



OTC derivatives reform

**Presentation to the
ISDA Transaction Reporting Conference
Sydney, 23 May 2014**



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Agenda



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- **Introduction**
 - G20 commitments on OTC derivatives reform
 - ASIC's role in implementation
- **Derivatives transaction reporting**
 - Details of the obligation
 - Scope of reporting
 - Delegated reporting
 - What information must be reported
 - Implementation process
- **Other G20 mandates**
 - Central clearing
 - Platform trading
 - International aspects
- **Questions**

Introduction – GFC and OTC derivatives

- GFC:
 - Collapse of Lehman Brothers and bailout of AIG
 - A lack of transparency in OTC derivatives markets hampered the crisis resolution efforts of authorities and increased market uncertainty
 - Exposures between market participants were not fully understood by regulators
 - Regulators never again wanted to be ‘blindsided’ by poorly understood and risk managed exposures in the OTC markets
- G20’s rationale in agreeing to reform of OTC derivatives markets
 - improve transparency in the derivatives markets
 - mitigate systemic risk
 - protect against market abuse



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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

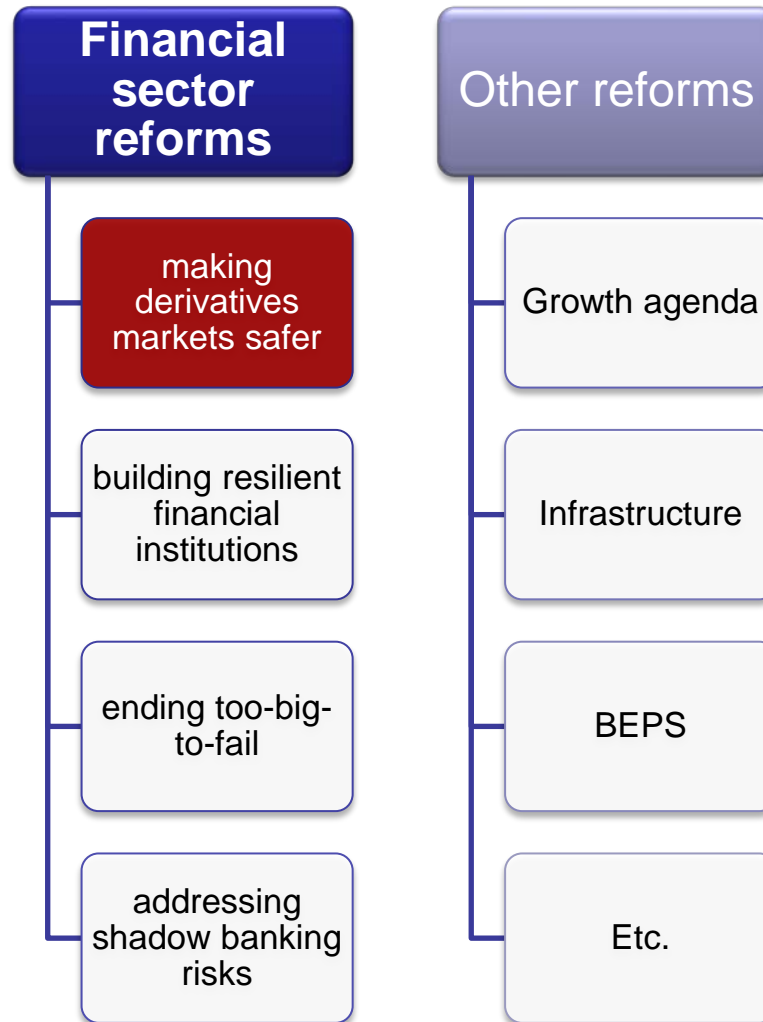
- Increased capital requirements for OTCD exposures
- Margining requirements for uncleared OTCDs
- Bilateral risk mitigation requirements

G20 broader objectives



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ASIC's Role in implementing OTC derivatives reforms

