

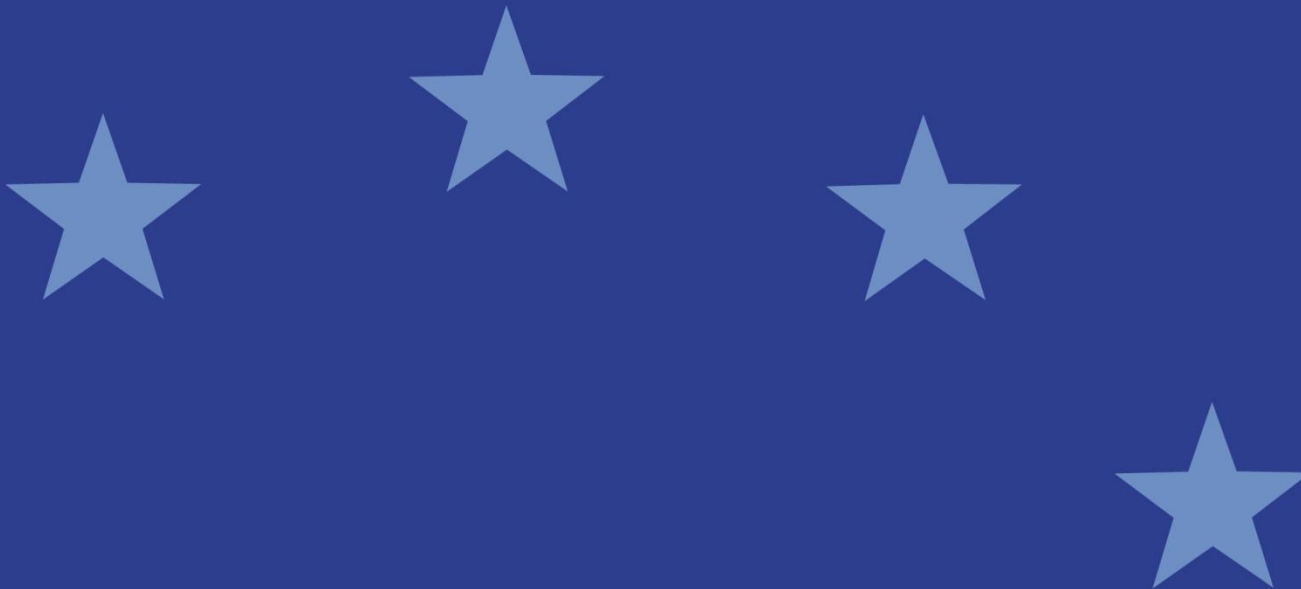


European Securities and  
Markets Authority

14 February 2014 | Conference Centre Albert Borshette, Brussels

## DG Agri Expert Group

**Catherine Sutcliffe, Senior Officer Secondary Markets**





# Agenda

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- **EMIR**
- MiFID II
- MAD/MAR
- Overview

EMIR sets the following overarching obligations:

- **all derivative contracts by all counterparties** must be reported to Trade Repositories from **12 February 2014** by all counterparties for contracts which were entered into:
  - before 16 August 2012 and remain outstanding on that date or
  - on or after 16 August 2012
- certain OTC derivative contracts\* must be cleared through CCPs (“clearing obligation”)
- OTC derivatives not cleared through a CCP must apply risk mitigation techniques

\* OTC derivative: execution does not take place on a Regulated Market (EMIR, Art.2)



## EMIR – trade reporting obligation

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- November/December 2013: announced 6 entities registered as TRs for the European Union (EU):

