

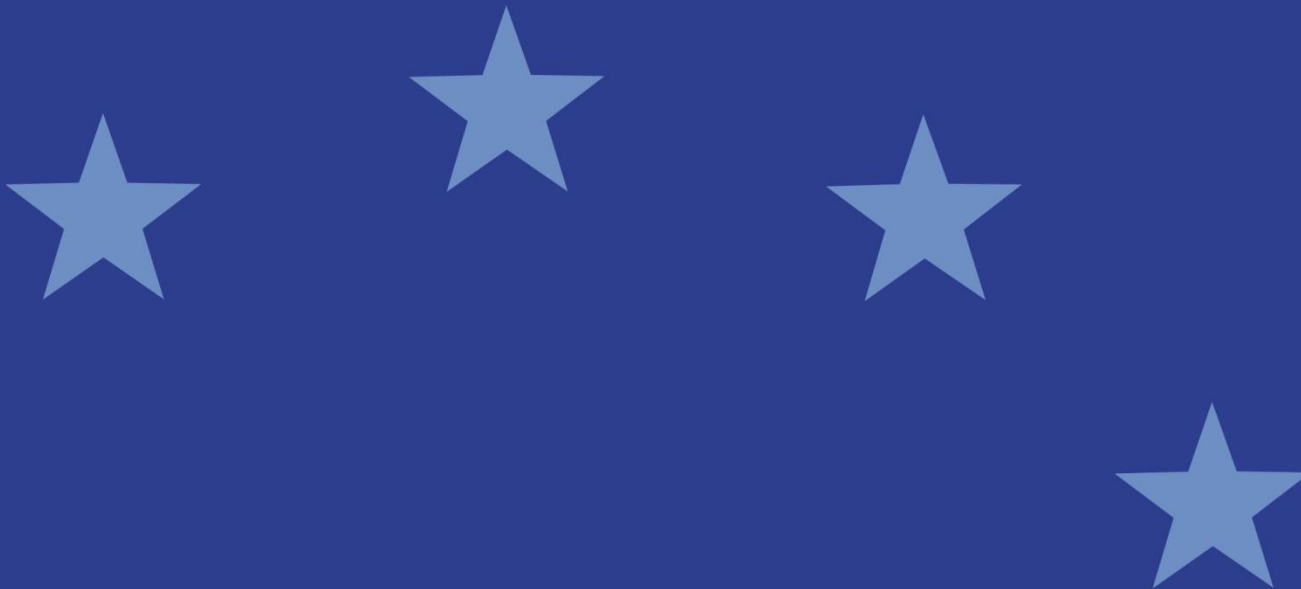


European Securities and  
Markets Authority

15 October 2015 | DG Agri Expert Group, Brussels,

## MiFID II – ESMA’s draft RTS on Commodity Derivatives”

**Nuno Casal**



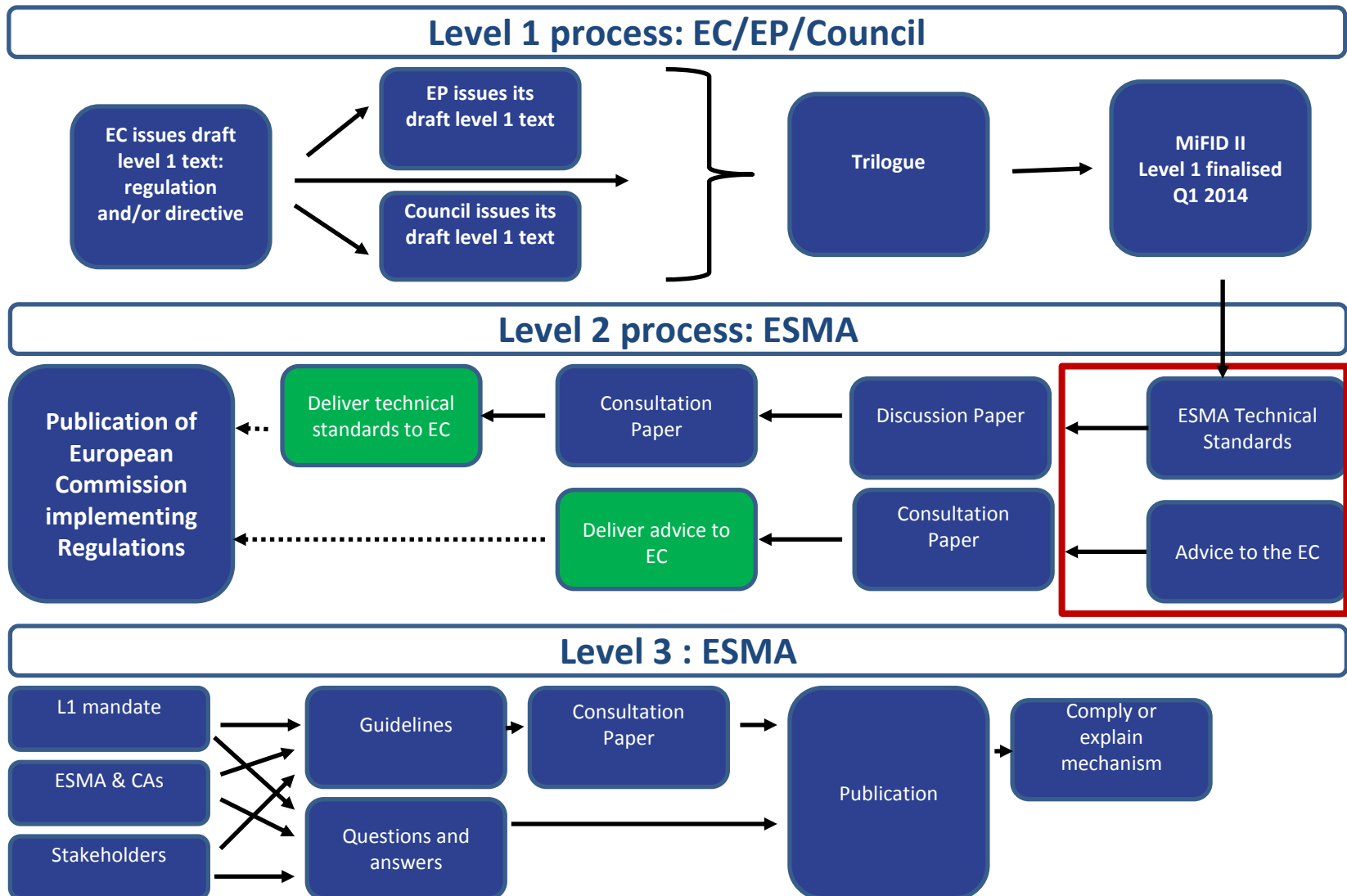
## 1. Contents and Context

### 2. Scope of MiFID II

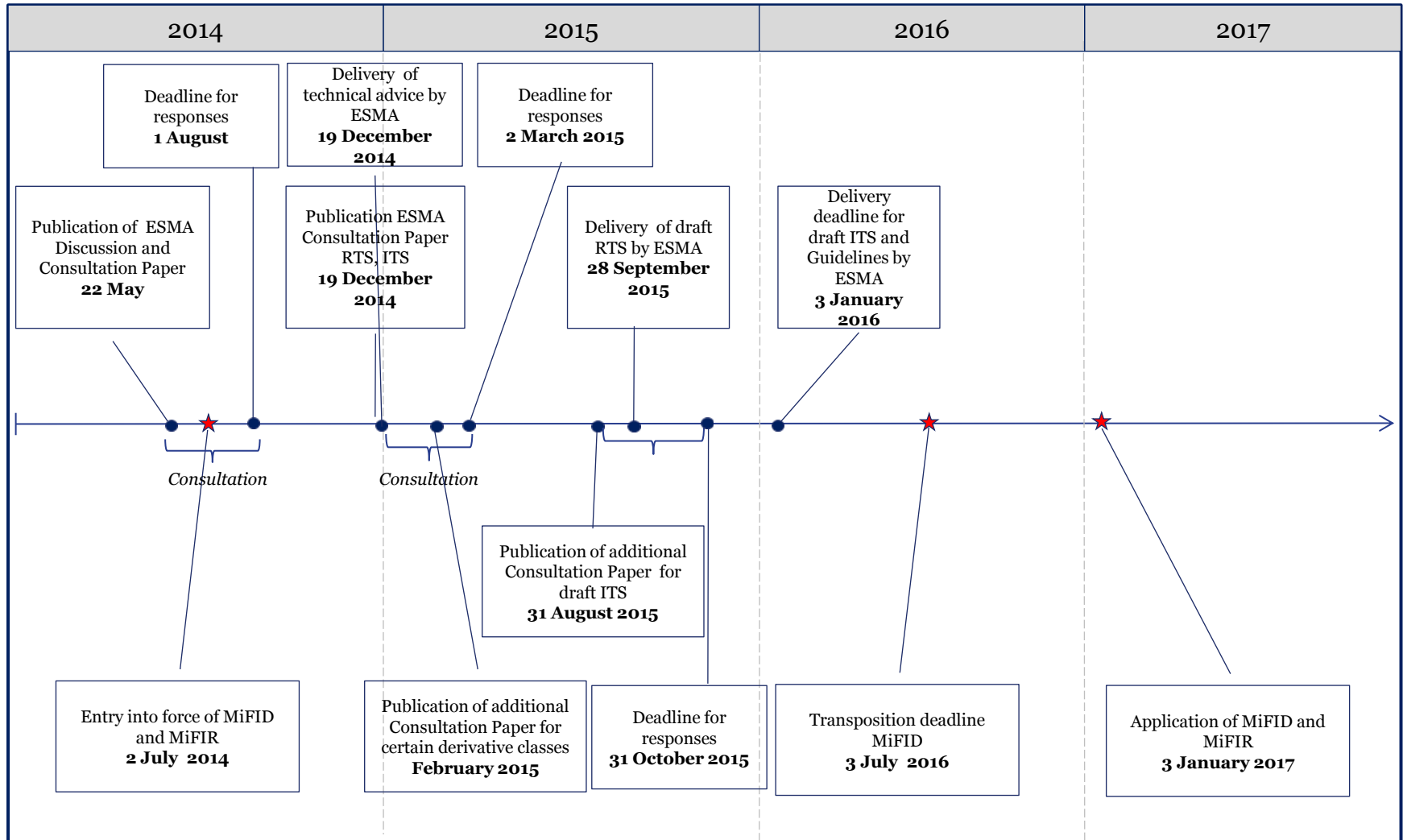
- Ancillary activity
- Definition of financial instruments

### 3. Position control framework

- Position limits
- Position reporting



# ESMA's Timetable for Delivery



Discussion (on RTS) and  
Consultation (on TA)  
Papers (22 May 2014)

- All matters

Technical advice by ESMA  
to European Commission  
on 19 December 2014

- Financial instruments def. - Section C 6, 7 and 10 of Annex I
- Position reporting thresholds
- Position management powers of ESMA

Consultation Paper on RTS  
and ITS (19 December  
2014)

