ClientEarth

17 August 2021

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Dear Financial Conduct Authority

Climate change and corporate reporting: the role of the FCA

ClientEarth is a non-profit environmental law organisation headquartered in London. ClientEarth's Climate Finance initiative analyses the legal implications of climate change-related financial risks for a wide spectrum of market participants, including companies, investors, company directors, professional advisers and regulators.

As one of the world's leading experts on climate change as a legal, financial, and business risk, we are concerned that the FCA is at risk of contravening its statutory objectives by its failures to address, and enforce against, companies' inadequate reporting in relation to climate change.

We are further concerned that the FCA's current approach to enforcement is inconsistent with clear recommendations from the Treasury, published earlier this year, to have regard to the Government's commitment to achieve a net-zero economy by 2050 under the Climate Change Act 2008 (Order 2019) when considering how to advance its objectives and discharge its functions[1].

Accordingly, we draw your attention to the contents of this letter and the two referral requests we have submitted today in respect of Just Eat Takeaway.com N.V. and Carnival plc and Carnival Corporation (together, the "**Referrals**"). We ask that the FCA:

(i) prioritise its remit in relation to climate change and the Government's commitment to net-zero by 2050;

(ii) take all necessary steps to procure that it is adequately empowered, and resourced, to fulfil that remit; and

(iii) use its remit to hold laggards accountable for their failures to satisfy climate change-related reporting obligations – both those existing and to be implemented – via robust, consistent, and timely enforcement action.

[1] Letter from the Chancellor of the Exchequer to the Chief Executive of the Financial Conduct Authority (FCA) providing recommendations for the FCA (24 March 2021). This is also reflected in the Financial Services Act 2021 and the new section 143G Financial Services and Markets Act 2000 (FSMA) (coming into force from 1 January 2022).

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1. Materiality of climate risk

1.1. The world's largest investors are unequivocal that granular and company-specific information about climate change-related risks and impacts is material to their investment and stewardship decision-making. They now expect and seek to compel companies to address it as such, and are demanding that companies provide detailed climate-related disclosures covering climate risk governance, mitigation and targets[2]. Investors also expect that financial accounts reflect these matters and are aligned with the goals of the Paris Agreement to achieve net zero emissions by 2050[3].

1.2. The FCA itself states, in its recent Technical Note on 'Disclosures in relation to ESG matters, including climate change', that *"climate-related risks and opportunities are widely understood to be financially material to many issuers' assets and therefore may need to be disclosed*", and that *"issuers should assess climate-related risks and opportunities… carefully in informing their disclosures*" [4].

1.3. Elsewhere, the FCA notes the findings of the Financial Reporting Council ("**FRC**") in the FRC's recent Climate Thematic Review[5] that "*investors are not yet receiving the information they need to make informed decisions*" and that "*even where climate-related financial risks and opportunities are identified in companies' reports, the financial implications of climate change in their financial statements are often unclear*" [6].

1.4. It is evident that clear, consistent and ongoing regulatory supervision and, where necessary, robust enforcement on reporting activities is vital to ensure that investors have the material information they need on companies' exposure to climate change-related risks, transition plans and associated financial implications.

2. Current reporting on climate change

Relevant legal obligations

2.1. The FCA is responsible for enforcing the provisions of the Disclosure Guidance and Transparency Rules ("**DTRs**"), the Listing Rules ("**LRs**"), among others. The DTRs and LRs include rules via which companies are already required to disclose climate change-related information. We refer you to the Referrals for a more detailed analysis of those legal obligations. For present purposes, we include a brief summary in Appendix I to this letter.

Reporting failures and inconsistencies to date

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[2] See, for example, Climate Action 100+'s 2020 Progress Report on investor-engaged focus companies' growing net zero commitments, related IIGCC press release, and most recently the Climate Action 100+ Net–Zero Company Benchmark

[3] Investor Expectations for Paris-aligned Accounts (November 2020, IIGCC)

[4] See the FCA's Final Technical Note at Appendix 2, page 52, of its Policy Statement PS20/17: Proposals to enhance climate-related disclosures by listed issuers (December 2020)

[5] Page 4, Summary Report of the FRC's Climate Thematic Review 2020

[6] Ibid, paragraph 2.8

2.2. As we highlight in the Referrals, the annual report, among other sources, is a key resource, which enables investors to assess the position and performance of a particular business. Investors are clear that they cannot prepare their portfolios for the global transition to net-zero unless they understand how each, and every, company is prepared both for the physical threats of climate change and the transitional risks involved in any global economic transition[7]. In recent years, ClientEarth has repeatedly brought these matters to the attention of both the FRC and FCA[8]. Despite this, and as we discuss further below, the FCA has not to our knowledge taken any public or other enforcement action in response to companies referred.

