

Price Cap Coalition

Advisory for the Maritime Oil Industry and Related Sectors *Best Practices in Response to Recent Developments in the Maritime Oil Trade*

October 12, 2023

The Price Cap Coalition is issuing this advisory to provide recommendations concerning specific best practices in the maritime oil industry. This advisory reflects our efforts to promote responsible practices in the industry to prevent and disrupt sanctioned trade, and enhance compliance with the price caps on crude oil and petroleum products of Russian Federation origin, put in place by the G7, the European Union, and Australia (“the Price Cap Coalition” or “Coalition”).¹ The advisory is directed at both government and private sector actors (“industry stakeholders”) involved in the maritime trade of crude oil and refined petroleum products.²

The Coalition is committed to encouraging responsible maritime trade in crude oil and petroleum products within a reputable, safe, and secure market. Recent developments in the maritime oil trade, described below, expose industry stakeholders to increased safety, environmental, economic, reputational, financial, logistical, and legal risks. This advisory outlines best practices industry stakeholders can adopt to reduce risks while promoting the safe flow of oil on the market. These recommendations build upon previous guidance issued by the Price Cap Coalition such as the May 2020 Sanctions Advisory for the Maritime Industry,³ the Office of Financial Sanctions Implementation (OFSI) December 2020 Maritime Guidance,⁴ the Office of Foreign Assets Control (OFAC) February 2023 Guidance on Implementation of the Price Cap Policy,⁵ OFAC’s April 2023 Alert on Possible Evasion of the Russian Oil Price Cap,⁶ OFSI’s UK Maritime Services Ban and Oil Price Cap Industry Guidance,⁷ and the European Commission’s Oil Price Cap Guidance.⁸ By adopting the recommendations included in this advisory and previous guidance documents,

¹ The price cap is designed to deprive the Russian Federation of the revenue it uses to wage its unjust war against Ukraine, while maintaining reliable supply of crude oil and petroleum products to global markets.

² Industry stakeholders include but are not limited to port authorities, other government bodies, ship owners, managers, operators, brokers, ship chandlers, flag registries, port operators, shipping companies, freight forwarders, classification service providers, and insurance and reinsurance companies.

³ *Guidance to Address Illicit Shipping and Sanctions Evasion Practices*, U.S. Department of Treasury, State, and Coast Guard (May 14, 2020), <https://ofac.treasury.gov/recent-actions/20200514>

⁴ *Maritime Guidance*, Office of Financial Sanctions Implementation (December 2020), <https://www.gov.uk/government/publications/financial-sanctions-faqs>

⁵ *Guidance on Implementation of the Price Cap Policy for Crude Oil and Petroleum Products of Russian Federation Origin; Publication of Russia-related Determinations; Issuance of Russia-related General Licenses*, OFAC (February 3, 2023), https://ofac.treasury.gov/recent-actions/20230203_33

⁶ *OFAC Alert: Possible Evasion of the Russian Oil Price Cap* (April 17, 2023), <https://ofac.treasury.gov/media/931641/download?inline>

⁷ *UK Maritime Services Ban and Oil Price Cap Industry Guidance*, Office of Financial Sanctions Implementation (last updated June 2023), <https://www.gov.uk/government/publications/russian-oil-services-ban>

⁸ *Oil Price Cap; Related Provision: Article 3n of Council Regulation 833/2014 Frequently Asked Questions* (last updated August 2023) https://finance.ec.europa.eu/system/files/2023-08/guidance-russian-oil-price-cap_en.pdf

industry stakeholders can reduce their exposure to possible risks associated with recent developments in the maritime oil trade.

