

# FATCA and OECD CRS

EY Breakfast Briefing

23 September 2014

The EY logo consists of the letters 'EY' in a bold, white, sans-serif font. The 'E' and 'Y' are connected at the top. The background of the slide is a low-angle photograph of several tall skyscrapers in a city, with a bright yellow diagonal stripe cutting across the scene from the bottom left towards the top right.

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# Today's presenters

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# Agenda

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- ▶ Introduction – 08.30
- ▶ Discussion topics
  - ▶ Important updates coming out of FATCA Regulations
  - ▶ An overview of the Common Reporting Standard including discussion of the package released by the OECD at the end of July
  - ▶ Differences between FATCA and the CRS and the potential for convergence of internal compliance programs
  - ▶ Ireland's position in relation to compliance with FATCA, the DAC and the CRS including what industry should expect in terms of local legislation and guidance on implementation in Ireland
- ▶ Q&A – 09.30-10.00
- ▶ End of session – 10.00



# Final Irish FATCA Regulations



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# Final Irish FATCA Regulations

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- ▶ Released in late June and in effect since 1 July 2014
- ▶ Number of new definitions including:
  - ▶ Deposit
  - ▶ Entity
  - ▶ Financial Group (only needs to contain one FI, no matter how small)
  - ▶ Qualifying activities
  - ▶ Relevant Treasury Company and Relevant Holding Company
- ▶ The term '**Registered Deemed Compliant Financial Institution**' (RDCFI) has been removed
  - ▶ To alleviate confusion between the definition in the IGA and the US Treasury Regulations

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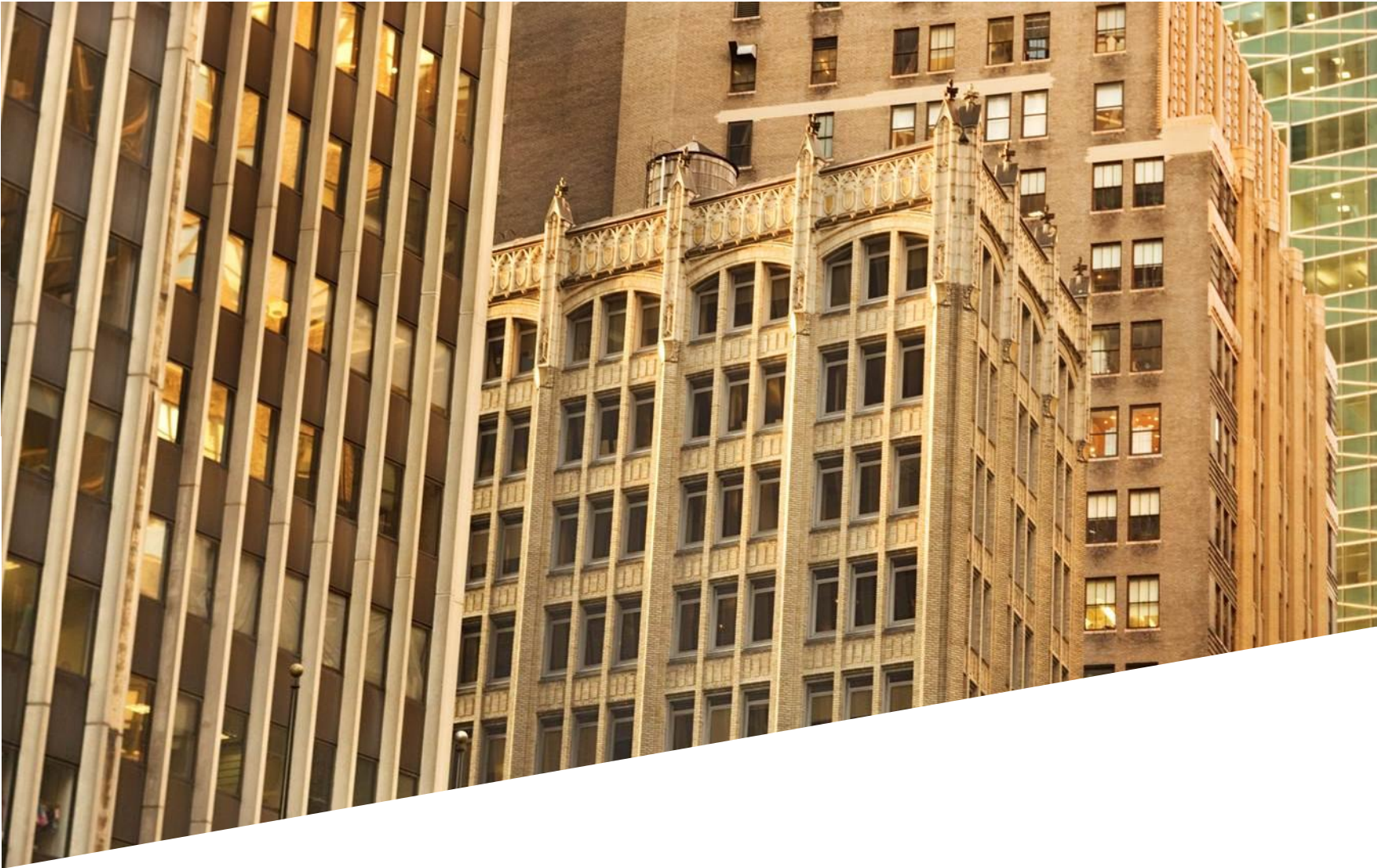
# Final Irish FATCA Regulations (cont.)

