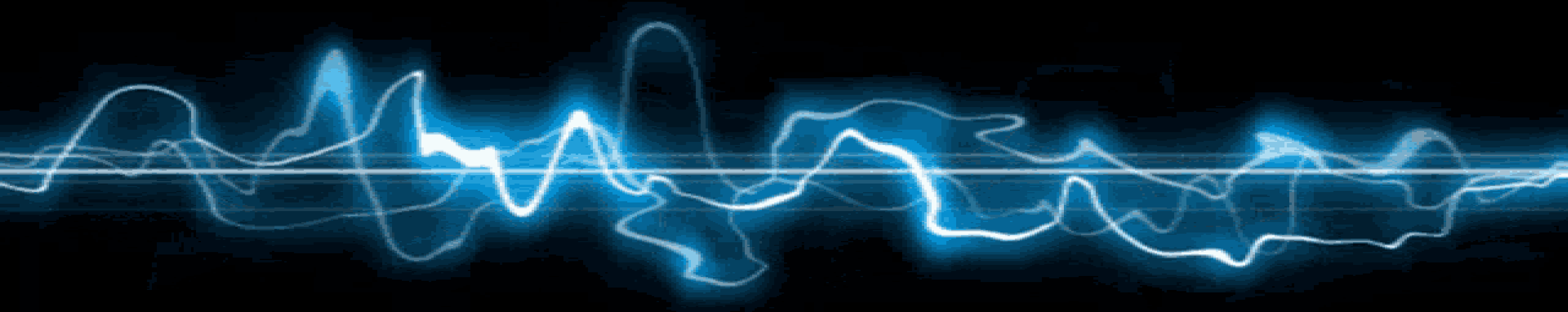


Complexities and ambiguities of AEOI



Mark Morris & Paul Millen



Steuerabkommen mit der Schweiz bleibt umstritten



CRS
Methodology

Trusts &
subsidiaries

Amendments

Tax
residence

CARF

Ambiguities

Reporting
misunderstandings

Non
participating

Loopholes

Quiz



CLEARCHANNEL

Example of CRS misinterpretation

Who is reported for CRS?

CRS page 60 E(1)

A nominee is a company that is nominated to hold assets on behalf of another entity. A nominee / agent is not the Account Holder.