- Ancillary activity
- Position limits
- Position reporting

Consultation Paper on ITS  
(31 August 2015)

- Position reporting

RTS with final report and  
CBA (28 September 2015)

- Ancillary activity
- Position limits

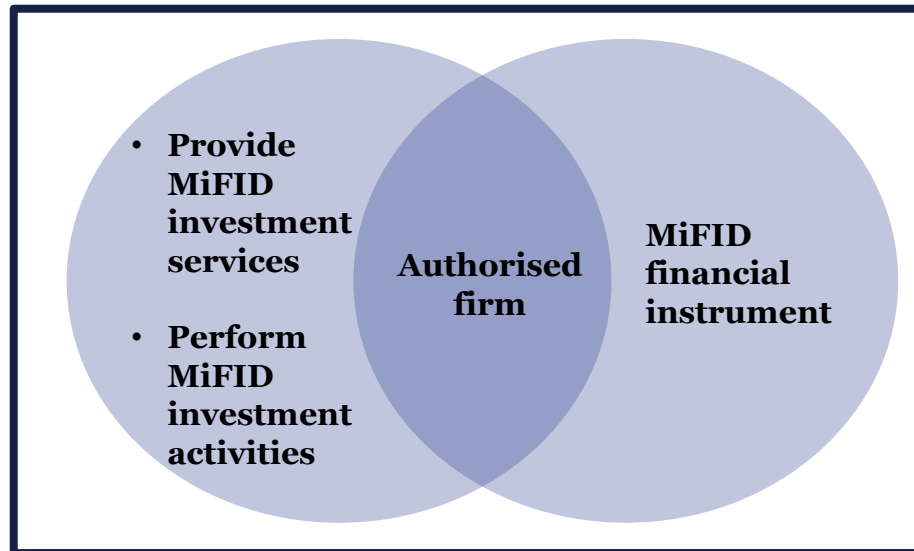
RTS with final report and  
CBA (28 September 2015)

- Position reporting



# Agenda

1. Contents and Context
- 2. Scope of MiFID II**
  - Ancillary activity
3. Position control framework
  - Position limits
  - Position reporting





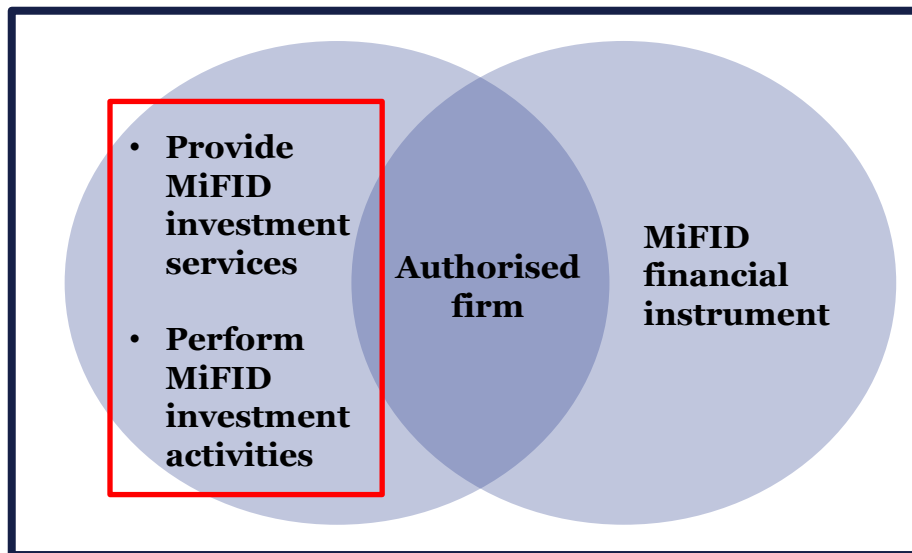
# Agenda

1. Contents and Context
- 2. Scope of MiFID II**
  - **Ancillary activity**
3. Position control framework
  - Position limits
  - Position reporting