- Corporations Act Part 7.5A gives ASIC rulemaking power
 - dependent on Ministerial mandates with regards to trade reporting, central clearing, and platform trading
- ASIC advises Government on OTC mandates through the Council of Financial Regulators (CFR)
- CFR recommends mandates to Minister through periodic market assessment reports
 - 2009
 - March, Oct. 2012
 - July 2013
 - Apr 2014
 - [Next report due 2015]



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Trade reporting: Rationales

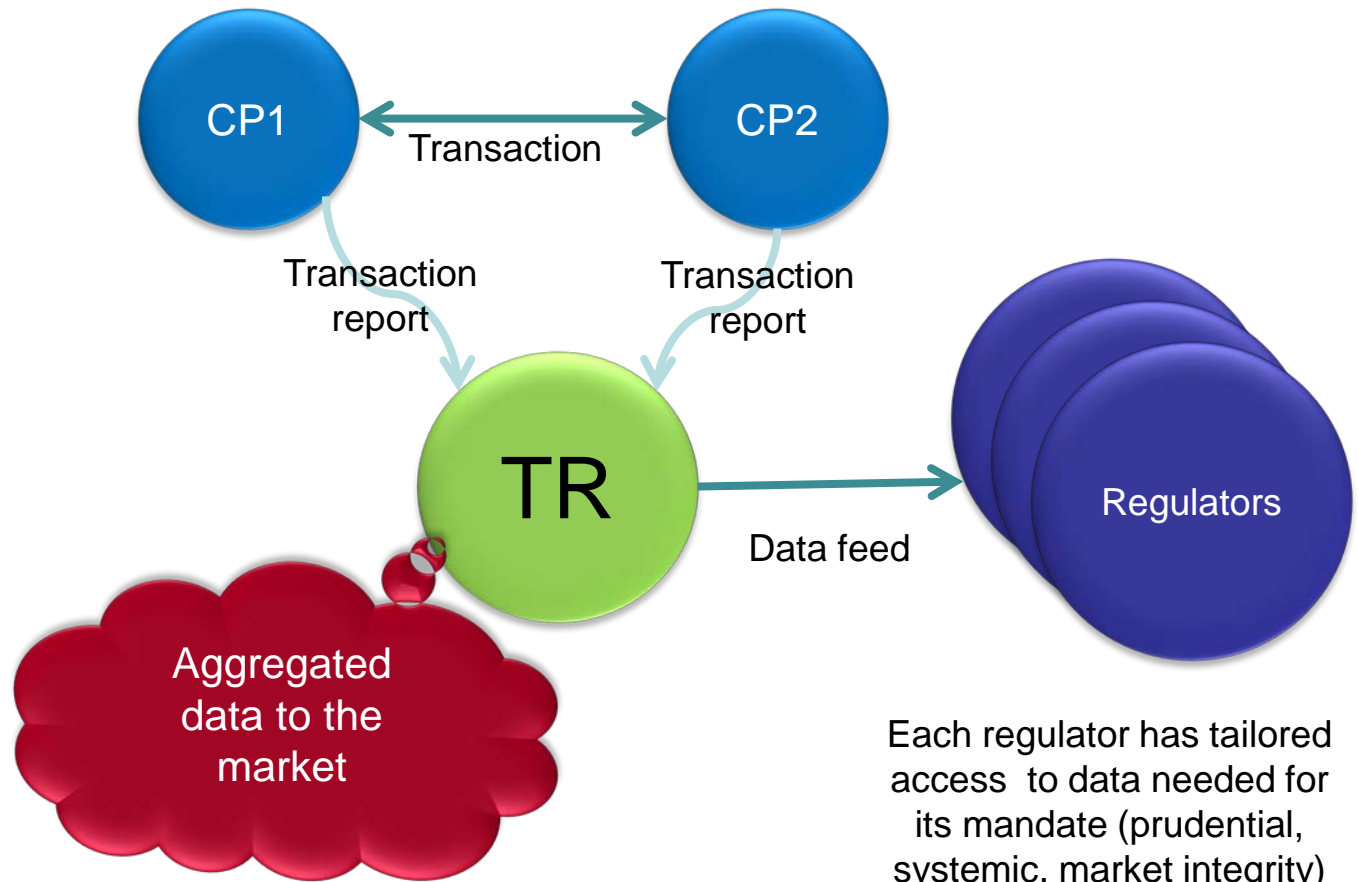
- ASIC's objectives in implementing trade reporting are:
 - to enhance the transparency of transaction information available to relevant authorities and the public
 - to promote financial stability
 - to support the detection and prevention of market abuse.