Increased Risks from Recent Developments in the Maritime Oil Trade

Geopolitical changes continue to impact and shape the world's maritime oil trade, shifting trade routes, broadening the scope of shipping service providers, and, at times, resulting in loss of transparency. A "shadow" trade has become more pronounced, often involving actors and cargo affiliated with countries and persons subject to sanctions, or associated with other illicit activity. This shadow trade is characterized by irregular and often high-risk shipping practices that generate significant concerns for both the public and private sectors. These heightened risks include, but are not limited to:

- *Maritime Safety and Marine Environment:* The vessels engaged in this shadow trade, sometimes called the "shadow fleet," are typically older ships, many of which are operating past their traditional lifespans. These vessels are often registered with flag states that fail to meet their international obligations. There is also an increased risk of falsified registration. Vessels in the shadow trade may fabricate or neglect the appropriate surveys or inspections and lack regulatory certificates required under international conventions. Additionally, crews employed on shadow fleet vessels may face pressure to disregard prudent shipboard practices, including those provided by the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers ("STCW"). These factors (*i.e.*, vessel age; substandard certifications; inadequate safety and maintenance standards performed by substandard flags or unrecognized organizations; imprudence by crew) could increase the likelihood of marine casualties.
- *Insurance and Economic:* Oil spills can create tremendous environmental damage and impose immense economic costs on coastal states. Ships involved in the shadow trade may rely on unproven Protection and Indemnity (P&I) insurance providers that operate in jurisdictions with opaque or limited regulation, and insufficient capital, reinsurance arrangements, and/or technical expertise to handle a major claim in the event of a marine casualty. Accordingly, it is more challenging to hold such vessels accountable for the heavy economic burden generated by environmental damage.
- *Reputational, Logistical, and Financial:* Actors involved in the shadow trade often conceal their ownership structures and the origin of their cargo. The ownership of shadow fleet tankers may be concealed through complex corporate arrangements, with a recent increase of single vessel fleets. These vessels may disable or manipulate AIS systems to conceal illicit activity or other information about their voyages. Such deceptive practices may cause industry stakeholders to unknowingly engage in transactions that are inconsistent with industry stakeholders' compliance policies, affect industry stakeholders' reputations, and trigger de-risking behavior from counterparties. This de-risking can result in loss of access to reputable service providers, financing, customers, and ports.
- *Legal and Sanctions:* A coalition of over thirty countries have adopted a variety of economic measures in response to Russia's war against Ukraine, including the oil price cap policy implemented by the Price Cap Coalition. Bad actors may use deceptive practices to gain or maintain access to Price Cap Coalition services to transport Russian oil or petroleum products

to be sold above the price cap or to engage in activity that may otherwise violate the Coalition’s sanctions, laws, or regulations.

Recommended Actions

The following recommendations are best practices that the Coalition encourages industry stakeholders to adopt, subject to applicable laws and regulations and, as appropriate according to their risk, based on: (i) their role; (ii) the information available to them; and (iii) the types of transactions in which they engage:

Recommendation 1: Require appropriately capitalized P&I insurance. The shadow trade involves ships that may rely on unknown, untested, sporadic, or fraudulent insurance. Without legitimate, continuous insurance coverage, these ships may be unable to pay the costs of accidents in which they are involved, including oil spills, which entail tremendous environmental damage and safety risks and associated costs. The Coalition encourages industry stakeholders to require that vessels have continuous and appropriate maritime insurance coverage for the entirety of their voyages. The Coalition further recommends that industry stakeholders require vessels to be insured by legitimate insurance providers with sufficient coverage for CLC⁹ liabilities. If an industry participant is engaging with a ship that is not insured by such a legitimate insurance provider, the industry participant should conduct sufficient due diligence to ensure that the insurer can cover all relevant risks. Such due diligence could include, as feasible, a review of an insurer’s financial soundness, track record, regulatory record, and/or ownership structure.

Recommendation 2: Receive classification from an International Association of Classification Societies¹⁰ member society. The information gathered by classification societies is useful in enabling insurers, port states, and other industry stakeholders to make informed decisions about the seaworthiness of vessels. Some ships involved in the shadow trade have shifted away from industry standard classification societies, and instead use societies that are not a part of, or have been removed from, the International Association of Classification Societies. The Coalition encourages¹¹ industry stakeholders to ensure counterparties receive classification from IACS member classification societies to ensure vessels are fit for the service intended.