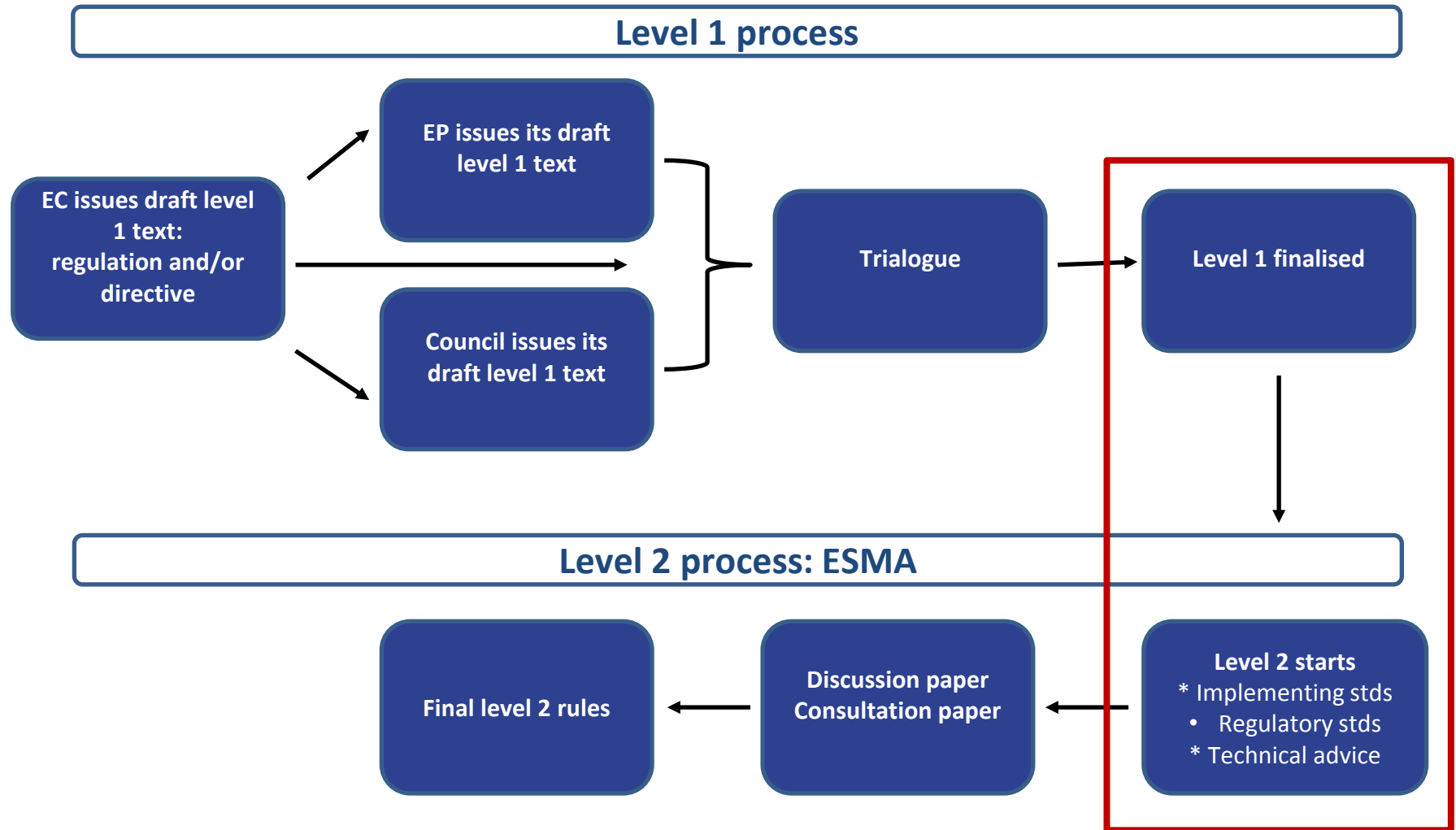
DTCC Derivatives Repository Ltd. (DDRL)	All asset classes
Krajowy Depozyt Papierów Wartosciowych S.A. (KDPW)	All asset classes
Regis-TR S.A.	All asset classes
UnaVista Limited	All asset classes
CME Trade Repository Ltd. (CME TR)	All asset classes
ICE Trade Vault Europe Ltd. (ICE TVEL)	Commodities, credit, equities, interest rates

- Reporting obligation to TRs applied from 12 February 2014
- ETD contracts must be reported
  - Updated Q&A issued December 2014, Part V