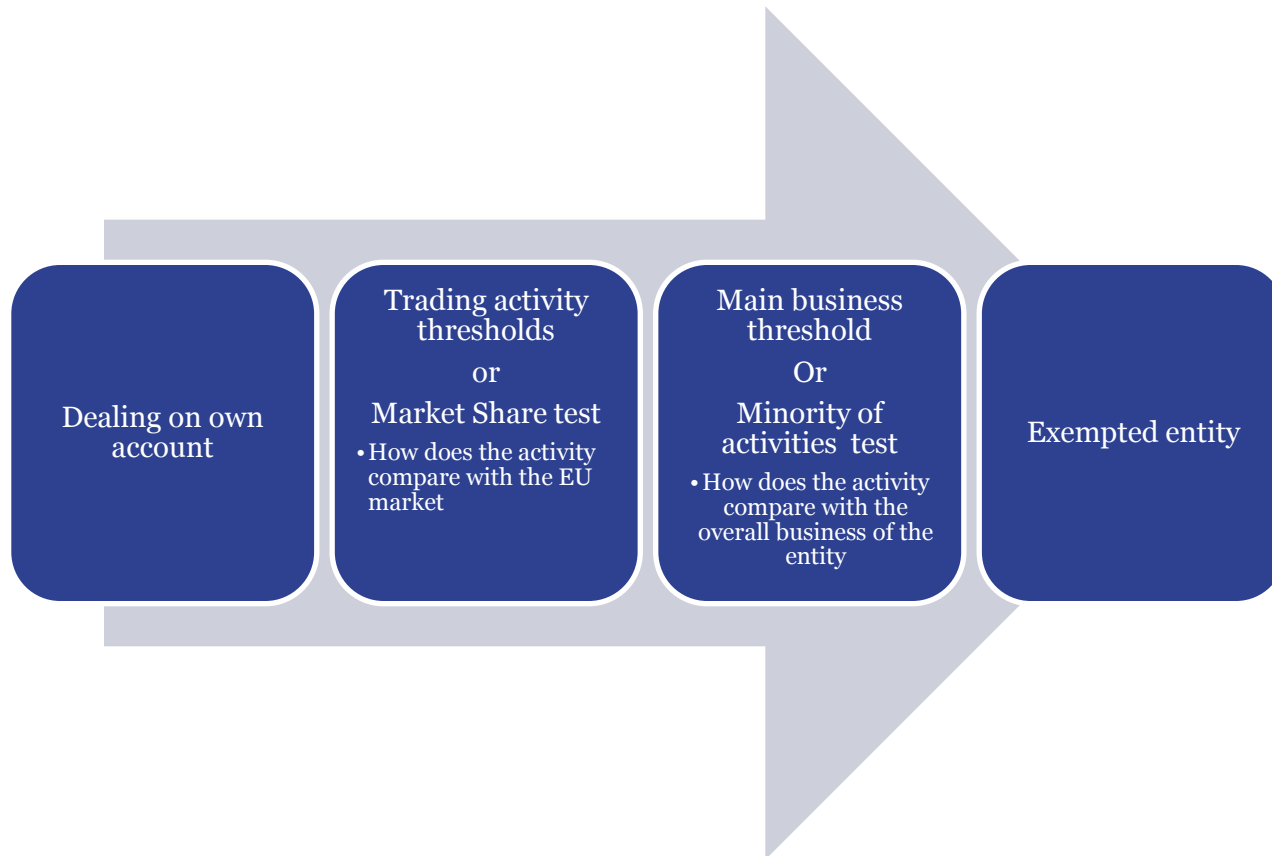


## Investment services and activities (annex I, section A, MiFID II)

- (1) Reception and transmission of orders in relation to one or more financial instruments;
- (2) Execution of orders on behalf of clients;
- (3) **Dealing on own account;**
- (4) Portfolio management;
- (5) Investment advice;
- (6) Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis;
- (7) Placing of financial instruments without a firm commitment basis;
- (8) Operation of an MTF;
- (9) Operation of an OTF.



| MiFID I                |   | MiFID II               |   |
|------------------------|---|------------------------|---|
| <b>Article 2(1)(k)</b> | main business consists of dealing on own account in commodities and/or commodity derivatives  | <b>Deleted</b>         |   |
| <b>Article 2(1)(i)</b> | dealing on own account in financial instruments, or providing investment services in commodity derivatives or derivative contracts providing the activity is ancillary to their main business | <b>Article 2(1)(j)</b> | dealing on own account in commodity derivatives/ emission allowances and derivatives thereof, or providing investment services in such instruments to customers/ suppliers providing the activity is ancillary to their main business |



## Is the size of the trading activity at group level below the relevant threshold (per asset class?)

### Calculation for size of trading activity

Size of trading activity at group level in the relevant asset class in the EU (numerator)

*divided by*

Size of overall trading activity at in the relevant asset class in the EU (denominator)

          
*equals*

**% of firm's trading in an asset class compared with the size of the overall market trading activity in the EU in that asset class**

# Trading activity thresholds or Market Share test

| Threshold | Class of derivatives   |
|-----------|--|
| 4 %       | derivatives on metals  |
| 3 %       | derivatives on oil and oil products  |
| 10 %      | derivatives on coal  |
| 3 %       | derivatives on gas   |
| 6 %       | derivatives on power   |
| 4 %       | derivatives on agricultural products;  |
| 15 %      | derivatives on other commodities, including freight and commodities referred to in Section C 10 of Annex I of Directive 2014/65/EU |
| 20 %      | emission allowances or derivatives thereof   |

## Relevant trading activity

### Calculation for determining the size of the firm's trading activity in a commodity asset class at group level in the EU (numerator)

Volume of the overall trading activity in the relevant asset class of the person seeking the exemption at group level in the EU

*minus*

Volume of privileged exemptions in the relevant commodity asset class at group level in the EU

(i.e. intra-group transactions,

transactions in derivatives reducing commercial and treasury financing risks,

and transactions entered into to fulfil obligations to provide liquidity)

*minus*

Volume of trading in licensed activity (i.e. trading activity undertaken by a MiFID authorised firm in the group)

---

*equals*

**Size of firm's trading activity in an asset class at group level in the EU**

## Ancillary activity – “Privileged transactions”

|          | Exemption  | Detailed approach                            |
|----------|--|--|
| <b>1</b> | Intra-group liquidity exemption: <i>intra-group transactions referred to in Article 3 EMIR that serve group-wide liquidity and/or risk management purposes</i>   | EMIR definition                              |
| <b>2</b> | “Hedging exemption”: <i>transactions in derivatives which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity</i>   | Close to the hedging transactions under EMIR |
| <b>3</b> | Liquidity obligation exemption: <i>transactions in commodity derivatives/ emission allowances entered into to fulfil obligations to provide liquidity on a trading venue where such obligations are required by regulatory authorities or trading venues</i> |  |

## Article 5

### Transactions qualifying as reducing risks

**[...] a transaction [...] shall be considered to reduce objectively measurable risks directly relating to commercial activity or treasury financing activity when [...]:**

- (1) it reduces the risks arising from the potential change in the value of assets, [...]
- (2) it covers the risks arising from the potential indirect impact on the value of assets, [...] resulting from fluctuation of interest rates, inflation rates, foreign exchange rates or credit risk;
- (3) it qualifies as a hedging contract pursuant to [IFRS][...]

