



THE SHIP FINANCE PUBLICATION OF RECORD

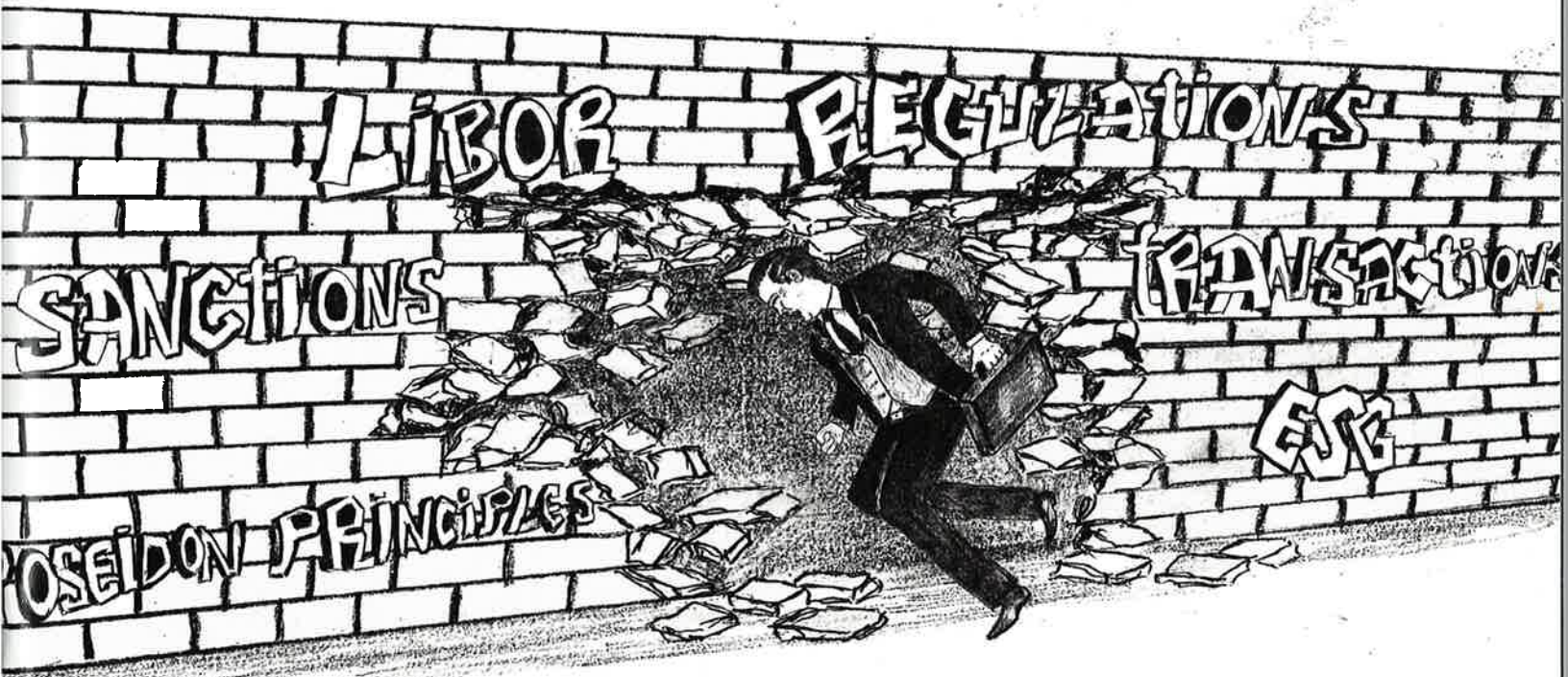
MARINE MONEY

INTERNATIONAL

HAMBURG ♦ SINGAPORE ♦ LONDON ♦ NEW YORK ♦ OSLO ♦ PIRAEUS

OCTOBER/NOVEMBER 2019

VOLUME 35, NUMBER 6



*Call 1-800-Super Lawyer
The Legal Issue*

THE SHIP FINANCE PUBLICATION OF RECORD

MARINE MONEY

INTERNATIONAL

Editor in Chief GEORGE WELTMAN

Contributors CAMPBELL HOUSTON

MOLLY PRIBOR

Sales Director MICHAEL MCCLEERY

Advertising Sales ANDREA FARRISON

Managing Director MM Asia & Greece KEVIN OATES

Greek Director & Events Organiser MIA JENSEN

Art Director/Production Manager CARI KOELLMER

President MATT MCCLEERY

Chairman & Publisher JAMES R. LAWRENCE

BUSINESS AND SUBSCRIPTION OFFICES

UNITED STATES

100 First Stamford Place, Floor 6
Stamford, CT 06902 USA
Phone: +1 203 406 0106 • Fax: +1 203 406 0110
Email: info@marinemoney.com

