



ashurst

## Introduction to Carbon Markets

MRIWA

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# Introduction to Carbon Markets

## Agenda

- |   |   |
|---|---|
| 1 | Introduction & key carbon concepts              |
| 2 | Regulation towards Net Zero                     |
| 3 | Carbon market participation and key legal risks |
| 4 | Conclusion & Q&A                                |





# 1.

## Introduction & key concepts



# Carbon offsetting

1. “When anthropogenic emissions of greenhouse gases to the atmosphere
2. are balanced by anthropogenic removals over a specified period.”

Carbon  
neutral

Carbon  
positive

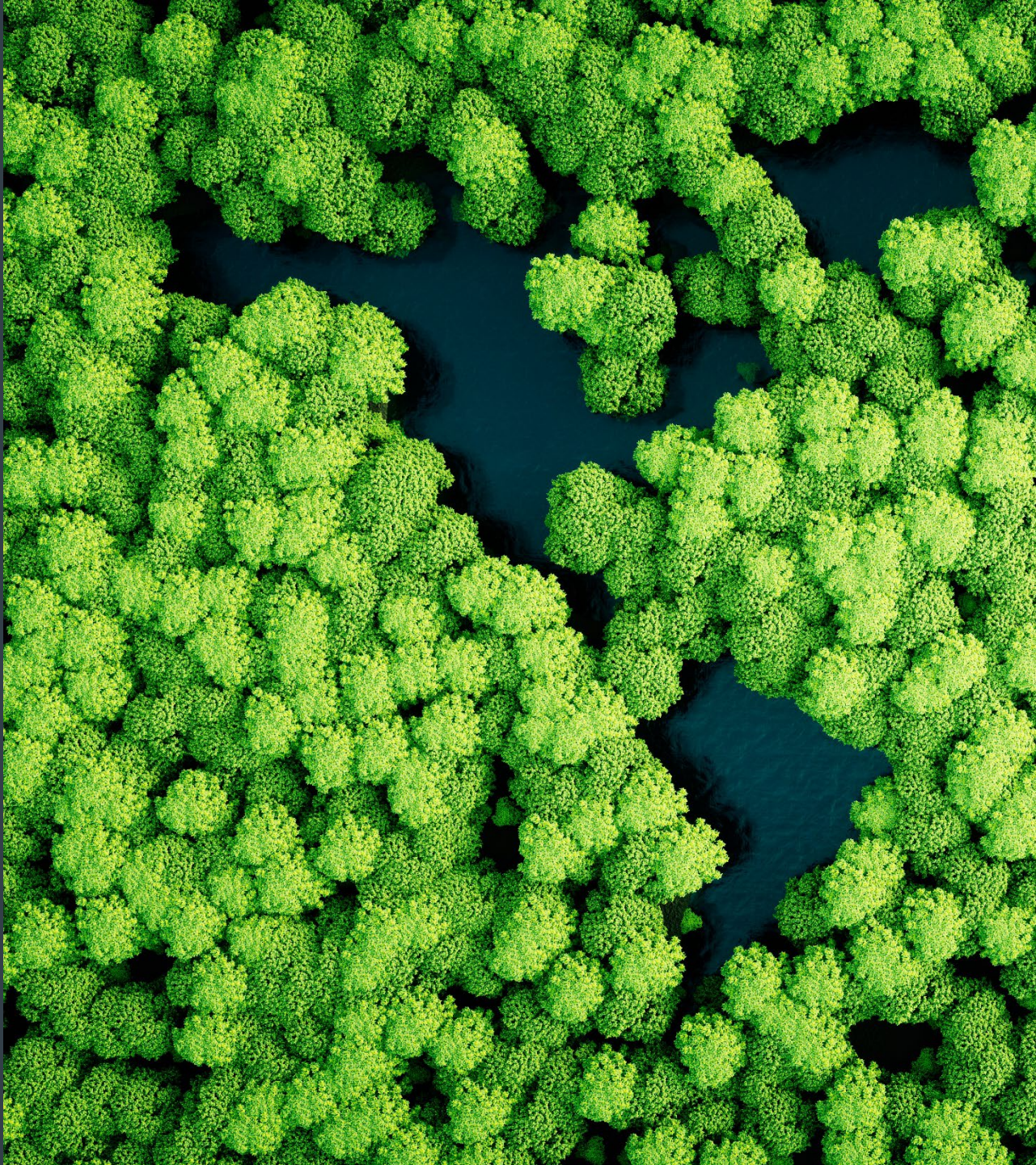
Carbon  
negative

Offsetting



# Carbon offsets and credits

- A **carbon offset** is a reduction in GHG emissions, or an increase in carbon storage, that is used to compensate for emissions that occur elsewhere.
- A **carbon credit** is a tradeable credit issued under a **scheme** for each tonne of carbon dioxide-equivalent offset.
- Carbon credits can be:
  - **surrendered** to meet regulatory obligations or voluntary goals; or
  - **sold** to governments or purchasers







