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# **OTC derivatives reform – trade reporting regime**

**Presentation to the Australian Bankers  
Association**

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# Overview



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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 OTCD reform mandates**
- **Next steps**
- **Questions**

# GFC and OTC derivatives

- Collapses of Lehman Brothers and AIG in 2008
  - Substantial and unknown exposures to other counterparties through over-the-counter (OTC) derivatives
  - Regulators felt they had to take big decisions whether to bail-out these institutions without full knowledge of the consequences of (in)action
- Lessons learned
  - Regulators never again want to be ‘blindsided’ about the risk positions and interlinkages of major market participants
  - Focus on improving OTC derivatives markets’ transparency, stability and integrity
  - More broadly, focus on reducing size of counterparty credit risk positions plus risk mitigation tools



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# Costs of the GFC and benefits of derivatives reforms



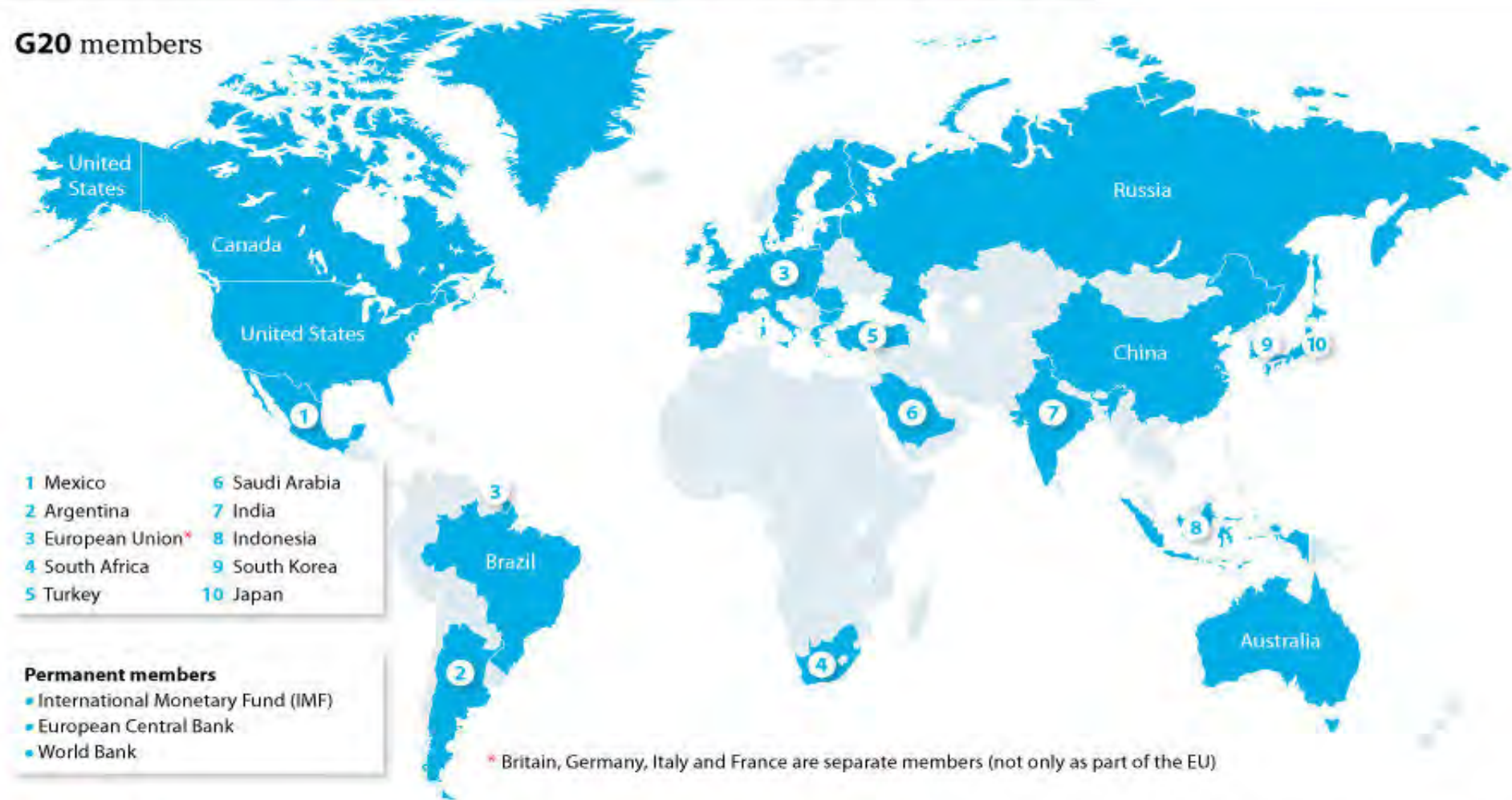
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- CFTC recently issued a report that put the cost of the GFC – in cumulative output foregone – as high as \$200tn
- Bank for International Settlements (BIS) valued benefits of OTC derivatives reform at 0.12% of GDP per year: \$1.8bn p.a in Australia
- We estimate that savings to Australian banks and markets infrastructure operators from substituted compliance across derivatives reform mandates would reach into the tens of millions per year
- *Therefore, a phased-in, internationally consistent implementation of OTC derivatives reform is in the best interests of Australia's financial system*

# G20: countries and permanent members

## G20 members



**The G-20** is the premier forum for our international economic development that promotes open and constructive discussion between industrial and emerging-market countries on key issues related to global economic stability.