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- ▶ Financial accounts opened on or before 30 June 2014 are considered ‘pre-existing accounts’
  - ▶ The new regulations do not apply IRS Notice 2014-33 which allowed entity accounts opened by 31 December 2014 to be considered pre-existing (though without the \$250k de minimis in this case)
  - ▶ It is expected that a note will be included in respect of the above in the next draft guidance notes due out shortly
- ▶ The definition of a **Financial Institution** has been updated to include:
  - ▶ Relevant Holding Company
  - ▶ Relevant Treasury Company



# OECD Common Reporting Standard (CRS)



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# Executive summary

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## Where we are

- ▶ The OECD's Common Reporting Standard (CRS), a global 'FATCA-like' regime
- ▶ Model Agreement, Reporting Standard and Commentary published by 21 July
- ▶ 46 'early adopter' jurisdictions (August 2014) aiming for 1 January 2016 commencement

## What we are expecting

- ▶ First bilateral or multilateral agreements to be signed in October
- ▶ Jurisdictions will need to amend local law to bring the CRS into effect

## Issues to consider

- ▶ Identify any synergies and key differences with their existing US FATCA programme
- ▶ Maintain momentum and expertise of FATCA project teams

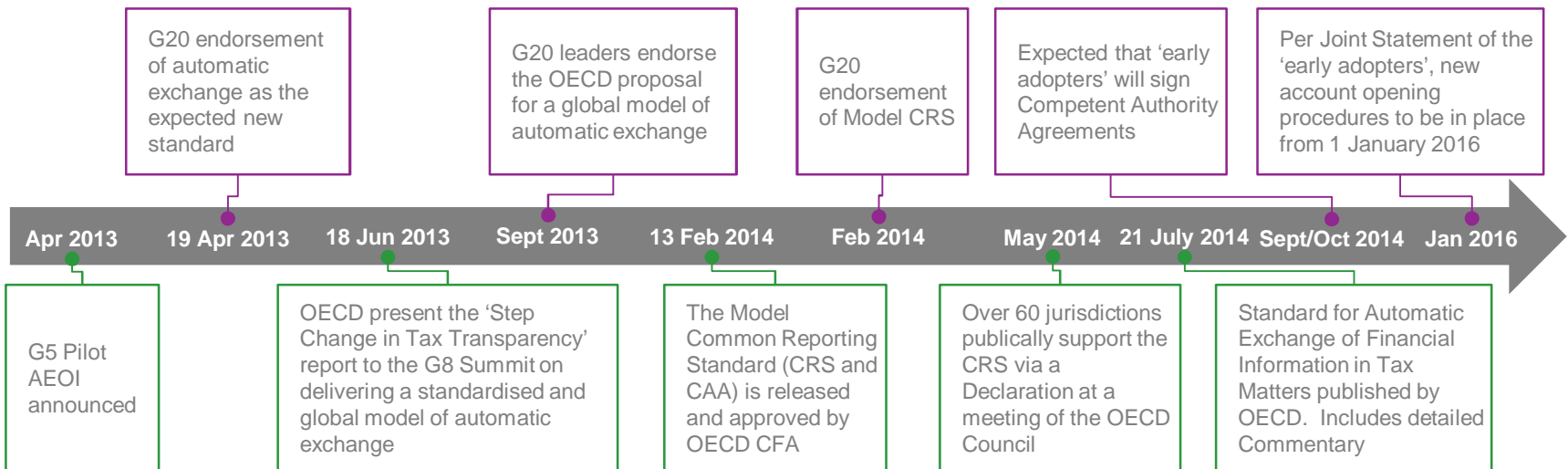


# Road to the OECD Common Reporting Standard

## Components of the Common Reporting Standard

- ▶ Competent Authority Agreement (CAA) – A reciprocal agreement between jurisdictions allowing for automatic exchange of financial account information (the CAA also allows for non-reciprocal CAAs to be entered into)
- ▶ Common Reporting Standard (CRS) – The reporting and due diligence standard for each jurisdiction