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What is trade reporting?

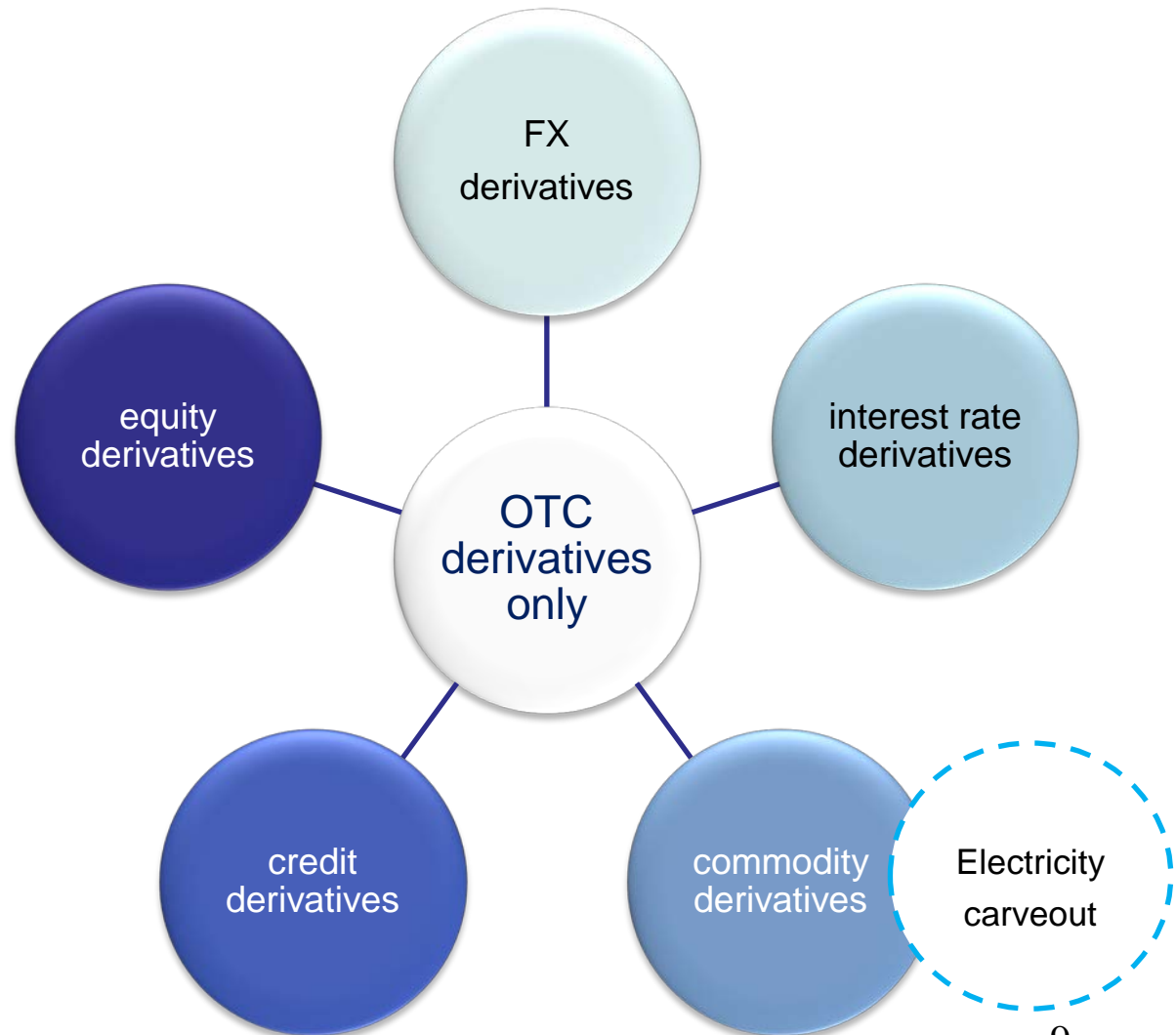


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Each regulator has tailored access to data needed for its mandate (prudential, systemic, market integrity)

Which asset classes are reportable to trade repositories?