**[...] a qualifying risk-reducing transaction [...] is one for which the non-financial entity:**

- (1) describes [...] in its internal policies:

the types of commodity derivative contracts included in the portfolios used to reduce risks directly relating to commercial activity and their eligibility criteria;

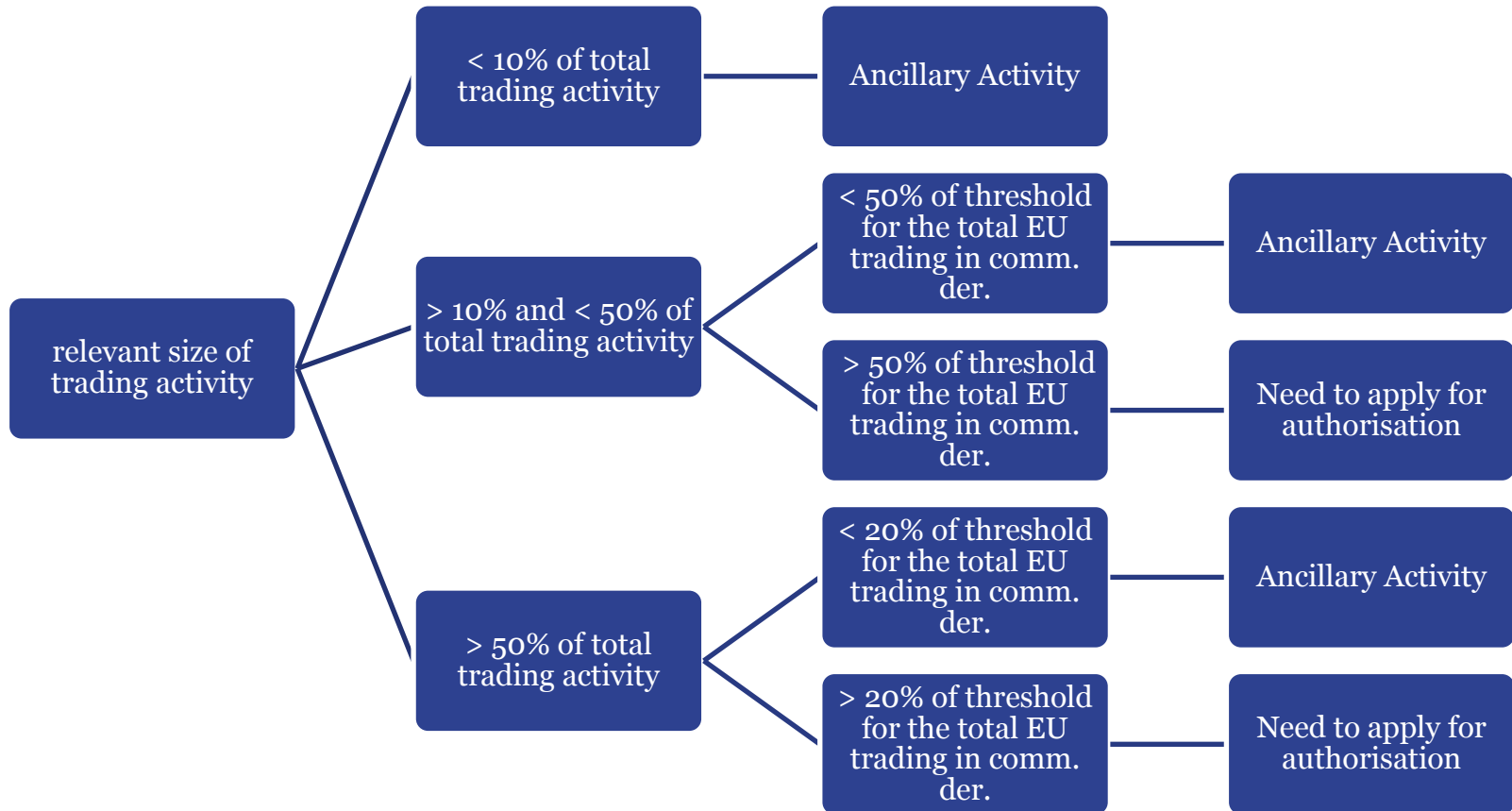
the link between the portfolio and the risks that the portfolio is mitigating;

the measures adopted to ensure that the transactions concerning those contracts serve no other purpose than covering risks directly related to the commercial activities of the non-financial entity, and that any transaction serving a different purpose can be clearly identified;

- (2) is able to provide a sufficiently disaggregate view of the portfolios in terms of class of commodity derivative, underlying commodity, time horizon and any other relevant factors.