- Certain OTC derivatives must be cleared through a CCP
- Applicability to Non Financial Counterparties (NFCs)
  - **NFC thresholds**
    - Thresholds are set by class (credit, equity, interest rate, foreign exchange, commodity)
    - Clearing threshold for commodity derivative contracts: EUR 3 billion in gross notional
    - NFC becomes a “NFC+” if rolling average position over 30 days exceeds the threshold
  - **Derivative contracts which are objectively measurable as reducing risks directly related to commercial activity or treasury financing activity excluded from threshold calculation**
- Current status on implementing clearing obligation
  - “Bottom-up” process for commodity derivatives class
    - **Product type:** Metals, Energy, Index, Agriculture, Environment, Freight
    - **Product sub type:** Biofuel, Fertilizer, Grain Oil Seeds

- Jan 2014: ESMA published a list of applicant central counterparties (CCPs) established in non-EEA countries which have applied for recognition under Article 25 of Regulation (EU) No 648/2012
- November 2013: Issued final draft RTS related to derivative transactions by non-EU counterparties.
- Jan 2014: ESMA issued a supplement to its September 2013 advice to the European Commission in respect of the equivalence between the Japanese regulatory regime for commodity CCPs and the regulatory regime for CCPs under EMIR.

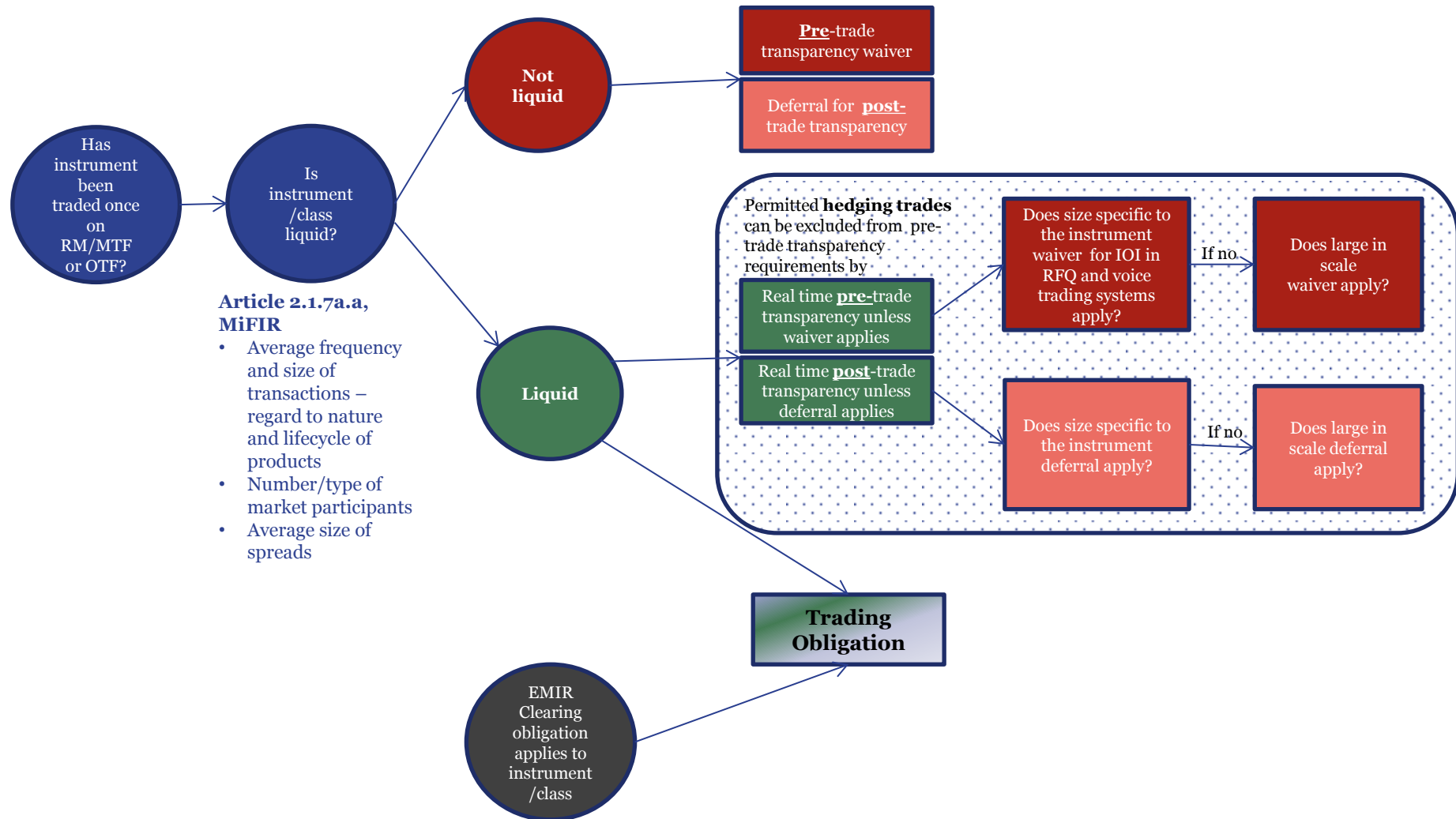
- EMIR
- **MiFID II**
  - Status in policy process and timeline
  - Scope
  - Transparency requirements
  - Position limits
  - Position reporting
  - New regulatory powers
- MAD/MAR
- Overview