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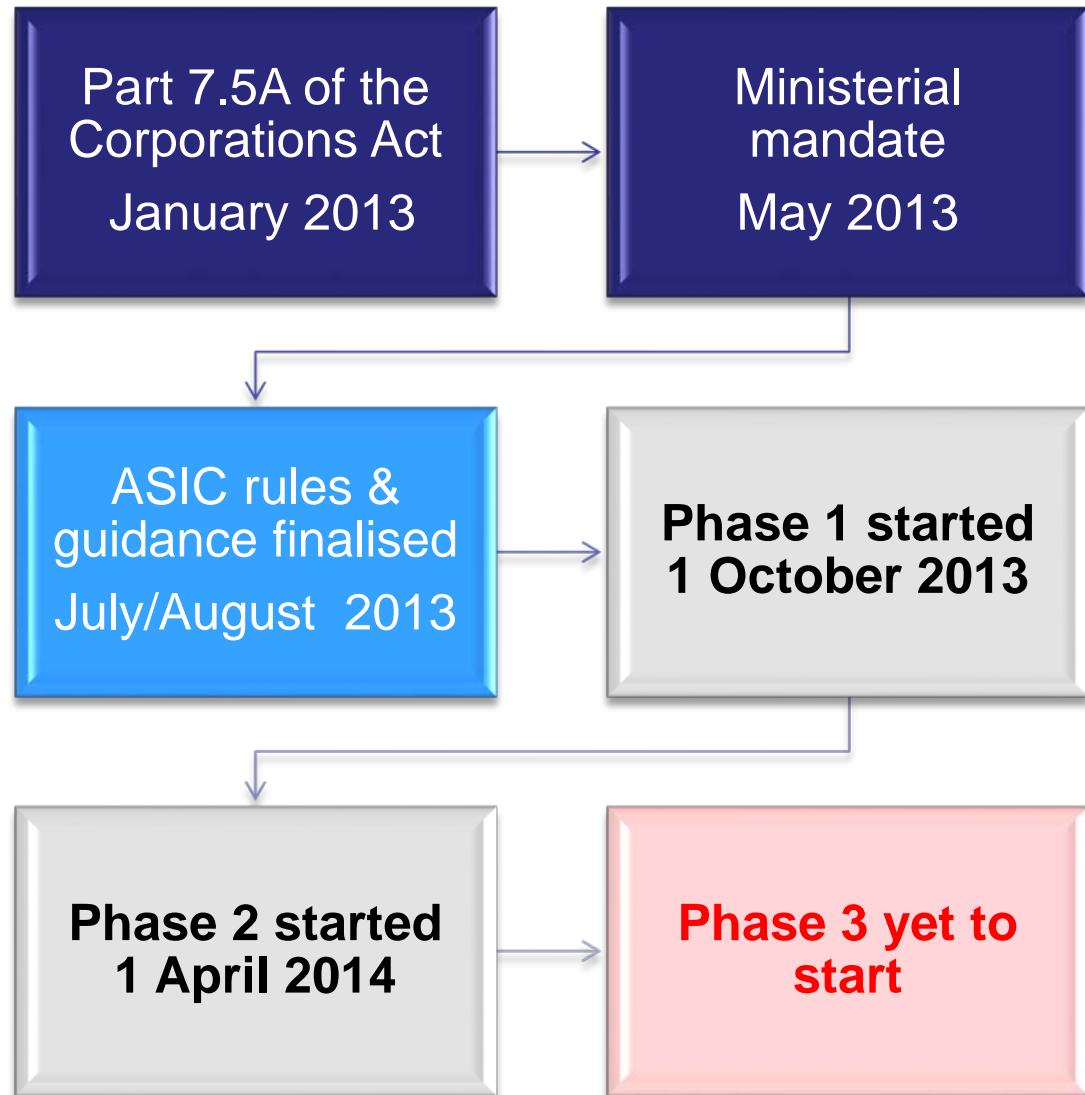
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Trade reporting – process so far



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Trade reporting rules – When does reporting start?

