

23<sup>rd</sup> February 2024

## CIRCULAR

### OIL AND OIL PRODUCTS PRICE CAP NOTICE AND ENDORSEMENT

The members of the G7, the European Union and Australia (together, the "**Price Cap Coalition**") have agreed to implement a prohibition on the maritime transportation of certain oil (HS code 2709 / CN code 2709 00 / HTS code 2709.00) and oil products (HS code 2710 / CN code 2710 / HTS code 2710) (together "**Russian Oil Products**"), originating in or consigned from Russia, from a place in Russia to a third country or from one third country to another. The prohibition extends to the provision of financial services, including (re)insurance, in pursuance of or in connection with an arrangement whose object or effect is the maritime transportation of Russian Oil Products.

In order to ensure the continued flow of oil and oil products onto the global market, price cap exceptions have been implemented by the Price Cap Coalition at the same time. The price cap exceptions permit the supply or delivery by ship of Russian Oil Products as well as provision of associated services only where such oil and oil products have been purchased or sold at or below the set price (the "**Price Cap Exception**"). This currently applies to Russian Oil Products which are at or below \$60 per barrel.

The Association is, therefore, prohibited from insuring and otherwise providing any insurance service in connection with the supply or delivery by ship of oil products from Russia to a third country or from one third country to another unless such supply or delivery complies with the terms of the Price Cap Exception as implemented by the states in the Price Cap Coalition. That is the case regardless of whether the prohibition on such supply or delivery applies to the Member in any way or not. The Association are under a legal obligation to obtain and retain an attestation from the Member that any carriage of Russian Oil Products falls within the scope of the Price Cap Exception and, in the event such an attestation is not obtained in a timely manner, notify the relevant authorities of that fact, and withdraw the insurance cover as soon as reasonably practicable.

Note that changes to the attestation model were recently announced by the Price Cap Coalition.

The Price Cap Coalition (G7, Australia and the EU) has published a statement of updates to the Price Cap rules. The changes are designed to support the implementation of the Price Cap and disrupt circumvention by reducing opportunities for bad actors to use opaque shipping costs to disguise oil purchased above the cap. These changes come into effect on 19 February 2024 (UK and US) and for cargoes loaded on or after 20 February 2024 (EU).

The two key changes are:

A requirement for attestations to be provided on a per-voyage basis. Annual attestations will no longer be acceptable. Where the cargo is transferred to another vessel via STS, this will constitute a new voyage requiring further attestations.

The per voyage attestations should be provided as follows:

- The attestations received by shipowners from charterers or other contractual counterparts should be obtained prior to loading. This is emphasised in the US guidance. Unless the attestation is received before loading, the shipowner will not have comfort that the cargo is price cap compliant until it is already on board. The EU guidance reiterates that "Shipowners are required to do the necessary due diligence such that it would be reasonable to rely on the attestation they have been provided by their customer".
- The attestations provided by shipowners to the Association must be provided within 28 days of loading. No cover will be available unless an attestation is provided within this timescale.

Itemised price information for ancillary costs is to be recorded by those entities with access to price information and then provided to shipowners and the Association upon request. Shipowners must ensure they have a right to ancillary costs information within 28 days of request.

Accordingly, Members should include in their contracts appropriate provisions to enable them to exercise such rights. If Members fail to do so, this may affect their ability to discharge their own information obligations to the Association, and potentially jeopardise their P&I cover.

The Association is to ensure that shipowners obtain and share this information with them on request. The EU Regulation 833/2014 has been amended to provide that service providers should have the right, upon request, to itemised price information. Members should therefore consider ensuring a right to such information within a much shorter timescale than 28 days, so as to be able to share the information promptly with the Association and other service providers. The itemised ancillary costs to be recorded and shared as set out in the UK and EU guidance should include the following:

*"For cost, insurance, and freight (CIF) contracts, the following should be covered:*

*Costs: export licences, inspection of products, fees for shipping and loading the goods at the seller's port, packaging costs, fees for customs clearance, duty and taxes, compensation for any damage or destruction of the goods, port dues at the point of loading/export and port service charges at the point of loading/export.*

*Insurance: cost of insuring the shipment up until the buyer's goods have been delivered at the port of destination.*

*Freight: cost of shipping the freight via sea or waterway from the seller's port to the buyer's port of destination.*

*Other costs: any other costs that demonstrate compliance with the general licence and provide assurance that the transaction is being conducted legally (the EU FAQs add that these costs include "costs related to the provision [of] auxiliary services for ship-to-ship transfers")*

*For free on board (FOB) contracts, the following should be covered:*

*Costs: costs of packaging the exported items, any charges for loading the product onto transport and delivering the goods to the seller's port, export taxes, customs duty and costs, and any transfer, handling and loading charges associated with loading the product onto the ship."*

In order to be able to rely on attestations and other costs information provided, Members must also conduct appropriate due diligence on the reliability and accuracy of the information provided.