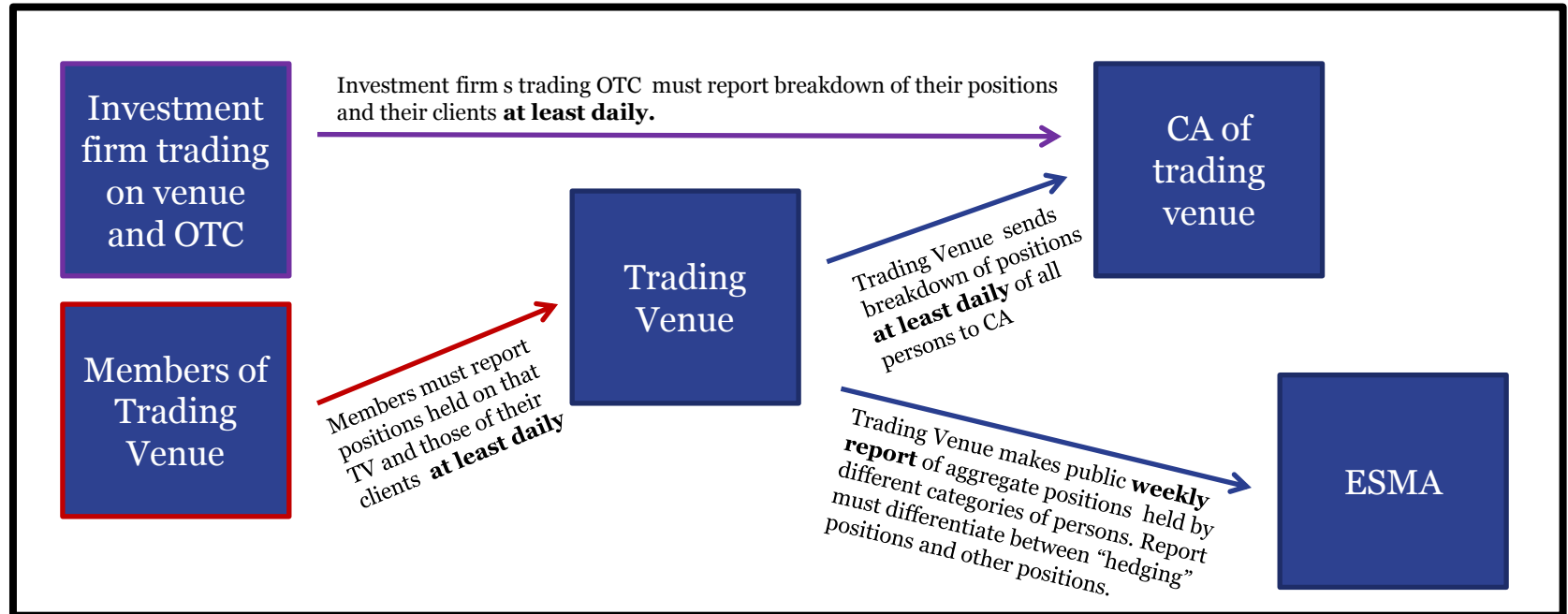
- Ancillary activity exemption narrowed (article 2.1.1, MiFID II)
  - **ESMA's role and work:**
    - develop regulatory standards with criteria for determining when an activity is “ancillary”
    - “ancillary” determination won't include: certain intra group transactions or transactions objectively measurable as reducing risks (“hedging exemption”)
- Definitions of financial instruments:
  - Definition of derivatives: C4 to C10, annex 1, section C
  - **ESMA's role and work**
    - Provide technical advice to Commission on C6, C7 and C10 (article 4.2)