# Main business threshold – Minority of activities test



A firm should calculate a simple average for the figures of three years on a rolling basis once the regime is in place and three years of data are available to determine whether it falls above or below the thresholds

Interim approach :

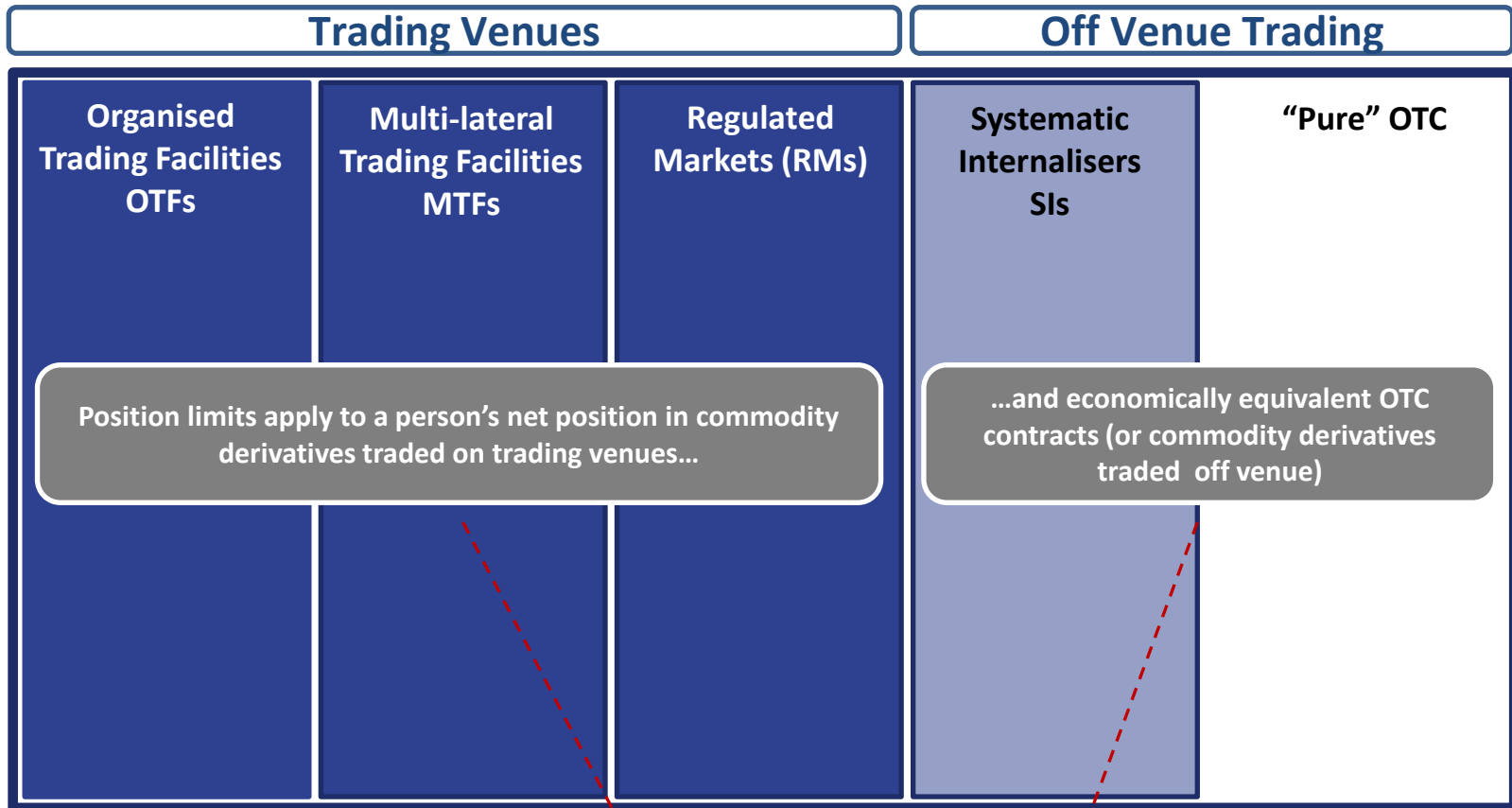
| <b>Notifications made</b>                   | <b>Relevant data in calendar years</b> |
|---|--|
| <b>Before 1 July 2017</b>                   | 1 July 2015 to 30 June 2016            |
| <b>Between 1 July 2017 and 30 June 2018</b> | 1 July 2015 to 30 June 2017            |



# Agenda

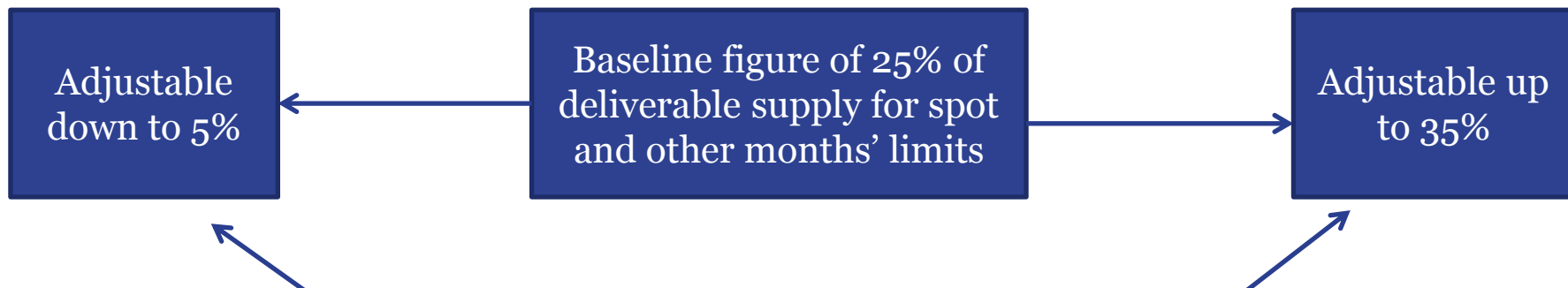
15 October 2015 | DG Agri Expert Group, Brussels,

1. Contents and Context
2. Scope of MiFID II
  - Ancillary activity
- 3. Position control framework**
  - **Position limits**
  - Position reporting