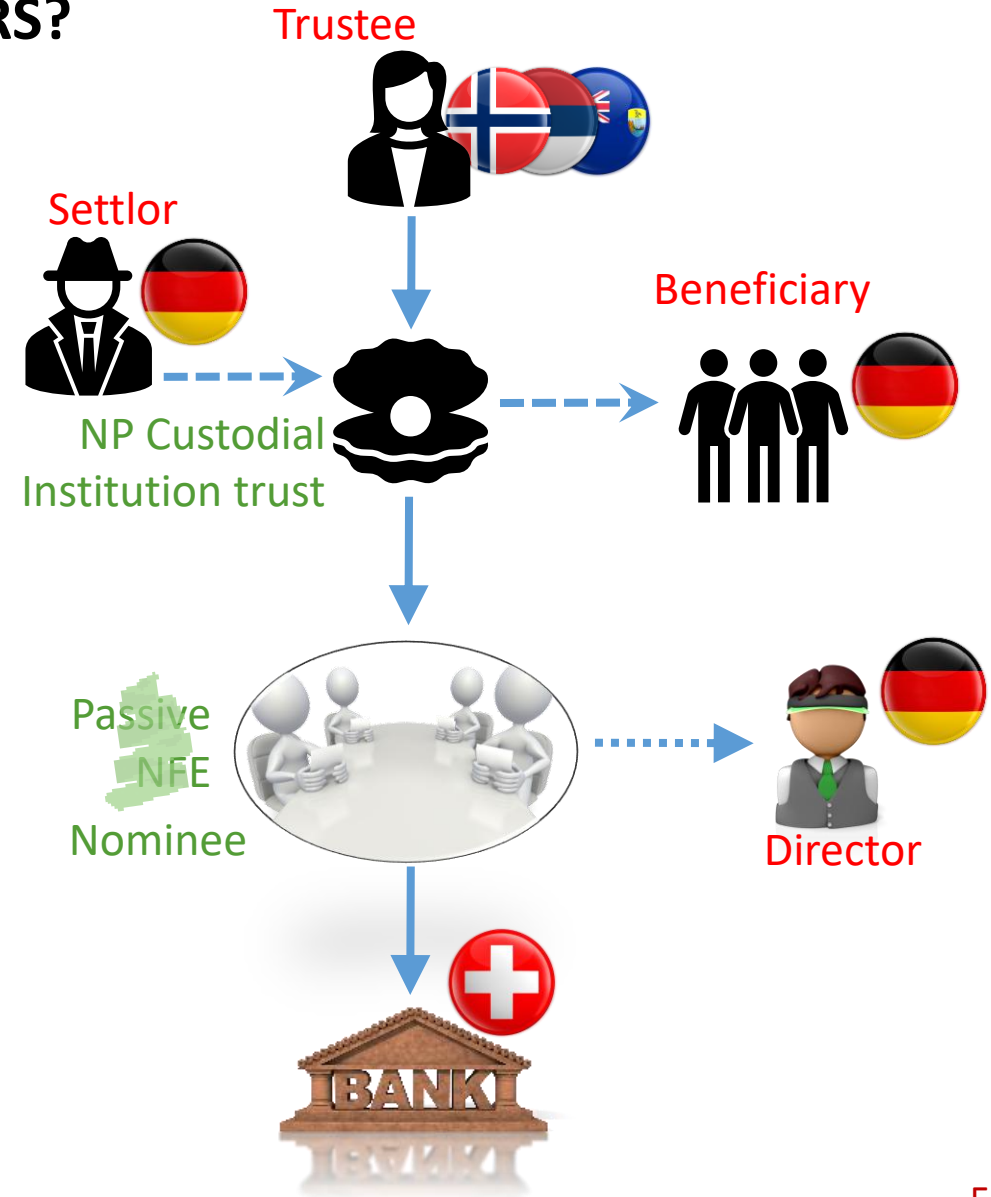


Director

Settlor/
Beneficiary

Trustee

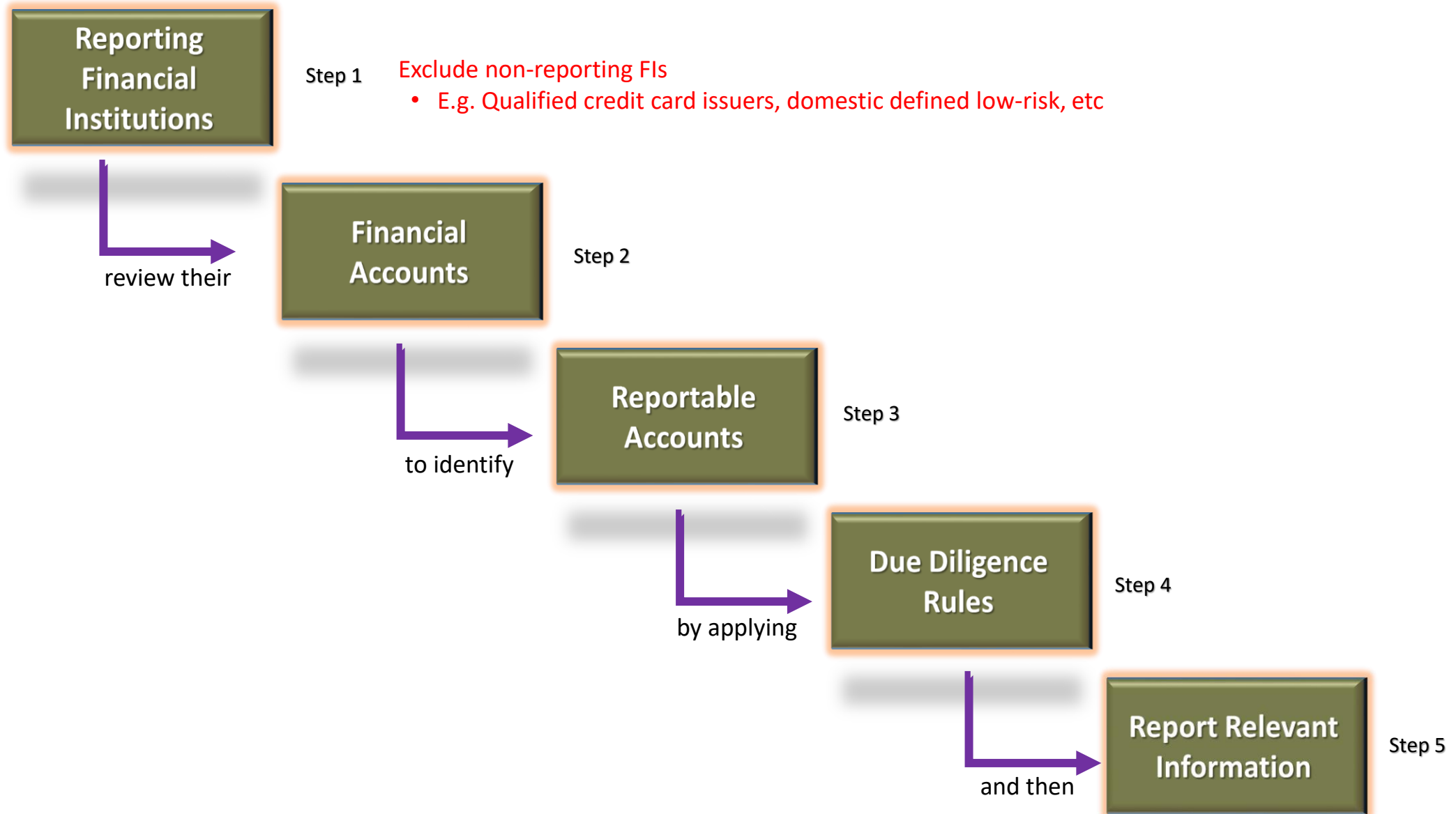
No-one



Tracing AEol Ambiguities



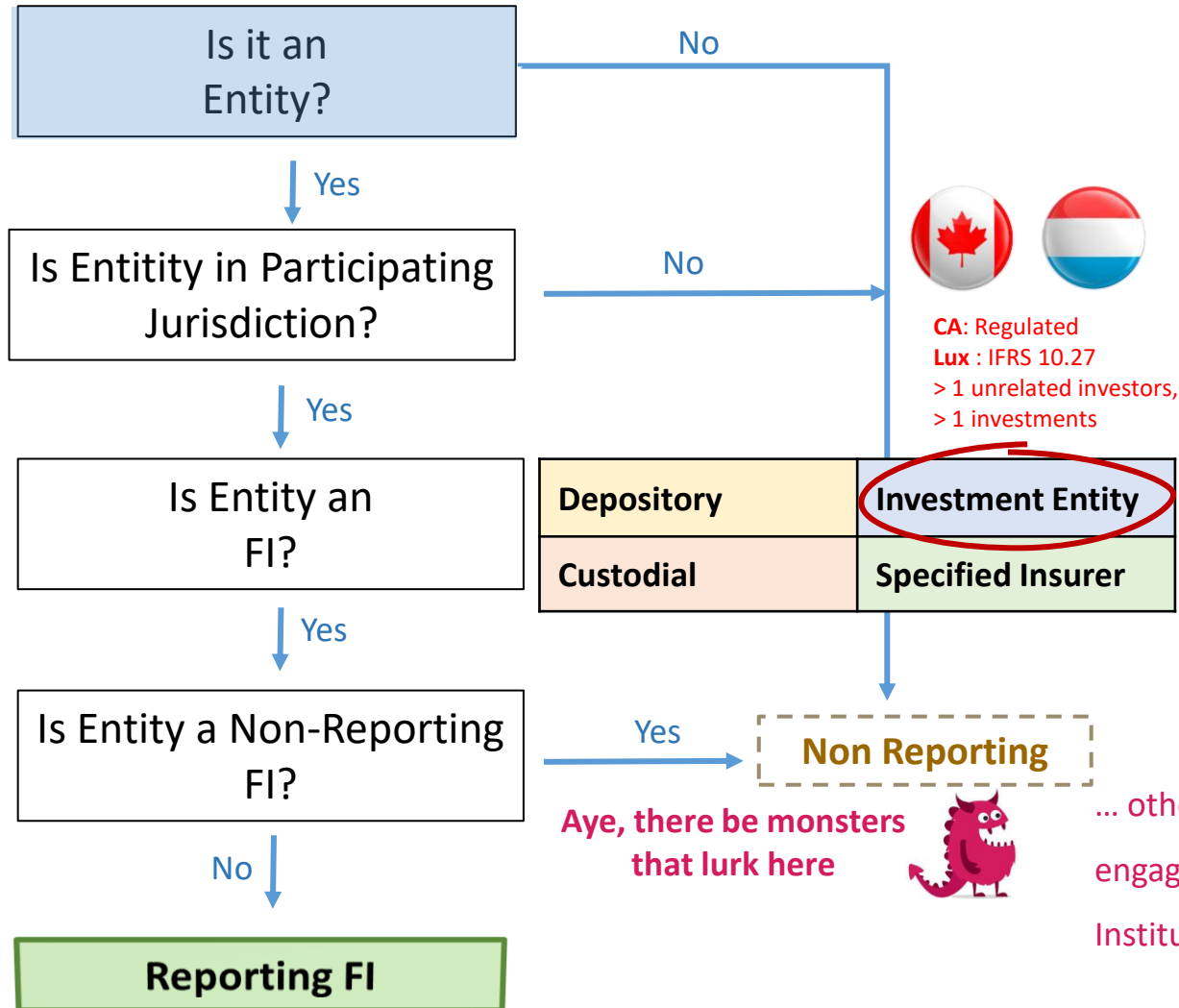
Tracing Source of Misunderstanding



Is it a Reporting FI

**DUAL RESIDENT
UNTAXED ENTITIES?**

Place where it maintains its financial accounts (**different to untaxed NFEs**)



Entity	Jurisdiction under the Standard
Tax resident Entities	Residence for tax purposes
Un-taxed resident Entities, except trusts	Place where it is incorporated under the laws of; place of management; or where it is subject to financial supervision
Multiple resident Entities, except trusts	Place where the accounts are maintained
Trusts	Where one or more trustees are resident, unless the required information is being reported elsewhere because the trust is treated as tax resident there.

... other than a payment in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution

Custodial Institution

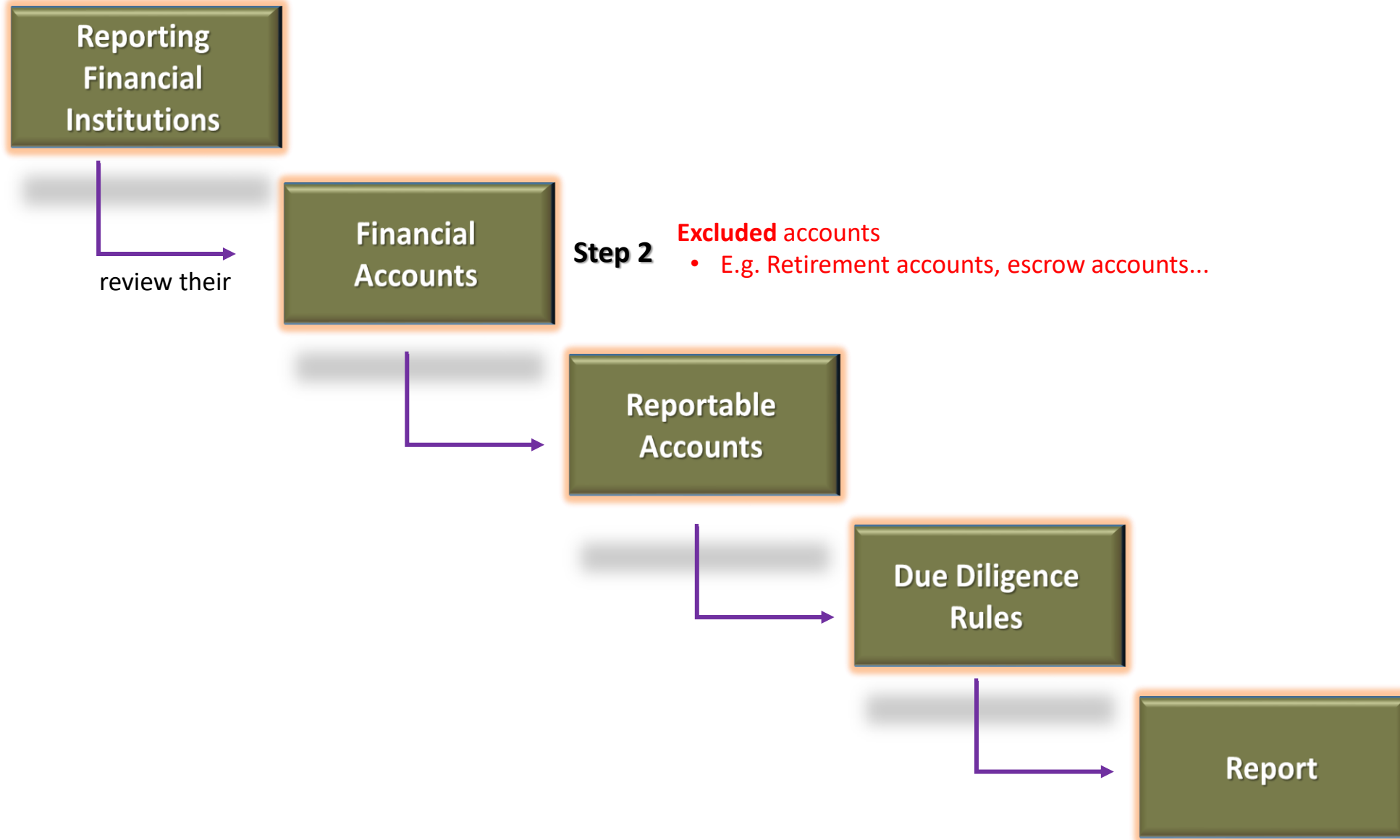
Entities holding assets for someone else and earn more than 20% gross income attributable to holding Financial Assets and related financial services (to unrelated 3rd parties?)

- i. Custody, account maintenance and transfer fees
- ii. Commissions and fees earned from executing and pricing securities transactions
- iii. Income earned from extending credit to customers
- iv. Income earned from ~~contracts for differences and~~ as the bid-ask spread of financial assets
- v. Fees for providing financial advice with respect to Financial Assets held in (or potentially to be held in) custody by the entity**
- vi. Fees for providing clearance and settlement services

Is Entity a Non-Reporting FI?






Non-Reporting FI	Comments	
Governmental entities, International organisations or Central bank or their pensions	<ul style="list-style-type: none"> • Other than financial activity where income inures to private persons • Any integral parts, controlled entities and political subdivision 	
Broad participation retirement fund	<ul style="list-style-type: none"> • No individual entitled to > 5% 	At least one condition required 😊 <ul style="list-style-type: none"> • tax favoured • most contributions from sponsor • withdrawals on specified event • contributions < \$50,000 p.a.
Narrow participation retirement fund	<ul style="list-style-type: none"> • Provide retirement < 50 current/former employees • Sponsor cannot be an Investment Entity or Passive NFE 	<ul style="list-style-type: none"> • Contributions referenced to earned income • < 20% non-residents
Qualified credit card issuer	<ul style="list-style-type: none"> • Procedures to return more than \$50,000 overpayments within 60 days 	
Exempt Collective Investment Vehicle	<ul style="list-style-type: none"> • All interest held by non-reportable persons 	
Trusts where trustee reports on all its FI trusts	<ul style="list-style-type: none"> • Trustee documented trusts 	
Other low risk FIs <u>(domestically interpreted)</u> 😞	<ul style="list-style-type: none"> • Similar characteristics of above • Officially published single list by jurisdiction. • Does not frustrate the purposes of the Standard (suspend CAA!) 	

