

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

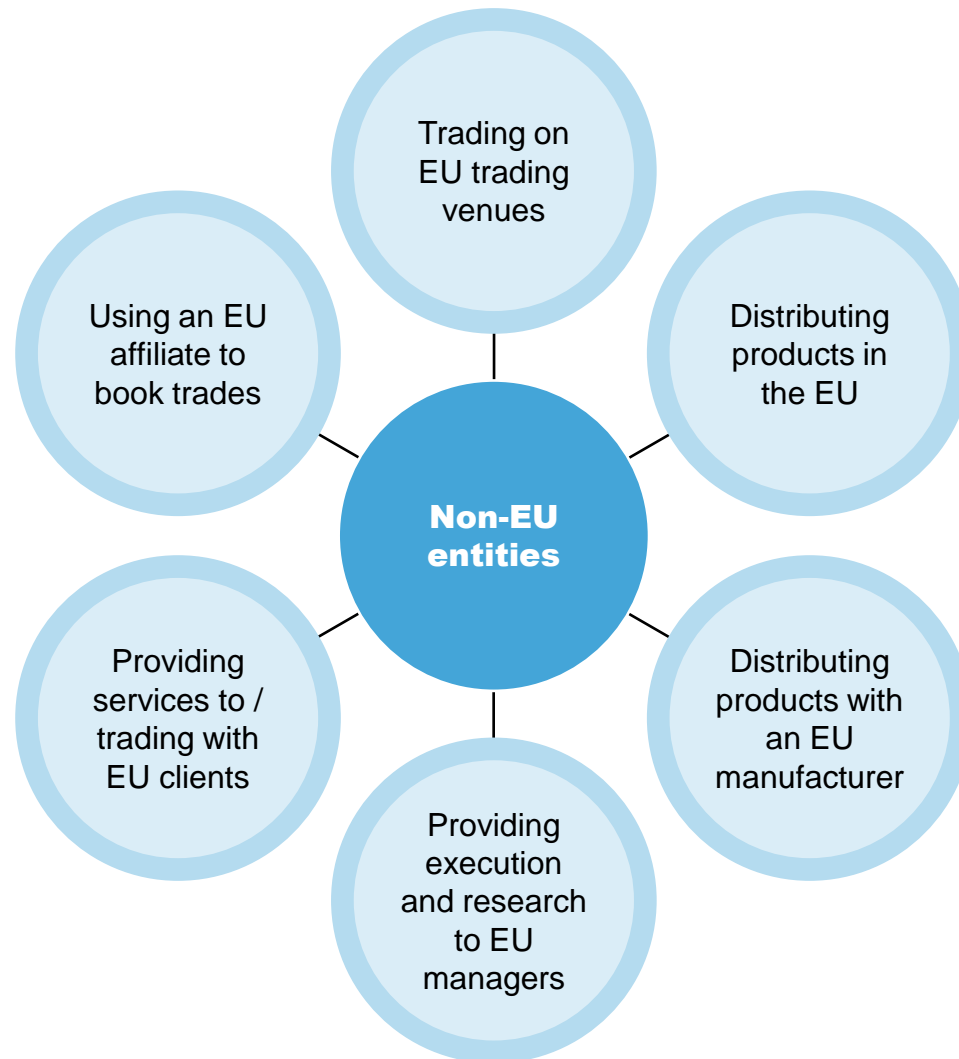
**asifma**   
*Growing Asia's Markets*



**MIFID2 FOR ASIAN FINANCIAL INSTITUTIONS**  
**POSITION LIMITS: HARMONISATION, MONITORING AND REPORTING**

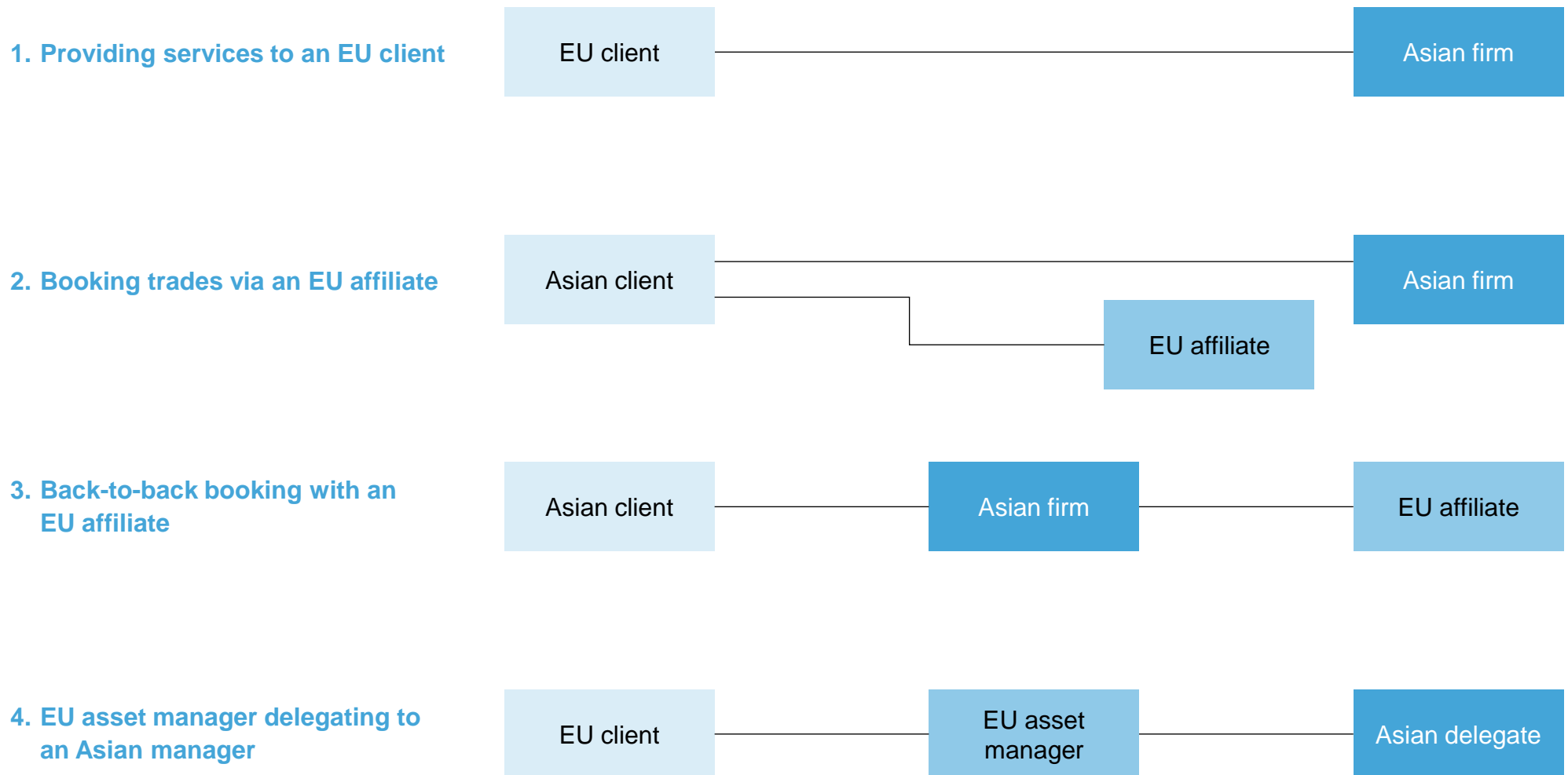
DECEMBER 2017

# IS MIFID2 RELEVANT TO ME?

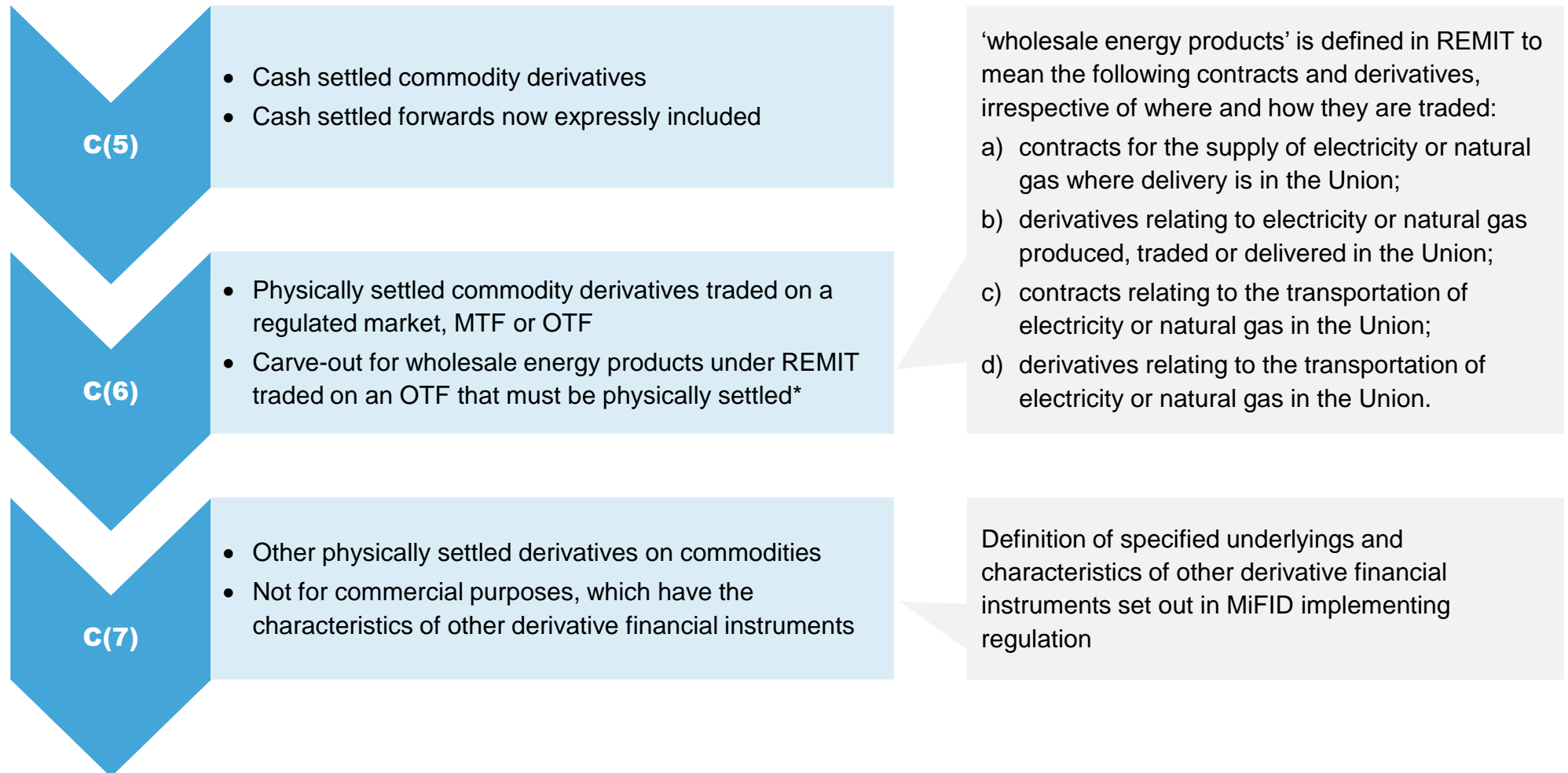


# KEY TRIGGERS

## IDENTIFYING EU CLIENTS AND EU AFFILIATES

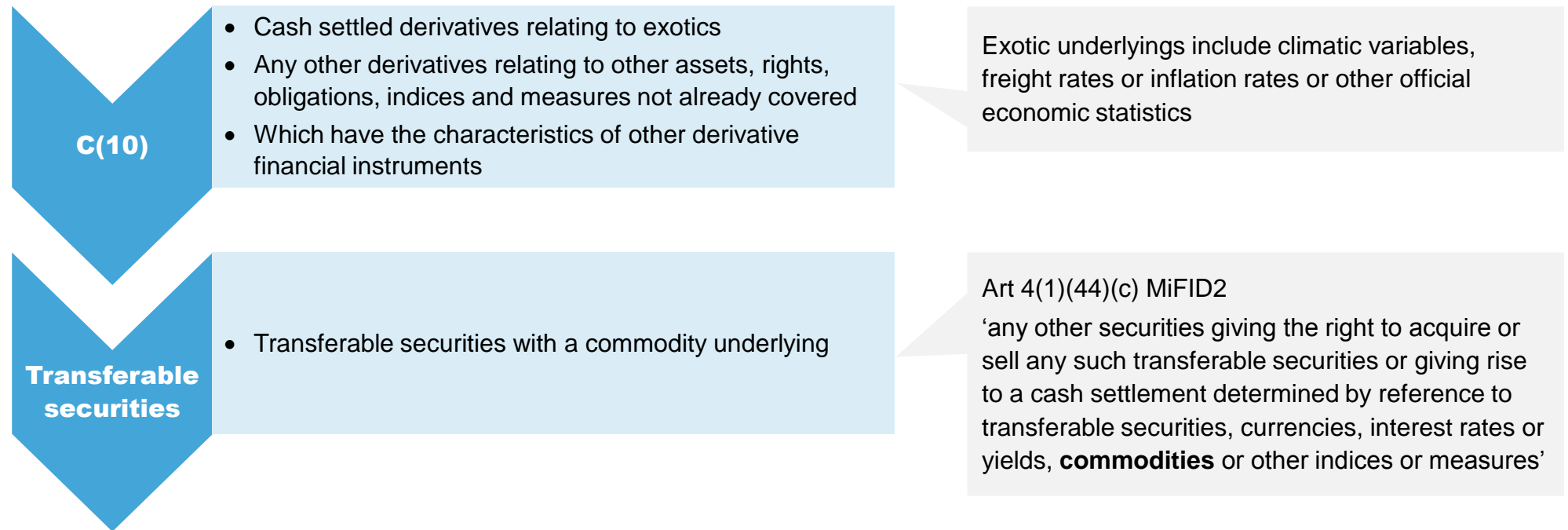


# SCOPE – WHAT IS A COMMODITY DERIVATIVE?



\*Plus competent authorities can give temporary exemption from EMIR clearing/clearing threshold for physically settled oil/coal derivatives traded on an OTF.

# SCOPE – WHAT IS A COMMODITY DERIVATIVE? (CONTINUED)



# EXEMPTIONS FOR COMMODITY DEALERS

## Article 2

- Dealing on own account in commodity derivatives where this is ancillary to main business (must notify competent authority annually)