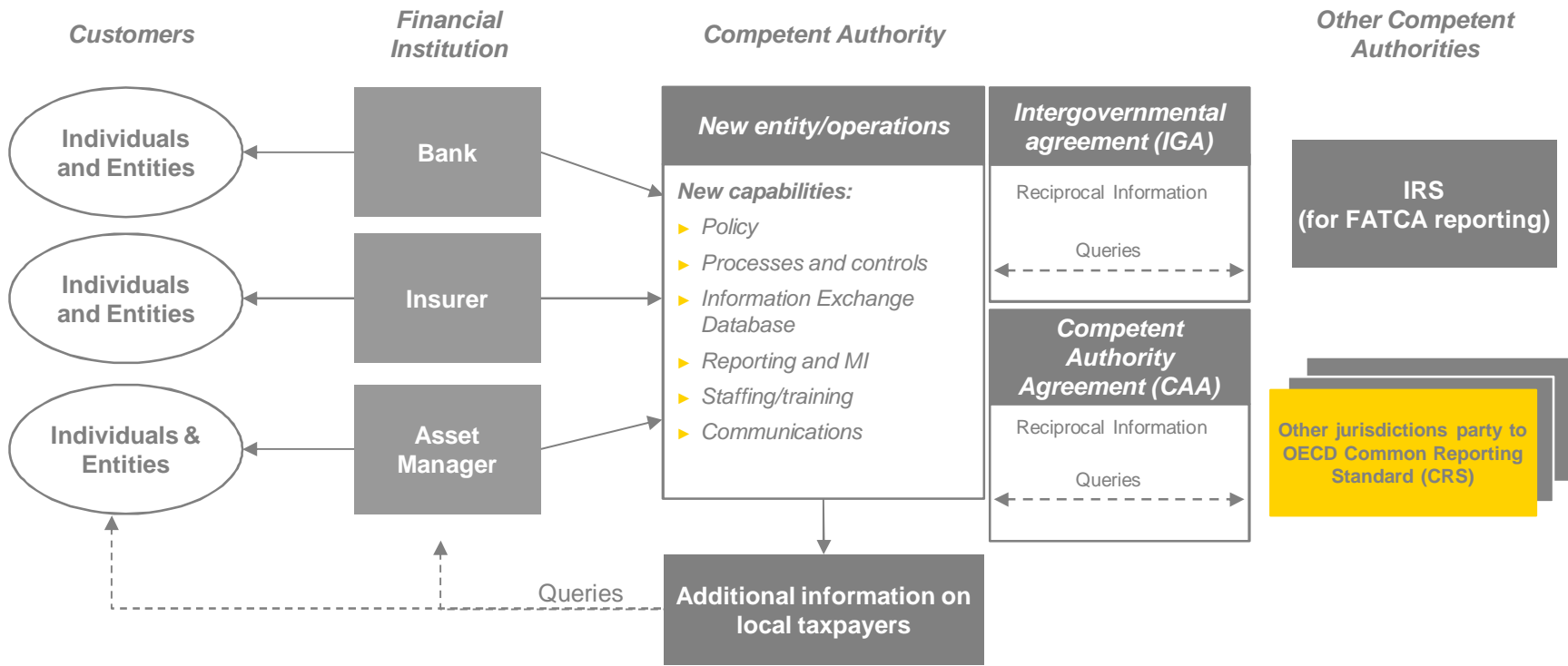
## Common Reporting Standard Timeline



# What is Automatic Exchange of Information?

Automatic exchange of information involves the systematic and periodic transmission of 'bulk' taxpayer information by the source jurisdiction to the residence jurisdiction

It can provide timely information on non-compliance where tax has been evaded particularly where tax administrations have had no previous indications of non-compliance



# OECD CRS: Geographical scope

In August, a number of jurisdictions confirmed their intention to early adopt the CRS, commencing 1 January 2016:

| Jurisdiction  | Jurisdiction  | Jurisdiction  | Jurisdiction  | Jurisdiction   | Jurisdiction   |
|---|---|---|---|--|--|
| <ul style="list-style-type: none"> <li>▶ Anguilla</li> <li>▶ Argentina*</li> <li>▶ Belgium*</li> <li>▶ Bermuda</li> <li>▶ BVI</li> <li>▶ Bulgaria</li> <li>▶ Cayman Islands</li> <li>▶ Colombia*</li> </ul> | <ul style="list-style-type: none"> <li>▶ Croatia</li> <li>▶ Cyprus</li> <li>▶ Czech Republic*</li> <li>▶ Denmark*</li> <li>▶ Estonia*</li> <li>▶ Faroe Islands*</li> <li>▶ Finland*</li> <li>▶ France*</li> </ul> | <ul style="list-style-type: none"> <li>▶ Germany*</li> <li>▶ Gibraltar</li> <li>▶ Greece*</li> <li>▶ Guernsey</li> <li>▶ Hungary*</li> <li>▶ Iceland*</li> <li>▶ India*</li> <li>▶ <b>Ireland*</b></li> </ul> | <ul style="list-style-type: none"> <li>▶ Isle of Man</li> <li>▶ Italy*</li> <li>▶ Jersey</li> <li>▶ Latvia*</li> <li>▶ Liechtenstein</li> <li>▶ Lithuania*</li> <li>▶ Malta</li> <li>▶ Mexico*</li> </ul> | <ul style="list-style-type: none"> <li>▶ Montserrat</li> <li>▶ Netherlands*</li> <li>▶ Norway*</li> <li>▶ Poland*</li> <li>▶ Portugal*</li> <li>▶ Romania</li> <li>▶ Seychelles*</li> <li>▶ Slovakia*</li> </ul> | <ul style="list-style-type: none"> <li>▶ Slovenia*</li> <li>▶ South Africa*</li> <li>▶ Spain*</li> <li>▶ Sweden*</li> <li>▶ Turks &amp; Caicos</li> <li>▶ United Kingdom*</li> </ul> |

On 6 May 2014, the following jurisdictions issued a statement of public support for adoption of the CRS

(members of the Early Adopters to also endorse the Declaration denoted by \*):

| Jurisdiction   | Jurisdiction   | Jurisdiction  |
|--|--|---|
| <ul style="list-style-type: none"> <li>▶ Austria</li> <li>▶ Australia</li> <li>▶ Brazil</li> <li>▶ Canada</li> <li>▶ Chile</li> <li>▶ China</li> <li>▶ Costa Rica</li> </ul> | <ul style="list-style-type: none"> <li>▶ Indonesia</li> <li>▶ Israel</li> <li>▶ Japan</li> <li>▶ Korea</li> <li>▶ Luxembourg</li> <li>▶ Malaysia</li> <li>▶ New Zealand</li> </ul> | <ul style="list-style-type: none"> <li>▶ Saudi Arabia</li> <li>▶ Singapore</li> <li>▶ Switzerland</li> <li>▶ Turkey</li> <li>▶ USA</li> <li>▶ EU endorsement</li> </ul> |



| Key dates for 'early adopters' |  |
|--------------------------------|--|
| 1 January 2016                 | New account opening procedures to record tax residence to be in place from 1 January 2016                    |
| 31 December 2016               | Due diligence for identifying high-value pre-existing individual accounts to be completed                    |
| 2017                           | First CRS reporting by financial institutions  |
| September 2017                 | Exchange of information between Competent Authorities commences  |
| 31 December 2017               | Due Diligence for identifying low-value pre-existing individual accounts and entity accounts to be completed |

