

FuelEU Maritime:

Securing the pathways for compliance

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N 55°30'23.8458"
Longitude
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Agenda

1. Introduction:

- *Speakers*

- *Practicalities*

02. The Risks, Complexities, and Why You Must Start Discussions Now

03. The FuelEU Maritime Clause: Addressing the FuelEU Maritime Challenges

04. Q/A



Welcome

● Host & Presenter:

James Shiller

*Global Lead of New Fuels,
Dan-Bunkering*



● Speakers:

Nick Walker

*Partner,
Watson Farley & Williams LLP*



Carl Lindahl

*Maritime Contracts Manager,
BIMCO*



● Practicalities ►

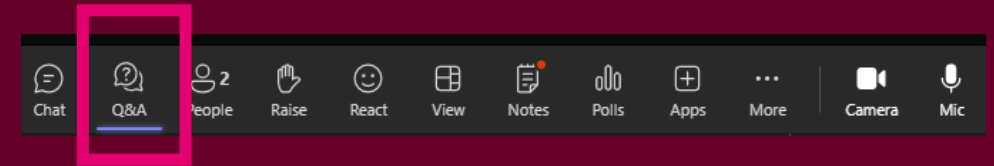


Instructions

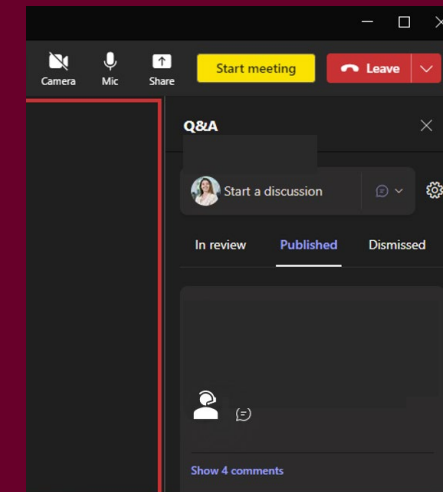


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5. Follow-up: Every attendee will receive a link to this presentation and recording next week.

Find all instructions in the Q&A section



The Q&A will show on the right side of your screen.



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Narrative

"I am a **shipowner** or **charterer**. This new regulation has come into effect, and I must now agree on **who is responsible** for compliance and **how** the associated operational and financial **obligations will be managed**.

How can I ensure I am in the best position possible?"



Financial Implications



"I will just pay the fine"





Key Focal Points of the Webinar

- **Handling a Surplus** – What is it, who owns it, how could it be valued, and how it should be structured in agreements
- **Managing a Deficit** – How liabilities are assigned and mitigated
- **Compliance Mechanisms** – Banking, borrowing, pooling, and the role of low-GHG intensity fuels
- **The Penalty and Multiplier Effect** – Financial implications and risks
- **The BIMCO SHIPMAN Clause and New Financial Flows** – Impact on relationships between owners, charterers, and managers (This section can be removed or emphasized less if we are constrained on time)
- **Possible Amendments/Additions** – How the clause may evolve based on market developments (This section can also be shortened if needed)

