

UK Financial Services Update: the UK's High Court rejects ClientEarth's application for judicial review

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PRACTICES Corporate, Energy, Power and Natural Resources, Capital Markets and Securities, Climate Change and Corporate Sustainability, Environmental, Social and Governance, Corporate Governance, Financial Regulatory

ClientEarth (the climate change pressure group) have had their application for judicial review of the Financial Conduct Authority's (the "**FCA**") decision to approve the prospectus of Ithaca Energy Plc ("**Ithaca**") rejected by the High Court. See our earlier [Alert](#) for details of ClientEarth's application.

The High Court were satisfied that ClientEarth could not reasonably argue that the FCA had erred in concluding that Ithaca's prospectus properly disclosed climate-related financial risks. In approving Ithaca's prospectus, the FCA had been satisfied that Ithaca had met its obligations under the Finance Services and Markets Act 2000 as it contained, among other things, all of the information required by Article 6(1) and 14(2) of the Prospectus Regulation.

In refusing ClientEarth's application, the High Court rejected both principal arguments put forward by ClientEarth, finding that:

1. the FCA were correct to conclude that Ithaca had adequately disclosed or described the specificity of the climate-related financial risks associated with its securities and that by adequately disclosing such risks, Ithaca's obligations had been discharged; and
2. the FCA were correct not to impose a separate obligation on Ithaca to disclose its assessment of the materiality of such climate-related financial risks.

The application for judicial review was therefore refused.

Conclusion

The UK High Court's decision serves as a reminder that, whilst climate-related risks are required to be disclosed, there is no requirement on a UK issuer to disclose its assessment of risk, specificity or materiality.

However, whilst this may reassure UK issuers operating in industries associated with climate change, such issuers should be mindful that ClientEarth's application was made and refused before the full implementation of various provisions of section 21 of the UK's Financial Services and Markets Act 2023 ("**FSMA 2023**"). It is therefore not yet clear how the full implementation of FSMA 2023 will affect the FCA's approach to approving a prospectus and what that may mean for UK issuers operating in industries associated with climate change.

Depending on the content and implementation of subordinate UK legislation and the UK government's sustainability disclosure requirements, issuers will likely still find themselves subject to more scrutiny as regards the disclosures they will have to make regarding climate-related risks.

We will provide further updates for UK issuers as the legislation is enacted in the UK in the coming months. For more information on section 21 of FSMA 2023, please see our earlier [Alert](#).

For further information, please contact a member of the Haynes Boone [Capital Markets and Securities Practice Group](#).