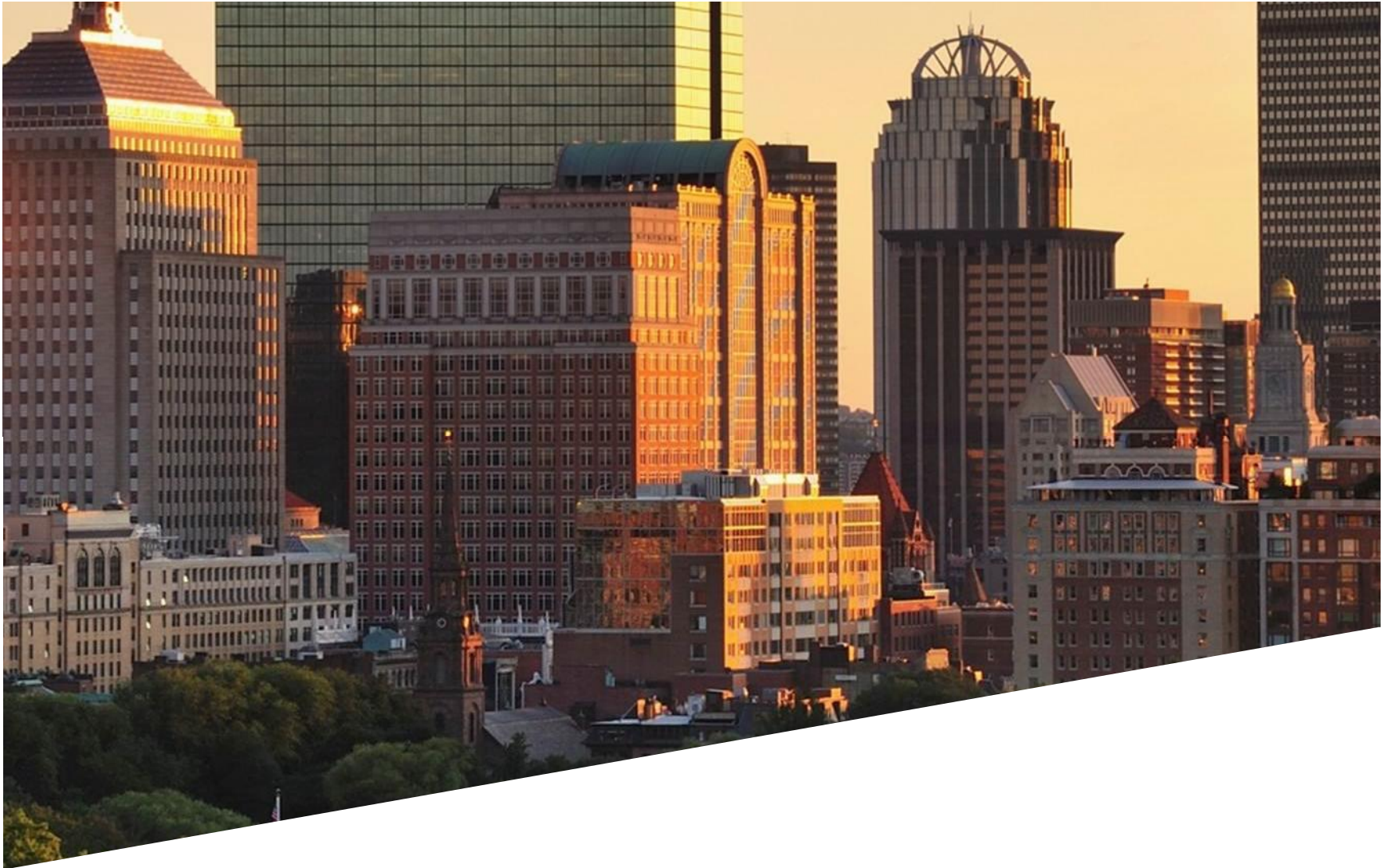
# CRS: key requirements

|                                     | In scope  |   |                                       |  | Out of scope  |  |  |  |
|-------------------------------------|---|---|---------------------------------------|--|---|--|--|--|
| Reporting Financial Institutions    | <ul style="list-style-type: none"> <li>▶ Depository institutions</li> <li>▶ Custodial institutions</li> <li>▶ Investment entities</li> <li>▶ Specified insurance companies</li> </ul> |   |                                       |  | <ul style="list-style-type: none"> <li>▶ Holding companies and treasury companies</li> <li>▶ Government entities, international organisations and central banks</li> <li>▶ Broad participation retirement funds, narrow participation retirement funds, qualified credit card issuers and pension fund of first bullet point</li> <li>▶ Entities exhibiting low risk of tax evasion (defined by local law);</li> <li>▶ Exempt collective investment vehicles; and</li> <li>▶ Trusts if the trustee is a Reporting Financial Institution reporting necessary information on behalf of the trust</li> </ul> |  |  |  |
|                                     | Reportable Accounts   | <ul style="list-style-type: none"> <li>▶ Depository accounts</li> <li>▶ Custodial accounts</li> <li>▶ Cash value insurance contracts</li> <li>▶ Annuity contracts</li> <li>▶ Certain equity or debt interests in a financial institution</li> </ul> |                                       |  |   | <ul style="list-style-type: none"> <li>▶ Certain retirement or pension accounts</li> <li>▶ Certain tax favoured savings</li> <li>▶ Certain life insurance contracts</li> <li>▶ Estate accounts</li> <li>▶ Other accounts presenting low risk of being used to evade tax (as defined by local law)</li> </ul> |  |  |
| Reportable Information <sup>1</sup> |   | Name  | Address/<br>Countries of residence    | Tax Payer Identification number                      | Date of Birth (individuals)   |  |  |  |
|                                     | Account number  | Account balance   | Gross amounts paid to account in year | Total gross proceeds paid or credited to the account |   |  |  |  |

<sup>1</sup> Information will be exchanged between the competent authorities within 9 months after the end of the calendar year



