BankBCLP

BANKING BITES – MAY 17 2022

May 17, 2022

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. UK antitrust regulator writes to leading retail bank regarding breaches of the Retail Banking Order
2. EU's sixth package of sanctions – what's the delay?
3. New sanctions prohibitions on digital media and professional services providers
4. UK regulator notes inadequacy of financial crime risk controls of challenger banks
5. Emerging financial crime risks
6. UK Boardrooms must do more to eradicate modern slavery
7. Warning to retail bank over gender diversity
8. Horizon scanning: anticipated financial sector legislation following the reopening of UK's Parliament

1. UK ANTITRUST REGULATOR LETTER TO LEADING RETAIL BANK REGARDING BREACHES OF THE RETAIL BANKING ORDER

On 28 April 2022, the UK's antitrust watchdog, the Competition and Markets Authority (the "CMA") wrote to a leading retail bank in respect of breaches of the Open Banking provisions based on the failure of the bank to provide accurate and up to date information regarding its products and services. Examples included failing to publish or publishing incorrect information six times through Open Banking Programme Application Interfaces and presenting this incorrect information to third parties and independent price comparison tools. The CMA decided that no further formal action was necessary because the bank had undertaken remedial measures including introducing more robust compliance tools and conducting further reviews with additional training on procedures. For those retail banks with UK regulated entities, this is a reminder that, in addition to ensuring that effective and robust compliance systems and policies are in place, they should continue to engage openly and transparently with regulators to avoid non-compliance.

Please contact Victoria Newbold should you wish to discuss further.

2. EU'S SIXTH PACKAGE OF SANCTIONS – WHAT'S THE DELAY?

The President of the European Commission, Ursula von der Leyen, clarified what we can expect from the EU's hotly anticipated sixth package of sanctions (first mooted in April) in a speech published on 4 May 2022. If the full package is approved it will include designations of high ranking military officials; SWIFT exclusions for Sberbank and two other banks; bans on 3 Russian state-owned broadcasters from EU airwaves; a ban on the importation of Russian oil and a ban on professional services being provided to Russian companies, which may include legal services. A copy of the draft text has been leaked to the media, resulting in further disclosures that the package of sanctions would also halt property deals with Russian citizens, residents and entities.

The package will need to be endorsed by EU members before entering into force. However, a meeting of the EU's 27 ambassadors ended last week without an agreement, with Hungary continuing to block the proposal due to its reliance on Russian hydrocarbons. A ban on shipping Russian oil to third countries may also be delayed until the G7 commit to similar measures. On Friday 13 May, Josep Borrell, High Representative of the European Union for Foreign Affairs and Security Policy, stated that if there is no agreement by EU Ambassadors by Monday 16 May, he will ensure foreign ministers "provide the political impetus" for agreement for getting "rid of the oil dependency on Russia".

Please feel free to address any queries to contact Chris Bryant, or Megan Barnhill for US-based firms.

3. NEW SANCTIONS PROHIBITIONS ON DIGITAL MEDIA AND PROFESSIONAL SERVICES PROVIDERS

The UK, meanwhile, has moved to sanction internet service providers with the publication, on 27 April 2022, of the Russia (Sanctions) (EU Exit) (Amendment) (No 9) Regulations 2022, SI 2022/477. The regulations create the necessary legal framework to prohibit social media service providers and internet service providers from facilitating a user based in the UK from encountering, downloading or accessing content produced by persons designated under the Russian sanctions regime, presenting a series of compliance challenges for technology companies.

On May 4th, UK Foreign Secretary, Liz Truss, also announced that the UK would be imposing a ban on exports of management consulting, accounting and public relations services to Russia. The US has since adopted similar prohibitions by issuing a determination, pursuant to April 6 Executive Order 14071, providing that accounting, trust and corporate formation, and management consulting are categories of services that are subject to the prohibition on the export, reexport, sale, or supply, directly or indirectly, from the United States, or by a US person, wherever located, to any person located in the Russian Federation.

Together, these regime changes mark a novel extension of the practice of imposing economic sanctions, bringing IT service providers and professional services companies into a space more familiar to the financial services market. For those involved in supporting these industries, it is important to be aware of the rapidly changing picture and to take this into account when assessing current risks or contracts.

BCLP has produced an insight on the internet services sanctions. If you have any questions about these new sanctions, feel free to contact Chris Bryant.

4. UK REGULATOR NOTES INADEQUACY OF FINANCIAL CRIME RISK CONTROLS OF CHALLENGER BANKS

On 22 April 2022, the UK's primary financial services regulator, the Financial Conduct Authority (the "FCA"), published the findings of its review of financial crime controls at six relatively new and primarily digital challenger banks that all offer similar products to traditional retail banks. The review provides useful guidance as to examples of good practice applicable not just to challenger banks but traditional banks as well.

The key takeaways from the review are:

- the regulator expects senior managers to take responsibility and be accountable for implementing necessary changes to anti-financial crime programmes;
- a number of the good practices highlighted involved harnessing emerging technology. Digital innovation remains top of the regulator's agenda;
- the regulator was positive about those challenger banks that had tailored their financial crime policies to the risks they faced - an accurate risk assessment remains an essential component to satisfying the regulator that the firm has understood its regulatory obligations; and
- knowing your customer remains key - significant criticisms were levelled at those who had not implemented effective customer due diligence processes or procedures.

BCLP has produced a more detailed analysis on this topic.