# Pre- and post-trade transparency requirements



- ESMA RTS to determine:
  1. methodology for calculation which NCAs will apply in establishing spot month and other month position limits
  2. whether a position qualifies as reducing risks directly related to commercial activities for non-financial entities (“hedging exemption”)
  3. when positions of a person should be aggregated within a group
  4. criteria regarding whether a contract is an economically equivalent contract to that traded on a trading venue
  5. with respect to cross border trading, what is meant by same commodity derivative and significant volumes and method for calculating such
  6. methodology for aggregating and netting OTC and on-venue commodity derivatives positions to establish the net position
  7. procedure on how to notify and apply for exemption

- ESMA ongoing tasks
  1. issue an opinion to NCAs on the position limits they propose to set
  2. settle disputes between NCAs
  3. monitor at least annually the way NCAs have implemented position limits
  4. publish on website summaries of position limits and mgt controls in place



- Prepare ESMA ITS to:
  - Determine format of weekly report and format of investment firms' daily reports to CAs
  - Specify measures to require all weekly reports to be sent to ESMA at a specified time

- National Competent Authorities (NCAs) can
  - request information on size/purpose of a [commodity] derivatives position
  - require persons to reduce their positions/exposure
  - for commodity derivatives, limit ability to enter into transactions.
- ESMA
  - will have comparable powers to NCAs **but** may only exercise these in limited circumstances
  - will facilitate and coordinate national position management limits and measures
  - must consult public bodies competent for oversight, administration and regulation of physical agricultural markets under Regulation 1234/2007 before taking any measures related to agricultural commodity derivatives
  - must publish measures taken on its website
- EC delegated acts to determine:
  - What is a threat to the orderly functioning of and integrity of financial markets or to the stability of whole or part of the EU financial system
  - What is an appropriate reduction of a position or exposure entered into
  - Situations where risk or regulatory arbitrage could arise



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- MAD II/MAR extends scope to:
  - instruments traded solely on MTFs and the new category of OTFs (whereas today MAD applies to instruments admitted to trading /traded on Regulated Markets only)
  - related OTC traded financial instruments which may impact the underlying market e.g. CDS;
  - emissions allowances; and
  - spot commodity markets which impact financial instruments and vice versa
- Strengthens enforcement & investigatory powers against market abuse by setting minimum standards and reducing national discretions
- Coordinates action and enhances cooperation between regulators with ESMA playing an important role