WATSON FARLEY
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WILLIAMS

NAVIGATING THE FUTURE: FUEL EU INSIGHTS

Nick Walker



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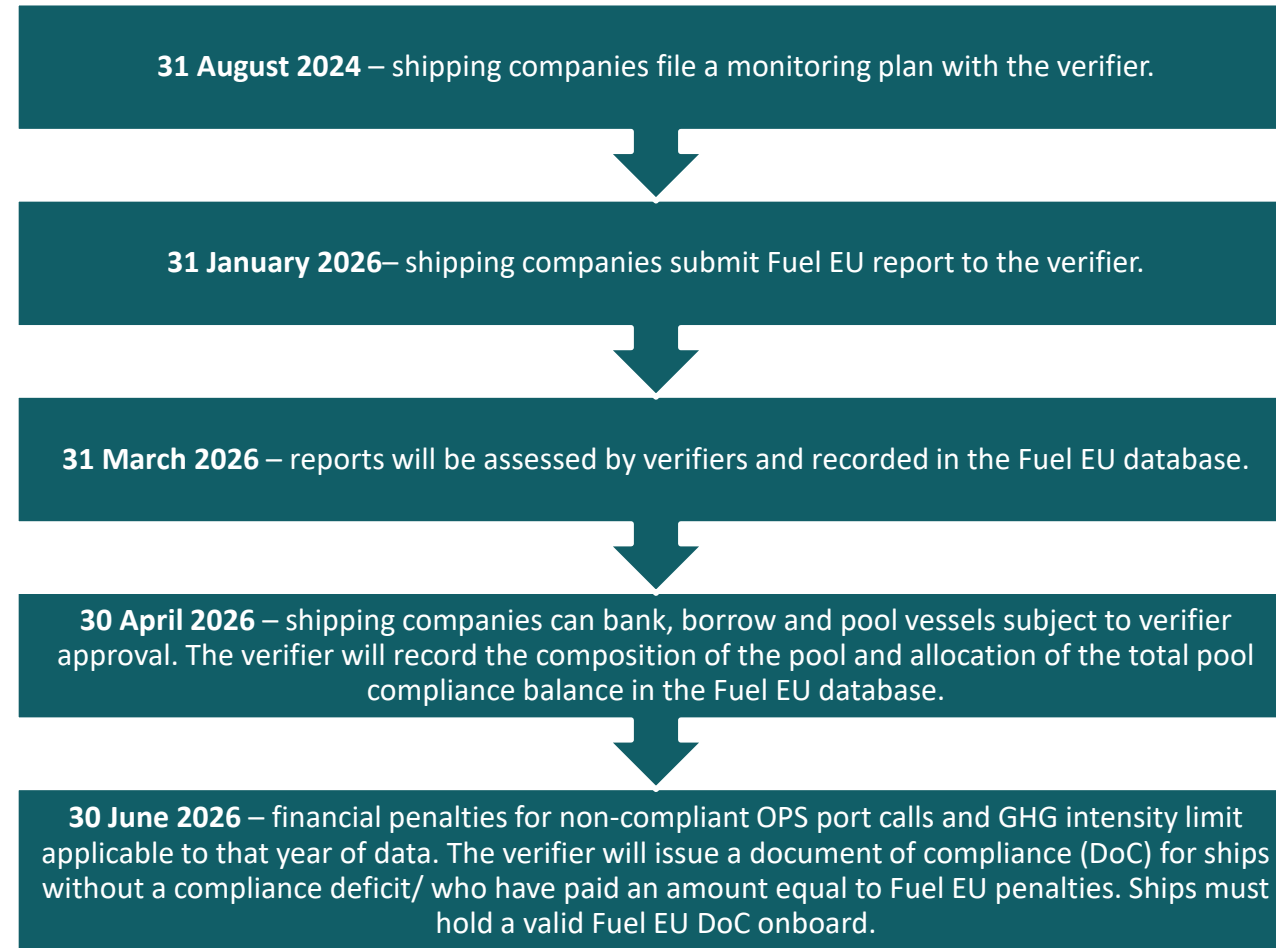
Fuel EU

What is it?

- Applies from 1 January
- 31 August 2024 – first deadline – submit Monitoring Plan
- Focus on shifting towards renewable and low-carbon fuels – EU Renewable Energy Directive (RED III) and Alternative Fuels Infrastructure Regulation (AFIR)
- Imposes a limit on the GHG intensity of energy used on board by a ship arriving at, staying within or departing from EEA ports:
 - **2025: reduce by 2% compared to 2020 levels;**
 - **2035: reduce by 20% compared to 2020 levels;** and
 - **2050: reduce by 80% compared to 2020 levels**
- Obliges the use of onshore power supply (OPS) or zero-emission technology in MS ports by 2030
- Incentivises uptake of **Renewable Fuels of Non-Biological Origin (RFNBO)s**
- **Banking, Pooling, Borrowing:** ships allowed to offset an entire fleet / pool penalties – this is complex – calls for specialist input, particularly when considering compliance and quantifying the risk

Fuel EU

Compliance deadlines for shipping companies



Fuel EU

Pooling across compliance years

- Under the ETS the registered owner is responsible unless responsibility is assumed by ISM
- It seems the ISM may be the 'shipping company' for Fuel EU, though this flies in the face of polluter pays
- No obligation for shipping company to register
- Even if the ISM is the entity facing the regulator the registered owner is ultimately "on the hook" as enforcement is against the vessel
- As with ETS, regulatory responsibility and contractual liability bear little if any relationship to one another, so contractual arrangements will be crucial; unwise to wait for "market standards" to develop



Fuel EU

Who is responsible?

