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BANKING BITES - JULY 13 2022

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SUMMARY

Welcome to Banking Bites! This is our short summary flagging key developments in the UK that we hope will inform your activities in your market.

This edition covers:

1. Banks continue to crack down on use of non-firm approved messaging platforms for business communications
2. New FCA sanctions screening tool and updated approach to online fraud
3. Importance of being aware of applicable regulatory guidance on financial crime risk
4. House of Commons Foreign Affairs Committee and Treasury Committee work on the UK Government's Russia Sanctions regime
5. FCA Feedback Statement on ESG integration in UK capital markets: Feedback to CP21/18
6. Time to put the H in ESG – ESHG?
7. FCA publishes guidance on the scope and application of the business interruption insurance test case

1. BANKS CONTINUE TO CRACK DOWN ON USE OF NON-FIRM APPROVED MESSAGING PLATFORMS FOR BUSINESS COMMUNICATIONS

Following increasing interest from regulators in the use of non-firm approved messaging platforms, major banks have continued to dismiss senior employees for using unapproved communications channels for business communications. Although many clients in the sector are accustomed to communicating with banks on such platforms, the dismissal of senior individuals at large multinational investment firms shows that banks are continuing to react to the regulatory pressure

being applied both in the UK and the US. Other multinational investment banks have gone further by requiring staff to use an application which records all calls and logs text messaging. Many firms will already have clear policies and procedures on the use of unapproved communications in place. Firms should take every opportunity to reinforce that message. Senior leaders in business teams should be reminded of their responsibility to set an example and employees should be encouraged to speak-up where they consider firm-approved communications platforms could be improved and/or identify the use of non-firm approved platforms. BCLP has extensive experience in this area.

Please contact with Oran Gelb should you wish to discuss further.

2. NEW FCA SANCTIONS SCREENING TOOL AND UPDATED APPROACH TO ONLINE FRAUD

The UK's financial services regulator, the Financial Conduct Authority (FCA), has indicated that it has developed and implemented sanctions screening tools to support the monitoring of the effectiveness of a firm's controls in identifying organisations or individuals that have been sanctioned. The regulator is also utilising web scraping to identify potential scams; scanning an average of 100,000 websites created every day to identify newly registered domains that show characteristics that could be used for scams or fraud. This was set out as part of an update on the regulator's data strategy, which indicates that the FCA plans to invest heavily in its use of data in 2022/23. It also plans to equip its staff with a dashboard for all the financial companies it regulates and sectors it oversees to make it easier to identify and focus on the highest risk cases.

Please contact Siân Cowan if you would like further information.

3. IMPORTANCE OF BEING AWARE OF APPLICABLE REGULATORY GUIDANCE ON FINANCIAL CRIME RISK

Two recent FCA notices reinforce the importance of UK-regulated firms being aware of all applicable regulatory guidance relating to financial crime risk. In the first, the FCA imposed a financial penalty of £7,881,700 (including a 30% discount) on an insurance broker for breaches of Principle 3 of the FCA's Principles for Business. Despite improvements having previously been made to its systems and controls frameworks, the FCA found that the firm had failed to consider whether additional safeguards or approvals should be implemented where an overseas introducer, engaged by another entity in the same group, introduced business that was subsequently placed by the firm in the London market. The group entity has itself recently been the subject of a US Department of Justice declination in respect of FCPA violations, pursuant to which it has agreed to disgorge $29,081,951 representing the profit from corruptly obtained and retained contracts. Notably, the US Department of Justice has agreed to credit this amount against the amount the group may pay to the Serious Fraud Office pursuant to a separate resolution that addresses the same underlying conduct.

In the second notice, the FCA imposed a financial penalty of £5,829,900 (including a 30% discount) on the UK branch of a bank for breaching provisions of the UK's money laundering regulations (the

2007 regulations, rather than the Money Laundering Regulations 2017). The breaches concerned the bank's anti-money laundering and counter-terrorist financing policies and procedures. Despite the FCA finding no evidence of actual money laundering, the financial penalty was justified on the basis that the bank's policies and procedures were not sufficiently risk-sensitive to address the money laundering risks posed by its correspondent banking relationships.

In light of these decisions, firms may want to review their current financial crime risk assessments and policies to ensure they contain as much up-to-date best practice as possible. Please contact Joseph Ninan and Tegan Schultz if you would like to discuss any of the general financial crime points above in more detail and/or would be interested to know more about the two cases discussed above.

4. HOUSE OF COMMONS FOREIGN AFFAIRS COMMITTEE AND TREASURY COMMITTEE WORK ON THE UK GOVERNMENT'S RUSSIA SANCTIONS REGIME

On 30 June 2022, a UK Parliamentary sub-committee, the Foreign Affairs Committee (FAC), released its report "The *cost of complacency: illicit finance and the war in Ukraine"*. Amongst other things, the report noted that indefinitely freezing the assets of a growing number of oligarchs should not become a form of *"criminal justice light"* nor should it become a form of expropriation without due process. It recommended that law enforcement agencies consider whether there is a criminal case for asset seizure against the frozen assets. The FAC has also recommended that the Government provide the UK's Office of Financial Sanctions Implementation (OFSI) with the necessary additional resources - particularly staff – to oversee compliance with the sanctions regime.