2.3. We are pleased to see that companies' annual reports are discussing climate change and environmental impacts, risks, and opportunities more than in the past. However, it is with a degree of concern that we note from our review of annual reports published in 2021 a pervasive lack of clarity on what action companies are actually taking, and/or what actions they say they are committed to taking at, or by, some future date. Without follow through action or evidence, this can result in mere 'greenwishing' [9], or greenwash.

2.4. Companies are increasingly providing information that is unclear, incomplete, and potentially misleading. Such reports may give rise to greenwash, in that statements made may lead investors and other stakeholders to believe businesses are doing more to combat climate change than is really the case[10]. According to one FCA study, evidence suggests environmental, social and governance ("**ESG**") or sustainability information can have "*a significant effect on which funds consumers decide to invest in*". It follows that where information of this nature is incomplete or misleading, consumers are put at risk.

2.5. We refer you to the Referrals for specific detailed examples of problematic reporting, and set out below an overview of the current negative trends we are seeing along with supporting examples from reports published in 2021.

Companies

2.6. Several companies claim to be developing some form of ESG, climate change-related or other sustainability strategy. However, they are omitting decision-useful information, and instead promise to disclose that information and/or strategy (in some cases, in line with the Financial Stability Board's ("**FSB**") Task Force on Climate-related Disclosures' ("**TCFD**") Recommendations and Recommended Disclosures) next year:

Centamin plc

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[7] See for example, Larry Fink's 2021 Letter to CEOs (2021)
[8] Most recently, see ClientEarth's report, 'Accountability Emergency: A review of UK-listed companies' climate change-related reporting (2019-20)' (4 February 2021)
[9] See 'Overselling Sustainability Reporting' (Harvard Business Review, May-June 2021 issue)
[10] This can take various forms; see, for example, ClientEarth's Greenwashing Files (2021), and the FCA's own "*increasing concerns about firms confusing or even misleading consumers about the nature of some of these investments*" in relation to financial greenwash, and stating that its analysis "*adds to the case for better ESG/sustainable related disclosures and the wider need for an environment in which market participants can manage the risks from moving to a more sustainable economy and capture opportunities to benefit consumers*": 'Sustainable investing: objective gradings, greenwashing and consumer choice' (FCA Insights, 8 July 2021)

2.6.1. Centamin plc ("**Centamin**") owns and operates the Sukari gold mine in Egypt, one of the world's largest mines. It is well established that Egypt is highly vulnerable to the impacts of climate change due to its primary reliance on the Nile river, which serves mining, cooling of machinery and power generation needs. This significant reliance further exposes the country to rising temperatures and reduced rainfall[11]. Centamin's annual report:

2.6.1.1. acknowledges that "*climate change has recognition as a growing global risk*"[12]; and

2.6.1.2. states that the company intends to "*undertake a structured assessment of the [FSB]'s [TCFD] with the aim to put in place a long term climate change strategy which will identify the risks associated with climate change and the mitigations required to reduce the risks*"[13] [emphasis added].

2.6.2. In circumstances where Centamin is already exposed to at least physical risks associated with climate change, its annual report fails to report on how climate change may impact the company's business, viability or bottom line. This approach risks falling short of the standard required by the DTRs and LRs; in particular, those referenced in Appendix I to this letter.

2.6.3. Further, rather than incorporating any real climate risk reporting into its annual report, Centamin has instead published a separate 69-page 2020 Sustainability Report nearly two months afterwards. On Centamin's promise to align with TCFD, the document goes no further than repeating that it "*has initiated a structured assessment of the Financial Stability Board's Task Force on Climate-related Financial Disclosures ("TCFD") with the aim to put in place a long-term strategy and accompanying roadmap to address the transition to net zero emissions including specific science-based targets and actions for 2030*"[14]. This broad aim is not decision-useful. Further, the sustainability report (which does not appear to have been incorporated into the annual report) adds to the already significant burden on investors to review and identify material disclosures, without obviously providing the necessary information.