"While the company **should** remain responsible for fulfilling monitoring and reporting obligations under this Regulation, as well as for paying the FuelEU penalties, in line with the 'polluter pays' principle and in order to promote the uptake of cleaner fuels, the entity responsible for purchasing the fuel or for taking operational decisions that affect the GHG intensity of the energy used by the ship **could**, through contractual agreements with the company, in the event of compliance deficit, be put under the obligation to reimburse or otherwise compensate the company with respect to the cost of the FuelEU penalties resulting from the operation of the ship. That company **should** be able to, on a contractual basis, request the verifier to calculate the amount of the FuelEU penalties corresponding to the operation of the ship by the other entity during the reporting period. Within this context, operation of the ship **should** be understood to mean determining the cargo carried, the route and the speed of the ship..."

- Para 63 L234/59

Fuel EU

Banking and Borrowing

- Fuel EU allows for the banking and borrowing of compliance surpluses for each ship between reporting periods
- Any compliance surplus may be "banked" until the following reporting period. Any compliance deficit may borrow an "advance" compliance surplus from the following reporting period
- Advance surpluses will be subtracted from the subsequent reporting period at a punitive rate
- Fuel EU allows for shipping companies to "pool" their compliance balance with other ships, including those outside the shipping company
- Pooling emissions penalties and surplus credits may allow for huge costs savings
- There is no guidance on pooling from the Commission so important to be clear about what you are agreeing too
- The Regulation does not define who owns the vessel's surplus – this must be negotiated between the parties and properly reflected in drafting



Fuel EU

Pooling across compliance years

- Charterparty A: The vessel is chartered to charterer A from 1 January 2025 to 31 March 2025 ("charter period A")
- Charterparty B: The vessel is chartered to charterer B from 1 April 2025 to 31 December 2025 ("charter period B")
- It is not possible to engage in "partial pooling" in such a scenario
- Again, specific drafting is crucial. We recommend the owner retains control of pooling arrangements for any partial year and recovers costs from charterers on a monthly basis
- Establishing a market price/value for surplus will be crucial



Fuel EU

Penalties and enforcement

- Penalties will be imposed on ships that:
 - exhibit a compliance deficit for GHG intensity of the energy used onboard or, if applicable, for the RFNBO sub target, as of 1 June of the verification period
 - have made at least one non-compliant port call during the reporting period
- The company must pay the penalty by 30 June of the verification period. The administering state ensures payment (without prejudice to any relevant contractual arrangements)
- Penalty levels for non-compliant port calls are calculated by multiplying the following:
 - €1.5/kWh
 - total electric power demand on ship at berth (kWh)
 - non-compliant hours at berth
 - (Penalty levels for GHG intensity compliance deficit is more complex, multiplied by €2,400 per tonne of very low sulfur fuel oil equivalent energy)
- Failure to pay a penalty can result in expulsion from ports, flag detentions, and restricted access to ports in other MSs



Fuel EU

Issues and concerns

- Only partially implemented
- Open (or "only-just-recently-closed") consultations
- Costs clauses and provisions
- Lack of "market standard"
- Certainty of litigation



Thank you!



Nick Walker



Link to WeChat

Follow on LinkedIn:

<https://www.linkedin.com/in/nick-walker-259a9a33/>

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Maritime EU ETS and FuelEU: your essential checklist of exemptions and compliance deadlines

Are you FuelEU ready or just coasting?