The G20 was formed in **1999**

**The main forms of G20 activity** are annual meetings at the level of financial ministers and heads of central banks

The meetings are hosted by a **presiding country**

The presiding country is **changed annually** on a rotation basis

Each year the presiding countries must represent a **different region**

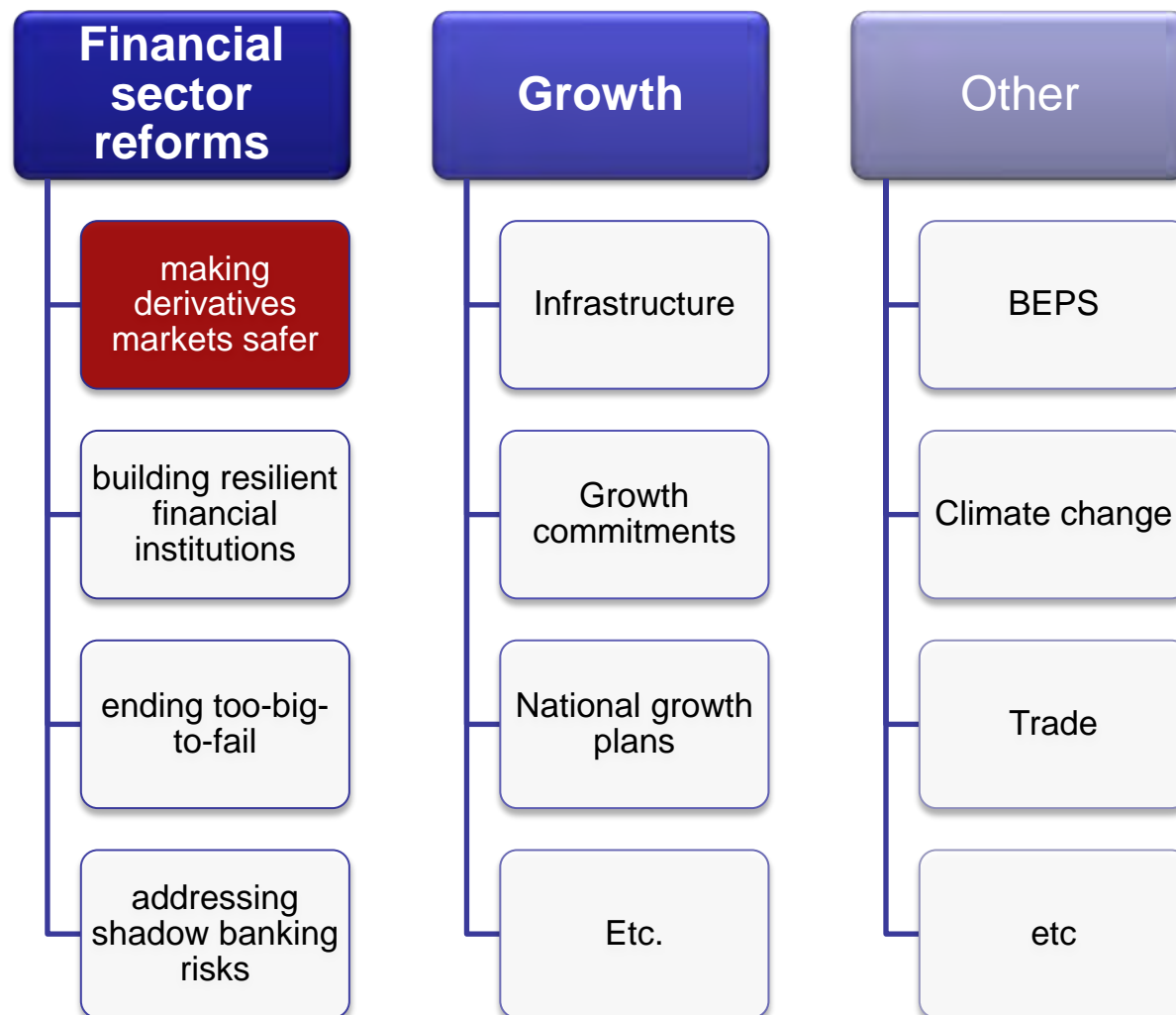
The temporary secretariat is located in the **presiding country**

# G20: Broader objectives



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# G20 OTC derivatives reform commitments

## 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



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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