Ph.	Who covered	Transaction reporting start date	Position reporting start date
Opt-in	Counterparties that wish to opt-in	As specified in the opt-in notice	As specified in the opt-in notice (but before 1 October 2014)
Phase 1	CFTC registered swap dealers –	1 October 2013	1 October 2014
Phase 2	Major financial institutions (\$50 billion or more notional outstanding)	1 April 2014 (rates, credit)	1 October 2014 (rates, credit)
		1 October 2014 (other)	1 April 2015 (other)
Phase 3	All other financial entities (ADIs, AFSLs, exempt foreign licensees, licensed CS facilities)	Per next slides	Per next slides



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Proposed revised start dates for Phase 3 reporting

Type of reporting	Current start date (Phase 3)	Proposed start date (Phase 3A)	Proposed start date (Phase 3B)
Interest rate and credit derivative <u>trades</u>	1 October 2014	The earlier of: 6 months after the first TR is licensed; or 13 April 2015	The earlier of: 12 months after the first TR is licensed; or 12 October 2015
Equity, FX and commodity derivatives <u>trades</u> (other than electricity)	1 April 2015	The earlier of: 12 months after the first TR is licensed or 12 October 2015	
Position reporting (one-off obligation)	6 months after respective trade reporting start date		



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Proposal to delay Phase 3 commencement

- ASIC is consulting on a proposal that will *split* Phase 3 into Phase 3A and Phase 3B and *delay* the implementation of phase 3 reporting
- Phase 3A would be made up of firms that have \$5bn or more in gross notional derivatives outstanding as at end June 2014 (OTC only, including electricity derivatives, per fund basis). Phase 3B is the rest of Phase 3.
- The delay is based on the timing of TR licensing, with 'backstop dates'
- *ASIC is seeking comment on this proposal via Phase 3 Working Groups – intending to finalise in Q2 2014*



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Why is a delayed start for Phase 3 being considered?

- ASIC is unlikely to licence a TR for trade reporting purposes before August 2014
 - Phase 3 Reporting Entities that are expected to report to a licensed TR under the rules, may therefore have limited time to 'on-board' with a licensed TR before 1 October 2014
- Industry is still working towards developing standardised arrangements (including documentation) to facilitate delegated reporting by Phase 3 Reporting Entities
- We understand that many Phase 3 Reporting Entities, particularly those that have been affected by a number of recent regulatory reforms, require additional time to prepare for compliance with their trade reporting obligations from 1 October 2014



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Trade reporting rules – Who needs 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; or - entered into by the entity in this jurisdiction	Licensed TRs or Prescribed TRs

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 – 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 rules – Delegated reporting

- The rules allow for a reporting entity to report via 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
 - Delegating entity must take all reasonable steps to ensure accuracy and currency of info reported on its behalf
- Generally, reporting entities and counterparties will need to clarify whether and under what conditions delegated reporting will be offered
- Australian reporting entities will have an advantage over foreign institutions with regards to delegated reporting, as they will be required to report ‘full ASIC’ fields
- Some potential delegates for trustees: FMs, FMs’ brokers, custodians, asset administrators, etc.



