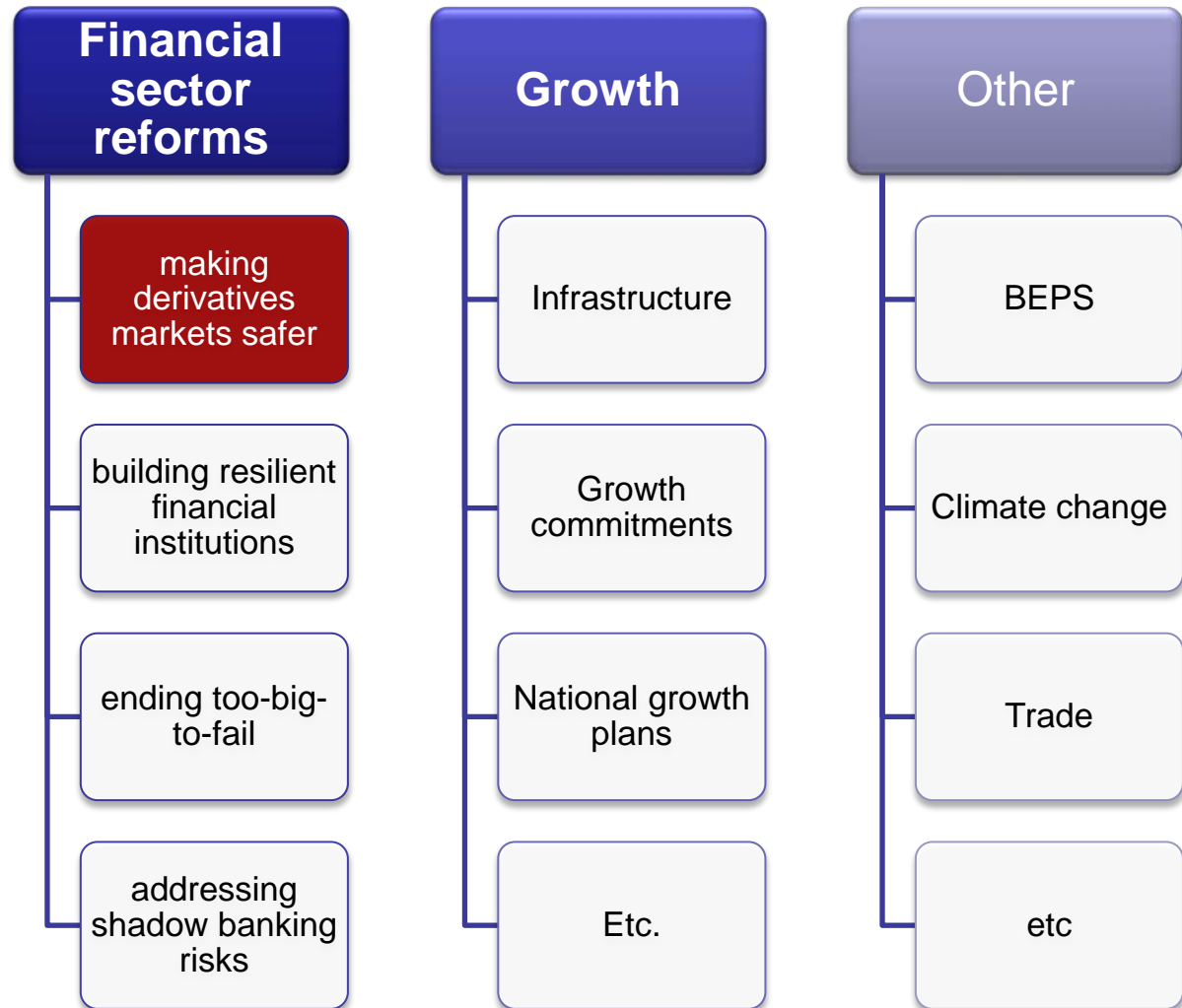
- Increased capital requirements
- Margining requirements
- Bilateral risk mitigation requirements

# G20 broader objectives



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# ASIC's Role in implementing OTC derivatives reforms



