

ClientEarth litigation against the FCA

FAQs

Why is ClientEarth taking legal action against the Financial Conduct Authority?

A key role of the UK's financial regulator – the Financial Conduct Authority or FCA – is to protect investors. A key way it can do that is by ensuring companies seeking to list on the London Stock Exchange (LSE) adequately disclose the risks associated with their business in their prospectus – and climate risk is no exception. In fact, the FCA may not approve a prospectus unless satisfied that it meets the requirements of the Prospectus Regulation, including risk disclosure requirements.

ClientEarth's case argues that the FCA acted unlawfully by approving Ithaca Energy's prospectus despite the fact it breached the Prospectus Regulation by failing to adequately describe the climate risks associated with the company's activities, which include a part ownership of the Cambo and Rosebank oil and gas fields in the North Sea.

Did ClientEarth raise this issue before Ithaca Energy plc listed?

Yes. As Ithaca prepared to list in November 2022, ClientEarth corresponded with the FCA outlining its concerns that the climate risk disclosures in Ithaca's prospectus were inadequate.

Although certain changes were made to Ithaca's draft prospectus after ClientEarth first raised its concerns with the FCA, ClientEarth considered the final document was still insufficient to meet Prospectus Regulation requirements, and should not have been approved by the FCA. As a result, ClientEarth has filed a claim with the High Court of England and Wales against the FCA over its approval of Ithaca's prospectus.

Why does a company need to disclose climate risk?

Under the Prospectus Regulation requirements, companies are required to disclose the specific and material risks they face in their prospectus.

Climate change brings with it a host of risks. It threatens the financial position of companies and investors and it ultimately jeopardises the integrity of the UK (and global) financial markets, as the Bank of England, among other institutions, has [recognised](#).

It also runs the risk of leaving investors with unviable stranded assets, with their investments losing value in the face of policy change and net zero transition.

Why does ClientEarth believe the FCA's approval of Ithaca's prospectus was unlawful?

As noted above, the FCA may not approve a prospectus unless satisfied that it meets the requirements of the Prospectus Regulation, including risk disclosure requirements

Although Ithaca's prospectus includes a climate-related risk factor, ClientEarth's view is that the risks disclosed are of too general a nature to leave investors fully informed or to meet Prospectus Regulation requirements. Ithaca does not appear to explain how these risks affect its business specifically, or how significant these risks are for the company.

In addition, the prospectus does not address the apparent conflict between Ithaca's intention to develop new fossil fuel assets that would operate for decades and the International Energy Agency's conclusion that no new fossil fuel infrastructure can be built if the world is to meet a 1.5 warming target.

Ithaca fails to explain how its business model and financial prospectus would need to change, or be affected, if the Paris Agreement goals are to be achieved and what impact that would have on their key assets, which include Cambo and Rosebank.

ClientEarth is also arguing that the above information is vital to investors if they are to make an informed assessment of the company's financial position and therefore should have been provided in the prospectus.

What is a prospectus?

A prospectus is a document that companies are required to produce when they seek admission to trading on UK regulated markets such as the London Stock Exchange. The prospectus must contain various details relating to the company and the shares or other securities that will be admitted to trading, including the material risks that are specific to the company.

The Prospectus Regulation refers to EU Regulation (EU) 2017/1129 as retained in UK law.

What is the UK's Net Zero-aligned Financial Centre?

The Government [announced](#) that the UK will be the world's first Net Zero-aligned Financial Centre during COP26 in Glasgow.

In the Government's own words, that means that UK financial institutions will have a: "robust firm-level transition plan setting out how they will decarbonise as the UK meets its ambitious and legally binding net zero targets".

The Government fact sheet goes on to say that there will be, "strong Government oversight of the financial sector as a whole to ensure financial flows actually shift towards supporting net zero".

How is ClientEarth taking legal action?

ClientEarth has filed a judicial review case against the FCA. This is a type of legal case that challenges a decision or act by a public body.

A judicial review is not used to challenge the policy merits of a decision or act, only whether that decision or act was lawfully made or taken.

What happens if ClientEarth wins this case?

ClientEarth is seeking a declaration from the High Court that the FCA's approval of Ithaca's prospectus (and its determination that Prospectus Requirements had been met) was unlawful because Ithaca's disclosure of climate-related risks did not meet Prospectus Regulation requirements.

Is ClientEarth challenging the validity of Ithaca's listing?

No. ClientEarth is neither challenging the validity of Ithaca's listing, nor suggesting that Ithaca should be delisted as a result of this legal intervention.

The basis of ClientEarth's claim is that the FCA's approval of Ithaca's prospectus was unlawful because the prospectus did not meet risk disclosure requirements in the Prospectus Regulation.

What does ClientEarth aim to achieve with this case?

It is essential for the protection of investors and the functioning of financial markets that the FCA exercises its powers lawfully. That includes insisting that, where relevant, climate-related risks are adequately disclosed in the prospectuses of companies seeking to list in the UK, as required by law, especially in the case of fossil fuel companies such as Ithaca, which are particularly exposed to climate-related risk.

This is information that is needed by investors to make informed financial decisions. Full and transparent disclosure of climate-related risk is also essential to ensuring that financial flows can shift to support net zero.

By taking this case, ClientEarth hopes to ensure that when reviewing future prospectuses, the FCA upholds prospectus requirements and gives full consideration to whether climate-related risks have been adequately disclosed in compliance with existing law.

What happens next?

ClientEarth has filed the case against the Financial Conduct Authority – and it is now up to the High Court to decide whether to grant permission to bring the claim.