

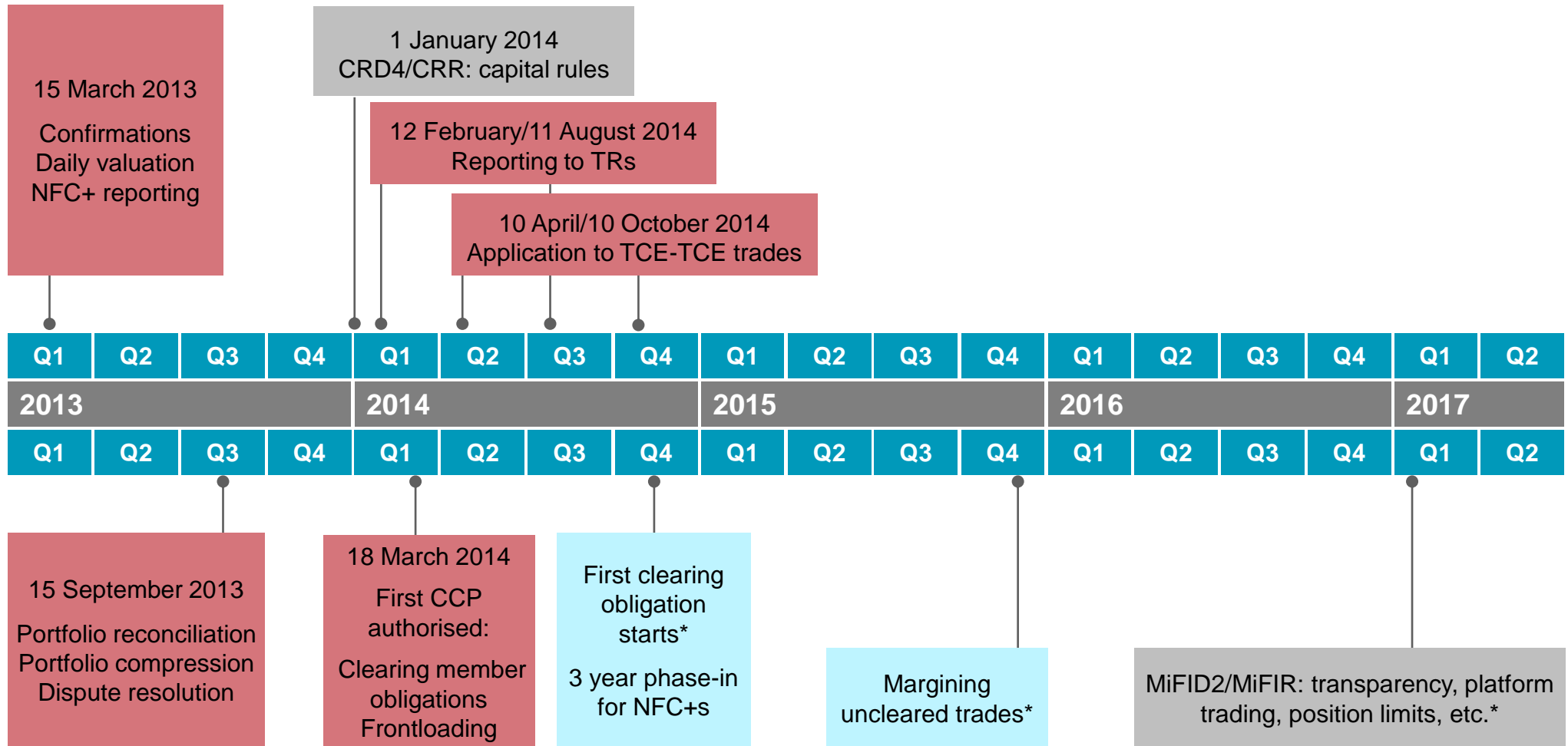
Impact of market structural reform - EMIR