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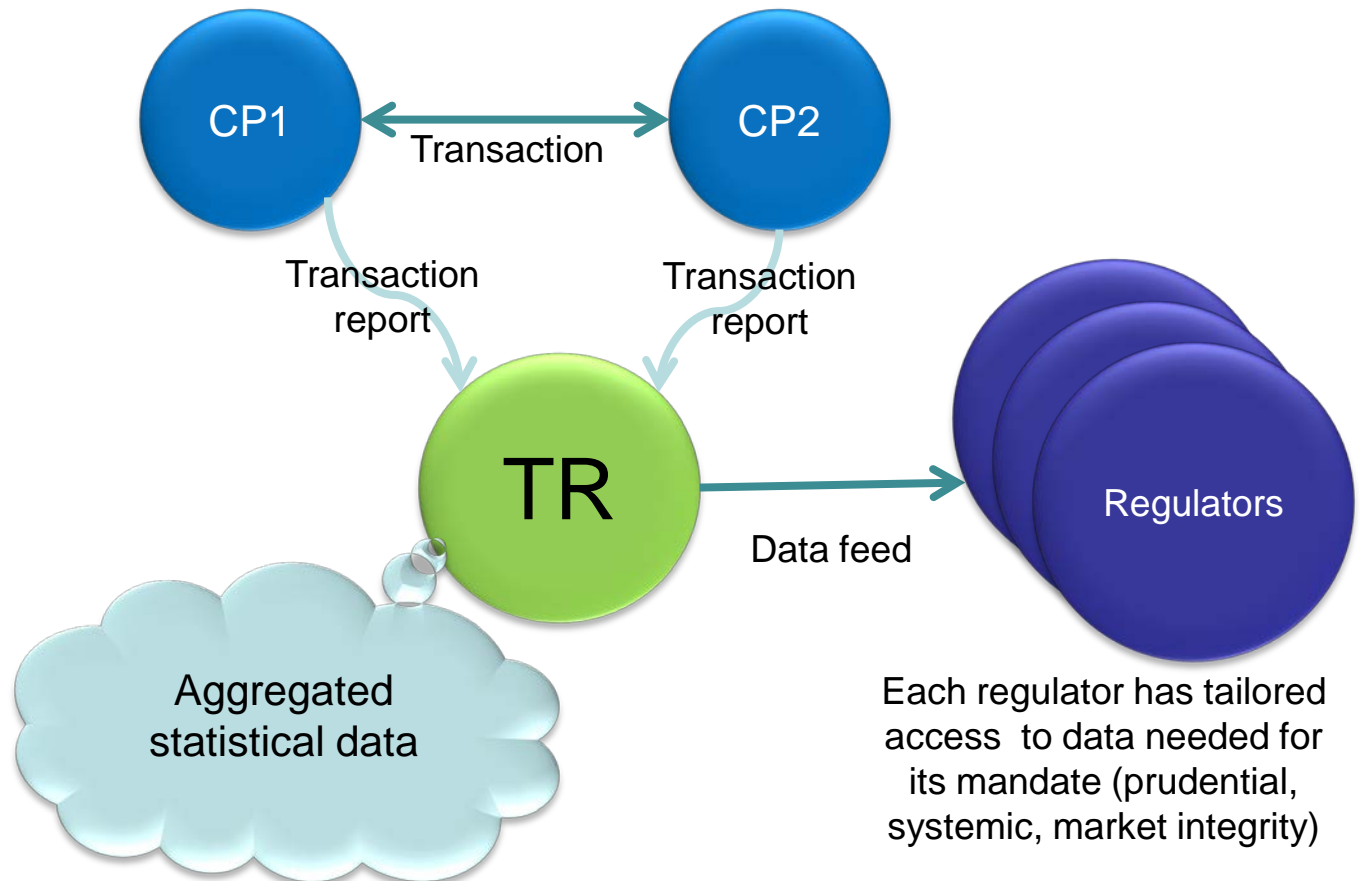
- Australian implementation through the Council of Financial Regulators (CFR):
  - ASIC
  - APRA
  - RBA
  - Treasury
- Corporations Act Part 7.5A gives ASIC rulemaking power
  - dependent on Ministerial mandates
- CFR recommends mandates to Minister through periodic market assessment reports
- ASIC rules and guidance to date:
  - ASIC Derivative Trade Repository Rules 2013
  - ASIC Regulatory Guide **RG249**: Derivative trade repositories
  - ASIC Derivative Transaction Rules (Reporting) 2013
  - Regulatory Guide **RG251**: Derivative transaction reporting

# What is trade reporting?



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# What is trade reporting?