- Dealing on own account in financial instruments other than commodity derivatives, unless member of RM / MTF or have direct electronic access (carve-out for NFCs engaged in hedging activity).

## Article 3

- Optional exemptions for local electricity undertakings / natural gas undertakings and operators of installations for research into greenhouse gases.

## CRD IV

- Time-limited exemption of commodity dealers from own funds requirement.

# POSITION CONTROLS FOR COMMODITY DERIVATIVES

## Position limits

### Competent authorities shall impose position limits on:

- Net position that a person can hold at all times
- In commodity derivatives traded on trading venues and economically equivalent OTC contracts
- Limits to be set on the basis of all positions held by a person and those held on its behalf at an aggregate group level

### Except that:

Limits shall not apply to positions held by or on behalf of a non-financial entity, and which are objectively measurable as reducing risks directly related to the commercial activity of that non-financial entity.

## Other powers for competent authorities

- Temporary additional position limits in exceptional cases (valid for up to 6 months)
- Additional supervisory powers (including power to require a person to provide information on commodity derivatives, to reduce their position or to limit the ability of a person or class of persons to enter into a commodity derivative)

## ESMA powers

- Market monitoring and power to ban products / activities
- Co-ordination of national measures
- Additional position management powers





# POSITION CONTROLS FOR COMMODITY DERIVATIVES

## (CONTINUED)



### Position management

Operators of trading venues trading commodity derivatives must apply position management controls, including powers to:

- Monitor open interest
- Access information about size and purpose of a position
- Require a person to terminate or reduce a position
- Require a person to provide liquidity

### Position reporting

Operators of trading venues trading commodity derivatives must:

- Weekly: make a public report of aggregate positions by class of person
- Daily: provide a complete breakdown of all positions (participants, clients, clients of clients) to competent authority
- Require participants to provide them with necessary information to enable them to report

Investment firms trading commodity derivatives must:

- Daily: provide a complete breakdown of all positions entered into when trading outside of a trading venue (own positions, clients, clients of clients) to competent authority
- Daily: report to a trading venue their own positions, as well as those of clients, clients of clients



# POSITION LIMITS

## AN OVERVIEW

National competent authorities, in line with methodology for calculation determined by ESMA, will establish and apply position limits on the size of a net position which a person can hold at all times

### Calculating the net position ....

#### Subject of the Limits

Positions held by a person and those held on its behalf in commodity derivatives traded on trading venues and economically equivalent OTC contracts (EEOTC).