EU ETS and FuelEU Maritime Regulation (Fuel EU) Compliance Toolkit

*No Maritime EU ETS Account, No Compliance:
Register or Risk Penalties*



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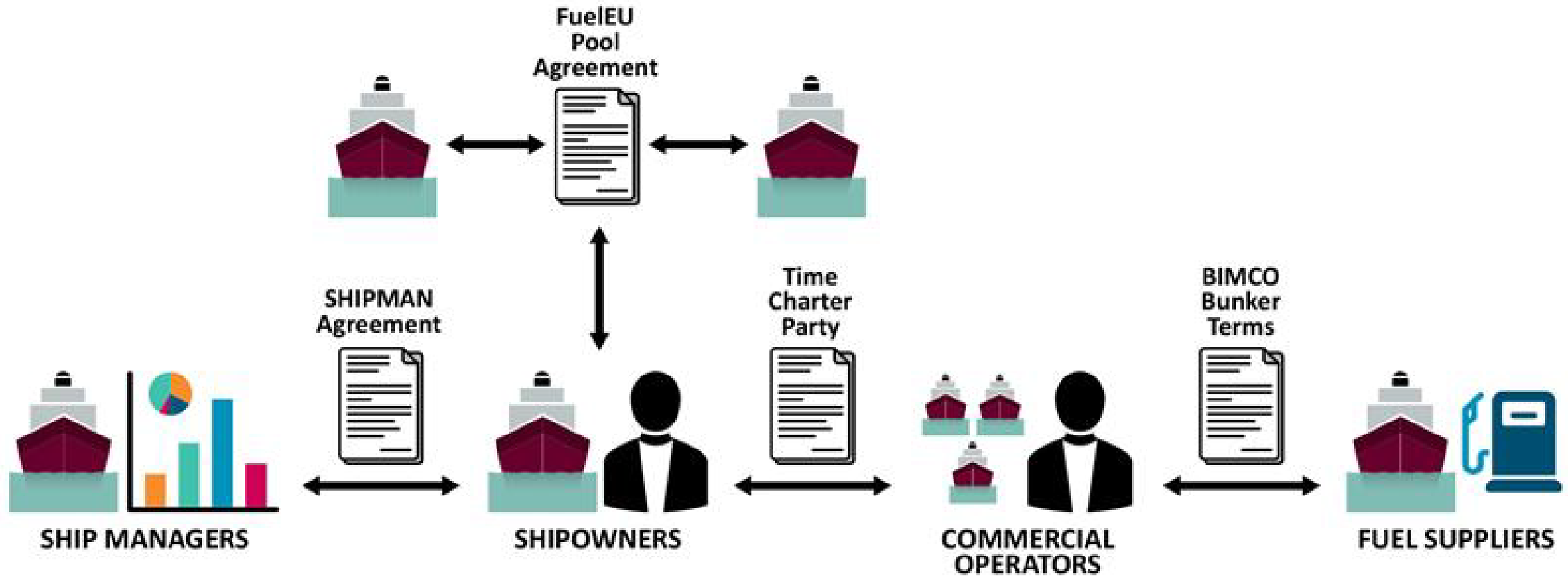
BIMCO FuelEU Maritime Clauses

Carl Wilhelm Lindahl
Maritime Contracts Manager
BIMCO Contractual Affairs

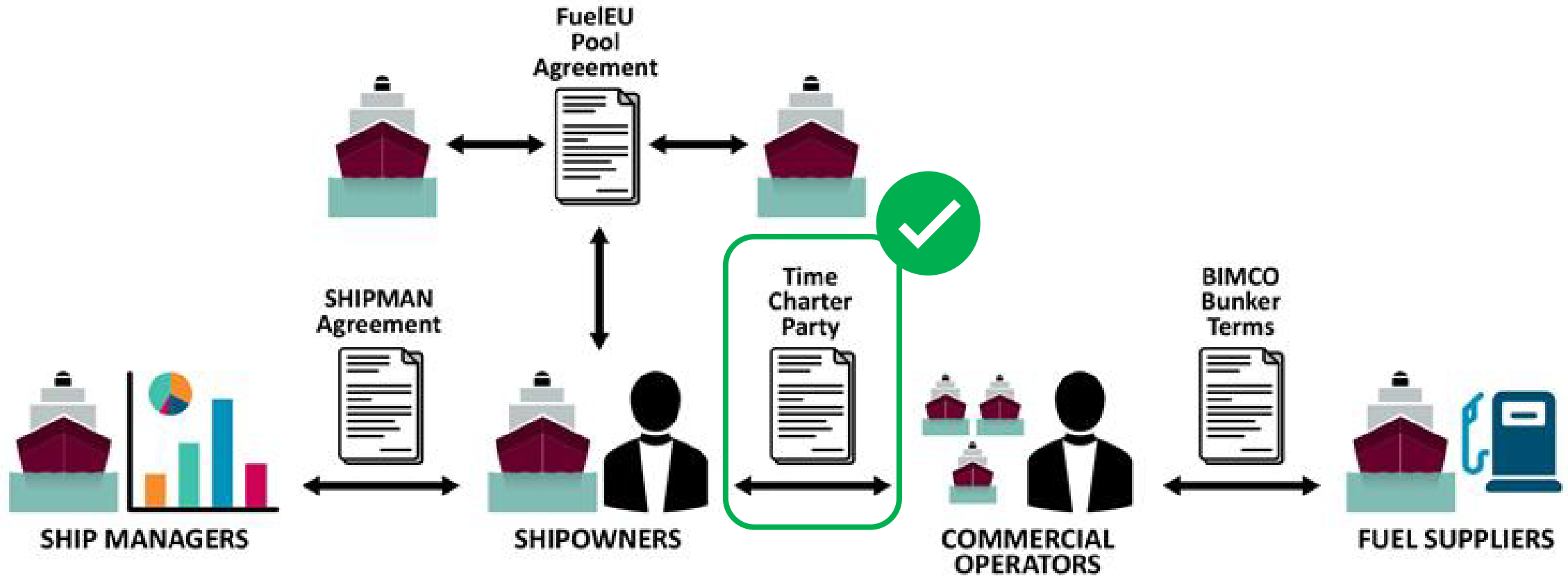
Agenda

- FuelEU Maritime – The Contractual Matrix
- BIMCO FuelEU TC Clause – Key Features
- BIMCO FuelEU SHIPMAN Clause – Key Features