- Reporting obligation created based on rules made by ASIC under s901A of the Corporations Act
- Obligation is to report OTC derivatives transactions to ‘trade repositories’:
  - Obligation applies to OTC trades in classes of derivatives determined by Minister
  - Obligation falls on counterparties to trade
  - Information required to be reported is set out in Schedule 2 of the Rules
  - ‘Derivatives’ definition is from Corporations Act (s761D) and relevant regulations – for example, some FX products settled within 3 business days may not be (reportable) derivatives

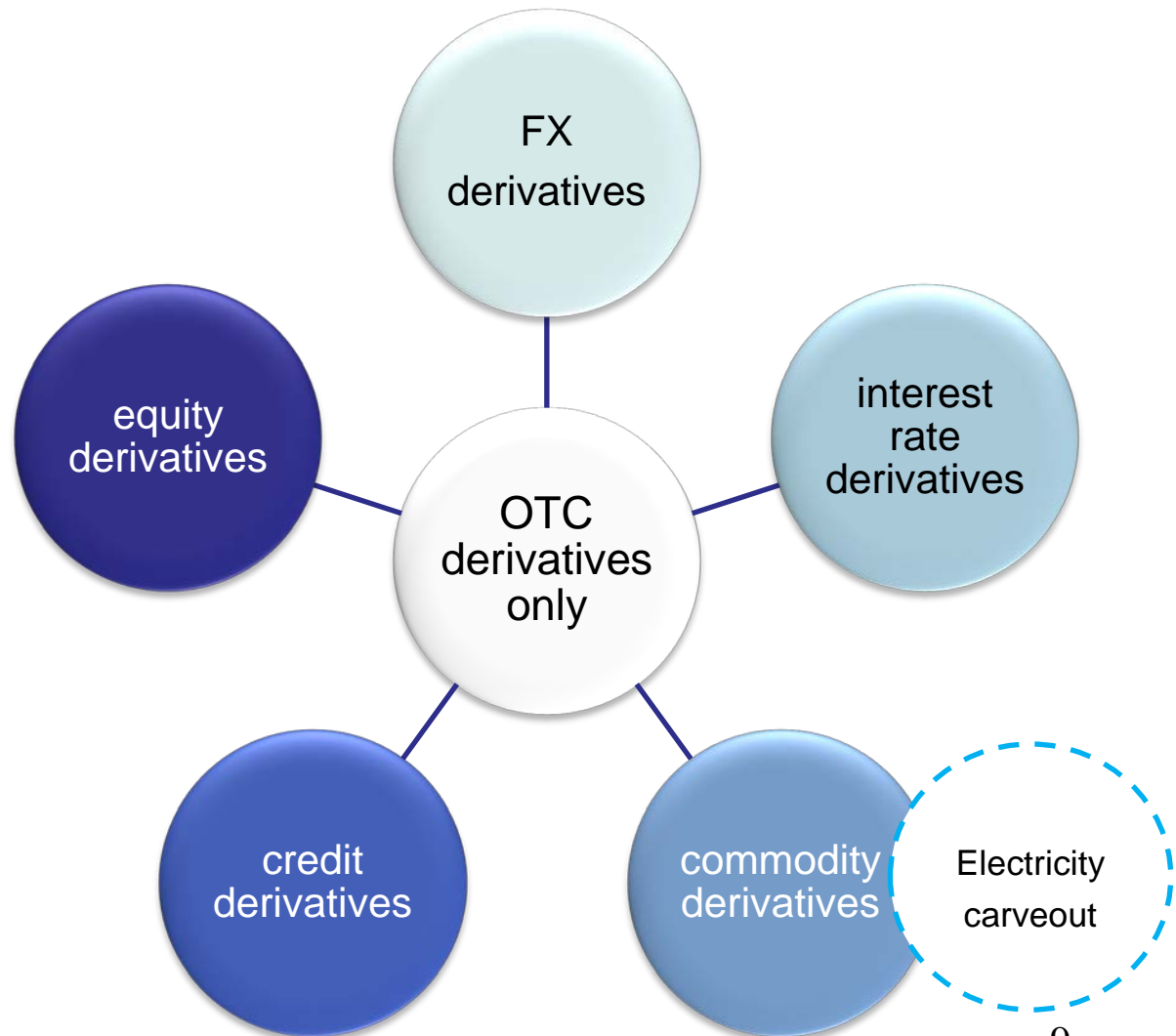


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# Which asset classes are reportable to trade repositories?