ASIA

c/o 50 Draycott Park 24#01
Singapore 259 396
Tel: +65 9151 7036
Email: asia@marinemoney.com or koates@marinemoney.com

GREECE

21 Orfeos Str.
155 61 Holargos-Athens, Greece
Phone: +30 210 9858 809 • Fax: +30 210 9842 136
Email: mia.jensen@marinemoney.gr



Annual Subscription is \$1490 U.S. plus postage. Payment should be made to International Marketing Strategies, Inc. at the U.S. subscription address above. While Marine Money has taken great care in the production of this publication, no liability can be accepted for any loss incurred in any way whatsoever by any person who may seek to rely on the information contained herein.

Marine Money, Inc. (International Marketing Strategies)
ISSN No: 1051-5496

Reproduction in any form is strictly prohibited
without written consent of the publisher.

Contents

October/November 2019

- **Unique Challenges of LIBOR's Disappearance For Shipping Loans**
Hoyoon Nam explains the challenge. — page 2
- **Sustainable/Green Financing in the Shipping and Offshore Sectors**
Eleanor Martin & Andrew Williams explain the opportunity. — page 6
- **Issues in Ship Leasing Transactions**
David Osborne & Charles Buss tell you what you need to know. — page 10
- **A Quick Guide to the Poseidon Principles**
Sophie Parker and Julia Zhan explain what the banks are doing to be green. — page 14
- **How Greater Support from Asian Funding Sources Could Be the Crucial Factor to the Success of the Poseidon Principles**
Alison Weal suggests Asian Banks do their fair share. — page 20
- **Bermuda Offers Safe Haven for Shipping Companies From winds of Change**
Marcello Ausenda promotes the benefits of Bermuda. — page 22
- **Another Milestone in the Development of the English Scheme as the International Restructuring Tool of Choice**
Alex Rogan highlights the English tool of choice which is likely easier, faster and cheaper. — page 24
- **IMO 2020 Enactment & Enforcement in the United States**
George Chalos exhorts owners to take it seriously. — page 26
- **LNG Shipping Keeps Hitting on the Gas**
Yannis Litinas provides an overview on LNG. — page 28
- **Brazilian Offshore Sector – Recent Developments and Trends**
Rafael Baleroni provides an update. — page 30
- **The Shipping Industry Is Increasingly Embracing Environmental Sustainability**
JP Gauci-Maistre & Despoina Xynou cover the regulatory landscape. — page 34
- **Noteworthy Deals of the Year**
Picked by the lawyers themselves. — page 39

Cover Art by Itzhak Feld

IMO 2020 ENACTMENT & ENFORCEMENT IN THE UNITED STATES

By George M. Chalos, Esq., Chalos & Co, P.C. –
International Law Firm

The shipping industry has been preparing, or perhaps more aptly termed: bracing for the implementation of IMO 2020 and the worldwide requirement for commercial vessels to consume fuel with a 0.5% sulfur content or less. As the deadline for use of compliant low sulfur fuel draws near, it is important to consider how the largest environmental regulatory regime in the world — the United States — is likely to treat enforcement. MARPOL Annex VI is aimed at preventing air pollution from ships, with a primary goal of limiting the main air pollutants contained in ships' exhaust gas, such as sulfur oxides and nitrous oxides. It also established Emission Control Areas (ECAs), which include the Baltic Sea, North Sea, coastal U.S. and Canada, and the U.S. Caribbean Sea (around Puerto Rico and the U.S. Virgin Islands). In these special areas, the sulfur limit has been capped at 0.1% since 2015. A complementary "carriage ban" enters into force on March 1, 2020, which will prohibit vessels

subject to the IMO 2020 regulations (except those equipped with exhaust gas cleaning systems, i.e. — scrubbers), from carrying noncompliant fuel onboard for any reason. The International Maritime Organization has made clear that IMO 2020 and the carriage ban will not be delayed and/or pushed