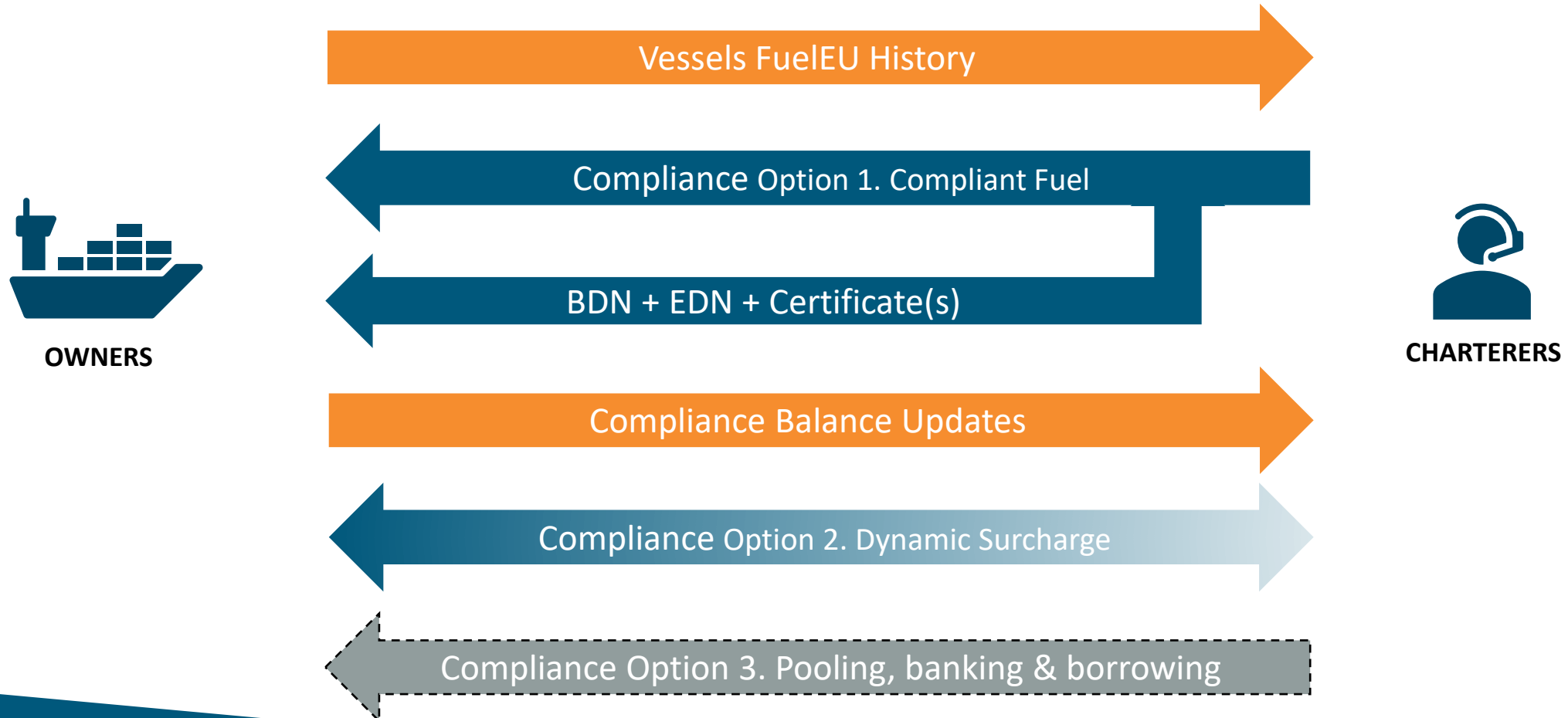
FuelEU Maritime - Contractual Matrix



FuelEU Maritime - Contractual Matrix



FuelEU Maritime Clause for TCP; Key Features



Who Controls the Compliance Balance?