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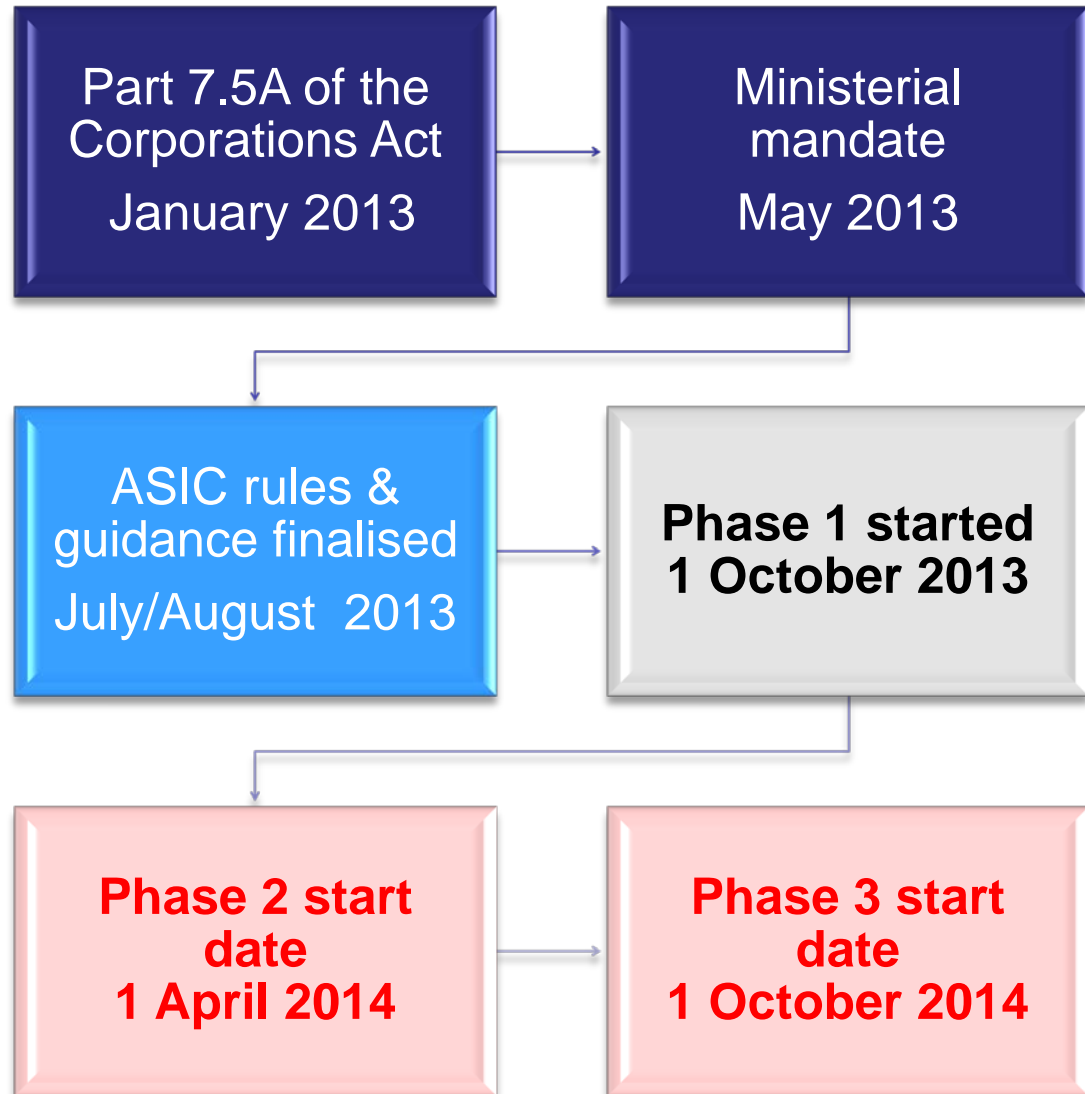
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# Trade reporting – process so far



