

BankBCLP

BANKING BITES – AUGUST 2 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. FCA publishes guidance on regulated firms offering compromises and tells banks to improve treatment of small to medium sized enterprises
2. FSB issues statement on cryptoasset supervision and regulation
3. FCA provides update on ESG strategy
4. Government announces intended implementation date of Overseas Entity register
5. Government introduces amendments to money laundering legislation including implementing the 'travel rule'
6. Government provides responses to the independent review into SFO failings
7. Successive amendments to UK sanctions regimes in a short space of time

REGULATION

1. FCA PUBLISHES GUIDANCE ON REGULATED FIRMS OFFERING COMPROMISES AND TELLS BANKS TO IMPROVE TREATMENT OF SMALL TO MEDIUM SIZED ENTERPRISES

Bearing in mind the soon-to-be implemented Consumer Duty, UK-regulated firms have an opportunity to consider some of the lessons that can be taken away from recent publications by the UK's financial services regulator, the Financial Conduct Authority ("FCA"), and adopted into systems and processes:

- First, its [guidance](#) detailing its approach to compromises for regulated firms, which aims to clarify the regulator’s approach; one focused on best outcomes for consumers. In line with Principle 11 of the FCA’s [Principles for Businesses](#), it is crucial that firms engage with the FCA and notify it as soon as a compromise is considered. Failure to do so is considered a significant breach of the firm’s regulatory duties. In addition, firms should provide as much information as possible to allow the FCA to make a determination. Finally, it is important that firms consider any potential misconduct or redress concerns before proposing a compromise since the FCA will consider any prior (or continuing) misconduct when determining whether or not to allow a compromise and/or take enforcement action.
- Second, the outcome of a recent [review](#) into the treatment of small to medium sized enterprise (“SME”) customers who have run into financial difficulty with their borrowing sets out what the regulator considers to be “*positive examples*” of treating SMEs fairly. For example, refusals of offers of settlement or arrangements to pay should be based on a “clear rationale”; frontline staff can be trained on how to deal with customers in financial difficulty; and customer outcomes or metrics measuring fair treatment, governance and oversight ought to be included in the content of reports sent to senior management. Good record keeping practices are also key to ensure that consumer files are updated, accurate, and include detailed call notes of any contact with frontline staff. While each of the 11 retail banks considered in this review received individual feedback from the regulator, the FCA also addressed a “*Dear Chair*” [letter](#) to all retail banks with SME customers together with warnings that the regulator will use its supervisory and enforcement powers to take further action as necessary.

Please contact [Polly James](#), [Joanna Munro](#) or [Tegan Schultz](#) for any queries relating to the above, or if you would like to discuss the Consumer Duty more generally.

2. FSB ISSUES STATEMENT ON CRYPTOASSET SUPERVISION AND REGULATION

On 11 July 2022, the Financial Stability Board released a [statement](#) regarding the supervision and regulation of cryptoassets. This sets out what is being done to enable cross-border and sectoral cooperation with national authorities and international standards agencies and to address concerns. Cryptoassets are fast changing and evolving. Firms operating within the sector should take great care to ensure they act within the existing regulatory frameworks. As noted within the statement, FSB members will not hesitate to take enforcement action. Indeed, given the risks posed by cryptoassets, enforcement agencies may well be more inclined to take action. Stablecoins will be a particular asset of focus, and therefore firms offering this or considering offering this should bear this in mind.

We will continue to monitor this topic for further updates.

3. FCA PROVIDES UPDATE ON ESG STRATEGY

The FCA has provided a [strategy paper](#) on its ESG priorities. The paper highlights some high level [milestones](#) for the regulator, of which firms can take note to give an idea of the direction of travel. These include plans to enhance transparency around climate-related financial disclosures, which goes hand-in-hand with the regulator's oversight function. The FCA clearly expects there to be accountability for ESG claims, including appropriate incentives. Through greater use of technology, the FCA should be able to identify issues more effectively. The FCA intends to take a more interventionary approach in this area and, finally, ESG related expectations may soon be built into the authorisation model.

Please contact [Polly James](#) for any queries arising from this update.

FINANCIAL CRIME

4. GOVERNMENT ANNOUNCES INTENDED IMPLEMENTATION DATE OF OVERSEAS ENTITY REGISTER

The UK's Register of Overseas Entities at Companies House ("ROE") was [launched](#) on 1 August 2022 and the [commencing legislation](#) was published. The land registration elements will come into force from 5 September 2022. It will apply to all overseas entities with an existing interest in land (freehold or lease of over 7 years) or acquiring such an interest following the commencement date. It is vital that firms which are registered overseas and have or intend to enter into UK landholding arrangements ensure that the necessary ROE requirements are met to avoid financial penalties and reputational harm or worse. The law now provides for several criminal offences related to non-compliance. Firms involved in real estate finance should also consider their dealings with overseas counterparties as part of their risk assessments.