- **Article 20**

(1) *“...the company may bank it to the same ship’s compliance balance for the following reporting period... ”*

(2) *“...the company may borrow an advance compliance surplus of the corresponding amount from the following reporting period...”*

- **Article 21**

(2) *“The company shall register in the FuelEU database its intention to include the ship’s compliance balance in a pool, the allocation of the total pool compliance balance to each individual ship, and the choice of the verifier selected for verifying that allocation...”*

Compliance Option 3: Pooling & Banking

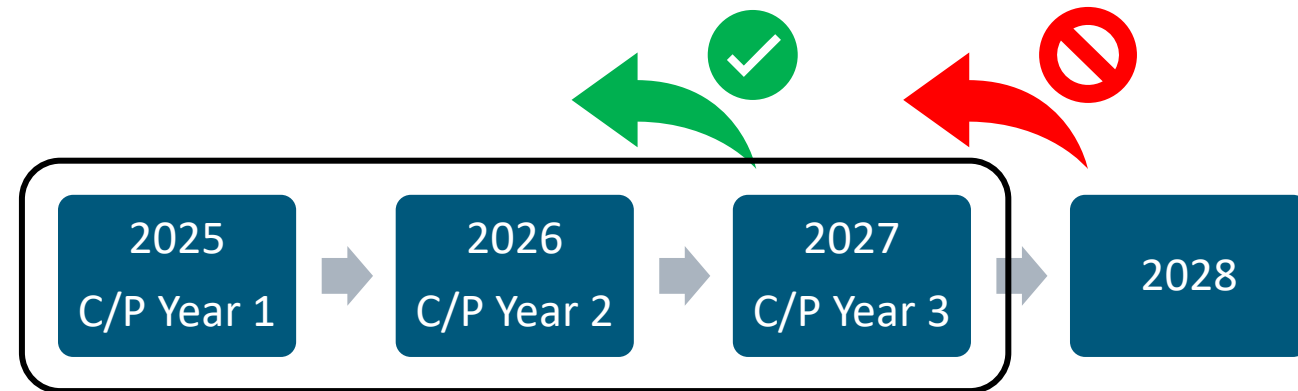
- If the Charter Period covers a complete Reporting Period (1 Jan–31Dec):
 - Charterers can instruct Owners to bank or pool Compliance Balance.
 - Instructions must be received by Owners no later than **[X**]** days before 30 April in the Verification Period.
 - Charterers are responsible for any liability or costs arising from such instructions.

Compliance Option 3: Borrowing

- Charterers can instruct Owners to borrow if:
 - Charter Period covering at least two consecutive Reporting Periods

AND

 - Reporting Period borrowed from falls within the Charter Period.



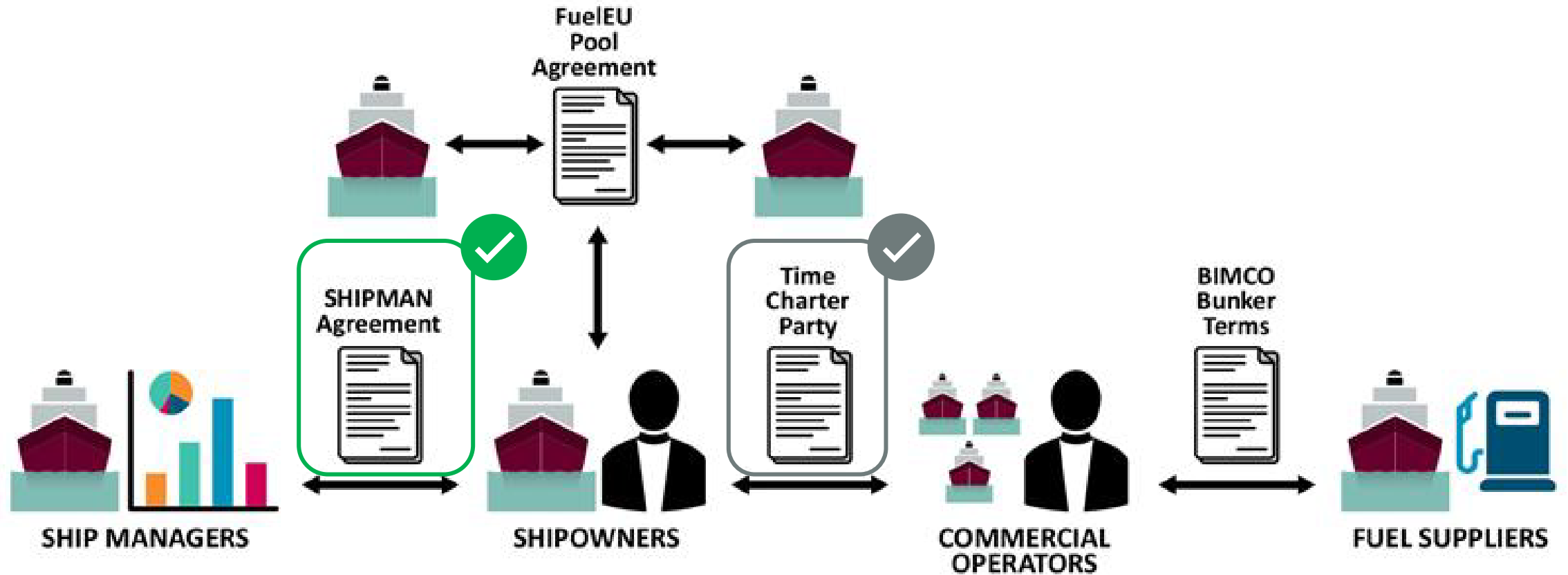
FuelEU “Settlement Mechanism”