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# Trade reporting phases



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Phase	Who covered	Transaction reporting start date
1	<b>CFTC registered swap dealers</b> (ie major banks)	1 October 2013
2	<b>Major financial institutions</b> (≥\$50b notional outstanding)	1 April 2014 (rates, credit)
		1 October 2014 (other)
3	<b>Other financial entities</b> (ADIs, AFSLs, exempt foreign licensees, CCPs)	1 October 2014 (rates, credit)
		1 April 2015 (other)

# Trade reporting rules – Who will need to report what?



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Reporting entity	Transactions reported	Reported to
Australian entity ie incorporated or formed in Australia	All OTC Derivatives to which the entity is a counterparty	Licensed TRs (prescribed TRs until 1/10/14)
Foreign ADI with a branch in Australia  Foreign corporation registered under Part 5.2B Corporations Act	All OTC Derivatives:  -booked to the P/L account of an Australian branch; <b>or</b>  - entered into by the entity in this jurisdiction	Licensed TRs  Prescribed TRs

# Trade reporting rules – Which trade repositories can be used?

- No TRs licensed as yet in Australia
  - DTCC Data Repository Singapore is licensed in Singapore and has lodged a draft application for an Australian TR licence
- TRs prescribed by Regulation (till at least 30 June):

Trade Repository	Rates	Credit	Equity	Comm	FX
DTCC Data Repository (U.S.) LLC	✓	✓	✓	✓	✓
DTCC Derivatives Repository Ltd	✓	✓	✓	✓	✓
DTCC Data Repository (Japan) KK	✓	✓	✓	✓	✓
DTCC Data Repository (Singapore) Pte Ltd	✓	✓	✓	✓	✓
Chicago Mercantile Exchange Inc	✓	✓		✓	✓
INFX SDR					✓
ICE Trade Vault, LLC	✓	✓		✓	✓
HKMA	✓				✓



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# Trade reporting: Two-sided obligation

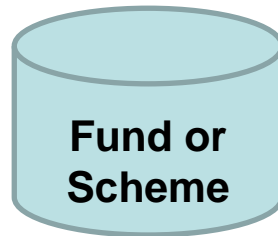
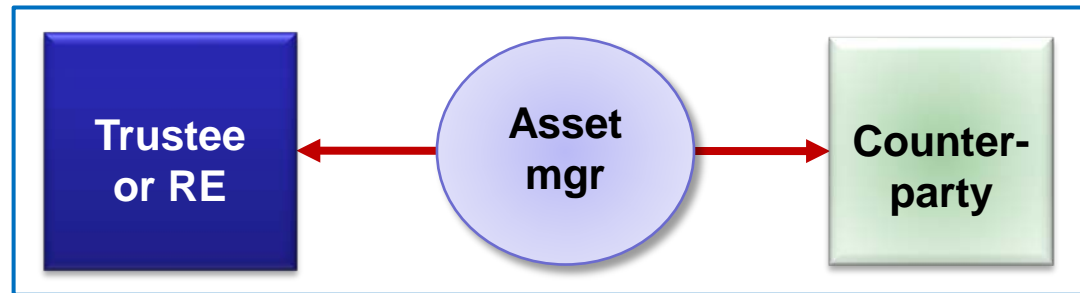