Synthomer plc

2.6.4. Synthomer plc ("**Synthomer**") is a global chemicals company and one of the world's leading suppliers of "*sustainable water-based polymer solutions*"[15] [emphasis added]. Its business includes the manufacturing and supply of adhesives, coatings, monomers and additives for use in industries including construction, textiles, paper, adhesives, healthcare, plastics and rubber, and oil and gas[16].

[11] See the World Bank's Egypt Country Summary (World Bank Climate Change Knowledge Portal)
[12] Page 71, Centamin 2020 Annual report (2021)
[13] Page 55, Centamin 2020 Annual Report (2021)
[14] Page 8, Centamin 2020 Sustainability Report (2021)
[15] Page 2, Synthomer 2020 Annual Report (2021)
[16] See Synthomer's website, under 'Markets & Products'

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2.6.5. Despite the well-known climate risks and environmental impacts associated with chemicals manufacturing[17] and oil and gas[18], Synthomer's annual report:

2.6.5.1. acknowledges climate change as only "*an emerging risk that is continuing to evolve*", giving limited information on the anticipated impacts on Synthomer's "*reputation and strategy for growth*"[19]; and

2.6.5.2. states, "*We are… continuing to develop our approach to climate risk reporting, guided by the recommendations of the Task Force on Climate-Related Financial Disclosures (TCFD)*"[20], and "*We are committed to reporting using the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) and will produce our first disclosure in our next Annual Report*"[21] [emphases added].

2.6.6. The omission of potentially material analysis by this promise to report next year, instead of now, is at best unhelpful. At worst, it may affect the import of the annual report as a whole and risks being inconsistent with Synthomer's other obligations under the DTRs and LRs. Without this information, investors may also struggle to assess whether Synthomer's products are indeed "*sustainable*", as claimed. Finally, this example neatly demonstrates why in our view the FCA's new 'comply or explain' rule does not go far enough; in that despite the obviously problematic disclosure gap described above, were the rule to apply to this year's reporting Synthomer's promise to report technically could be said to be compliant.

2.7. Other companies, including but not limited to Phoenix Group[22], Admiral Group[23], and Lancashire Group, claim to be committed to (and, in some instances, already providing) TCFD-aligned reporting, and yet are still failing to deliver the granularity of detail investors need. To take one example:

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[17] Beyond the fact that chemicals can become pollutants themselves, see the International Energy Agency's ("**IEA**") report, 'The Future of Petrochemicals Towards more sustainable plastics and fertilisers' which found that in 2018, CO2 emissions from the chemical sector stood at approximately 1.5 gigatonnes of carbon dioxide (GtCO2) per year globally, or 18% of industrial CO2 emissions (OECD, IEA, 2018); see also 'Decarbonization of industrial sectors: the next frontier' at pages 12 to 19 (McKinsey & Company, June 2018)

[18] See, for example, ClientEarth's update, 'Fossil fuels and climate change: the facts | ClientEarth' (11 November 2020), and more recently, 'Crushing climate impacts to hit sooner than feared: draft UN report' (23 June 2021)

[19] Page 44, Synthomer 2020 Annual Report (2021)

[20] Ibid, Synthomer 2020 Annual Report (2021)

[21] Page 11, Synthomer 2020 Annual Report (2021)

[22] Page 67-78, Phoenix Group 2020 Annual Report (2021): following ClientEarth's referral to the FCA dated 2 August 2018, Phoenix has "*made progress to develop* [its] *disclosures in line with the TCFD's four pillar framework*", and claims to be "*committed to full disclosure*" in line with the framework, but does not appear to provide this in the annual report, instead promising to "[d]*eliver key areas of focus*" in 2021.

[23] Pages 86 and 91-94, Admiral Group 2020 Annual Report (4 March 2021): despite improved recognition of the materiality of climate risk to its business following ClientEarth's referral to the FCA dated 2 August 2018, Admiral categorises climate change as a risk that "*will remain an emerging risk for the foreseeable future*" and does not appear to have considered it at all in its financial statements.