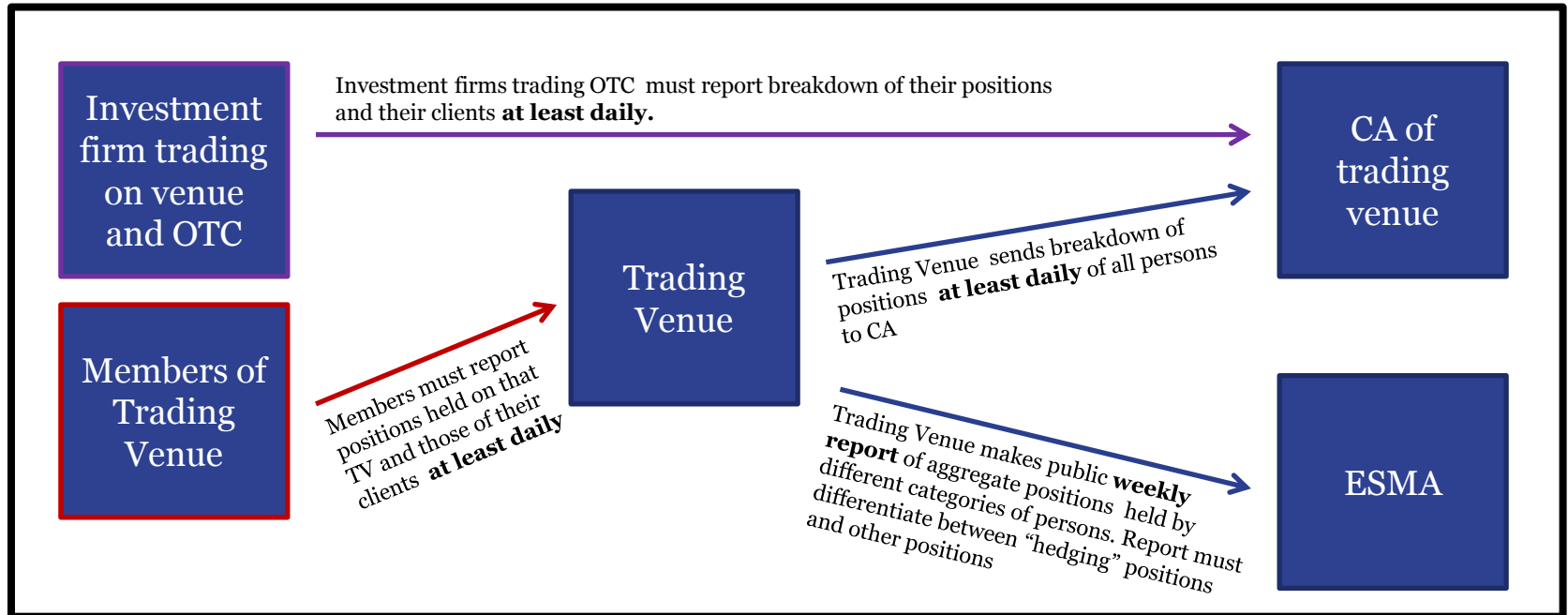
**Exemption to limits available for non-financial firms' 'hedging trades' – NFC must apply to NCA to use exemption**

|   | Spot months              |   |  | Other months             |  |  |
|---|--------------------------|---|--|--------------------------|--|--|
|   | Baseline measure         | Baseline %  | CA flexibility to deviate from baseline based on factors | Baseline measure         | Baseline %   | CA flexibility to deviate from baseline based on factors |
| <b>Physically delivered commodity derivatives</b>       | Deliverable supply       | 25%   | +10%- 20%  | Open interest            | 25% of total open interest unless open interest is less than 10,000 lots in which case, baseline is 2,500 lots | +10%- 20%  |
| <b>Cash settled commodity derivatives</b>               | Deliverable supply       | 25%   | +10%- 20%  | Open interest            | 25% of total open interest unless open interest is less than 10,000 lots in which case, baseline is 2,500 lots | +10%- 20%  |
| <b>Commodity derivatives with no deliverable supply</b> | Open interest            | 25%   | +10%- 20%  | Open interest            | 25% of total open interest unless open interest is less than 10,000 lots in which case, baseline is 2,500 lots | +10%- 20%  |
| <b>Securitised commodity derivatives</b>                | Number of units in issue | 25% unless less than 10million securities in issue. | +10%- 20%  | Number of units in issue | 25% unless less than 10million securities in issue   | +10%- 20%  |



| Factor  | Application   |
|---|---|
| <b>New and illiquid contracts</b>                     | For venue traded commodity derivatives where the open interest is lower than 10,000 lots over a three month period, the position limit is set at 2,500.lots.<br>For securitised derivatives where the number of securities issued is lower than 10 million over a three month period, the position limit is set at 2.5 million securities.          |
| <b>Maturity of contract</b>                           | CAs can decide to raise the position limit below the baseline regarding contracts with short maturity.<br>CAs can decide to raise the position limit <u>above</u> the baseline regarding contracts with a large number of separate expiries.  |
| <b>Deliverable supply in underlying commodity</b>     | Where the deliverable supply in the underlying commodity can be restricted or controlled, the CA can decide to lower the position limit <u>below</u> the baseline.<br>Where the level of deliverable supply is low relative to the amount required for orderly settlement, the CA can decide to lower the position limit <u>below</u> the baseline. |
| <b>Overall open interest</b>                          | Where the contract has a comparatively large volume of total open interest, the CA can decide to lower the position limit <u>below</u> the baseline.  |
| <b>Number of participants</b>                         | Where there is a comparatively significant number of participants (based on daily average number over a one year period) holding positions in the contract, the CA can decide to lower the position limit <u>below</u> the baseline.  |
| <b>Characteristics of underlying commodity market</b> | Where the characteristics of the underlying commodity market may lead to market participants holding or maintaining sizeable positions, the CA should have regard to the extent to which market participants may hold and maintain a dominant position.   |