BCLP has produced a [detailed insight](#) on this topic. Please contact [Siân Cowan](#) or [Victoria Duxbury](#) for more information.

5. AMENDMENTS TO UK'S MONEY LAUNDERING LEGISLATION INCLUDING IMPLEMENTING THE 'TRAVEL RULE'

In line with continuing AML/CTF efforts in the UK, the UK Government has introduced further AML legislation: the [Money Laundering and Terrorist Financing \(Amendment\) \(No. 2\) Regulations 2022](#). A key target of the amendments are cryptoassets firms, with the new legislation extending the 'travel rule' to such firms. This rule requires that information on the identity of an originator and beneficiary of a funds or asset transfer is sent and recorded by the firm making the transfer, therefore making it easier to identify individuals and companies. In addition, proposed purchasers of already-registered cryptoasset firms will be required to notify the FCA ahead of making the acquisition. This will allow the FCA to object to such acquisitions or changes in control before they take place and, in doing so, ensure that unregistered firms are unable to access the UK market.

6. GOVERNMENT PROVIDES RESPONSES TO THE INDEPENDENT REVIEW INTO SFO FAILINGS

On 21 July 2022, the [independent review](#) conducted by Sir David Calvert-Smith into the agency's failings in a recent failed prosecution was published, setting out the sequence of events that resulted in the overturned convictions of several individuals. The review made a series of recommendations to improve the internal procedures of the SFO. The Government has published its [responses](#) to the recommendations, adopting the vast majority.

Given the accepted failures by the SFO and the recommendations to be adopted, companies and individuals who are the subject of SFO investigations can have greater confidence in the fact that the disclosure process involved in ongoing and future investigations and prosecutions will be handled with greater care and integrity by the prosecutor. Among the commitments made, SFO cases should be more regularly reviewed and rigorously re-assessed, providing suspects and defendants with some assurances that cases may not simply hang over their heads indefinitely. Furthermore the SFO will launch an internal communications campaign to support adherence to existing policies and introduce an assurance process to monitor compliance with operational policies. There is a brief window of opportunity for those under investigation to probe the extent to which policies and procedures have been followed to date and for those investigating to provide suspects and their advisors with greater confidence in the investigative process.

SANCTIONS

7. SUCCESSIVE AMENDMENTS TO UK SANCTIONS REGIMES IN A SHORT SPACE OF TIME

The speed with which the sanctions landscape is changing continues to create challenges for those trying to ensure effective compliance with it. UK regulated financial services firms, insurance firms and UK-based cryptoasset providers will need to be able to demonstrate an agile response to the following developments, in particular:

- the [Russia \(Sanctions\) \(EU Exit\) \(Amendment\) \(No. 13\) Regulations 2022](#), which, from July, 18 2022, saw amendments to the designation criteria under the [Russia \(Sanctions\) \(EU Exit\) Regulations 2019](#) to increase the scope of the regime by enabling more individuals and entities to be designated under it. This SI also created a humanitarian exception for humanitarian assistance in non-government controlled areas of the Donetsk and Luhansk regions to the provisions governing trade sanctions;
- the [Russia \(Sanctions\) \(EU Exit\) \(Amendment\) \(No. 12\) Regulations 2022](#), which came into force on July, 19, 2022 and created a new investment ban relating to Russian land and designated persons. OFSI published a new [General Licence](#) providing a wind down period;

- the [Sanctions \(EU Exit\) \(Miscellaneous Amendments\) Regulations 2022](#) and the [Sanctions \(EU Exit\) \(Miscellaneous Amendments\) \(No.2\) Regulations 2022](#) published on the same day, which immediately came into effect. These have a broad impact, amending various autonomous sanctions regimes made under the Sanctions and Anti-Money Laundering Act 2018 so that, from 30 August 2022, UK cryptoasset businesses have reporting obligations to consider, wherever they might encounter designated persons in the course of their business. This is backed up by offences and penalties should they fail to report something they are obliged to;
- the [Russia \(Sanctions\) \(EU Exit\) \(Amendment\) \(No. 14\) Regulations 2022](#), which came into force on Friday, 21 July 2022, substantially increasing the bite of trade sanctions under the Russian regime. Prohibitions now extend to the provision of accounting, management, business consulting and PR services as well as gold originating in Russia and, with effect from 10 August 2022, will extend to coal and coal products and, from 31 December 2022, to oil and oil products. Ancillary services related to trade in these goods (including financial services, funds and brokering services) will also be caught; and
- [General Licence INT/2022/2009156](#) issued on the same day, which permits designated persons to make payments to UK insurers and brokers, relating to insurance cover for UK properties, and for UK insurers to make payments to the frozen accounts of UK designated persons due as a result of a successful claim or overpayment refund, subject to record keeping and reporting requirements. Firms may process these payments.

Please contact [Chris Bryant](#) for any sanctions queries and please contact [Anthony Lennox](#) or [James Fairburn](#) for more information on insurance-related sanctions queries.

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