2.7.1. Over two years after ClientEarth referred Lancashire Holdings Limited to the FCA on 2 August 2018[24], the group only now appears to have established an ESG working group "*to drive the necessary work to be in compliance with the TCFD requirements prior to the end of 2021*" and claims to be "*developing greater formality around the understanding of the impacts of climate change risk and implementing an appropriate governance framework for climate change management… starting to build a picture of the likely impacts of a range of climate change scenarios on the Group's insurance operations and its investment portfolio*"[25].

2.8. In our view, while statements such as these technically may be said to be 'TCFD-aligned', they are overly vague, provide no real insight into steps being taken to harness climate risks and opportunities, and fall short of the standards investors are entitled to expect.

2.9. Attempts to provide greater transparency can also lead to a flood of disorganised information or misinformation:

Bodycote plc

2.9.1. Bodycote plc ("**Bodycote**") provides thermal processors via a variety of heat treatment techniques across aerospace, defence, energy, automotive, and general industrial markets, designed to "*improve the properties of metals and alloys and extend the life of components*"[26]. Following ClientEarth's referral of Bodycote to the FRC in 2018[27], we are pleased to note that its annual report does now mention climate change. However, statements made leave investors with an unclear picture of Bodycote's risk exposure and longer term viability.

2.9.2. The annual report claims, on the one hand, that "<u>*by its very nature, heat treatment consumes a significant amount of energy*</u> *and consequently,* <u>*Bodycote is likely to receive increased scrutiny in the future in relation to emissions and climate change*</u>"[28] and yet asserts, "[a]*s the world's leading provider of thermal processing services, Bodycote plays an important role in minimising climate change... In this regard,* <u>*Bodycote should be viewed as an enabler*</u> *to the goal of a reduction in emissions*"[29] [emphases added].

2.9.3. These statements appear to be inconsistent. It is not clear whether Bodycote is suggesting that the fact that its products can extend the life of components, for example, means that it should be viewed as an enabler to the goal of a reduction in emissions. Even so, without comparable data on estimated emissions from replacing components versus utilising Bodycote's product line(s), which is not provided, readers are unable to verify such a claim. Bodycote's purported "*important role in minimising climate change*" is further called into question when "*by its very nature*", its product line(s) require(s) such "*significant*" energy consumption; particularly while supply remains reliant on fossil fuels. No detailed analysis features in the annual

[24] <u>ClientEarth Complaint to the FCA: Lancashire Holdings Limited</u> (2 August 2018)
[25] Pages 41, 44, and 58 to 61, Lancashire Group 2020 Annual Report (2021)
[26] Page 3, Bodycote 2020 Annual Report (2021)
[27] <u>ClientEarth Complaint to the FRC: Bodycote plc</u> (2 August 2018)
[28] Page 31, Bodycote 2020 Annual Report (2021)
[29] Page 37, Bodycote 2020 Annual Report (2021)

report on how Bodycote is prepared, or might be required, to adapt its product line(s) in response to the global energy transition away from fossil fuels.

Synthomer

2.9.4. In our view, Synthomer's annual report similarly reports inadequately on how it is positioned to address climate change.

2.9.5. The annual report notes that "*Scarcity of resources and the impact of climate change are a growing economic concern which will drive a change in consumer and regulator behaviour. Demand for energy is forecast to increase by as much as 50% by 2030 and water withdrawals by 40%. Increasing levels of environmental regulation are expected with the opportunity for rapid innovation in more efficient, lower carbon and higher performance applications delivered with a reduced impact*"[30] [emphases added].

2.9.6. However, Synthomer does not go on to explain how it is prepared for challenges such as the potentially significant cost shifts associated with such resource scarcity and/or increases in energy demand, for example. Instead, under "***Why Synthomer is well positioned***", it pitches its products as a solution to the demands of extreme weather events. Synthomer's annual report states:

> "*The need for more sustainable solutions will drive the use of water-based and regulatory compliant polymer solutions and the need for products to deal with extremes of weather. Our water-based products find broad application in consumer and industrial use. Our regulatory compliant water-based products avoid the use of significant volumes of solvent-based VOCs. Our heat reflection coatings and insulation system textiles cater for the demands of extreme weather. Change will continue to come and Synthomer is committed to driving lower carbon use and zero impact through its supply chain as new products, better processes and alternative raw materials become a greater focus for our investment.*"[31] [emphases added]

2.9.7. Elsewhere, its report claims, "*As a chemical company climate change is one of our biggest challenges. Our water-based products eliminate the use of significant volumes of volatile organic compounds containing solvents which avoids greenhouse gas (GHG) emissions downstream.*" [emphasis added] The report does not explain how those downstream emissions are avoided or to what degree, nor does it provide any basis for comparison against competing solutions, for example.