CRS Methodology

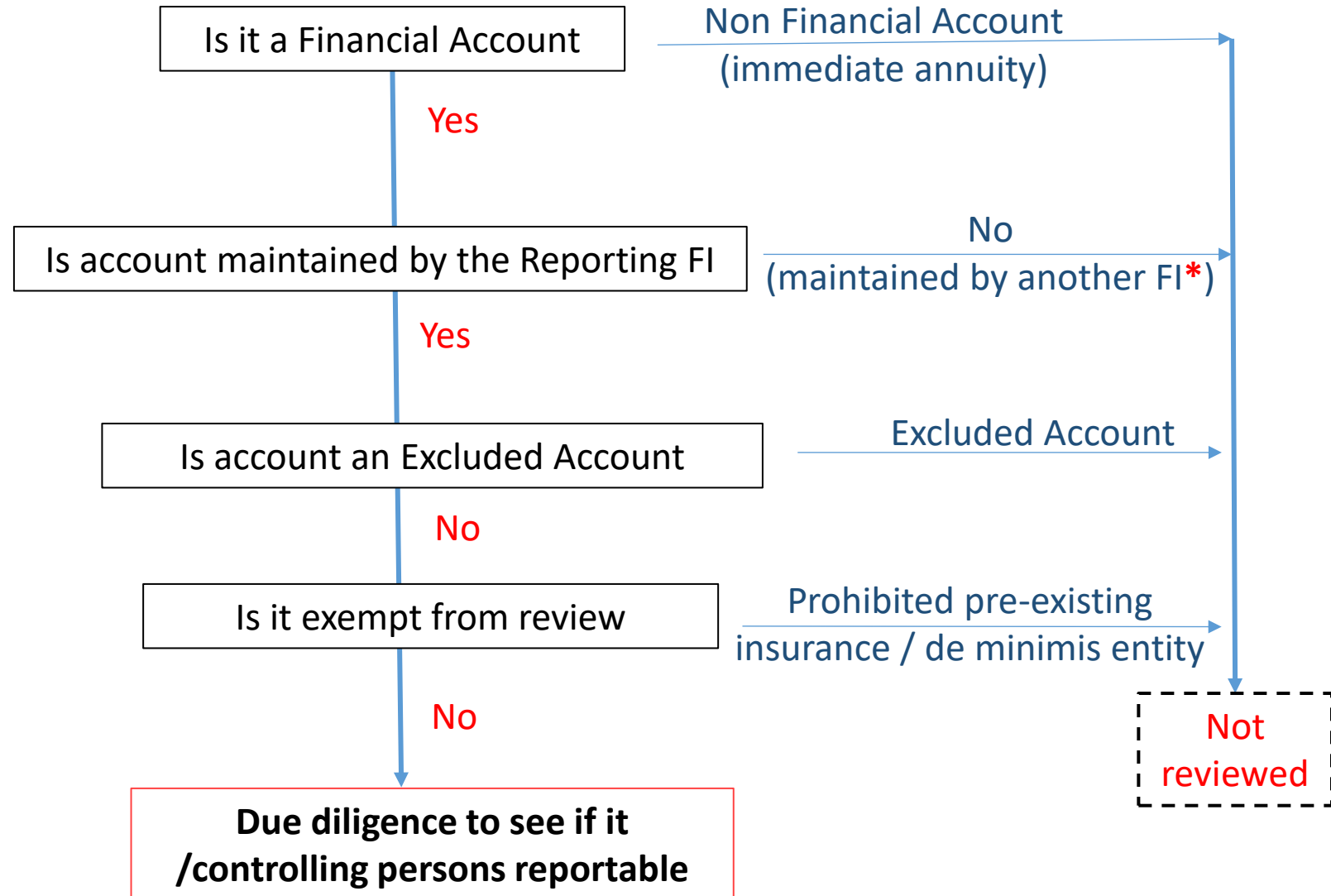


Reporting FI review their Financial Accounts

(Report on Financial Assets in the Financial Account, but may include non-financial assets)

Accounts to be reviewed	FI considered to maintain the Account
 Depository Accounts	FI obligated to make payments with respect to the account
 Custodial Accounts	FI holding custody over the assets in the account, excl. insurance contracts (Central Securities Depository usually not)
 Equity & debt interest in Professionally Managed Investment Entities	The equity or <u>debt</u> interest in the PMIE is maintained by FI Equity interest in other FIs if avoid CRS
 Cash Value Insurance and Annuity Contracts (excl immediate)	<ul style="list-style-type: none"> • FI obligated to make <u>payment</u> with respect to the contract (surrender, benefits) • OECD addresses <u>Zero Cash Value</u> loophole
 FI set up to avoid CRS reporting	The equity or debt interest in the FI

Review Financial Account?