## 2. Regulation towards Net Zero

# Regulation towards Net Zero

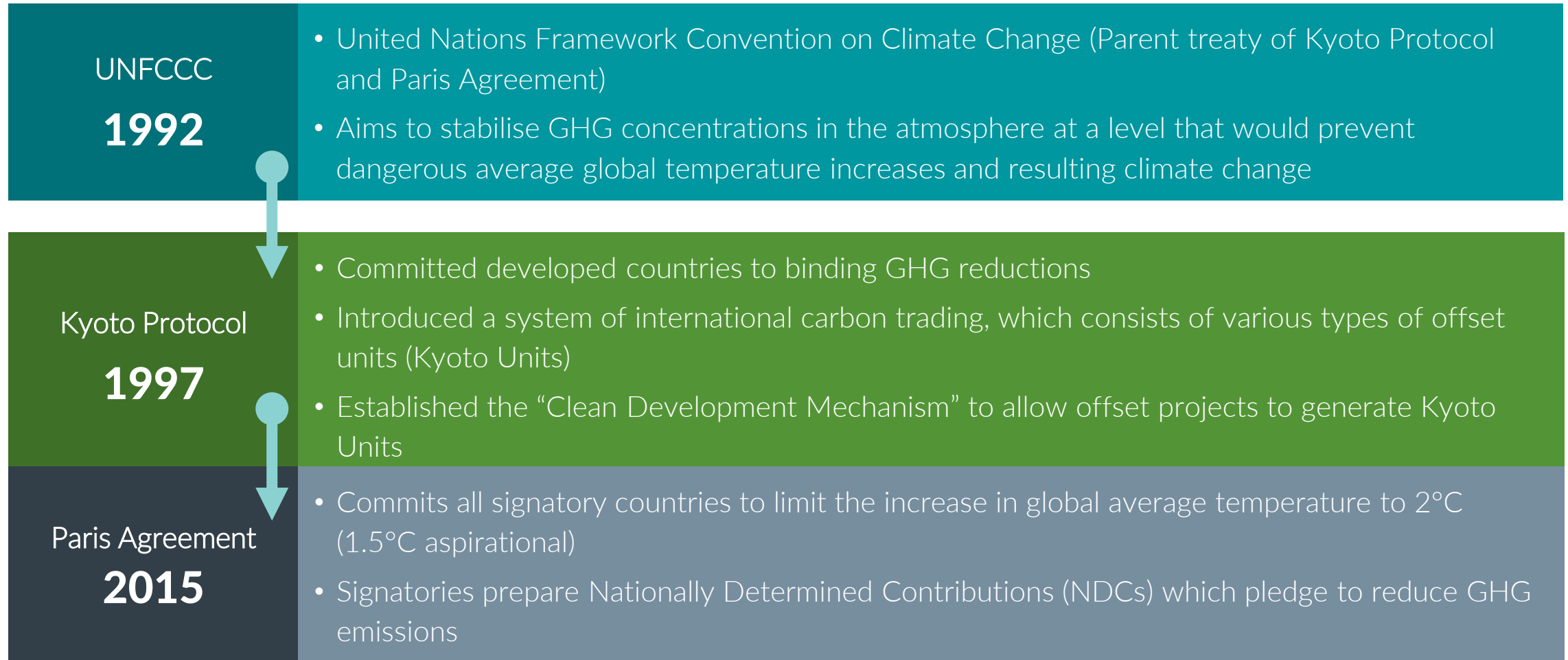
## OUTLINE

- International
- Commonwealth:
  - Current:
    - NGERS
    - SGM
    - CFI/ERF/CSF
  - Future?
- WA
  - Climate Policy
  - GHG Emissions Policy for Major Projects
  - EPA GHG Environmental Factor Guideline
  - Project examples
  - Sectoral emission reduction strategies