2.10. Investors need to know specifically how companies such as Synthomer are taking tangible action to lower their carbon emissions, mitigate environmental impacts, and adapt product lines. Climate change reporting should not be misunderstood, or misused, as an opportunity to claim to be a "*part of the climate solution*" without substantiating that

[30] Page 27, Synthomer 2020 Annual Report (2021)
[31] Ibid. Synthomer 2020 Annual Report (2021)

claim, as Centamin appears to do[32], or to merely market existing offerings and seek to increase sales, as appears to be the intent behind Synthomer's reporting above.

Investment trusts

2.11. Finally, a number of investment trusts have not provided any information in relation to climate change[33]. While certain trusts may be exempt from providing information on their greenhouse gas emissions, for example, as listed issuers they remain subject to the DTRs and LRs. As such, directors are legally required to consider material risks such as climate change, and resulting analysis should appear in the annual reports. In many cases it does not.

Periodic reviews are necessary to maintain public trust in corporate reporting

2.12. Left unchecked, climate change-related reporting such as the examples we have given above may ultimately create confusion and uncertainty for stakeholders rather than building trust; particularly if information cannot be properly sorted, assessed and compared.

2.13. There is also a real risk that the FCA's 'comply or explain' approach will contribute further to this deluge of information by facilitating either (i) convoluted explanations by companies on whether and how they have or have not provided climate-related reporting in line with the TFCD's Recommendations and Recommended Disclosures, and/or (ii) empty promises to provide such disclosures at some unfixed later date. Neither is conducive to ensuring the proper functioning of markets, protecting market certainty, or to enhancing financial market integrity. We drew the FCA's attention to precisely these risks, including the greater scope for 'greenwash' and uncertainty for investors, when we responded to its consultation, 'CP20/3: Proposals to enhance climate-related disclosures' in August last year[34].

2.14. In the circumstances, and bearing in mind that this letter does not provide a complete set of examples of negative reporting trends, we call on the FCA to immediately:

2.14.1. carry out a comprehensive review and assessment of company reporting;

2.14.2. report publicly on the results of its review; and

2.14.3. take appropriate enforcement action in respect of laggards it identifies.

New climate-related disclosure obligations

2.15. We note that the FCA is consulting until 10 September 2021 on the following proposals to enhance climate-related disclosures (which we intend to respond to in due course):

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[32] Page 21, Centamin 2020 Annual Report (2021)
[33] See, for example, the 2020 annual reports of each of the City of London Investment Trust, Mercantile Investment Trust, Monks Investment Trust, Scottish Mortgage Investment Trust, Smithson Investment Trust, Polar Capital Technology Trust
[34] See 'FCA Consultation CP20/3: Proposals to enhance climate-related disclosures ClientEarth briefing' (ClientEarth, August 2020)

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2.15.1. 'CP21/17**: Enhancing climate-related disclosures by asset managers, life insurers, and FCA-regulated pensions providers'[35];

2.15.2. 'CP21/18**: Enhancing climate-related disclosures by standard listed companies and seeking views on ESG topics in capital markets'[36].

2.16. Strengthening disclosure obligations without properly enforcing them is unlikely to be effective. In short, if the FCA does not secure compliance, it risks being ignored by those it regulates. This is an issue which may already be said to be crystallising, given (i) the FCA does not currently appear to be taking adequate, if any, steps to secure compliance with existing obligations, and (ii) the fact of the Referrals, the examples above, and ClientEarth's earlier communications to the FCA referenced in this letter. Accordingly, we are concerned that:

2.16.1. the FCA is failing to ensure the requisite degree of accountability that companies' investors and other stakeholders need and are entitled to expect; and

2.16.2. its new proposals, if adopted, will not achieve their stated objectives in circumstances where the FCA simply is not in a position to, or does not choose to, enforce them.