Chris Bates

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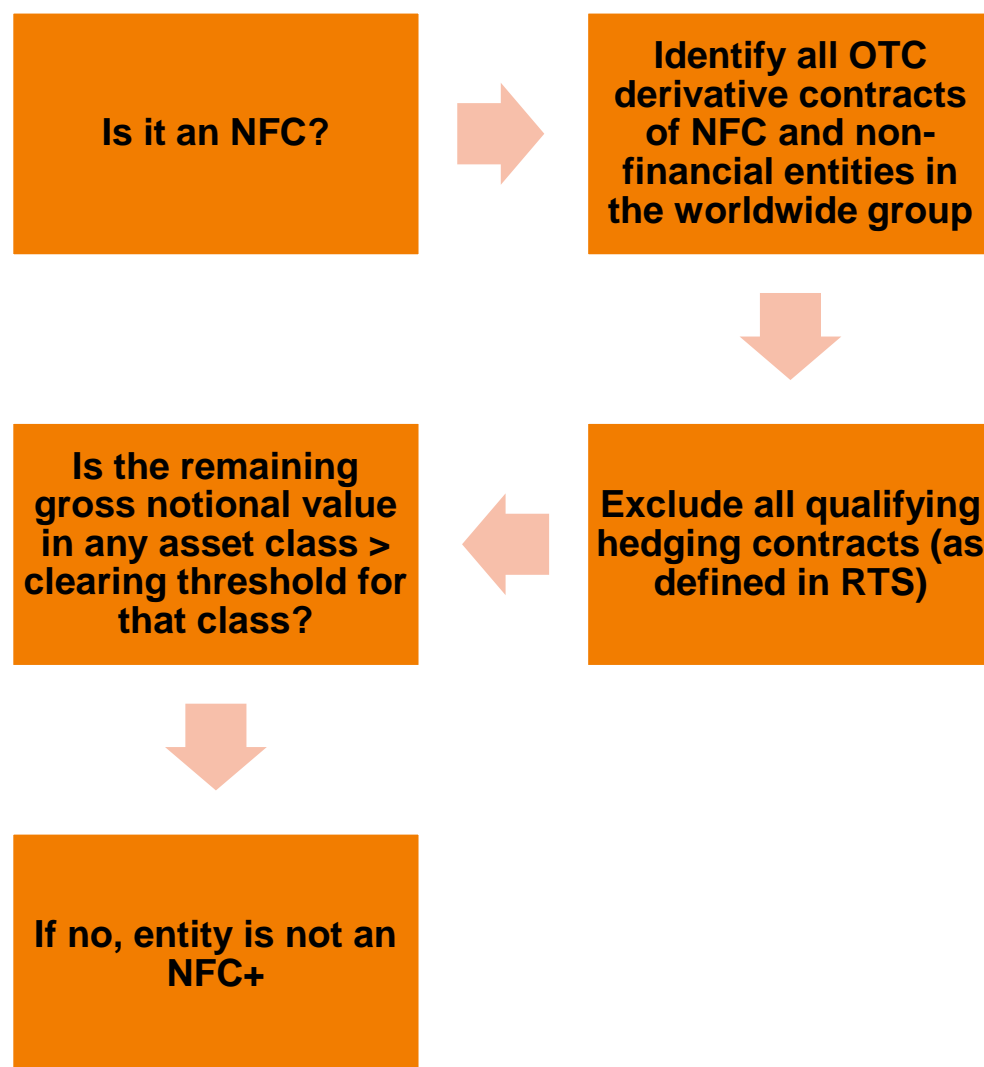
C L I F F O R D
C H A N C E

EMIR: illustrative implementation timeline



• Estimated start dates for these obligations.
See following pages for further explanation and the main assumptions underlying the illustrative timeline.

Corporates: do group companies exceed the EMIR clearing threshold?