# Regulation towards Net Zero

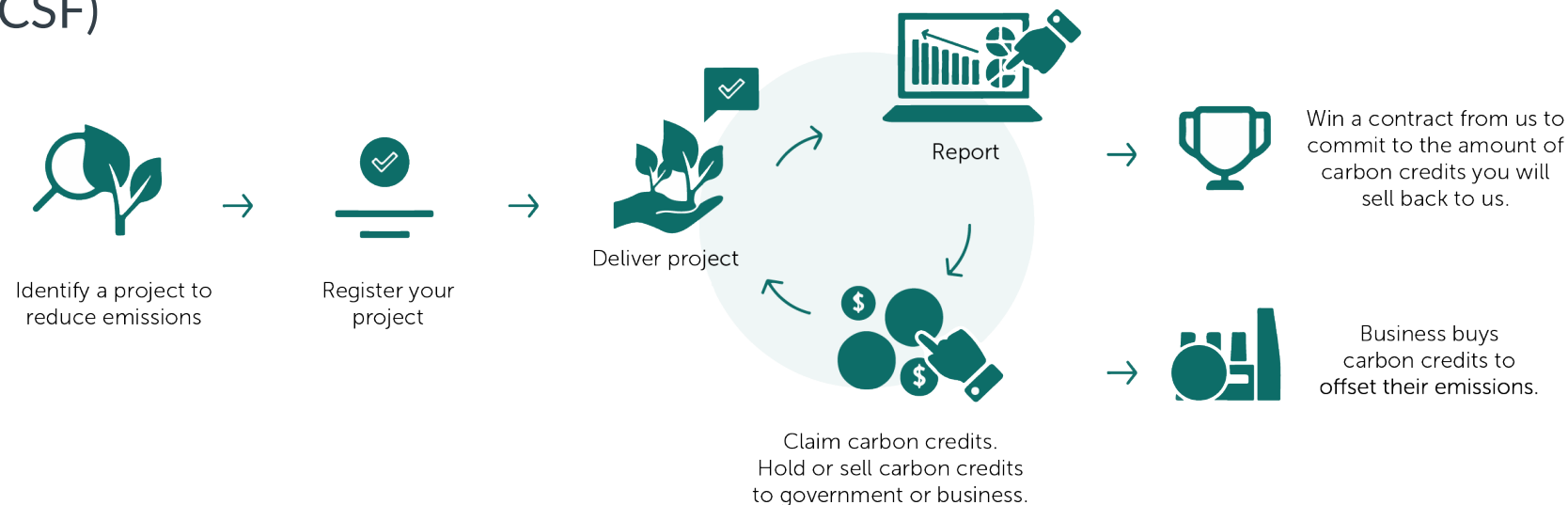
## INTERNATIONAL POLICY FRAMEWORK





# Commonwealth current mechanisms

1. National Greenhouse and Energy Reporting System (NGERS)
  - Report GHGs, energy prod. & and consum.
  - Corporate groups report above thresholds
  - CEO liability
2. Safeguard Mechanism (SGM)
  - Designated large facilities >100,000t CO2e pa direct Scope 1 GHG emissions
  - Baselines
  - SGM Credits
3. Carbon Farming Initiative (CFI), Emissions Reduction Fund (ERF) & Carbon Solutions Fund (CSF)





# Commonwealth future

## Safeguard Mechanism Reform Consultation

- The Commonwealth Department for Climate Change, Energy, the Environment and Water has released a suite of proposed reform the Safeguard Mechanism aimed at reducing emissions by 43% by 2030 and to net zero by 2050.
- Proposed reforms include:
  - a gradual reduction of baseline targets to assist reaching the 2050 net zero emissions target;
  - introducing credits for facilities which emit less than their baseline;
  - providing tailored treatment to emission-intensive, trade-exposed facilities so as to not disadvantage Australian businesses in national or international markets.
- The consultation period closes on **20 September 2022**.



# WA Climate Policy

Clean  
manufacturing  
and future  
industries

Transforming  
energy  
generation and  
use

Storing carbon  
and caring for  
our landscapes

Lower carbon  
transport

Resilient cities  
and regions

Government  
leadership



# WA major projects

- GHG Emissions Policy for Major Projects, August 2019:
  - Net zero by 2050 aspiration.
  - Acknowledged Cth 26-28% target and SGM.
  - Government may consider conditions requiring project plan for contribution towards net zero aspiration.
  - Focuses on scope 1, allows opportunities at facility level or across national operations, allow proponents to propose their own timeframes and interim targets, requires reporting.
  - Encourages WA offsets, but will consider credible international offsets.
- EPA GHG EFG, initially released March 2019 (full offset), further consultation and final April 2020
  - Generally 100,000t CO<sub>2</sub>e pa.
  - EIA requires estimated emissions, GHGMP with interim and long term scope 1 reduction targets, offsetting and reporting.
  - Recognises ACCUs and voluntary offsets may be recognised.

## WA major project examples

Project	Date	Outcome
Pilbara Energy Generation Power Station	1 February 2021 (appealed)	Emission limits (0t CO <sub>2</sub> e pa from 2040) and GHGMP
Waitsia Gas Project Stage 2	1 February 2021 (appealed)	Offset reservoir emissions and GHGMP
Covalent Lithium Hydroxide Refinery	15 July 2021	Emission limits (0t CO <sub>2</sub> e pa from 2050) and GHGMP
Perdaman Urea Project	24 January 2022 (appealed)	Emission limits (0t CO <sub>2</sub> e pa from 2050) and GHGMP (consult Murujuga Aboriginal Corporation)
Other projects		Emissions limits to 0t CO <sub>2</sub> e by 2050



# WA future

- EP GHG EFG under consultation to 21 September 2022.
- Sectoral emissions reduction strategies, outline document December 2022:
  - Release planned end 2023
  - Net zero 2050 “target”
  - Considering interim targets (eg 2030, 2040)
  - Focus on collaboration and partnerships with industry, intended to be constructed “bottom up”.
- Future?