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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 (Singapore) Pte Ltd	✓	✓	✓	✓	✓
DTCC Data Repository (U.S.) LLC	✓	✓	✓	✓	✓
DTCC Derivatives Repository Ltd (UK)	✓	✓	✓	✓	✓
DTCC Data Repository (Japan) KK	✓	✓	✓	✓	✓
Chicago Mercantile Exchange Inc	✓	✓		✓	✓
INFX SDR					✓
ICE Trade Vault, LLC	✓	✓		✓	✓
HKMA TR	✓				✓



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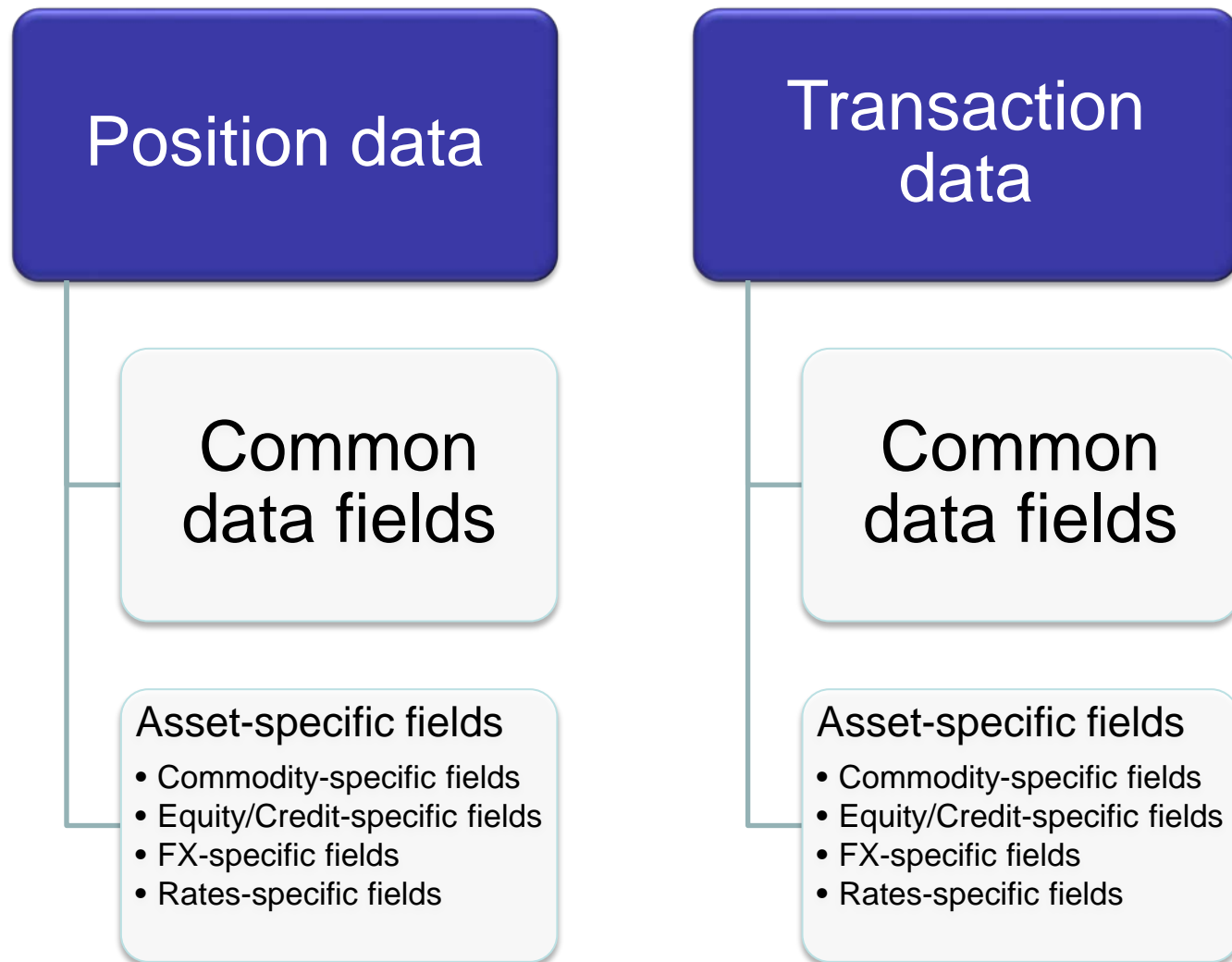
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Trade reporting rules – What information must be reported?