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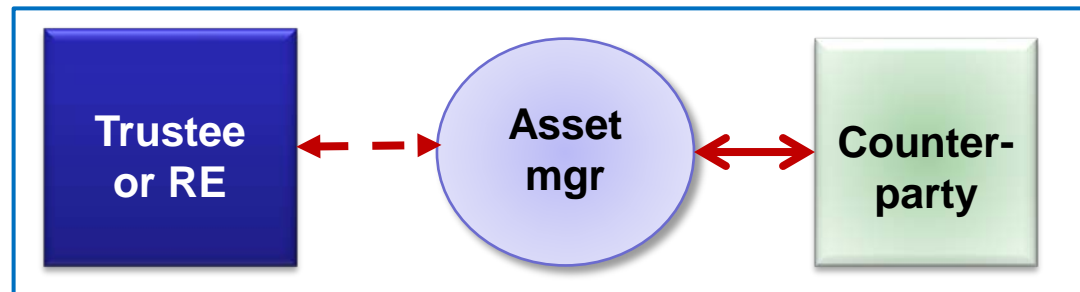
- Both counterparties to transaction must report to a TR if both are covered by scope of obligation
- If a counterparty is not subject to a reporting obligation, or has not yet been phased-in, they do not need to report.
- Reporting entities can delegate reporting to any third party e.g. to counterparty, clearing house, etc
- Foreign reporting entities can report under foreign rules to prescribed TRs if the foreign rules are “substantially equivalent”

# Trade reporting in asset management space



Dealing as agent

Dealing as principal



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# Trade reporting – Who reports?

- Generally, the **counterparty** (principal) to an OTC derivative transaction is required to report
  - Someone simply acting as agent *does not* have a reporting obligation
- Reporting entities include corporations, partnerships, managed investment schemes and trusts
- Trustees and Responsible Entities (REs) are deemed to be the reporting entity where they enter into transactions on behalf of funds or schemes, respectively
- However, the precise incidence of reporting obligations depends on how dealings are structured:
  - E.g. Whether asset manager enters into trades on its own account under a mandate or as agent for scheme/trust



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# Trade reporting rules – Delegated reporting

- The rules allow for a reporting entity to report by another person reporting on its behalf
  - A reporting entity that appoints another person to report on its behalf remains responsible for complying with the rules in relation to the report
  - The party appointed may be any third party
  - Delegating entity must take all reasonable steps to ensure accuracy and currency of info reported on its behalf
- Generally, ASIC would like to understand how delegated reporting may work in the asset management sector.
- Some of the following entity types could offer delegated reporting for asset managers or for trustees/REs – but there is no obligation on them to do so:
  - prime brokers
  - asset managers
  - Administrators
  - custodians



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# Trade reporting – Who reports?

- More complex fact situations can arise
  - More than two parties to ISDA agreements (eg in securitisation context)
  - Jurisdictional nexus in the case of international trades
    - Different scope rules apply to ‘Australian entities’ and ‘foreign entities’
- ASIC is happy to discuss particular arrangements in the asset management sector and how reporting obligation applies and has provided Q&A responses to trade associations and individual firms
  - We encourage requests via trade associations for workload/consistency reasons



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# Trade reporting rules – implementation processes



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Phase	Working group(s)	Status
1	5 Australian banks  Facilitated by ABA	<ul style="list-style-type: none"><li>•Data flowing to regulators</li><li>•Transitional exemptive relief granted &amp; now rolling off</li><li>•ASIC acquittal process</li><li>•Periodic debriefing meetings (post-implementation) focusing on data quality/troubleshooting issues</li></ul>
2	Roughly 12 international and local banks  Facilitated by AFMA/ISDA	<ul style="list-style-type: none"><li>•Fortnightly meetings</li><li>•Actively working on possible transitional exemptive relief</li></ul>
3	Investment management stream  ADIs stream  Other specialist streams	<ul style="list-style-type: none"><li>•Public events held March-April</li><li>•Convened through relevant industry groups (ABA, FSC, FTA, etc.)</li><li>•Followed by tailored engagement processes</li></ul>

# Implementing Transaction reporting for phase 3



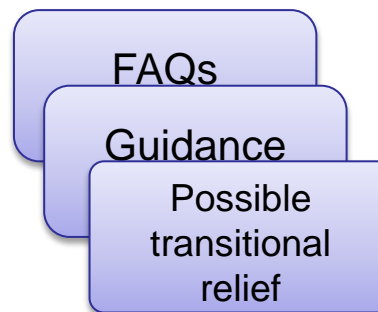
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## Working Groups e.g.