Finally, it should also be noted that parties engaged in Price Cap oil shipments were originally placed into one of three "tiers", with tier 3 entities being those, including shipowners and P&I clubs, without direct access to information on the price of the cargo. The UK and EU have now split tier 3 entities into tier 3A and tier 3B. Included in tier 3A are P&I Clubs, H&M insurers, cargo insurers, insurance brokers, shipowners and ship management companies. Tier 3B entities are reinsurers and financial institutions providing general financing facilities. The changes to the attestation model set out in the UK and EU guidance do not apply to 3B entities.

## **Form of Attestation Required and Club Cover**

The changes set out above mean that for the 2024/2025 policy year per voyage attestations will be required in the revised form set out at Annex A to this circular.

In order for the Association to provide assistance where an entered vessel is engaged in the carriage of Russian oil or petroleum products, the Member must have:

1. Submitted an attestation as set out in Annex A; and
2. For UK business - provided the voyage information in a SPIRE report. Members are reminded that this information must be provided to the Association following any call to a Russian port or a transit of Russian waters, whatever the cargo.

Once the above information and documentation has been submitted, it will be reviewed by the Association who may request further or clarificatory information from the Member. This may include a request for the itemised price information for ancillary costs referred to in this Circular and Members are reminded that failure to provide this information to the Association may jeopardise the provision of cover. Members can expect such a request for itemised price information where the Association does not have sufficient comfort that the requirements of the Price Cap scheme have been complied with, or in response to a request from a relevant authority. Reasons why the Association may not have sufficient comfort could include because there are concerns about the parties involved in the trade, concerns arising from the Association's own due diligence or where they have received information about a suspected violation (i.e. from open source reporting or a request from a relevant authority). The EU Regulation states that "*competent authorities can request that [the itemised price] information from any actor, regardless of their place in the supply chain, at any time, in order to verify compliance with the price cap mechanism*".

Members should anticipate that there may be delays in the provision of assistance by the Association due to the need to first ensure compliance with the Price Cap scheme.

In the circumstances, it is necessary for the Association to introduce specific terms to the wording of the Terms of Entry to address the legislative changes outlined above. These terms are as follows:

### **PRICE CAP EXCEPTION CLAUSE**

1. It is a condition precedent to liability under the Terms of Entry that:
  - a. the Member provides the Association with a signed attestation in the form of or substantially equivalent to that in Appendix A, and

- b. when notifying a potential claim, or circumstances that may give rise to a claim, under the Entry which arises whilst the entered vessel is in any way whatsoever, whether directly or indirectly, used or involved in a Prohibited Activity, the Member provides the Association with a signed attestation in the form of or substantially equivalent to that in Appendix B together with any available supporting documentation, which must, at a minimum, include a signed attestation from the party with whom the Member contracted in connection with the use or operation of the entered vessel(s) confirming that the Russian Oil or the Russian Oil Product, as the case may be, was at all material times purchased or sold at or below the Price Cap.
2. It is warranted that the entered vessel(s) shall not at any time during the entry period and in any way whatsoever, whether directly or indirectly, be used or involved in a Prohibited Activity unless the price paid for the Russian Oil or the Russian Oil Product, as the case may be, at all material times complies with the Price Cap, regardless of whether the Member itself is under a legal obligation to comply with the laws, regulations and rules concerning the maritime transportation and related services prohibition, and the Price Cap exception thereto, imposed by the Price Cap Coalition.
3. It is further warranted that if the Member becomes aware of or comes to have a cause to suspect that the entered vessel(s) may be or is being used or involved in the Prohibited Activity without the price paid for the Russian Oil or the Russian Oil Product at all material times being in compliance with the Price Cap, it shall immediately notify the Association of such circumstances.
4. Any breach of the warranty in Clause 2 or Clause 3 above is not capable of remedy and, subject to Clause 5 below, from the date of the breach the Association will have no liability whatsoever under the Terms of Entry without the need to return any unearned Call.
5. Insofar as the provision of cover available under the Entry is any way inconsistent with or would put the Association in breach of the terms of any applicable General Licence(s), the Association shall have no liability under the Terms of Entry beyond what is permitted by the terms of such General Licence(s).
6. Coverage is subject to all other terms of the Terms of Entry, in particular the sanctions clause contained therein.
7. Definitions:

**Russian Oil** means oil (HS code 2709 / CN code 2709 00 / HTS code 2709.00) originating in or consigned from Russia which falls within the scope of the maritime transportation and related services prohibition imposed by the Price Cap Coalition.