# FATCA versus CRS and Readiness



# FATCA versus CRS

|                          | FATCA  | CRS  |
|--------------------------|--|--|
| <b>De minimis limits</b> | \$50,000 (all individual accounts)<br>\$250,000 (pre-existing entity accounts)   | \$250,000 (pre-existing entity accounts)   |
| <b>Indicia</b>           | Focused on US citizenship and residency  | Focused on tax residency alone   |
| <b>Due diligence</b>     | Separate due diligence for pre-existing and new accounts, and for individuals and entities.<br>Significantly different processes between FFI Agreement and Model 1 IGA | Due diligence modelled on IGA, but with a number of key differences  |
| <b>Who is a FI?</b>      | Most financial institutions unless specifically exempted as being lower risk   | Similar to FATCA but no exemption for smaller local entities excluded under FATCA  |
| <b>Account scope</b>     | Most banking products unless low risk, some insurance, most asset management   | Banking and Asset Mgmt. broadly similar, though regularly traded exemption removed for interest in investment entities<br>CRS has no back book exemption for Insurance |
| <b>Reporting</b>         | Primarily to US (some US reporting obligations to non-US).<br>Account balances from 2014, with income and sale proceeds phased in                                      | Many-to-many, via local authority.<br>Account balances, income and sale proceeds from day one<br>Has to include countries of residence                                 |

# Re-using FATCA development to prepare for the CRS

The CRS shares a number of similarities with FATCA, allowing, to some extent, leverage of existing FATCA capabilities to support delivery. The scale of changes necessary is dependent on the current FATCA programme assumptions. The heat map below highlights if existing solutions support the FATCA regulations as opposed to the Model IGA, there may be a greater demand for process and system changes.

| Issue:                                 | Gap to Model 1 IGA   |
|--|--|
| Pre-existing individual identification | Additional indicia checks required but only for high value accounts, or accounts where no current residence address held. Sub-\$50k or other FATCA exempt accounts must be considered  |
| New individual identification          | <ul style="list-style-type: none"> <li>▶ Current self certification must be amended to cover all countries, rather than a 'US or not US' declaration</li> <li>▶ No de minimis</li> <li>▶ Systems need to allow for multiple statuses per customer</li> </ul> |
| Pre-existing entity identification     | Minor changes to entity types – documentation standards and workflow largely preserved.  |
| New entity identification              | A number of changes needed, including a self-certification on residency for all new entity accounts.   |
| Reporting                              | <p>Possible multiple statuses per customer</p> <p>Additional customer details reportable</p>   |
| Withholding                            | Only applicable to non-IGA countries for FATCA   |
| Compliance                             | As with Model 1 FATCA, compliance is under local law.  |

Process changes and new information requirements
  Minor or no redesign effort

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# Issues to consider

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- ▶ The CRS is heavily based on the **Model 1 IGA**, so systems and process synergies for Model 1 IGA solutions, greater gaps for those based on the FATCA Regulations
- ▶ The **volume of data** required to be collected, analysed and reported will be significantly greater than under FATCA
  - ▶ The scope of CRS encompasses residents of any participating jurisdiction whilst FATCA only requires the identification of US persons
  - ▶ CRS does not have de minimis exemptions for individuals
  - ▶ Unlike FATCA in practice there is no back book exemption for insurance in EU
  - ▶ The regularly traded exemption present under FATCA is not applicable under the CRS, so includes exchange traded funds (for equity/debt interests in investment funds)
- ▶ The concept of **tax residency** is a difficult subject and financial institutions will want to see competent authorities providing clear guidance to help clients determine their tax residency, but FIs only need to spot clear discrepancies
- ▶ Risk that implementing jurisdictions may deviate from the standard on issue of their own guidance – this could lead to **variable standards** applied across adopting jurisdictions. Multinationals will need to track and deal with any inconsistencies



# What should a financial institution do now?

## Immediate next steps regarding the OECD CRS

|   |   |   |
|---|---|---|
| 1 | <b>Establish CRS program governance</b>                     | <ul style="list-style-type: none"><li>▶ Determine whether or not OECD/CRS is managed separately from FATCA program</li><li>▶ Identify program sponsor and steering committee</li><li>▶ Establish change management protocols and rapidly build stakeholder awareness</li><li>▶ Build an internal communications strategy including Board involvement</li></ul>  |
| 2 | <b>Assess overall impact of CRS</b>                         | <ul style="list-style-type: none"><li>▶ Map early adopter countries to group footprint (or client footprint for fund service providers)</li><li>▶ Understand CRS requirements, local privacy laws and agreements between jurisdictions</li><li>▶ Determine impact of CRS to lines of business</li><li>▶ Perform comparison of CRS requirements to existing FATCA program, identifying synergies where appropriate</li></ul> |
| 3 | <b>Define strategy and impact to current FATCA program</b>  | <ul style="list-style-type: none"><li>▶ Determine and document key assumptions and enterprise policy decisions</li><li>▶ Local versus central communication &amp; decision making</li><li>▶ Resource availability</li></ul>   |
| 4 | <b>Plan CRS compliance efforts</b>                          | <ul style="list-style-type: none"><li>▶ Establish workstreams</li><li>▶ Phasing of CRS implementation, similar to FATCA phasing</li><li>▶ Prioritise activities and secure resources</li><li>▶ Define milestones and build work plans</li></ul>   |
| 5 | <b>Determine strategic FATCA and CRS reporting platform</b> | <ul style="list-style-type: none"><li>▶ Identify reporting solution strategy and approach</li><li>▶ Central versus de-centralized reporting implementation models</li><li>▶ Identify solution alternatives</li></ul>  |