Meanwhile, a different sub-committee of the UK's House of Commons has continued to receive evidence on the effectiveness of economic sanctions in response to the situation in Ukraine. In its latest oral evidence session, the Committee heard from the Director and Deputy Director of OFSI. The key messages conveyed by them included that OFSI intends to expand its intelligence function and other powers to align with the Office of Foreign Assets Control (OFAC, its US counterpart) and that it considers whistleblowers a potential source of intelligence. There is a plan to create a more structured whistleblower facility for sanctions breach reporting. Another point of note was that, currently, OFSI does not view the use of cryptoassets to avoid sanctions as a large-scale avoidance risk. The Committee has also recently posed a series of questions to the FCA and Her Majesty's Revenue & Customs about the regulated sector's awareness of the Russian sanctions regime and compliance with it. These included questions dedicated to the regulators' knowledge of the use of cryptoassets to evade sanctions regimes and how many firms are subject to sanctions currently. The FCA will no doubt be relying on the information it has but may also be contacting firms to ask for this information (a potentially large disclosure exercise for the banks).

As of April 2022, UK Government figures placed the total global net worth of oligarchs sanctioned by the UK around £200billion, within a total value of frozen assets being around £900billion. This exponential increase in the value of assets frozen creates a correspondingly greater compliance

burden on the regulated sector and those who control these assets. The increased calls for transparency around sanctions evasion and the frozen asset reporting exercise will generate new avenues of investigation for those tasked with enforcing sanctions compliance. It is incumbent upon firms to continue to keep pace with the evolving landscape and keep the situation under review, especially in terms of overall resilience (including cyber resilience) and firms' incident management and response procedures. Firms with exposure to the UK sanctions regimes should review compliance systems and processes and ensure there are no gaps, particularly given the increased risk both financially and reputationally from recent changes to the civil sanctions regime. Firms should also be placing even greater emphasis on due diligence in respect of any exposure to cryptoasset activity, given the heightened focus on this as a means of evading sanctions.

Please contact Chris Bryant or Sonja Hainsworth if you have any sanctions-related questions.

5. FCA FEEDBACK STATEMENT ON ESG INTEGRATION IN UK CAPITAL MARKETS: FEEDBACK TO CP21/18

The FCA's Feedback Statement FS22/4 on its future role an environmental, social and governance (ESG) regulator makes essential reading for those engaged in horizon scanning around ESG data and reporting. Responding to the UK Government's roadmap to sustainable investing, the financial services regulator welcomed the intention to bring ESG data and rating providers into its regulatory perimeter. The FCA's intention would be to develop a *"proportionate, targeted and phased approach to regulation in this area"*, taking into account the size of the provider, the degree of judgment and value-add in its service provision, and the nature and degree of usage of the provider's services in the market. Given the potential lead time before this could feasibly happen, the FCA is intending to work with ESG data and rating providers to create a voluntary, best practice code of conduct. Published alongside FS22/4, Primary Market Bulletin 41 sets out the FCA's approach to ESG-labelled debt instruments, which reminds market participants of existing obligations not to mislead etc. when advertising investments.

Please contact Matthew Baker if you would like further information.

6. TIME TO PUT THE H IN ESG - ESHG?

As ESG issues begin to penetrate corporate boardrooms, we are also seeing an increasing focus on issues relating to mental health and wellbeing in the workplace. There is often a major perception gap between employees and CEOs regarding whether or not the organisation is doing enough in relation to wellbeing and mental health. This has led to a number of influential business leaders noting that it is time to put the 'H' in ESG – ESHG. Although there are currently no formal reporting requirements relating to staff health and wellbeing at this stage, we are beginning to see more of a focus on psychological safety in the workplace from regulators such as the FCA.

Given that increased regulation on employee health and wellbeing appears likely, firms should be proactive on this issue to get ahead of the regulatory curve. From a practical perspective firms can

do this by:

- inspiring boards to make the health of employees a core purpose of business;
- appointment of a Chief Wellbeing Officer with sufficient budget; and
- creating a culture where work is a positive driver of mental health with co-creation of new and personalised ways of working.

Please contact Polly James for further information.

7. FCA PUBLISHES GUIDANCE ON THE SCOPE AND APPLICATION OF THE BUSINESS INTERRUPTION INSURANCE TEST CASE

The FCA has published a note directed at insurance firms watching the development of jurisprudence around business interruption claims carefully. The note explains that, as a result of a first instance judgment earlier this year, policyholder claims previously rejected by insurers (or only partly accepted) following the earlier decision of the Divisional Court in the test case, may need to be reconsidered. The note goes on to provide some guidance.

Please contact Anthony Lennox or James Fairburn for more information.

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