**Russian Oil Product** means oil product (HS code 2710 / CN code 2710 / HTS code 2710) originating in or consigned from Russia which falls within the scope of the maritime transportation and related services prohibition imposed by the Price Cap Coalition.

**Price Cap** means the price, or cap, set for the purchase or sale of the Russian Oil or the Russian Oil Product by the Price Cap Coalition as may be amended from time to time.

**Price Cap Coalition** means the members of the G7, the European Union and Australia which have agreed to implement the Price Cap, and any other state which may join the initiative.

**Prohibited Activity** means the (direct or indirect) supply or delivery from Russia to a third country or from one third country to another of Russian Oil or Russian Oil Product, including involvement in any STS transfer.

**Tier 1** actor means someone who knows or can directly access the unit price of the Russian Oil or Russian Oil Product to be (or being) supplied or delivered including but not limited to commodities brokers, commodities traders, and importers.

**Tier 2** actor means someone who directly interacts with parties with price information, who can request and receive the unit price of the Russian Oil or Russian Oil Product to be (or being) supplied or delivered to/from their customers in the ordinary course of business. Including but not limited to financial institutions providing transaction-based trade finance, customs brokers, ship agents.

**Tier 3** actor means someone with no direct access to price information, who does not now and cannot access the unit price of the Russian Oil or Russian Oil Product to be (or being) supplied or delivered.

Including but not limited to cargo insurers, flagging registries, insurance brokers, P&I Clubs, reinsurers, ship owners, ship management and sometime charterers.

## APPENDIX A

**Issued to:** Maritime Mutual Insurance Association (NZ) Limited

### **PRICE CAP ATTESTATION FOR RUSSIAN ORIGIN OIL AND/OR PETROLEUM PRODUCTS**

1. The Member represents and warrants that for any provision of services related to the maritime transportation of Russian origin oil or Petroleum Products by any party entitled to cover such transportation has been, is, and will be in compliance with the price cap policy administered and enforced by the governments of the United Kingdom, the United States, the European Union and its Member States, including their allies and partners such as Japan and Norway. The Member represents and warrants that it has not taken and will not take any action with the effect or purpose of evading, circumventing, or attempting to violate the price cap policy.
2. The Member shall provide to the Association information and documentation related to compliance with the price cap policy, including any relevant attestation, itemised price information for ancillary costs and proof of reporting provided by a Tier 1 or Tier 2 actor, as quickly as practicable upon request and always within 28 days of the request.
3. In the event the Member becomes aware of circumstances that provide reasonable cause to suspect that it may have been or may be involved in any activity contrary to the price cap policy, the Member shall immediately notify the Association of such circumstances. The Association may notify relevant authorities of information that provides a reasonable cause to suspect that a violation of the price cap policy has taken place.
4. The Association shall not indemnify a Member against any liabilities, costs or expenses where the provision of cover, the payment of any claim, or the provision of any benefit in respect of those liabilities, may expose the Association to risk of violation of the price cap policy. In the event the Association determines that a violation of the price cap policy has taken place, the Association may immediately terminate the policy and will have no liability whatsoever under the policy beyond what is permitted by applicable law.
5. The Member and the Association will retain the executed version of this attestation for five years.

[Member] confirms that for [Terms of Entry being provided], [Member] is in compliance with the Russian price cap framework and any other restrictions on oil and/or petroleum which originates in or is consigned from the Russian Federation which are applicable under US, UK and EU sanctions, regardless of whether such sanctions are directly applicable to the [Member/underlying Member].

[the Member] attests that:

- [Member] has received and retained price information demonstrating that the oil and/or petroleum of Russian Federation origin is/was purchased at or below the cap; or
- Where not practicable to request and receive such information, [the Member] has obtained a signed attestation that the oil and/or petroleum of Russian Federation origin is/was purchased at or below the cap; or
- [Member] has received a signed attestation that the purchase of oil and/or petroleum is/was done pursuant to a license or a derogation; and

- Any relevant price information/attestation on which [Member] rely shall be retained for a minimum of five years and any applicable reporting obligations have been complied with;and
- Any information relating to ancillary costs as required in order to comply with the EU, UK and US price cap policy.

The Member and the Association will retain the executed version of this attestation for five years.