# Background – Global context

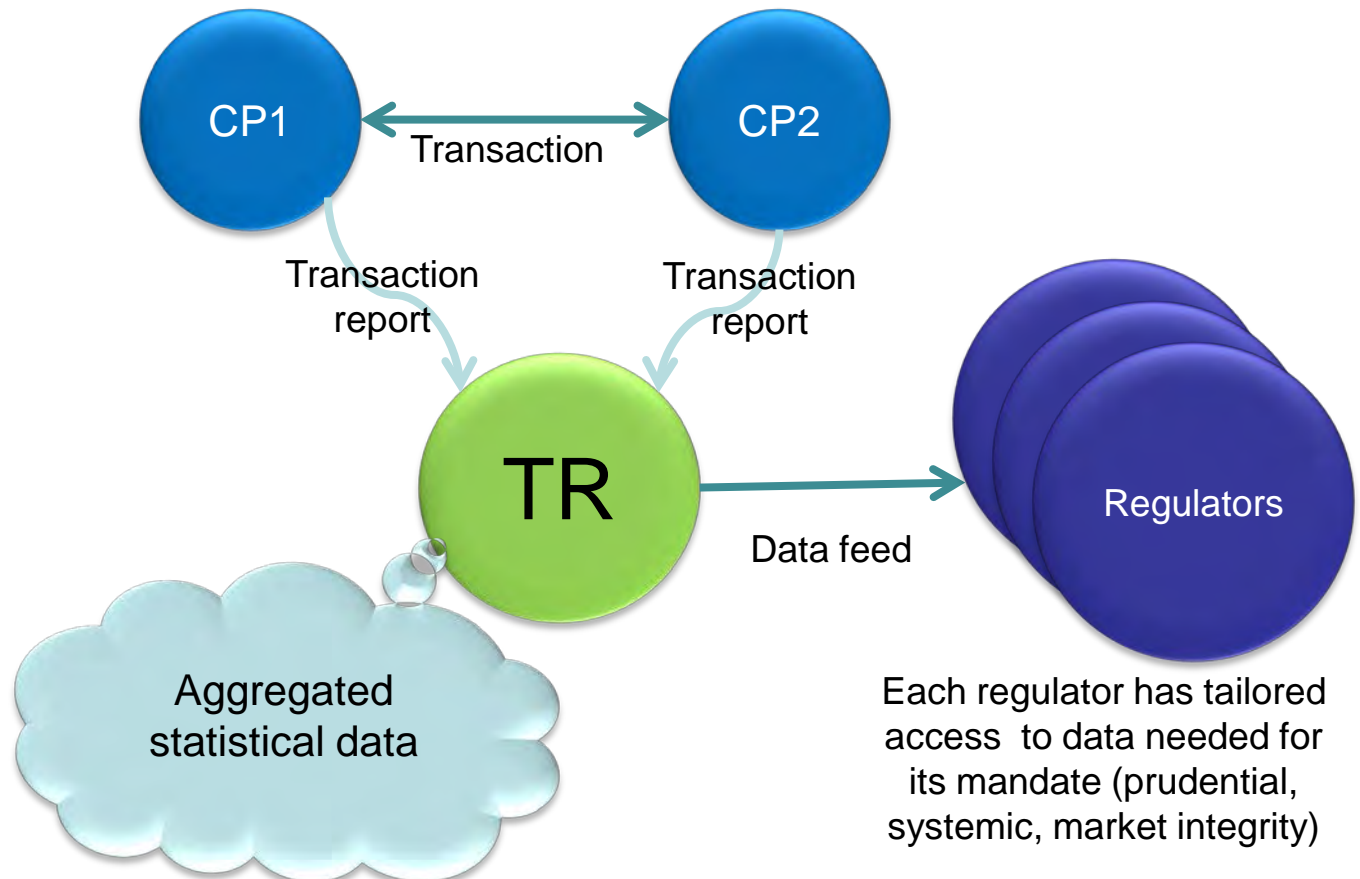


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- From the outset, OTC derivatives reform has been a global initiative
- Australia's OTC derivatives market is only 2% of the global total
  - However, it is significant in the Asian region
- Access to global OTC derivative markets is vital for Australia's financial system and real economy
- Major global regulators expect firms that trade with banks they regulate to be subject to equivalent regulation in their home jurisdiction, including here
- ASIC seeks to be a 'fast follower' in rolling out OTC derivatives reforms and ensure international consistency

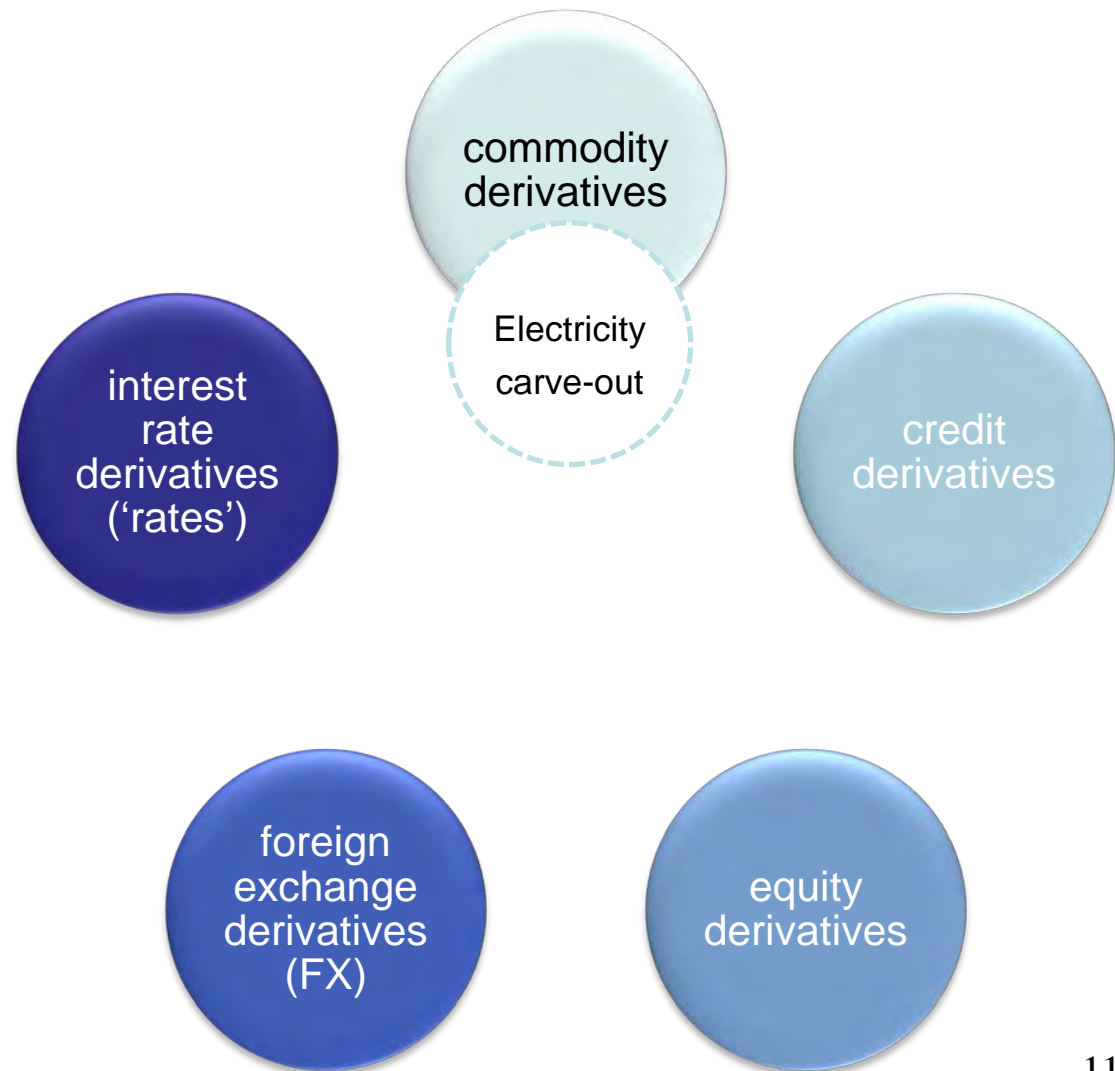
# What is trade reporting?



