

BankBCLP

BANKING BITES – APRIL 27 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. The UK Financial Regulator's new three-year strategy
2. The UK Government's outline of its plans for regulating stablecoins
3. FCA review of London Metal Exchange's control systems after suspension of nickel market
4. The SFO's questioning by a group of Parliamentarians
5. What you can do in response to the 'nationalisation' of assets located in Russia by the Russian Federation

1. THE UK FINANCIAL REGULATOR'S NEW THREE-YEAR STRATEGY

The UK's Financial Conduct Authority (FCA) has launched its new [three-year strategy](#), with the stated aim of improving outcomes for consumers across *all* markets throughout the UK. Described by its chief executive as focussed on results, rather than processes and reflecting the regulator's aims to be more assertive and innovative, the strategy sets an agenda which includes achieving fair value for consumers, more effectively supervising high risk investments, tackling greenwashing and maintaining the focus on diversity and inclusion. The regulator has devised 13 commitments to achieve its strategic goals which will see it scale-up its interventions, take a stronger role as a regulatory gatekeeper, improve the redress framework, increase oversight of authorised representatives and enhance its ability to detect market abuse. The financial crime focus is squarely on tackling investment and authorised push payment (APP) fraud. The regulator will also, for the first time, hold itself accountable against published [outcomes and performance metrics](#).

The strategy document is essential reading for those engaged in horizon scanning within UK regulated-firms. Please contact [Polly James](#) if you require any assistance in this area.

2. THE UK GOVERNMENT'S OUTLINE OF ITS PLANS FOR REGULATING STABLECOINS

The UK Government published a response to its consultation on regulatory approach to cryptoassets and stablecoins and the use of distributed ledger technology in financial markets. Points to note from the response include an intention on the part of the Government to extend the existing payments regulatory regime to cover issuers of stablecoins and entities providing related services. To achieve this, the Government plans to amend existing electronic and payment services regulations. The Government will also extend the applicability of Part 5 of the Banking Act 2009 to include stablecoin activities, to apply in cases where the risks posed have the potential to be systemic and so the threshold for Bank of England supervision is met. Finally, the consultation confirmed that the Government will extend the scope of the Financial Services (Banking Reform) Act 2013 to ensure relevant stablecoin-based payment systems are subject to appropriate competition regulation by the PSR. UK regulated firms and subsidiaries should be alive to these regulatory changes coming down the pipeline and be ready to adapt to any changes.

In conjunction with its publication, Economic Secretary to the Treasury, John Glen announced a package of measures at the Innovate Finance Global Summit which aim to make the UK a global cryptoasset technology hub. A key announcement was that the UK Government will consider stablecoins as a recognised form of payment in the UK and the Royal Mint will be commissioned to create a Non-Fungible Token this summer. Firms doing business in or with those operating in this sector should note that there is likely to be a further consultations on cryptoassets this year and we can expect further announcements soon about the creation of a new Cryptoasset Engagement Group to advise the Government on issues facing the cryptoasset sector.

Please contact [Eric Martin](#) if you have any crypto-related queries.

3. FCA REVIEW OF LONDON METAL EXCHANGE'S CONTROL SYSTEMS AFTER SUSPENSION OF NICKEL MARKET

On 8 March 2022, the London Metal Exchange ("LME") suspended nickel trading, having concluded a disorderly market had arisen. The suspension occurred amid challenging commodity market conditions following the situation in Ukraine. Trading subsequently resumed on 16 March.

In a [joint statement](#) by the UK's financial services regulators, the FCA has announced that it intends to review the approach to managing the suspension and resumption of the market in nickel to determine what lessons might be learned in relation to the company's governance and market oversight arrangements. The Bank of England will also review the operation of LME Clear during the period. The UK's financial regulators said they will also be engaging with firms who held significant positions in the market to assess the effectiveness of their risk management and governance during the period.

BCLP Partner, Adam Jamieson says: “We expect that firms that had significant positions in nickel (and so were impacted by this issue) will wish to carry out an internal review of their own actions during this period, including understanding their trading activities and the effectiveness of their systems and controls. Those firms will then be well placed to respond fully to any FCA enquiries (if required). In particular, firms should consider their market abuse surveillance systems in the context of what has happened and whether those systems provided any indication that behaviour may have occurred that either could amount to market abuse or otherwise give rise to disorderly trading conditions. Firms should examine how those systems responded, whether any follow up was required and if so, what actions were taken.”

If you have any concerns around how you may be impacted, please contact [Polly James](#).

4. THE SFO’S QUESTIONING BY MEMBERS OF UK PARLIAMENT

On 29 March 2022, the Director of the UK’s Serious Fraud Office (“SFO”), Lisa Osofsky, and its Chief Capability Director, Michelle Crotty, appeared before the House of Commons Justice Committee to answer questions on the SFO’s approach to combatting economic crime and responding to the challenges of Brexit and the pandemic. The hearing also covered lessons learned from recent cases and, in particular, issues the agency had encountered with meeting its disclosure obligations, as well as staff culture and victim support. The SFO Director repeated sentiments we’ve seen before as to the need for companies to be willing to completely reform before the agency will consider extending them the opportunity to enter into deferred prosecution agreements (“DPAs”) in the UK. The Director also called for the extension of pre-investigation powers to enable the SFO to decide whether to commence an investigation into fraudulent conduct (where they only presently apply to potential investigations for bribery). A tightening up of the law in this area could see more preemptive requests for information or interviews being issued by the UK’s lead fraud enforcement agency.

5. WHAT YOU CAN DO IN RESPONSE TO THE ‘NATIONALISATION’ OF ASSETS LOCATED IN RUSSIA BY THE RUSSIAN FEDERATION

Following Russia’s activities in Ukraine, President Putin announced that the Russian government may ‘nationalise’ property and/or assets located in the Russian Federation which belong to companies or people who have left the country in the wake of the invasion. Despite the unworkable proposition of bringing claims for wrongful ‘nationalisation’ before judicial tribunals in Russia, effective recourse is still available to companies and people who have had their assets expropriated. This can be done by relying on treaty claims which are made on the basis of an international arbitration framework designed to protect foreign investments in Russia. To bring a claim, the value of the investment must be either diminished or altogether eviscerated as a result of government intervention. Russia has 62 Bilateral Investment Treaties with Western countries (including the UK, France and Germany) and companies who have a presence in these countries may file claims based on wrongful expropriation. These claims are heard by a neutral international

tribunal and apply public international law. Any award issued by these tribunals will be enforceable in most countries. Crucially, the relief sought should be to require obligors of the Russian state to pay the claimant, rather than seek enforcement against the Russian Government itself.

BCLP has expertise in preparing and prosecuting these treaty-based investor-state claims. For more details please contact [Pedro J. Martinez-Fraga](#).

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