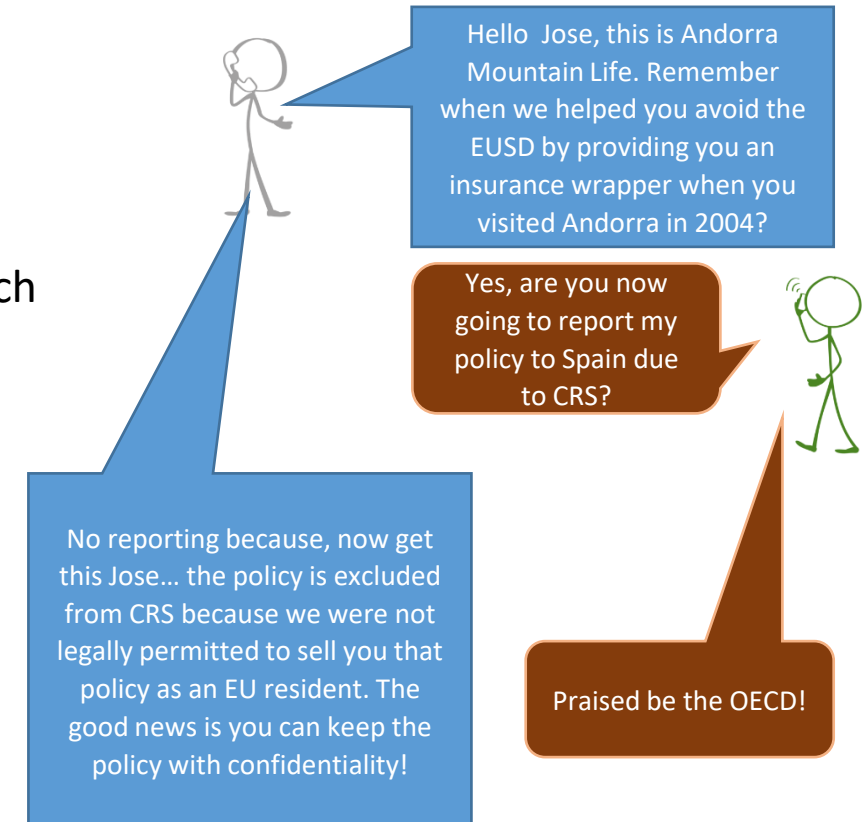


Excluded Financial Account vs. Financial Account not reviewed

Exempting prohibited insurance is stupid

Financial Account but need not be reviewed under due diligence

- Insurance prevented by law from being sold in a jurisdiction
- Same mistake made by EU Commission in the EU Savings Tax Directive which exempted non-UCITS because it was not allowed to be sold cross-border



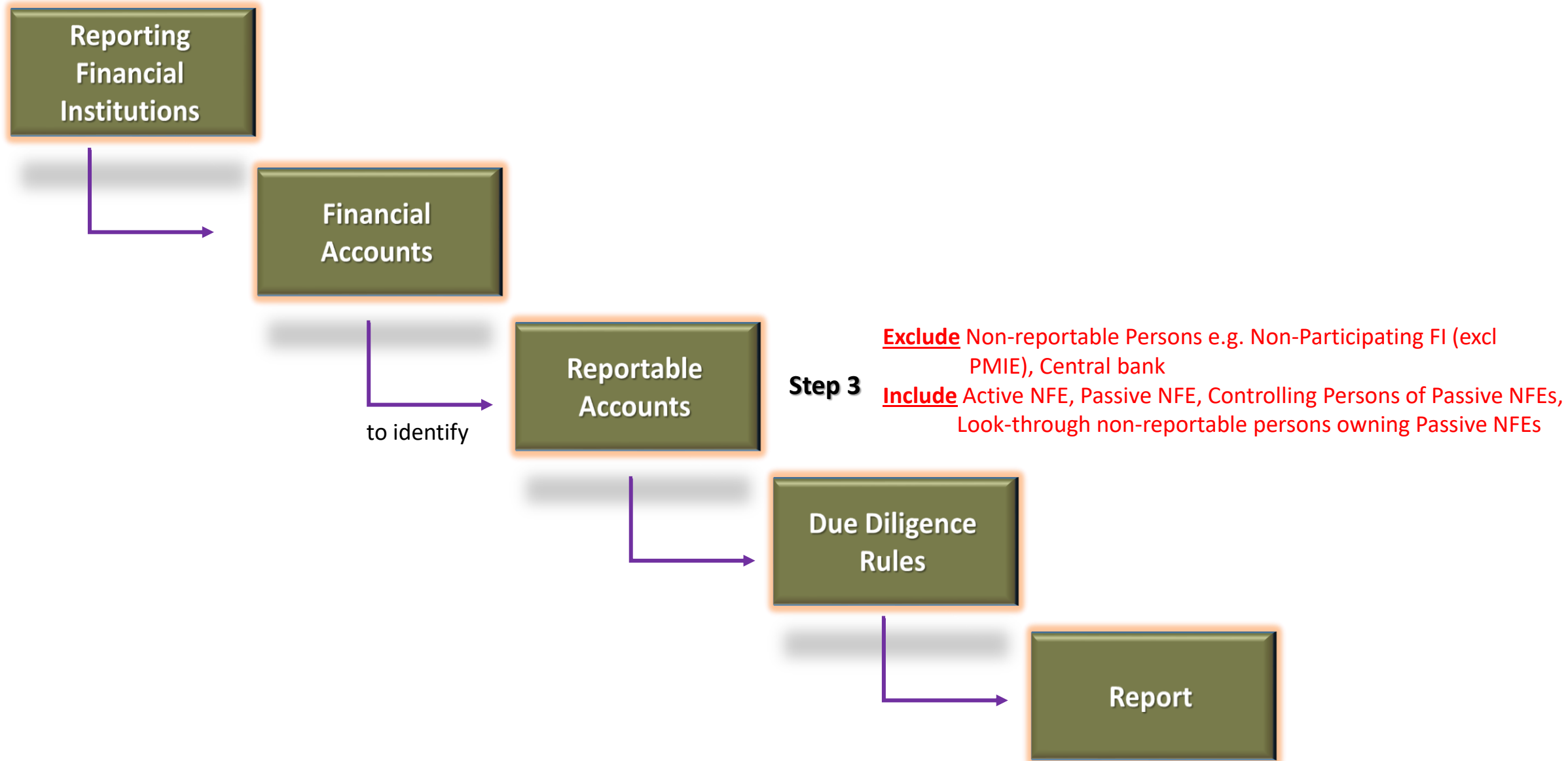
FIs do not review Excluded Accounts

(removed from definition of Financial Accounts)