2.17. New obligations **must** be coupled with robust accountability mechanisms to be effective. Anything less risks depriving investors and other stakeholders of the 'decision useful' information they need now and are entitled to expect.

3. The role of the FCA

Proper oversight of climate risk falls squarely within the FCA's statutory objectives and remit

3.1. In carrying out its role, including oversight in relation to the DTRs, LRs and the UK MAR, the FCA is required to pursue its statutory objectives to make markets function well, protect consumers, enhance financial market integrity and promote competition[37].

3.2. As indicated above, the most recent Recommendations letter from the Treasury also stipulates that the FCA should have regard to the Government's commitment to achieve a net-zero economy by 2050 under the Climate Change Act 2008 (Order 2019) when considering how to advance its objectives and discharge its functions.

To uphold its statutory objectives, the FCA must now deliver in relation to climate change risks and opportunities

[35] CP21/17**: Enhancing climate-related disclosures by asset managers, life insurers, and FCA-regulated pension providers (FCA, 22 June 2021)
[36] CP21/18**: Enhancing climate-related disclosures by standard listed companies and seeking views on ESG topics in capital markets (FCA, 22 June 2021)
[37] Section 1B(2), Financial Services and Markets Act 2000 (as amended)

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3.3. In light of its inaction to date in relation to upholding the standard of climate change-related reporting under existing legal obligations, the FCA is at risk of breaching its statutory objectives and acting inconsistently with its new remit on climate change.

3.4. In a recent speech by Nikhil Rathi, the FCA's CEO, on 15 July 2021, the FCA committed to be "*forward-looking, proactive*" and a "*more innovative, assertive and adaptive regulator*"[38]. We welcome these commitments, and the FCA's promise to "*deliver a sustainable financial system which supports and enables the government's commitment to a Net Zero economy*". However, given the FCA's track record, these assurances that it will deliver on issues, including climate change, risk amounting to no more than self-promotion or, at worst, a form of regulatory greenwashing. To avoid this, meaningful action on the issues we have raised in this letter and the Referrals must follow. In the circumstances, we hope that the appointment of Sacha Sadan as the FCA's new Director of Environment Social and Governance will see the FCA delivering on its recent promises, including the timely implementation of the necessary strategy, processes and enforcement action to address the issues we have raised.

3.5. The FCA has openly accepted that the needs of investors and other market participants are still not being adequately met, and that there remains a case for regulatory intervention to accelerate progress towards more complete and higher quality disclosures[39]. Any such regulatory intervention (including the recently introduced reporting requirement drawing in the FSB's TCFD Recommendations and Recommended Disclosures[40]) **must** incorporate robust and effective enforcement mechanisms.

3.6. Consistent and correct reporting on global, systemic financial risks such as climate change is critical, both to ensuring the smooth operation of financial markets[41], and to support the Government's commitment to achieve a net-zero economy by 2050. It is also inherent in achieving such a target that the FCA must make proper use of its statutory powers, resource, discretion and remit to:

3.6.1. consider, by reference to existing methodologies (which can be refined through common use[42]), the nature, seriousness and impact[43] of actual or potential legal breaches in relation to climate change; and

3.6.2. enforce against laggards who are failing to adhere to associated reporting standards in a timely manner.

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38 FCA commits to being a more innovative, assertive and adaptive regulator | FCA (FCA,) and Transforming to a forward-looking, proactive regulator | FCA (FCA,)

39 CP21/18**: Enhancing climate-related disclosures by standard listed companies and seeking views on ESG topics in capital markets (22 June 2021)

40 LR9.8.6R and the FCA's Policy Statement PS20/17: Proposals to enhance climate-related disclosures by listed issuers (December 2020)

41 This includes ensuring that markets are able to correctly price in climate risk, and avoid later price shocks and/or market instability as a result of those risks being misjudged or underestimated now.

42 'Uncertainty Is Not an Excuse. Integrating Climate Risks into Monetary Policy Operations and Financial Supervision' (SUERF Policy Briefs No 72, April 2021)

43 DEPP6.2.1(1)R

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4. Conclusion

4.1. For the reasons set out above, the FCA must urgently alter its approach to ensure that those it regulates make the appropriate climate change disclosures, that it is delivering on its own statutory objectives and remit, and that it does not leave itself open to challenge for related failures as regulator.