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# Trade reporting rules – Which transactions need to be reported?



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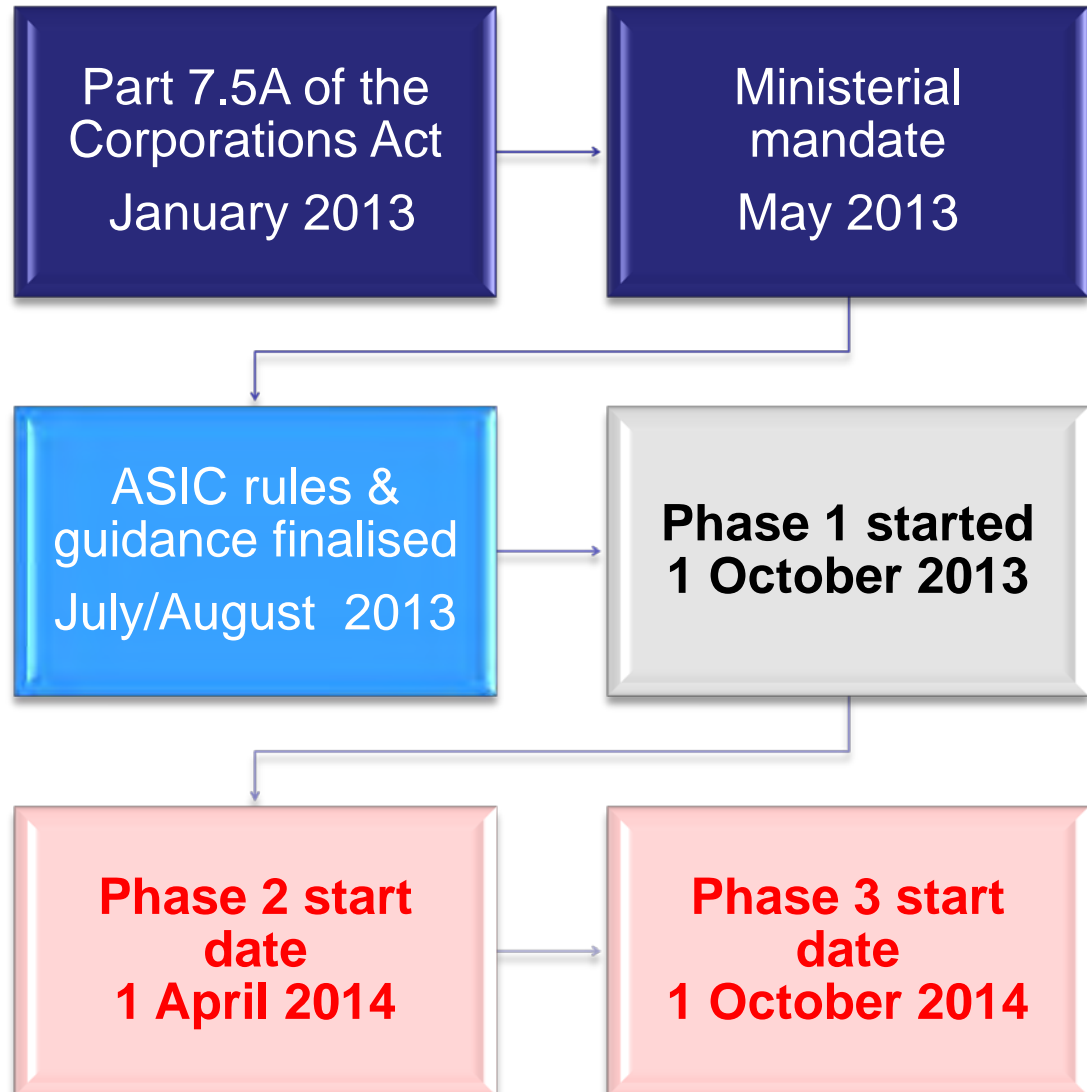
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# Trade reporting – process so far



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# Trade reporting rules – When does reporting start?