### **3.** Carbon Market Participation and Legal Risks



# Opportunities

Use of carbon credits to meet self-set or regulatory commitments

Marketing 'carbon neutral' products and bundled transactions





# What types of projects are eligible to create carbon credits?

## EXAMPLES OF TYPICAL OFFSET PROJECTS (GLOBALLY)

### LAND USE PROJECTS (VEGETATION & AGRICULTURE)

- New plantations
- Human induced regeneration
- Reforestation
- Sustainable land management
- Soil carbon sequestration
- Changing livestock feed
- Reduced fertiliser use

### ALTERNATIVE WASTE TREATMENT

- Capture landfill gas
- Methane destruction
- Solid waste diversion and alternative treatment

### INDUSTRIAL FACILITIES

- Replace or modify equipment
- Capture and re-use waste heat
- Reduce industrial process emissions
- Increasing the volume of fugitive emissions captured

### RENEWABLE ENERGY

- Wind and solar energy projects in developing countries
- Not eligible under the ERF

### ENERGY EFFICIENCY

- Improved cookstove or lighting projects in developing countries

All offset projects must be covered by a **methodology** under the relevant scheme.

Methodologies set out **how** a project is undertaken and how abatement is **quantified** and **reported**.



# Difference between regulatory and voluntary credits

## REGULATORY CREDIT

- Used to meet **emission reduction obligations** imposed by law (e.g. ACCUs and Safeguard Mechanism liability).
- Administered under legal/regulatory frameworks.
- Credits under regulatory schemes are obtained and surrendered by organisations which are required to emit below a certain level.

## VOLUNTARY CREDIT

- Used by organisations to meet **self-set, internal emission reduction goals** and/or to demonstrate certain products are “**carbon neutral**”.
- Credits issued by independent standards (not compliance based).
- Administered under voluntary international standards by private organisations and largely unregulated.
- Generally not able to be used to meet compliance obligations.

# Voluntary carbon credit schemes



## Climate Active

- Voluntary standard/scheme administered by the Australian Government.
- Provides a framework by which organisations can have their carbon neutral claims certified, including by the use of offsets.



## Verified Carbon Standard (VCS)

- International voluntary certification for offset projects. Administered by US non-profit Verra.
- VCS projects are issued Verified Carbon Units (VCUs).
- VCUs can be traded in the dedicated Verra registry and surrendered to meet voluntary commitments (and in limited circumstances, compliance regimes).



## REDD / REDD+

- UN supported framework that is designed to incentivise developing countries to undertake projects



## Plan Vivo

- International voluntary certification for community land-use projects.



## Gold Standard

- International carbon offsets program.
- Gold Standard projects are issued Verified Emission Reduction Units (VERs).



## Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)

- Covers international flights between 88 participating States (including AUS, UK and the USA).



## Clean Development Mechanism (CDM)

- Offset projects in developing countries generate Certified Emission Reduction Units (CERs)



## Climate Action Reserve

- American voluntary offset registry/scheme
- CAR projects issue Climate Reserve Tonne



## American Carbon Registry (ACR)

- American voluntary offset registry/scheme where offsets can be traded, purchased and retired.



# Which credit to choose?

1

## SCOPE AND ROBUSTNESS OF SCHEME

- Types of projects / geographical coverage
- Risk mitigation approaches
- Popularity

2

## FUNGIBILITY

- Linkage with other schemes

3

## QUALITY OF OFFSETS

- Additionality
- Permanence
- Leakage
- Co-benefits

4

## COMMERCIAL TERMS

- Price
- Counterparty
- T&Cs



# Key Legal Risks



Quality

Calculation,  
verification,  
double-  
counting

Delivery and  
retirement

Reputational  
and regulatory  
risks  
(greenwashing)

Financial  
Regulatory, Tax,  
ABC



# Key risks/issues in carbon trading agreements

## TYPICAL FORMS OF CONTRACTING

- Transaction structure depends on type of carbon credits and role of seller
- Spot sales
- Forward sales
- Key risks:
  - certainty of delivery obligations (volume, time)
  - force majeure relief
  - change in law



# Where to next?

## ACTIONING THE AMBITION

- Regulatory environment anticipated to become more, rather than less, intrusive
- Net zero an “organising principle for business”
- Need for clarity and transparency in communications, internally and externally, and an understanding of carbon market risks





These materials are for training purposes only and are not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to. Please take legal advice before applying anything contained in these materials to specific issues or transactions. For more information please contact the presenters or your usual contact.