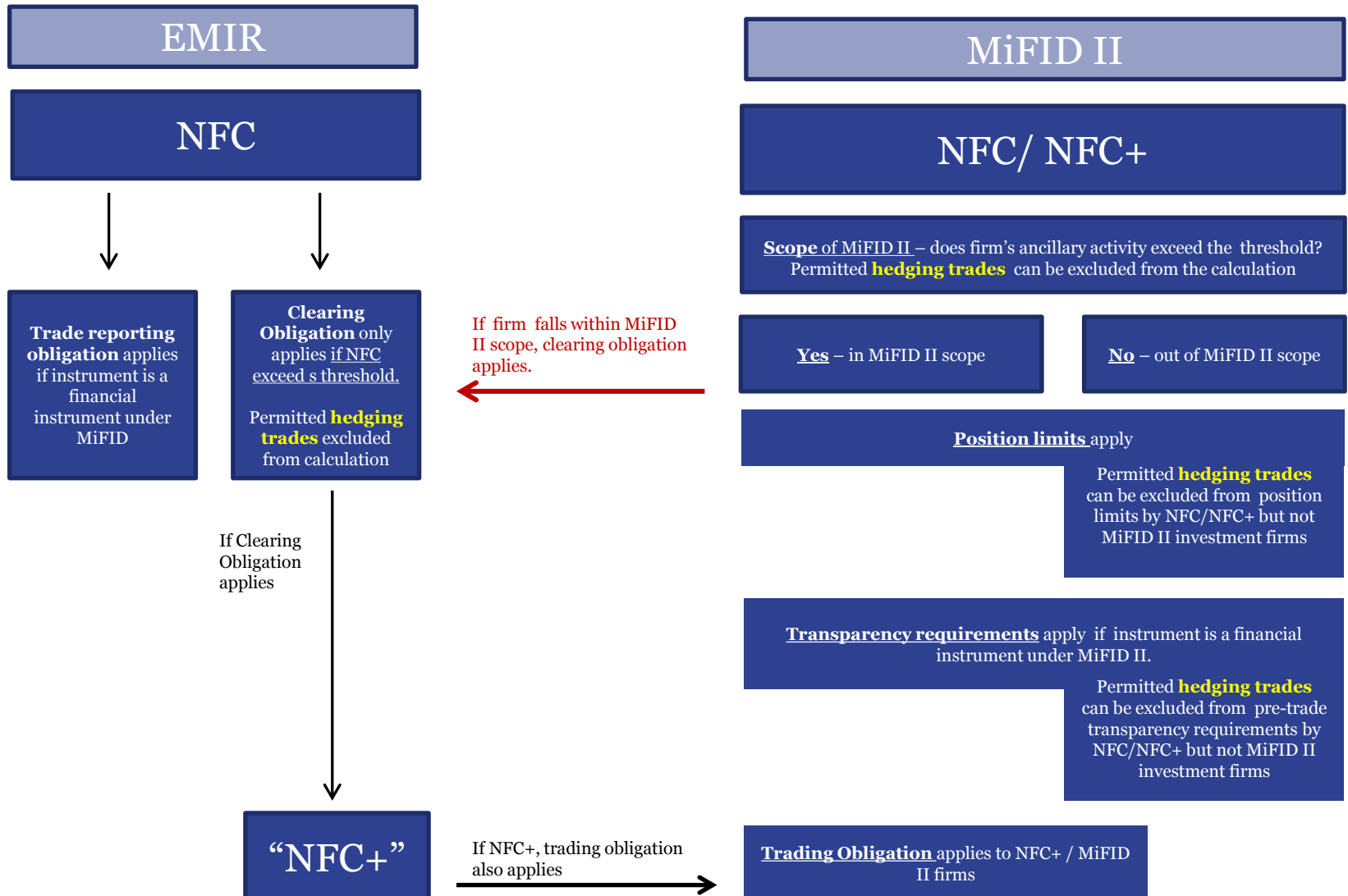
- Article 6(1)(b) MAR defines inside information in relation to derivatives on commodities as *“information of a precise nature, which has not been made public, relating, directly or indirectly to one or more such derivatives or relating directly to the related spot commodity contract, and which, if it were made public, would be likely to have a significant effect on the prices of such derivatives or related spot commodity contracts and where this is information which is reasonably expected to be disclosed or required to be disclosed in accordance with legal or regulatory provisions at the Union or national level, market rules, contracts, practices or customs, on the relevant commodity derivatives or spot markets.”*
- Article 6(3a) of MAR, ESMA must issue guidelines to establish a non-exhaustive indicative list of information which is reasonably expected or required to be disclosed in accordance with ...



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