# Ireland's position in relation to compliance with FATCA, the DAC and the CRS





# Automatic Exchange of Information

EY Breakfast Briefing  
23 September 2014

*Brian Boyle*

**Incentives & Financial Services Branch**

**Revenue**



# Tax Transparency

- No hiding place for untaxed or illicit monies
- Critical element of Ireland's tax credibility
- Ambitious global goals







# The Landscape

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- Foreign Account Tax Compliance Act (FATCA)
- Common Reporting Standard (CRS)
- EU Savings Directive (EUSD)
- Directive(s) on Administrative Co-operation (DAC 1,2,3)
- Treaty Relief and Compliance Enhancement (TRACE)
- Global Forum on Transparency and Exchange of Information for Tax Purposes(GFTEI)



# FATCA – Current State of Play

- IGA 2012 – CAA still in draft
- Financial Accounts Reporting (United States of America) Regulations 2014 (w.e.f. 1 July 2014)
- Guidance Notes September 2014
- Reporting in June 2015 – Exchange in September 2015



# FATCA Compliance

- Registration

- FIs in Model 1 countries IGA must register with the IRS by 31 Dec 2014.
- IRS published first list of registered FIs in June 2014 (2007)

- Reporting

- 30 June 2015 in respect of the 2014 accounting year.
- ROS Upload (Similar to iXBRL/P35) of FATCA Schema
- Processing and Exchange by VIMA Dundalk
- IRS Follow-Up with Competent Authority
- Enforcement under S.891E TCA

# ROS FATCA Screens (Prototype)

## Revenue Record:

Open Revenue Record

You have no new documents in your Revenue Record.

## Services:

Manage Tax Registrations

Download Pre-populated Returns

## Returns and Payments

No current tax clearance certificate. (What's this?)

File a Return

### Complete a Form On-line

Select a return you would like to complete now. You will be given the option of filing the return with or without a payment.

Select a tax type...

### Upload Form(s) Completed Off-line

Select the type of return from the drop-down list to upload a return completed off-line.

FATCA

Upload Return

## ROS Upload

If you wish to use this facility, select a FATCA file using Add File. Then upload the FATCA file by selecting Upload Files

GIIN Number

Add File

Upload File

To select your FATCA File, click on the "Add File" button on the left and select the file you want to send to Revenue.

To upload your FATCA file, click on the "Upload File" button on the left.

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# Common Reporting Standard

- The Global Standard
- CRS builds on FATCA but there are some key differences:
  - Place of tax residence v. U.S. Persons
  - No thresholds
  - No “frequently traded” exemption
  - Fewer Exempt entities
  - Potential Multiple Residence Indicia





# CRS - Current State of Play


- Common Reporting Standard developed by WP10
- Package Approved by OECD Council 18 July 2014
  - Standard, Commentary, IT Modalities
- Legality under Multi-Lateral Convention/DAC/Treaty
- Competent Authority Agreements
- G5 (48) Early Adopter Group (Berlin 24 October 2014)
- Data Protection Issues



# Early Adopter Obligations

## Due Diligence from January 2016

| Account Type | Definition                  | Sub-Class  | Exchange Date                  |
|--------------|-----------------------------|------------|--------------------------------|
| New          | Opened on/after<br>1/1/2016 |            |                                |
| Pre-Existing | Open as at<br>31/12/2015    | High Value | September 2017                 |
|              |                             | Low Value  | September 2018 at<br>latest    |
|              |                             | Entity     | By September 2018<br>at latest |



# Directive on Administrative Co-operation (2011/16/EU)

- DAC1 - Exchange of information on 5 categories:
  - income from employment;
  - Director's fees;
  - life insurance products;
  - pensions;
  - immovable property (ownership and income)
- S.I. no.549 of 2012
- Reporting from 1 Jan 2015 for 2014 Tax Year
- DAC 2 - Account data
- DAC 3 – 2017? (Extension to DAC1)



# DAC II

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Italian Presidency Priority

Alignment with Global Standard (CRS)

Commentary and ECJ Interpretation

Hybrid Instrument (Standard and Commentary)

To be finalised in October 2014

Dates to align with Early Adopter or Global Forum?