5. EMERGING FINANCIAL CRIME RISKS

The following interesting points came out of a recent industry seminar on anti-money laundering and financial crime risks, where key government entities talked directly to the market.

- The FCA reinforced its intention to take a stronger approach to financial crime enforcement. The next area of focus is likely to be firms' sanctions compliance systems and processes. The FCA will be taking a hybrid approach to assessments going forward, having found virtual assessments conducted during lockdowns to be effective and helpful. There are no targets for onsite visits but the number of visits will not be fewer than pre-pandemic levels. The FCA anticipates taking a narrower but deeper approach to assessments and the selection for assessment will be more data led. The FCA is also keen to ensure that firms have proper controls in place as a priority in the coming months.
- Reform of Companies House in the UK, now imminent, will result in Companies House being able proactively to share data about suspicious activity on the register with enforcement agencies and use intelligence provided by law enforcement. The Registrar will also be given new powers to query information on the register, building on the regime provided for under the Economic Crime (Transparency and Enforcement) Act 2022.
- The UK's suspicious activity reporting regime is key to combatting the illegal wildlife trade, being the fourth largest illegal trade behind drugs (worth an estimated £15 billion annually). This means that the onus is on the financial institutions, through whom the proceeds of these crimes are laundered, should be on high alert to this type of predicate offending and be adapting their AML controls and transaction monitoring accordingly.
- Current challenges for retail banks include the scope of the anticipated second Economic Crime Bill in the UK and whether it contains the right provisions to allow information sharing and predicting where exposure to foreign jurisdictions is likely to create the greatest risk in the next 6 months.
- Regarding the Quincecare duty (duty on banks to protect their customers from fraud) there are incentives for the customer relationship management model to be mandatory across the industry.

6. UK BOARDROOMS MUST DO MORE TO ERADICATE MODERN SLAVERY

On 25 April 2022, the UK's Financial Reporting Council published new research identifying significant shortcomings in companies' modern slavery reporting. Overall, information included in modern slavery statements and annual reports is lacking in the detail needed to enable investors and stakeholders to make informed decisions. The findings were based on a sample of 100 companies. Here are some key learning points.

- CEOs and/or board chairs should sign off modern slavery statements ensuring board-level responsibility.

- Care should be taken to avoid statements being superficial or descriptive. Broad brush-statements should be avoided. Instead, statements should contain critiques of the companies' performance and highlight areas of concerned. They should provide precise descriptions on issues and detail on how policies operated in practice (including internal training, due diligence processes, risk assessments) and how their effectiveness was measured.
- Their focus should not be entirely retrospective. Statements should also contain forward-looking discussion of emerging issues and the strategic approach to them.
- Statements should be written clearly and concisely and should be easy to read.

Please contact Polly James for further information.

7. WARNING TO FTSE 100 LENDER OVER GENDER DIVERSITY

The pressure investors are putting on companies to improve the diversity of their boards continues to mount. Last year, an influential investment advisory group, stated it would issue amber-top alerts on listed firms which failed to disclose ethnic diversity at board level. A red-top alert is the strongest type of warning issued and signifies that investors should have serious corporate governance concerns. The Hampton-Alexander Review report published in February this year recommended that FTSE 350 leadership teams comprise at least 40% females, by the end of 2025. There is currently a target of 33% at board level. The investment advisory group was recently reported to have issued a red-top alert against a FTSE 100 lender based on failing to meet these gender diversity requirements at its executive level. Such alerts can result in shareholder revolts.

This is a reminder for firms to ensure that positive action is needed to effect change and that the focus on culture, inclusion, transparency and openness continues. Firms should also note the importance of engaging with shareholders regularly in order to align objectives and to discuss potential issues such as missing gender targets.

Please contact Polly James should you wish to discuss further.

8. HORIZON SCANNING: ANTICIPATED FINANCIAL SECTOR LEGISLATION FOLLOWING THE REOPENING OF UK'S PARLIAMENT

On 10 May 2022, the UK Government used the Queen's Speech (given on the State Opening of the UK's Parliament) to introduce a range of new draft legislation which, if made, would impact the regulated financial services industry. Chief among these was the Financial Services and Markets Bill which will pave the way for greater regulatory autonomy from the EU by revoking retained legislation and paving the way for UK focussed regulation – including in the field of insurance regulation. This Bill will also place the requirement to compensate authorised push payment fraud victims on a statutory footing (establishing a liability framework based on existing powers), and to clarify the remit of the Payment Systems Regulator (the "PSR") in enforcing this. The PSR intends to publish a consultation on this in the Autumn. The Queen's Speech also announced the publication of the second 'Economic Crime Corporate Transparency Bill', designed to target illicit wealth and provide for Companies House reform.

Other key bills include: the National Security Bill designed to work alongside the Economic Crime Corporate Transparency Bill, with aims to reform espionage law and create offences relating to state-backed sabotage or theft of trade secrets; the Modern Slavery Bill intended to increase company accountability including strengthening the regime for the publication for modern slavery statements; the Boycotts, Divestment and Sanctions Bill to stop public bodies from adopting their own approach to international relations, such as sanctions, contrary to UK foreign policy objectives, and the Online Safety Bill (carried over from the last session). The UK also intends to create the first British state-owned investment bank to tackle climate change and support economic growth (in the UK's interests) via means of the UK Infrastructure Bank Bill.

While these Bills have no legal effect until they are brought into law, it is important that firms consider their potential impacts so as to be prepared.

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