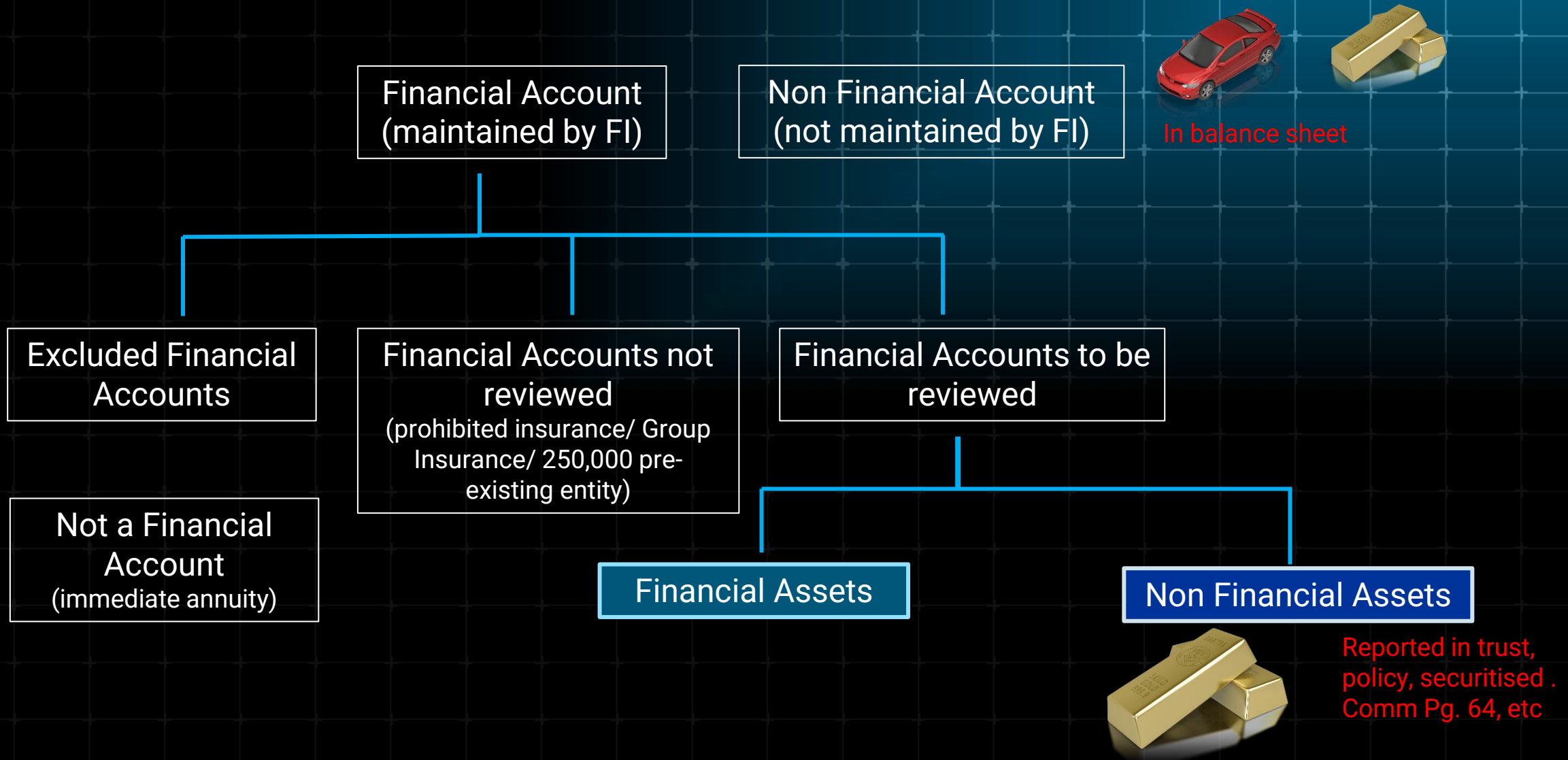
Excluded Accounts	Comments	
Retirement and pension accounts	<ul style="list-style-type: none"> regulated tax favoured reported tax authorities 	<ul style="list-style-type: none"> conditional withdrawals contribution limited limit \$50,000 p.a. or \$1m total
Non-retirement tax-favoured accounts	<ul style="list-style-type: none"> regulated or investment vehicle regularly traded tax favoured 	<ul style="list-style-type: none"> conditional withdrawal contributions limit to \$50,000 p.a.
Term life insurance	<ul style="list-style-type: none"> maximum age 90 	
Depository accounts due to not returned overpayments	<ul style="list-style-type: none"> if FI procedure to return overpayments for credit card or revolving credit in excess of \$50,000 within 60 days 	
Escrow accounts	<ul style="list-style-type: none"> court order or judgement sale exchange lease of property 	<ul style="list-style-type: none"> set aside with loan provider to pay property taxes, other taxes
Other low-risk	<ul style="list-style-type: none"> Similar characteristics of above Officially published single list by jurisdiction Does not frustrate the purposes of the Standard 	



CRS Methodology



Financial Account vs Non Financial Account vs Financial Assets vs Non Financial Assets



Identify Reportable Accounts

Most important slide of the seminar!