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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)
1	CFTC registered swap dealers – 'Phase 1'	1 October 2013	1 October 2014
2	Major financial institutions (>\$50b notional outstanding) 'Phase 2'	1 April 2014 (rates, credit)	1 October 2014 (rates, credit)
		1 October 2014 (other)	1 April 2015 (other)
3	Other financial institutions/intermediaries – 'Phase 3'	1 October 2014 (rates, credit)	1 April 2015 (rates, credit)
		1 April 2015 (other)	1 October 2015 (other)

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

- No TRs licensed as yet in Australia
  - first TRs expected to be licensed mid-2014
- TRs prescribed by Regulation until 30 June 2014 – ASIC working with Treasury to ensure repositories are available after this date



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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	✓				✓

# Trade repository rules – What info will TRs make available?

- Licensed Australian derivative trade repositories are required to make certain aggregated data publicly available on a weekly basis.
- Australian Regulators (and likely foreign regulators) will have access to continuous, direct and immediate access to all Derivative Trade Data retained in the Trade Repository.
- This data will be used to help achieve our regulatory objectives:
  - Enhance the transparency of transaction information available to relevant authorities and the public;
  - Promote financial stability;
  - Support the detection and prevention of market abuse.



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# 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
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

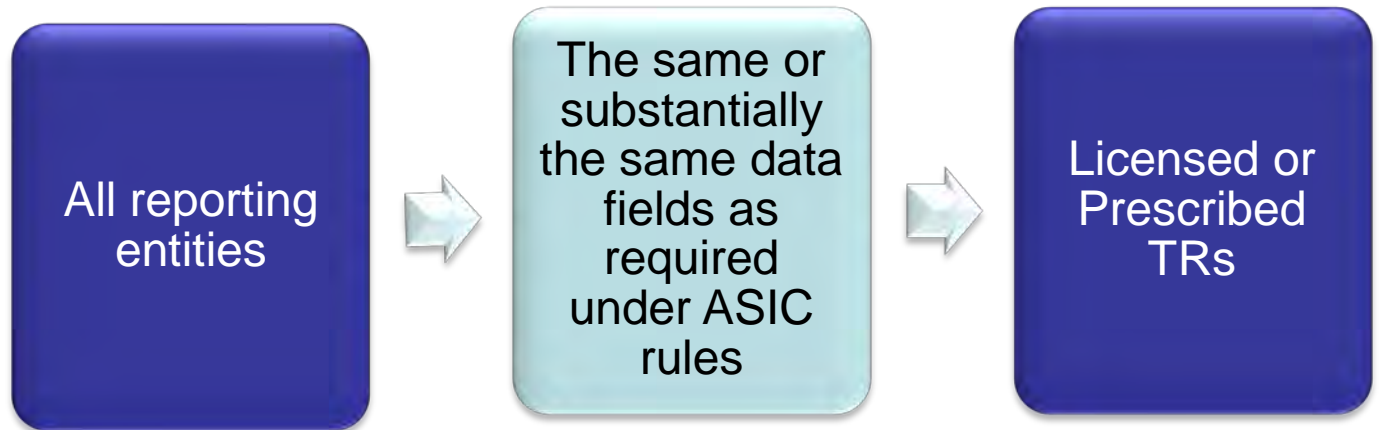
# Trade reporting rules – Alternative reporting

- Until 1 October 2014



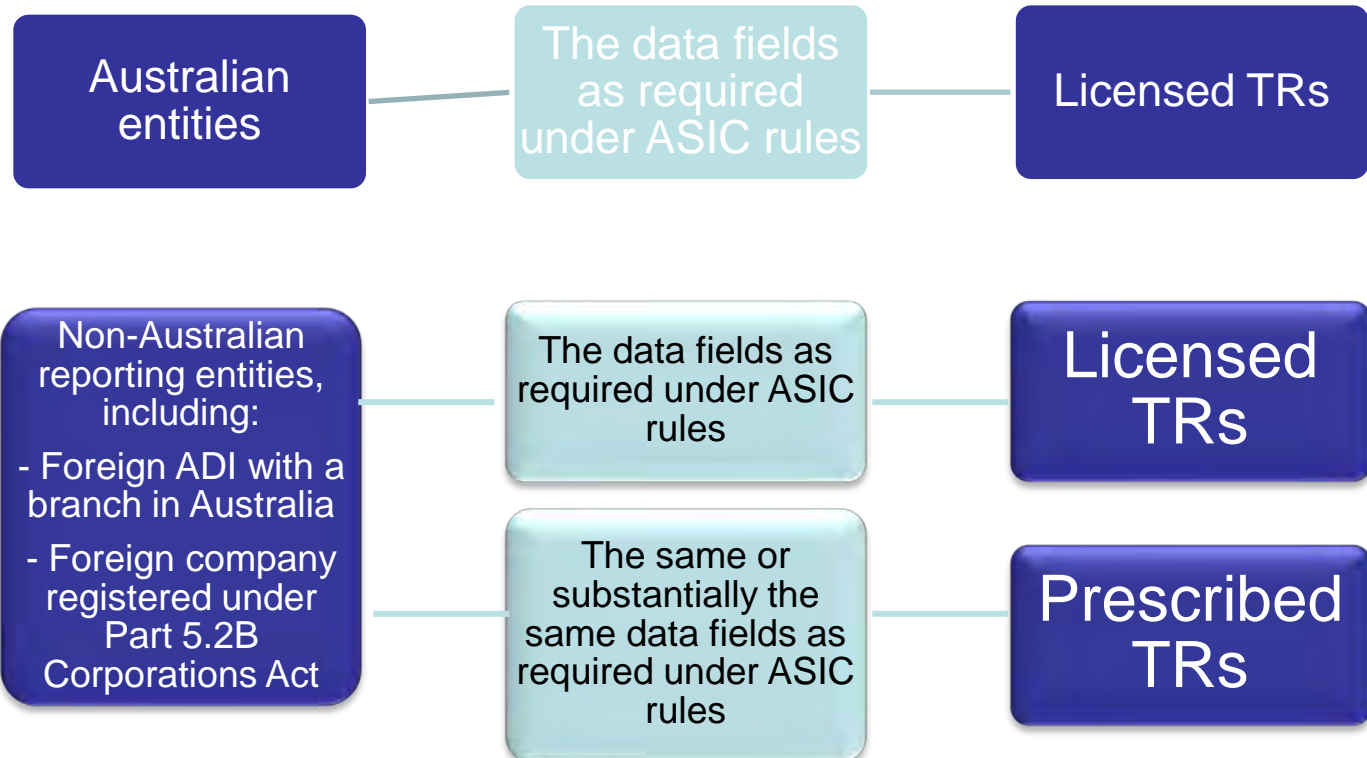
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# Trade reporting rules – Alternative reporting