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Trade reporting rules – Exclusion of exchange-traded derivatives

- Intent of rules is to ensure only OTC transactions are reported
 - We have excluded transactions undertaken on a Part 7.2A market supervised by ASIC in Australia (e.g. ASX24, FEX)
 - We have also excluded transaction done on a ‘regulated foreign market’, which is essentially a market equivalent to a Part 7.2A market
 - For phase 1 banks, we also excluded a further list of named foreign markets for a transitional period
 - Intention is that trades done on SEF/MTF-like platforms will need to be reported



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Trade reporting rules – Transitional exemptive relief

- Time-limited, transitional relief was issued by ASIC to assist in the transition to reporting
- Already granted to Phase 1 and 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 there is a 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
- Conditions around seeking counterparty consent are part of the proposed delay to phase 3



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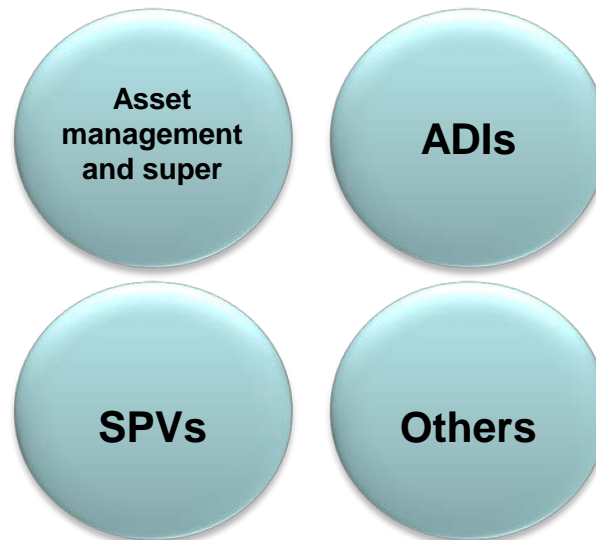
Implementing Transaction reporting for phase 3



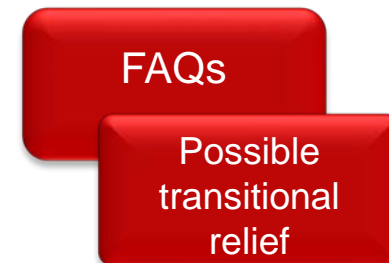
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**Sector-specific
working groups**



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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 (USD, JPY, GBP, EUR)
 - 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 2014
- ASIC will likely consult on draft rules H2 2014 if Government decides to proceed with a clearing mandate
- CFR OTC market report April 2014:
 - Recommended that the Government consider a mandatory clearing obligation for OTC transactions in Australian Dollar interest rate derivatives for internationally active dealers
- ASX Clear (Futures) and LCH were both authorised to provide OTC rates clearing in Australia in 2013



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Other G20 reforms – Platform Trading



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- CFR Report on the Australian OTC Derivatives Market (April 2014):
 - concluded that it was not yet appropriate to recommend a mandatory platform trading obligation
 - regulators would nevertheless continue to monitor developments to gauge the implications of overseas regimes for methods of execution and liquidity in the Australian OTC derivatives market, and more generally monitor evolving trends in the utilisation of electronic trading platforms
- 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
- We may need to move more quickly if CFTC mandates AUD IRD for mandatory clearing

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
- ASIC closely involved in multiple international for a discussing cross-border aspects of OTC and broader financial regulation eg ODRG, ODRF, FSB, IOSCO, CPSS-IOSCO, BCBS-IOSCO, etc.



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More information

- “ASIC OTC Derivatives reform” pages
 - ASIC Derivative Transaction Rules (Reporting) 2013 + RG 251
 - ASIC Derivative Trade Repository Rules 2013 + RG 249
 - links to CFR, FSB and other resources
- Queries/comments etc.:
 - OTCD@asic.gov.au



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Questions



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