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1 October



1 April 2015



# Transitional exemptive relief

- Transitional, time-limited relief from strict compliance with elements of the reporting rules
- Granted to Phase 1 reporting entities; we are considering granting similar relief to Phase 2 reporting entities
- Relief summary available on ASIC's OTC webpage
  - Delayed reporting of products not within scope of CFTC reporting rules
  - 'Snapshot' reporting allows reporting of end of day position changes instead of all intraday trades
  - Delayed reporting where dependency on middleware providers
  - Delayed reporting of counterparty IDs (masking) for specified jurisdictions and to allow time for consents/notification
  - Clarifying relief that no 'pairing and sharing' of transaction IDs where trades done away from trading/confirmation platforms
- Possibility of tailored relief for phase 3 – very diverse groups



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# Other G20 reforms: Central clearing

- CFR OTC market report July 2013:
  - Recommended a central clearing mandate for interest rate derivatives denominated in G4 currencies
  - Initial focus on dealers with significant levels of cross-border activity
- Treasury released a proposals paper on a central clearing mandate along the lines proposed by CFR on 27 February
- ASIC will likely consult on draft rules H1 2014 if Government decides to proceed with a clearing mandate
- Next OTC market report (due March 2014) will review case for mandatory clearing of AUD-denominated interest rate derivatives
  - Initial scope of any recommendation would likely be interdealer market
  - Also examining whether there is a case to apply mandatory clearing to non-dealers
- ASX Clear (Futures) and LCH were both authorised to provide OTC rates clearing in Australia in 2013