E.g. Same jurisdiction, US company

Test 1 Reportable Accounts by virtue of the Account Holder (entity or individual)

Is the Account Holder* a Reportable Jurisdiction Person?

Yes

Is the Account Holder* a Reportable Person?



Include Active NFE !

- All under wider-approach (I) but exclude if in same jurisdiction as FI (option)
- Where untaxed entity resident?

* Nominee/agent is not the Account Holder

Exclude Non-Reportable Person:
i. Financial Institution except non-participating jurisdiction PMIE,
ii. Regularly traded, iii. Govt entity,
iv. International organisation,
iv. Central bank



Look-through to Controlling Persons regardless of status of ownership chain - using FATF AML b.o. ⇒ Incl. Active NFE, Non-Reportable Persons, Investment Entities, Custodial institutions

No definition CP of FI, Active NFE

Test 2 (irrespective of test 1) Reportable accounts by virtue of the Account Holders' Controlling Persons

Is the Account Holder a (deemed) Passive NFE?

Yes

Does the NFE have Controlling Persons which are Reportable Persons?



Look through to beneficial owners, excl. same jurisdiction as FI

Reportable
Account

*Wider Approach Options

Test 1 Reportable Accounts by virtue of the Account Holder

Is the Account Holder a
Reportable Jurisdiction Person?

Non residents

Legal basis

Andorra → Narrow

Active NFE



Active NFE is an **NFE** (entity not an FI) that meets :

- A. In preceding year, less than 50% income is passive **and** less than 50% assets held or **potential** to produce passive income
- B. Regularly traded **(listed does not automatically qualify)**
- C. Government entity, international organisation, central bank or subsidiary of foregoing
- D. 80+% **activities** direct or **indirect holding subsidiaries** or providing finance services to entities engaged in business or trades other than a FI, unless holds itself out to be a fund **Holding fund is not an investment entity, but will be Passive NFE**
- E. New entity < 2 years old with intent of operating business other than FI
- F. **Reorganising**/ emerging from liquidity and wasn't a FI within past 5 years
- G. Engages in financing and hedging transactions for related entities that are not FI
- H. Charity, exempt from tax, for exclusive religious, charitable, scientific, artistic, cultural...
 - i. No members with beneficial interest
 - ii. Laws prevent distribution to private person or entity, upon liquidation all assets must be distributed to Government or other non profit organisation

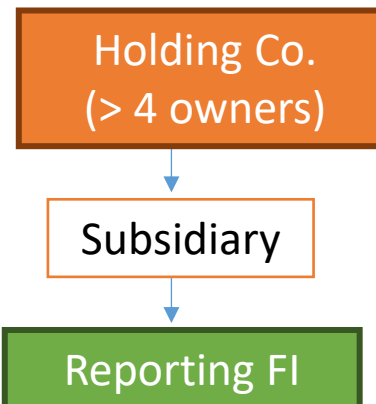
➔ **Passive NFE is an NFE which is not Active NFE**

Cannot be a PMIE
(bypass FI test!)

Controlling Persons of an ~~NFE~~ Look-through to FI or Active NFE?

Type of Entity	Description of Controlling Persons
Corporations	Natural persons holding directly and indirectly more than 25% shareholdings. If no such person then if exercises control over management i.e. senior managing executive
Partnership	Natural person who exercises control through direct and indirect ownership of capital or profits or who otherwise exercises control over the management
Trust (and entities equivalent to trust)	CRS rule: Settlers, trustees protector, beneficiaries. If any of these are entities then identify beneficiaries of the entities according to FATF recommendations 10 & 25 (AML using de minimis thresholds)

Is Controlling Person of subsidiary the senior executive of (i) Holding Co, or (ii) Subsidiary, or (iii) Both?



PMIE trust owns a Passive NFE ...

Controlling Person of a **Passive NFE** trust includes beneficiaries of trust regardless of distribution. So treat looked-through PMIE trust as a NFE trust?

When is there a look-through of any FI Non-Participating FI account holder



- Except PMIEs, there is no look-through of non-Participating FI - Custodial, Depository Institution or Specified Insurer
- **However**, if Account Holder is non-participating PMIE, there is look-through, incl. all parents, in the chain of legal ownership.
- Look-through all FIs in chain of legal ownership if they own a Passive NFE
- Who then are the Controlling Persons of Custodial, Insurers, Central banks, non-reporting FIs (pensions), International orgs, Govt entities, etc?

Why Controlling Persons of Active-NFE non reportable

OECD claims AEOI would be swamped

Suggest Controlling Persons of untaxed A-NFEs be reportable persons

Amendments