4.2. All investors, and particularly asset managers, require the disclosure of material information regarding the implications of climate change to meet their own legal duties to consider, manage and disclose climate change-related risks and impacts[44]. The fulsome and timely disclosure of this information is essential to the efficient operation of well-functioning financial markets.

4.3. We would welcome the opportunity to discuss the above matters with you. Please contact Maria Petzsch (mpetzsch@clientearth.org) or Joanne Etherton (jetherton@clientearth.org) in the first instance with any response to this letter.

Yours faithfully,

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[44] The provision of this information is, further, time critical in light of the sixth assessment report from the Intergovernmental Panel on Climate Change, 'Climate Change 2021: The Physical Science Basis' (9 August 2021). For reasons of timing, we do not discuss that report in detail in this letter. However, we expect the FCA to consider its contents and implications for the UK economy in detail as a part of its new remit.

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Appendix I

1. Under existing rules, and as summarised in the Referrals, companies are already required to disclose climate change-related information via the annual report, including:

    1.1. in financial accounts, prepared using International Financial Reporting Standards[45];

    1.2. the principal risks and uncertainties facing the business, including analysis and information relating to environmental matters[46];

    1.3. the main trends and factors likely to affect the future development, performance and position of the business[47];

    1.4. environmental impacts, and the policies, due diligence processes and key performance indicators associated with them[48];

    1.5. the implications of its environmental impacts for a company's business model[49];

    1.6. greenhouse gas emissions, including (where appropriate) Scope 3 emissions[50]; and

    1.7. long term viability and prospects for the company in light of identified risks and trends[51].

2. Listed companies' directors must also ensure the management report contains a "*fair review*" of the business[52], an indication of its future development and, where material for the assessment of its assets, liabilities, financial position and profit or loss, its financial risk management objectives and policies[53].

3. Directors must also take reasonable care to ensure that information notified in the annual report is "*not misleading, false or deceptive and does not omit anything likely to affect the import of the information*", including in relation to environmental, social and governance ("**ESG**") matters[54].

    3.1. In addition, listed companies must disclose any inside information that relates to climate change[55], and not engage in market manipulation through the omission of

[45] Section 395 Companies Act 2006, or in the case of a listed company that is not UK-incorporated, DTRs4.1.5R - 4.1.7R and Part 16 (Audit) Companies Act 2006
[46] FCA Handbook, DTRs 4.1.8R and 4.1.9R; Sections 414C(2)(b), 414C(7)(a)-(b) Companies Act 2006, as applicable;
[47] Ibid. Companies Act 2006
[48] Section 414CB Companies Act 2006
[49] Section 414CB Companies Act 2006; DTRs 4.1.8R(1), and 4.1.9R(2)(b): a company's non-financial information statement must contain information about how the environmental matters it has identified will impact its business model
[50] Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018/1155
[51] Section 4 UK Corporate Governance Code 2018 and LR9.8.6(3)R
[52] FCA Handbook, DTR4.1.8R
[53] FCA Handbook, DTR4.1.11R
[54] FCA Handbook, DTR1A.3.2R and LR 1.3.3R and comments on the consideration of ESG matters by the FCA in CP21/18**: Enhancing climate-related disclosures by standard listed companies and seeking views on ESG topics in capital markets (22 June 2021)
[55] Article 17 UK MAR

material information[56]. Such manipulation or attempted manipulation can include but is not limited to the "*dissemination of information which is likely to give false or misleading signals as to the supply of, demand for, or price of a financial instrument*", and can consist, for example, of "*the invention of manifestly false information, but also the wilful omission of material facts, as well as the knowingly inaccurate reporting of information*"[57].

3.2. More recently the FCA introduced LR9.8.6R(8) and LR9.8.7R, applicable to accounting periods beginning on or after 1 January 2021, and requiring UK incorporated and overseas commercial companies with a UK premium listing to include a statement in their annual financial report setting out whether or not they have included climate-related financial disclosures consistent with the TCFD's Recommendations and Recommended Disclosures on a 'comply or explain' basis[58].

[56] Articles 12 and 15 UK MAR
[57] Recital 47 UK MAR; and see also the FCA's Primary Technical Note TN/801.1 (December 2020)
[58] LR9.8.6R and the FCA's Policy Statement PS20/17: Proposals to enhance climate-related disclosures by listed issuers (December 2020)