- From 1 October 2014



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# Trade reporting rules – Two-sided reporting



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- Both counterparties to transaction must report to a TR if both 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 e.g. to counterparty, CCP, etc
- Foreign reporting entities can report under foreign rules to prescribed TRs if the foreign rules are “substantially equivalent

# Trade reporting rules – Who reports?



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- 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:

# Trade reporting rules – Delegated reporting



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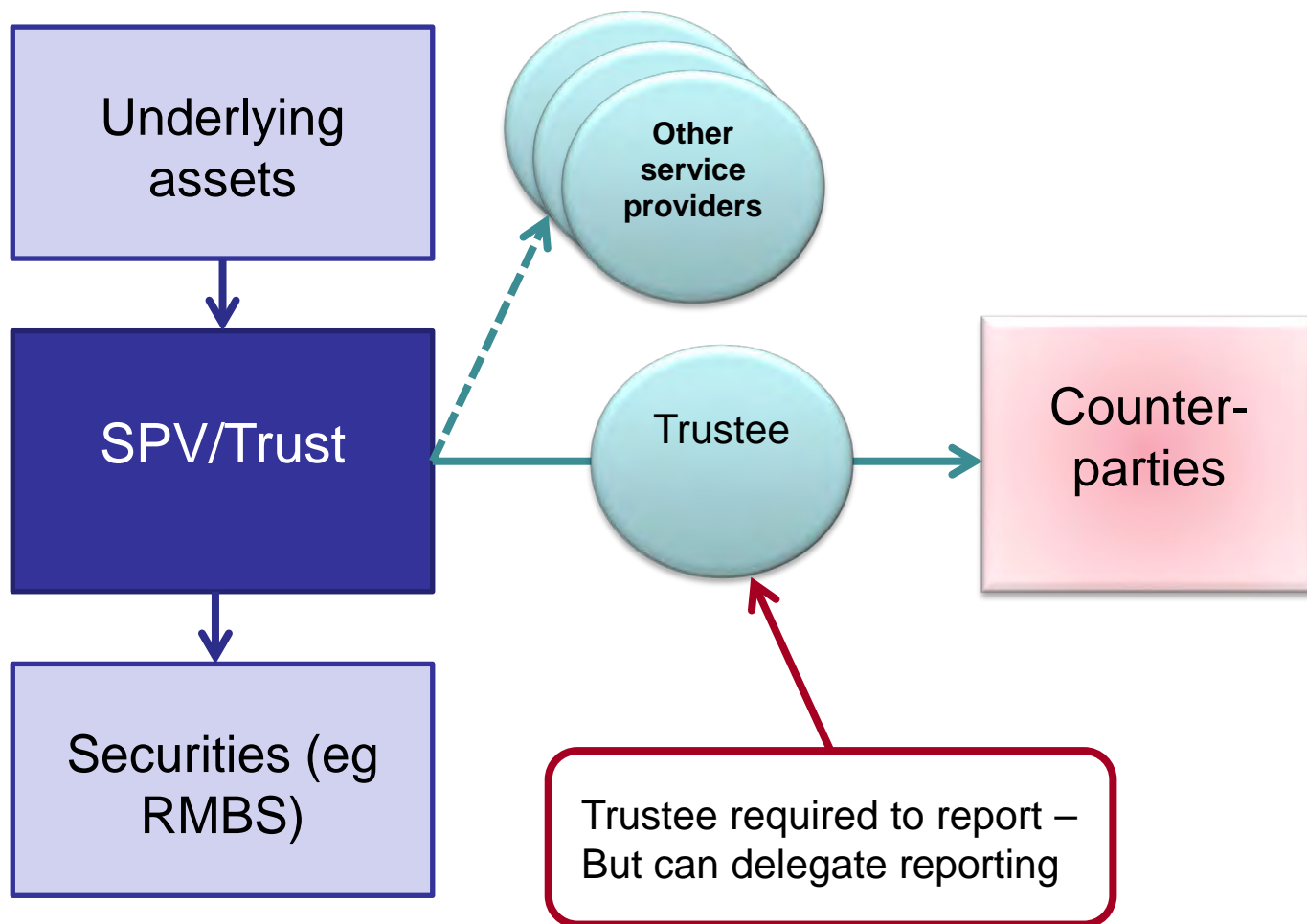
- The rules allow for a reporting entity to report by another person reporting on its behalf
  - A reporting entity that appoints another person to report on its behalf remains responsible for complying with the rules in relation to the report
  - The party appointed may be any third party: a counterparty, a central counterparty, a trading platform, a service provider, a broker, etc
  - Delegating entity must take all reasonable steps to ensure accuracy and currency of info reported on its behalf
- Generally, we anticipate (but cannot oblige) that large banks and dealers may offer delegated reporting to smaller ADI clients
- ASIC would like to understand barriers and challenges relating to delegated reporting in the ADI space