Recommendation 3: Best-practice use of Automatic Identification Systems (“AIS”). Consistent with the International Convention for the Safety of Life at Sea (“SOLAS”), industry stakeholders should promote the continuous broadcasting of AIS throughout the lifetime of a voyage. If a ship needs to disable its AIS in response to a legitimate safety concern, the ship should document the circumstances that necessitated disablement. Industry stakeholders should also vigilantly monitor irregular AIS patterns or data that are inconsistent with actual ship locations. By requiring that ships with which they engage use AIS in accordance with the SOLAS, industry stakeholders will

⁹ International Convention on Civil Liability for Oil Pollution Damage (CLC) (May 1996), [https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Civil-Liability-for-Oil-Pollution-Damage-\(CLC\).aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Civil-Liability-for-Oil-Pollution-Damage-(CLC).aspx)

¹⁰ The International Association of Classification Societies is the principal consultative technical advisor to the International Maritime Organization (IMO) and classes over 90% of the world’s ocean-going tonnage. See *Safer and Cleaner Shipping, IACS (September 2023)*, <https://iacs.org.uk/about-us/>

¹¹ For EU member States there is legislation in place requiring to use certain classifications societies as Recognised Organisations that have been approved at EU level (OJ 2022/C 466/07).

improve their understanding of vessels' activities, and reduce their exposure to criminal actors and associated risks.

- *If accessible, complement AIS Tracking with Long-Range Identification and Tracking ("LRIT").* In instances of AIS outages or suspected AIS manipulation, industry stakeholders such as flagging registries that have access to LRIT should use it to determine the true location of vessels, including, where feasible, those leased to third parties. For those industry stakeholders who have access to LRIT, combining AIS and LRIT is a best practice for mitigating risk.

Recommendation 4: Monitor high-risk ship-to-ship transfers. While ship-to-ship (STS) transfers (the transfer of cargo between ships at sea) are often conducted for legitimate purposes, such transfers can also be used to conceal the origin or destination of cargo in circumvention of sanctions or other regulations. Furthermore, STS transfers of crude oil or petroleum products outside of safe and sheltered waters entail heightened environmental and safety risks. Industry stakeholders should recognize these enhanced risks and, as appropriate to their role, conduct enhanced due diligence in the context of STS transfers, including the notification of STS oil cargo transfers as required by Annex I of the International Convention for the Prevention of Pollution from Ships ("MARPOL"), especially in areas at higher risk for illicit trading activity or AIS manipulation. It is also recommended that industry stakeholders verify oil record logs to hold accountable record of cargo movements aboard vessels.

Recommendation 5: Request associated shipping and ancillary costs. The inflation of shipping and ancillary costs (*e.g.*, freight, customs, insurance), or the bundling of such costs, are tactics that may be used to conceal that Russian oil was purchased above the price cap. The billing of commercially unreasonable or opaque shipping and ancillary costs should be viewed as a sign of potential price cap evasion. Shipping, freight, customs, and insurance costs are not included in the price caps and must be invoiced separately and at commercially reasonable rates. Industry stakeholders involved in the Russian oil trade that use "Cost, Insurance, Freight" contracts or whose counterparts use such agreements should require an itemized breakdown of all costs to determine the price paid for oil or petroleum products. This may require that industry stakeholders update contractual terms and conditions with sellers or counterparts or adjust invoicing models to show the price of the oil until the port of loading and the price for transportation and other services separately.

Recommendation 6: Undertake appropriate due diligence. Industry stakeholders should carry out appropriate due diligence. Heightened diligence may be appropriate for ships that have undergone numerous administrative changes (*e.g.*, re-flagging). Industry stakeholders may also wish to conduct increased diligence when dealing with intermediary companies (*e.g.*, management companies, traders, brokerages, etc.) that conceal their beneficial ownership or otherwise engage in unusually opaque practices. Such companies may be more likely to engage in deceptive practices and expose counterparties to heightened risks. Industry stakeholders' due diligence should be calibrated according to the specificities of their business and the related risk exposure. Due diligence is especially important where market assessments indicate that Russian oil prices exceed the price cap, and Coalition services are being used or sought.

Recommendation 7: Report ships that trigger concerns. If an industry participant is aware of potentially illicit or unsafe maritime oil trade, including suspected breaches of the oil price cap, they should report this to relevant authorities. By reporting these concerning behaviors, industry stakeholders can collectively help protect the trade from malign activity, while promoting safety and integrity across the market.