#### Aggregation

The limits apply at an aggregate group level. Consequently, a person's positions (and those held on its behalf) must be aggregated with the positions of other group entities.



#### Non-financial entity hedge exemption

Positions held by or on behalf of NFEs which are objectively measurable as reducing risks directly related to the commercial activity of NFE.

# POSITION LIMITS

## KEY ISSUES AND QUESTIONS

Who does the regime apply to?

- Article 57 refers to “persons”
- Article 1(6) extends application of regime to “exempt persons”
- Position limits do not apply to positions held by or on behalf of NFEs which are objectively measurable as reducing risks directly related to the commercial activity of NFE

**Does the regime apply to persons who require neither authorisation nor exemption?**

Setting the limits

- ESMA’s methodology sets limits:
  - for spot months at 25% of deliverable supply (DS)
  - for other months at 25% of open interest
- NCAs can vary +10/-20%

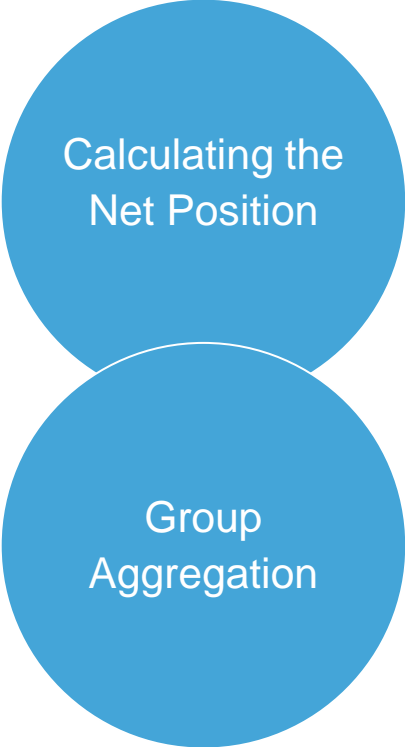
EEOTC

- To be considered EEOTC, to a commodity derivative traded on a trading venue, the OTC derivative must have identical contractual specifications, terms and conditions, excluding different lot size specifications, delivery dates diverging by less than one calendar day and different post trade risk management arrangements
- No register of EEOTC

**Does holding only EEOTC trigger limits?**

# POSITION LIMITS

## KEY ISSUES AND QUESTIONS (CONTINUED)



Calculating the  
Net Position

- Limits apply to “net position”, being the aggregation of positions held in a commodity derivative traded on a trading venue, commodity derivatives considered the same and economically equivalent OTC contracts

Group  
Aggregation

- 
- Do ultimate holding companies who hold no positions have to aggregate?
  - Aggregation proposal does not take into account independence and requires aggregation on “whole basis”, but see Article 4(2) of RTS 21

**Do you have to aggregate “up the chain”?**

**What is a group?**

# CONTACT INFORMATION



**OWEN LYSAK**  
**Partner, London**

**T** +44 20 7006 2904  
**E** owen.lysak  
@cliffordchance.com



**CAROLINE DAWSON**  
**Senior Associate, London**

**T** +44 20 7006 4355  
**E** caroline.dawson  
@cliffordchance.com

# OUR INTERNATIONAL NETWORK

## 32 OFFICES IN 22 COUNTRIES



Abu Dhabi  
 Amsterdam  
 Bangkok  
 Barcelona  
 Beijing  
 Brussels  
 Bucharest  
 Casablanca  
 Dubai  
 Düsseldorf

Frankfurt  
 Hong Kong  
 Istanbul  
 London  
 Luxembourg  
 Madrid  
 Milan  
 Moscow  
 Munich  
 New York

Paris  
 Perth  
 Prague  
 Rome  
 São Paulo  
 Seoul  
 Shanghai  
 Singapore  
 Sydney  
 Tokyo

Warsaw  
 Washington, D.C.  
 Riyadh\*

\*Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh  
 Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.

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

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

© Clifford Chance 2017

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

**[WWW.CLIFFORDCHANCE.COM](http://WWW.CLIFFORDCHANCE.COM)**