# Securitisation example



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# Trade reporting – Who reports?



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- 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 ADI sector and how reporting obligation applies and can provide Q&A responses to trade associations and individual firms
  - We encourage requests via trade associations for workload/consistency reasons

# Trade reporting rules – T+1 reporting



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- All transaction, amendments, allocations and terminations must be reported by the end of the business day following the day the transaction took place, in the time zone the transactions was entered into
- Updated mark-to-market valuations and information about collateral exchanges also need to be reported by T+1

# Trade reporting rules – Exchange-traded derivatives



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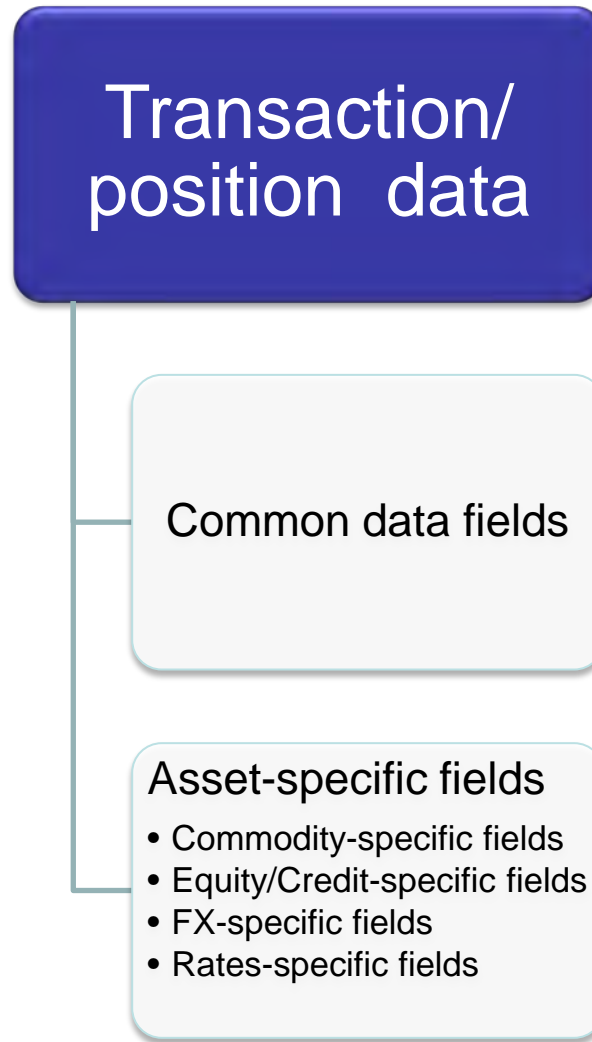
- Intent of rules is to ensure only OTC transactions are reported
- We have excluded transactions undertaken on a Part 7.2A market supervised by ASIC in Australia (e.g. ASX24, FEX)
- We have also excluded transaction done on a 'regulated foreign market', which is essentially a market equivalent to a 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

# Trade reporting rules – What information must be reported?



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# Trade reporting rules – Cleared trades

- When a derivative transaction is entered into before the clearing of a transaction through a CS facility, a bilateral trade may exist between the two counterparties to a trade.
- If the original transaction is a 'reportable transaction', the transaction must be reported to a TR.
- If the derivative transaction is then cleared by a CS facility, the original bilateral transaction between the counterparties may be novated to the CS facility.
  - The CS facility would then enter into a new transaction with each counterparty.
  - If these new transactions are 'reportable transactions', they must be reported as two new transactions.



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# Trade reporting rules – transitional measures

- Until 1 October 2014, information about barriers, collateral and valuations (mark-to-market, mark-to-model or other valuation) is not required to be reported
- Until 1/10/14 One-sided & conditional reporting
  - Alternative reporting for all reporting entities (not just foreign reporting entities)
    - Reporting of ‘substantially equivalent’ information
    - Note ‘porting rule’ requires transfer of information to Licensed TRs from prescribed TRs in certain circumstances
  - One-sided reporting of transactions with another Reporting Entity
  - One-sided reporting of transactions with another entity that is not a Reporting Entity



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# Trade reporting rules – Our powers to grant relief

- We are empowered under s907D to grant relief to the following from all or specified provisions:
  - (a) a person or class of persons;
  - (b) a facility or class of facilities; or
  - (c) a derivative transaction or class of derivative transactions.
- In accordance with the process outlined in Regulatory Guide 51 *Applications for relief* (RG 51), we will consider applications for relief from the reporting of certain derivative products in certain circumstances.