ECA and/or the Exclusive Economic Zone of the United States. The U.S. government routinely takes direct enforcement actions against Owners, Managers, and crewmembers of foreign flagged vessels alleged to have violated MARPOL, APPS, and U.S. regulations. The actions can be administrative,

investigation. Since 1998, the investigation of alleged false records (mostly Oil Record Books Part I, which failed to record discharges of bilge water and/or sludge), has led to over two hundred (200) criminal prosecutions and the collection of nearly USD 1 billion in criminal fines by the U.S. government.

The International Maritime Organization has made clear that IMO 2020 and the carriage ban will not be delayed and/or pushed back. Non-compliance will have serious consequences.

back. Non-compliance will have serious consequences.

MARPOL has been implemented (and is enforced) in the United States through the Act to Prevent Pollution from Ships or "APPS." APPS and U.S. regulations apply to all U.S.-flagged ships anywhere in the world, and all foreign-flagged vessels calling at a U.S. port or terminal or while operating in U.S. navigable waters, the U.S.

civil, and/or criminal in nature. As part of its port state authority, the Coast Guard is authorized to review vessel records and documents maintained onboard to ensure compliance. Although MARPOL anticipated that port states which discover suspected violations may refer the matter to the Vessel's Flag State Administration, the Coast Guard and U.S. government almost always elect to retain the

Over 9,500 scheduled port state control exams, including Annex VI compliance checks, are conducted by the Coast Guard every year. Since 2015, approximately 80 MARPOL Annex VI deficiencies have been documented by the Coast Guard and over a dozen enforcement actions have taken place. In 2019, the first criminal prosecution of a MARPOL Annex VI violation was pursued by the Coast Guard and Department of Justice (DOJ). In that matter, the Owner and Operator of a foreign flagged vessel each paid a criminal fine of USD 1,500,000 for the use of non-compliant fuel above 0.10 % in the Caribbean ECA and the

crew's failure to accurately record the actual bunker transfers and consumption in the Oil Record Books onboard. Similarly, it can be expected that the Coast Guard will be focused on ensuring vessel compliance with the new global sulfur cap starting in 2020 as part of its port state control inspections.

When analyzing the enactment and enforcement of IMO 2020 in the United States, it is critical to be aware of the Coast Guard and DOJ's perception. Senior Coast Guard officials have made clear that it is the agency's belief that compliant fuel oil is not going to be a problem in 2020. The failure to have compliant fuel on board of a vessel will be viewed as a failure of preparedness, not a failure of accessibility of resources. Parenthetically, the Coast Guard motto is "Always Ready." In addition, the DOJ perceives that there are vessels breaking the rules each day, and strongly believes in its mission to seek out noncompliance and prosecute alleged criminal activity accordingly.

To successfully demonstrate that a vessel is compliant with IMO 2020 regulations, shipowners and operators must ensure their vessels have the required documentation ready for port state control inspections. Critical records include:

- Bunker transfer procedures, as well as preloading plan and declaration of inspection

retained for at least thirty (30) days;

- Bunker delivery notes (BDN), to be retained onboard for a minimum of three (3) years;
- Declaration that fuel conforms to MARPOL Annex VI and does not exceed maximum sulfur content;
- Fuel changeover plan;
- Oil Record Books (with accurate and timely information properly recorded therein);
- Fuel oil non-availability reports (FONAR).

The best practices for shipowners and operators to avoid any issues during inspections by the Coast Guard is to obey the law and applicable regulations, and have good policies and procedures for IMO 2020 compliance in place. Owners and Operators must know and manage the type of fuel which is being put onboard their vessels. The failure to have compliant fuel onboard, and/or false records hiding the non-compliant fuel, will be viewed unfavorably by the Coast Guard. Education of vessel officers on IMO 2020 requirements and making sure that all crewmembers are aware of a vessel's non-retaliation and open reporting policies if they observe misconduct, are critical for a successful port call to the United States.