1. Contents and Context
2. Scope of MiFID II
  - Ancillary activity
  - Definition of financial instruments
- 3. Position control framework**
  - Position limits
  - **Position reporting**





|    | Field  | Explanatory comments  |
|----|--|---|
| 1. | <b>Date of the business day of the reported positions</b>                                    | The report shall be produced as at the close of the business day and submitted by 09.00 am local time on the next business day  |
| 2. | <b>Reporting investment firm ID</b>  | Legal Entity Identifier (“LEI”)   |
| 3. | <b>End client ID</b>   | LEI for legal entities or other identifiers for natural persons, as specified by ESMA in Regulation (EU) No xxxx/xxxx [TS under Article 26 MiFIR]. Note: if the position is held as a proprietary position of the reporting firm, this field will be identical to field 2 above |
| 4. | <b>Unique product identifier of on-venue contract</b>  | ISIN. See field 5 below for treatment of OTC contracts that are economically equivalent to contracts that are traded on trading venues  |
| 5. | <b>Trading venue identifier</b>  | Either the Market Identifier Code (“MIC”) or for off-exchange positions in economically equivalent OTC contracts, the code “XOFF”   |
| 6. | <b>Position maturity</b>   | Either “SPOT” for spot month or “ALL” for all other months. Note: separate reports are required for spot months and all other months in order to facilitate the monitoring of compliance with Article 57(1).  |
| 7. | <b>Position quantity</b>   | Position expressed in the number of contracts   |
| 8. | <b>Indicator of whether position is long or short</b>  | Indicated by the use of “+” (long) or “-” (short)   |
| 9. | <b>Indicator of whether the position is risk reducing in relation to commercial activity</b> | Indicated by the use of “yes” (position is risk reducing) or “no” (position is not risk reducing).  |

**Table of fields to be reported in daily position reports**

Trading Venues must produce a weekly report per commodity derivative traded on their venue when both the following thresholds are met:

- **Threshold 1: total number of persons that hold a position in the contract**
  - More than 30 position holders in a given contract on a given trading venue
  - *NB: Where there are 4 or fewer position holders in a category, the number of position holders in that category will not be reported*
- **Threshold 2: total size of open positions**
  - Exceeds a level of four times the deliverable supply

|  |                      | {Name of trading venue}         |                  |         |                  |         |                              |         |                         |         |                     |         | {Date of the report} |  |
|--|----------------------|---------------------------------|------------------|---------|------------------|---------|------------------------------|---------|-------------------------|---------|---------------------|---------|----------------------|--|
|  |                      | {Commodity derivative contract} |                  |         |                  |         |                              |         |                         |         |                     |         |                      |  |
|  |                      | Total                           | Investment firms |         | Investment funds |         | Other financial institutions |         | Commercial undertakings |         | Emissions operators |         |                      |  |
|  |                      |                                 | Long             | Short   | Long             | Short   | Long                         | Short   | Long                    | Short   | Long                | Short   |                      |  |
| <b>Current week's report</b>                       | <b>Risk reducing</b> | {value}                         | {value}          | {value} | {value}          | {value} | {value}                      | {value} | {value}                 | {value} | {value}             | {value} | {value}              |  |
|  | <b>Other</b>         | {value}                         | {value}          | {value} | {value}          | {value} | {value}                      | {value} | {value}                 | {value} | {value}             | {value} | {value}              |  |
|  | <b>Total</b>         | {value}                         | {value}          | {value} | {value}          | {value} | {value}                      | {value} | {value}                 | {value} | {value}             | {value} | {value}              |  |
| <b>Changes from last week's report (+/-)</b>       | <b>Risk reducing</b> | {value}                         | {value}          | {value} | {value}          | {value} | {value}                      | {value} | {value}                 | {value} | {value}             | {value} | {value}              |  |
|  | <b>Other</b>         | {value}                         | {value}          | {value} | {value}          | {value} | {value}                      | {value} | {value}                 | {value} | {value}             | {value} | {value}              |  |
|  | <b>Total</b>         | {value}                         | {value}          | {value} | {value}          | {value} | {value}                      | {value} | {value}                 | {value} | {value}             | {value} | {value}              |  |
| <b>Percentage of open interest</b>                 | <b>Risk reducing</b> | {value}                         | {value}          | {value} | {value}          | {value} | {value}                      | {value} | {value}                 | {value} | {value}             | {value} | {value}              |  |
|  | <b>Other</b>         | {value}                         | {value}          | {value} | {value}          | {value} | {value}                      | {value} | {value}                 | {value} | {value}             | {value} | {value}              |  |
|  | <b>Total</b>         | {value}                         | {value}          | {value} | {value}          | {value} | {value}                      | {value} | {value}                 | {value} | {value}             | {value} | {value}              |  |
| <b>Number of position holders in each category</b> | <b>Risk reducing</b> | {value}                         | {value}          | {value} | {value}          | {value} | {value}                      | {value} | {value}                 | {value} | {value}             | {value} | {value}              |  |
|  | <b>Other</b>         | {value}                         | {value}          | {value} | {value}          | {value} | {value}                      | {value} | {value}                 | {value} | {value}             | {value} | {value}              |  |
|  | <b>Total</b>         | {value}                         | {value}          | {value} | {value}          | {value} | {value}                      | {value} | {value}                 | {value} | {value}             | {value} | {value}              |  |



European Securities and  
Markets Authority