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# Transitional exemptive relief



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- 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

# Trade reporting 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” stream	<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.**

**Asset  
management**

**ADIs**

**E.g.  
Energy,  
Securiti-  
sation**

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**FAQs**

**Guidance**

**(Possible  
transitional  
relief)**

**1 October**

**Start date  
(rates & credit)**

**1 April 2015**

**Start date (other  
asset classes)**

# 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

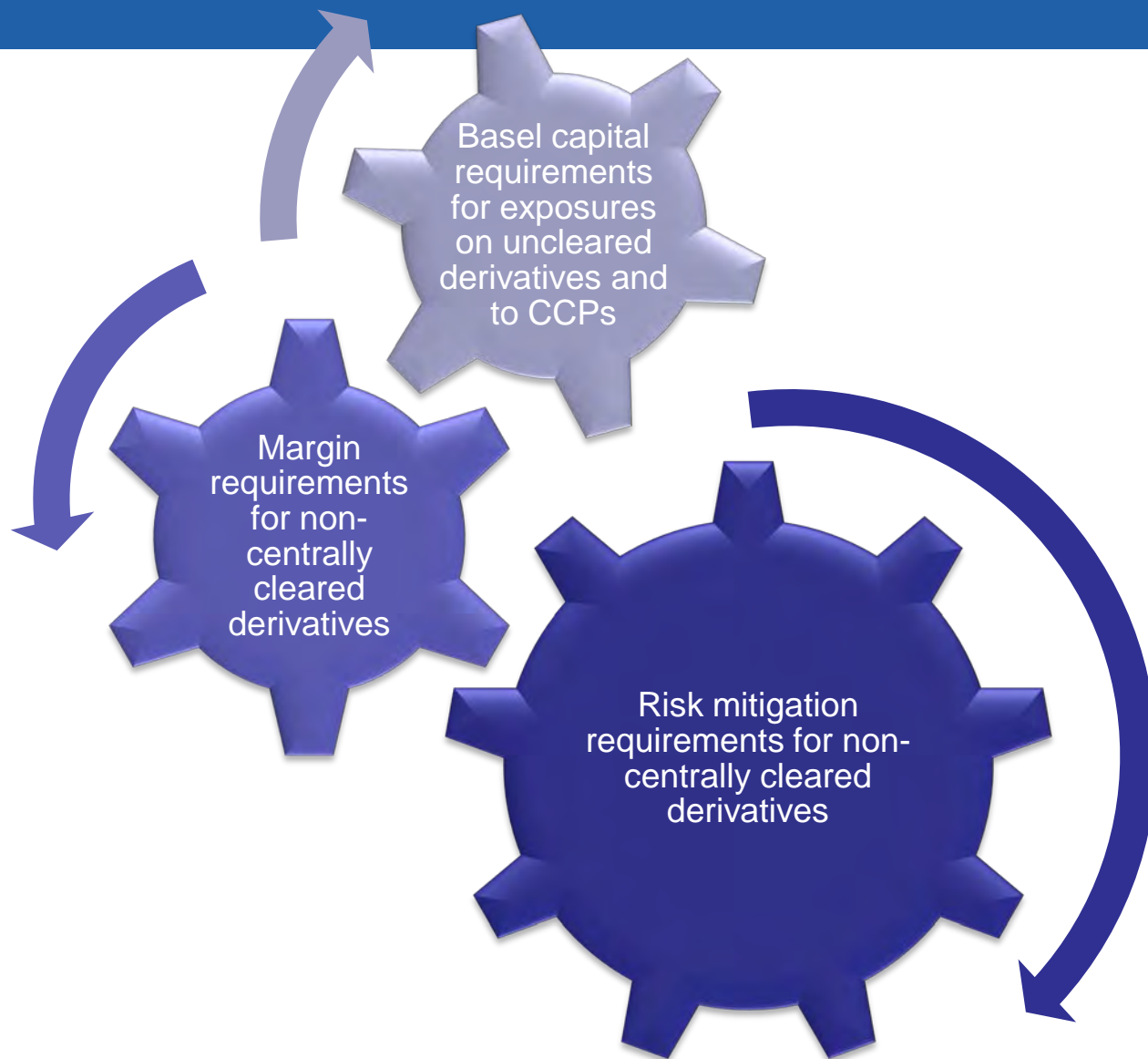


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- CFR Report on the Australian OTC Derivatives Market (July 2013):
  - Regulators are monitoring developments and seeking more detailed information on Australian market activity, to consider whether a mandatory obligation would benefit the Australian 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: 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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# 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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# Next steps

- Trade reporting
  - Phase 2
  - Phase 3 start date 1 October
  - Possible further consultation on rule ‘tweaks’
- Central clearing
  - Treasury consultation on mandatory clearing of G4 IRDs for internationally active dealers closes 10 April
  - Possible ASIC consultation on rules after that
- CFR market assessment reports
  - 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



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# More information

- Rules, FAQs, Explanatory Statements, Reg Guide on TRs:
  - [www.asic.gov.au](http://www.asic.gov.au) > Markets tab > OTC derivatives reform
- Key documents
  - Regulatory Guide RG 249
  - ASIC Derivative Transaction Rules (Reporting) 2013
- Queries/comments etc.:
  - [OTCD@asic.gov.au](mailto:OTCD@asic.gov.au)



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# Questions



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