Asset class	Clearing threshold
Credit derivatives	€1 bn
Equity derivatives	€1 bn
Interest rate derivatives	€3 bn
FX derivatives	€3 bn
Commodity and other derivatives	€3 bn

Non-financial counterparty (NFC): an undertaking established in the EU which is not a financial counterparty (FC) or central counterparty (CCP)

NFC+: an NFC which exceeds the clearing threshold under EMIR

Note similar question arises for non-EU group companies: i.e. would they be an NFC+ if they were established in the EU?

Why does exceeding the clearing threshold matter for corporates?

EU group companies

- Mandatory clearing for specified OTC derivatives when facing EU or non-EU banks*
- Margining for uncleared OTC derivatives
 - EU bank counterparty: NFC+ must post and collect margin
 - Non-EU bank counterparty: NFC+ must collect margin
- EU banks' pricing affected by higher capital charges for CVA on uncleared trades
- Must daily value all uncleared OTC derivatives
- Must report details of collateral and transaction values to trade repositories
- Must:
 - Confirm transactions more quickly
 - Reconcile portfolios more frequently
- Must notify their status to competent authority

Non-EU group companies

When facing EU banks:

- Mandatory clearing for specified OTC derivatives*
- Must post margin for uncleared OTC derivatives
- EU banks' pricing affected by higher capital charges for CVA on uncleared trades
- Counterparties will require:
 - More rapid confirmation of transactions
 - More frequent portfolio reconciliation

When facing non-EU banks:

- Clearing*, margining and other requirements may apply if counterparty guaranteed by an EU bank (and quantitative tests met)

* Under MiFID2/MiFIR may also be an obligation to execute trade through a regulated market, MFT or OTF

What are the EMIR obligations for corporates under the clearing threshold?

EU group companies

Status representation	Counterparties will need LEI + representation/confirmation that not NFC+
Confirmations*	Must have procedures and arrangements to confirm transactions by set deadlines
Portfolio reconciliation and dispute resolution*	Must agree with counterparties on processes for regular portfolio reconciliation and procedures for identification, recording, monitoring and resolution of disputes
Portfolio compression*	If have ≥ 500 contracts with a counterparty must have processes to address portfolio compression opportunities
Reporting to Trade Repositories (TRs)	Must report all their OTC and exchange traded derivative transactions to registered/recognised TRs or to ESMA (including backloading of contracts outstanding on or after 16 August 2012)