*"...a CRS by any other name would smell as sweet..."*

Apologies to W. Shakespeare



# Other AEOI Developments

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## Global Forum on Tax Transparency

- CRS to 120+ countries
- Timeline Early Adopters + 1 year
- Peer Review process to begin in 2015

## EU Savings Directive

- New Directive adopted March 2014
- Hopefully subsumed into DAC/CRS

## TRACE

- Residence to Source reporting
- Qualified Intermediaries





# Revenue Priorities

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- Visible commitment to transparency
- Convergence on single standard
- Maximising tax compliance dividend
- Secure TRACE as industry payback
- Consultative & Co-operative approach to implementation

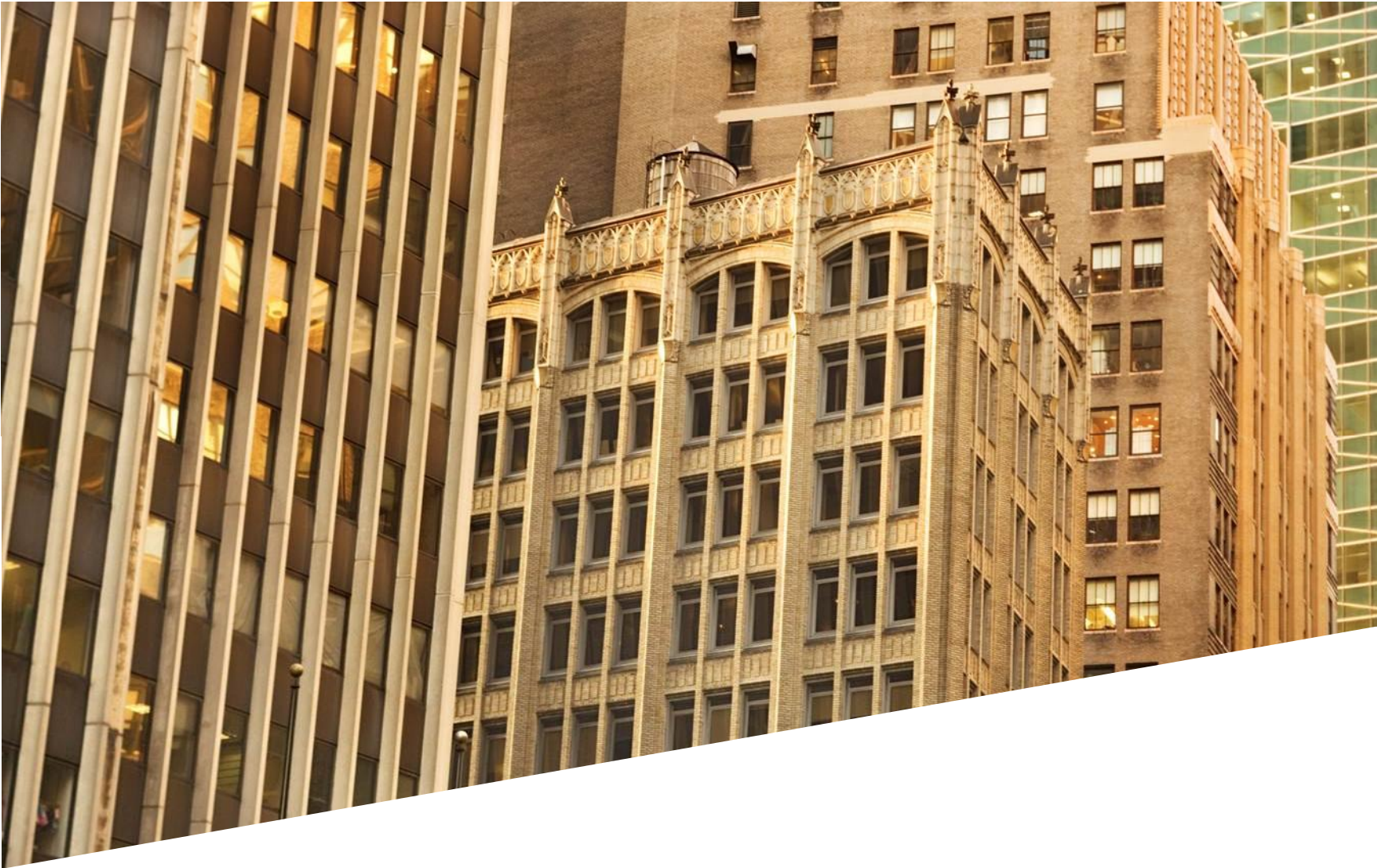


***Go raibh maith agaibh***

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# Question and answers



# Circular 230

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- ▶ The strategies presented in this presentation are subject to EY independence confirmation process prior to implementation.



Thank you

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