- (m) ***If the aggregated Compliance Balance incurred during the Charter Period for any Reporting Period is positive, the Owners will pay the Charterers a sum equal to **[insert currency and amount]** per tonne of CO₂ equivalent of positive Compliance Balance (remaining after any banking and/or pooling) up to a maximum of **[insert currency and amount]** within **[X**]** days after 30 June of the corresponding Verification Period or upon redelivery (whichever is earlier).

FuelEU Multiplier - Liquidated Damages

- (I)***If the Charter Period covers at least two consecutive Reporting Periods, and the Vessel has a negative Compliance Balance for the last two consecutive complete Reporting Periods or more during the Charter Period prior to redelivery, the Charterers shall pay to the Owners upon redelivery, by way of liquidated damages and not as a penalty (in addition to any Surcharge(s) paid), the sum of **[insert currency and amount]**. The Charterers and the Owners agree this sum is a legitimate and fair estimate of the Owners' future exposure to the FuelEU multiplier after redelivery in accordance with FuelEU Maritime.

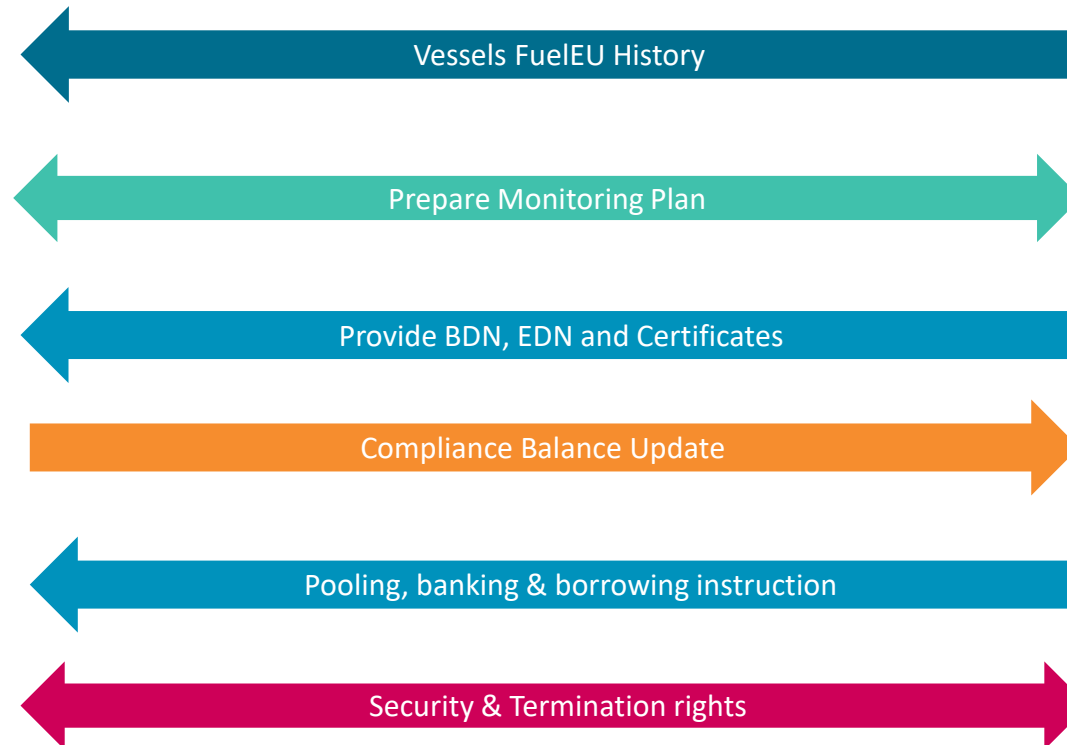
FuelEU Maritime - Contractual Matrix



FuelEU Maritime Clause for SHIPMAN; Key Features

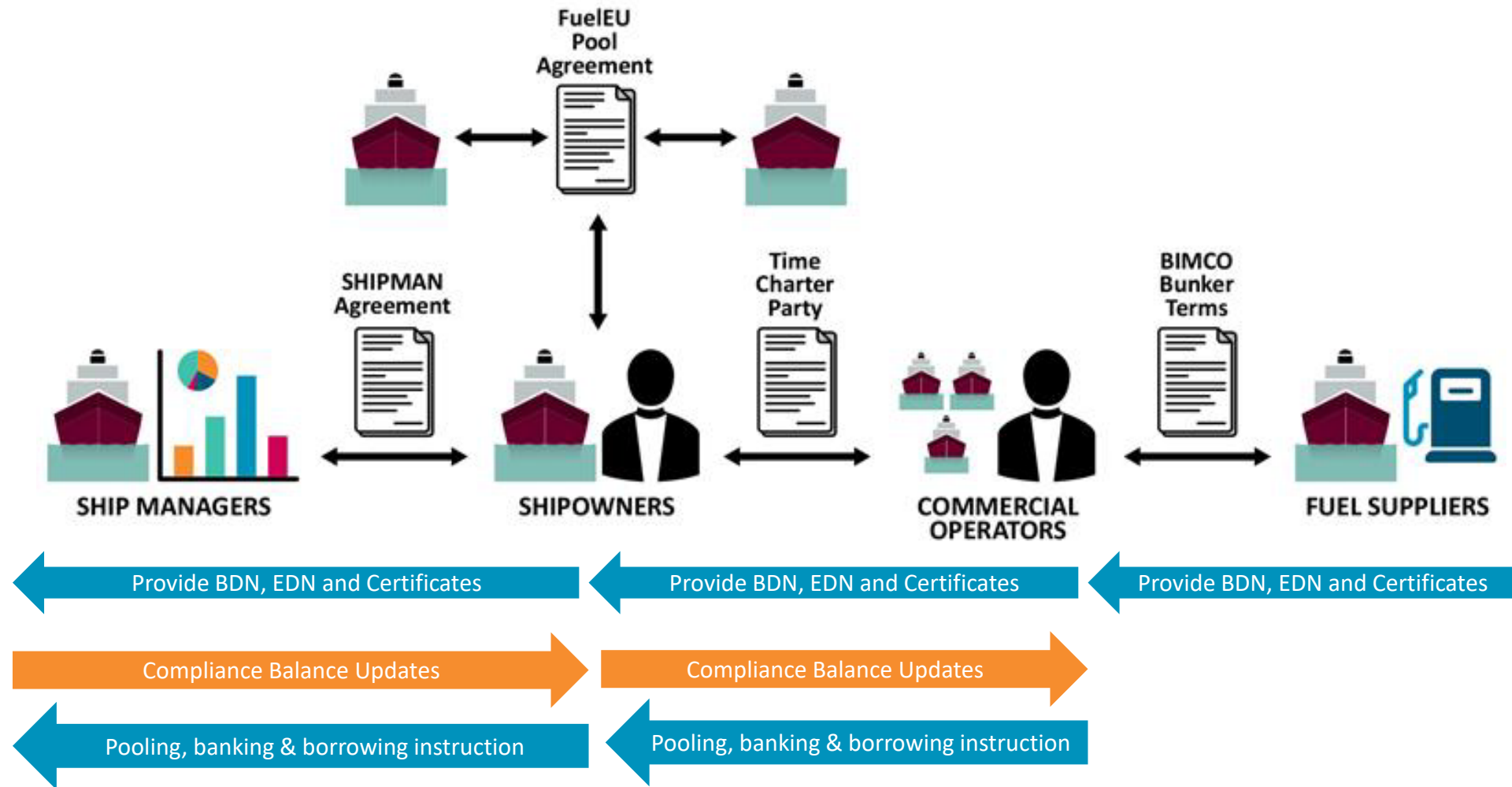


MANAGERS
✓ Responsible
compliance
entity



OWNERS

FuelEU Maritime - Contractual Matrix



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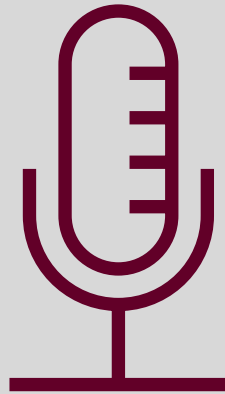


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Q/A



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Thank you