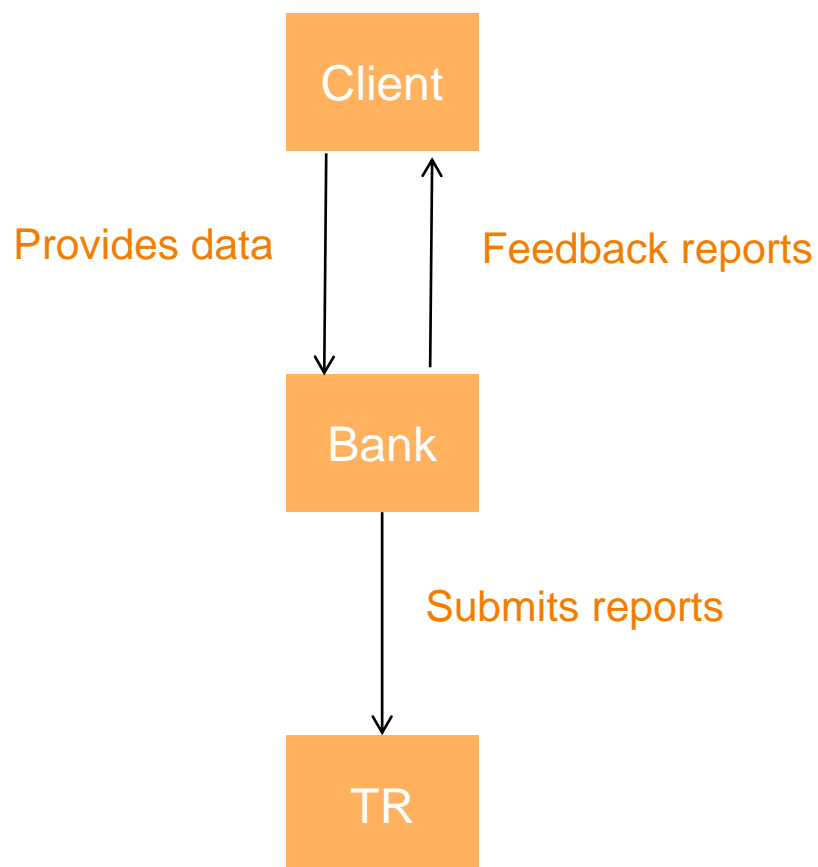
Non-EU group companies†

Status representation	EU counterparties will seek LEI + representation/confirmation that would not be NFC+
Confirmations*	EU counterparties will seek assistance to confirm transactions by set deadlines
Portfolio reconciliation and dispute resolution*	EU counterparties will seek agreement on processes for regular portfolio reconciliation and procedures for identification, recording, monitoring and resolution of disputes
Reporting to TRs	EU counterparties will ask for waiver of confidentiality to permit reporting

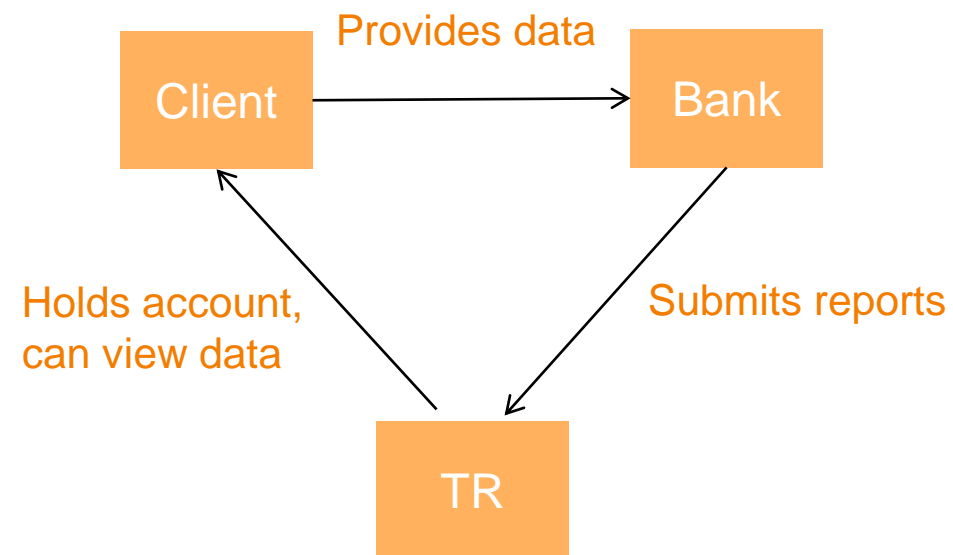
* Applies to uncleared OTC derivative contracts. † Current proposed draft RTS would also require EU banks to collect margin from non-EU group companies.

Delegated reporting models

Intermediary structure



Triparty



How does this impact your choice of counterparty?

Could favour EU bank counterparties

- Lower capital requirements for CVA on uncleared trades favours pricing
- May provide delegated reporting*
- May provide portfolio reconciliation and dispute resolution solution*
- No additional regime issues

* Relevant to EU group companies (but non-EU banks can elect to provide a competitive solution)

Indirect impacts on corporates

- Increased cost of OTC derivatives (clearing, collateral, operations)
- Increased focus on netting

Other issues

Possible requirement for EU banks to collect margin from all non-EU corporates

Possible equivalence assessments

Voluntary clearing and trading

Scope issues

Intragroup transactions

Developing non-EU/US regimes

Different tests trigger jurisdictional application



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