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# Platform trading

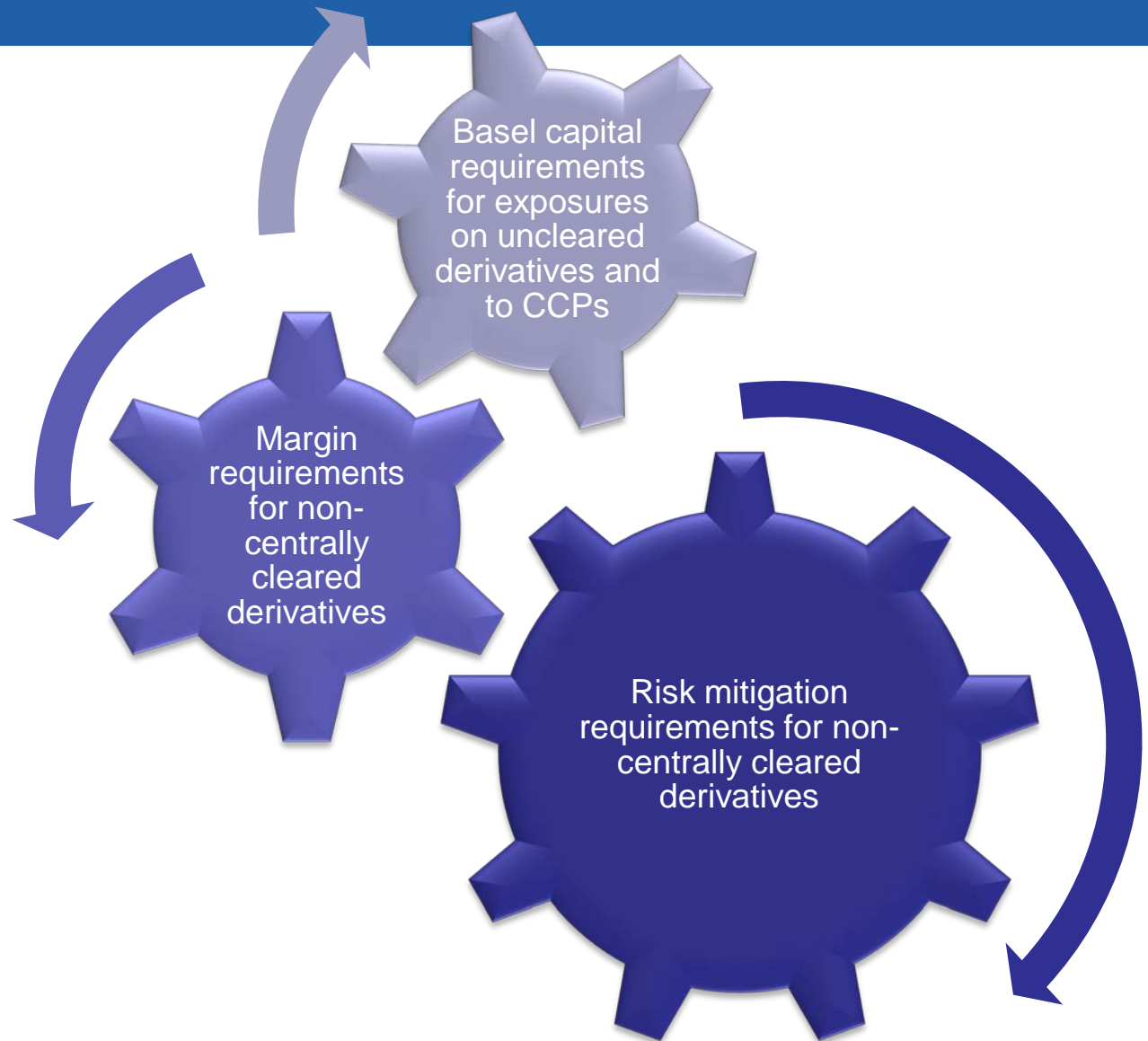


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- CFR Report on the Australian OTC Derivatives Market (July 2013):
  - Regulators are monitoring developments and seeking more detailed information on Australian market activity, to consider whether a mandatory obligation would benefit the Australian marketplace, especially where doing so will help to maintain liquidity in the Australian market by maintaining consistency with overseas developments
- Recent finalisation of CFTC SEF rules and the first mandatory trading (MAT) determinations are being made in the US
- Asian jurisdictions have expressed caution on timing of mandatory trading
  - Not wanting to damage liquidity of market
  - MiFID II has been finalised at political level but at detailed level won't be implemented till 2015-16
- Will be addressed again in next market assessment

# Bilateral risk mitigation



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# International aspects: cross-border engagement

- ASIC regularly engages with overseas regulators to maximise the possibility of positive substituted compliance or equivalence assessments and minimise duplicative/conflicting requirements
- Australian regulators including ASIC are very involved in international policy development and liaison
  - International standard-setting bodies (CPSS-IOSCO, BCBS, WGMR)
  - International coordination bodies (FSB, ODRG, ODRF)
  - Ongoing bilateral discussions with foreign regulators (CFTC, ESMA, MAS, HKMA, HK SFC, JFSA, ...)



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# International aspects: substituted compliance and equivalence

- Equivalence and substituted compliance has played a key role in our design decisions around the regime, across the G20 mandates
- Examples of results so far:
  - positive ESMA equivalence recommendations (clearing houses, trade reporting & repositories, clearing conditional)
  - CFTC equivalence decision on swap dealer regulation issued December 2013 finding a range of Australian requirements 'comprehensive and comparable'
  - Yieldbroker no-action relief from SEF registration
- Next steps
  - EC implementing Acts re CCPs, trade reporting & repositories
  - CFTC – potentially, foreign SEF regime and foreign CCP (DCO) regime



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# Next steps: broader OTC reforms

- Consultations:
  - Treasury is currently consulting on a clearing mandate for interest rate swaps denominated in G4 currencies (USD, Euro, JPY, GBP) for internationally active dealers
  - This consultation also covers trade reporting proposals, including making the end user exemption permanent
  - ASIC also intends to consult on amendments to reporting rules in the first half of this year
- CFR market assessment reports:
  - Next report due end March 2014
  - Possible extension of clearing mandate to AUD-denominated interest rate derivatives and North American/EU broad-based credit derivatives
  - Consideration of mandatory clearing for non-dealers
  - Further consideration of a platform trading mandate



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# More information



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- ASIC Derivative Transaction Rules (Reporting) 2013 & Regulatory Guide RG 249
- ASIC Derivative Trade Repository Rules 2013 & Regulatory Guide RG 251
- Background & intro materials:
  - [www.asic.gov.au](http://www.asic.gov.au) > Markets tab > OTC derivatives reform
  - Includes links to CFR, FSB and other resources
- Queries/comments etc.:
  - [OTCD@asic.gov.au](mailto:OTCD@asic.gov.au)

# Questions



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