17 August 2021

FCA Referral Request

Carnival plc and Carnival Corporation

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ClientEarth

Contents

1. Executive Summary

1. Carnival Corporation and Carnival plc, together with their consolidated subsidiaries, carry on business as a leisure travel (cruise ships) operator, operating in the travel and tourism sector. Carnival plc is listed on the main market of the London Stock Exchange. The purpose of this referral request ("**Referral**") is to bring a number of breaches and potential breaches of Carnival plc's legal duties to the attention of the Financial Conduct Authority (FCA), and to request that the FCA refer it for investigation and enforcement action.

2. Background

2.1. ClientEarth

2. 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.

3. In the UK, ClientEarth operates through a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office 10 Queen Street Place, London EC4R 1BE.

2.2. Carnival plc and Carnival Corporation

4. Carnival plc is a public limited company with company registration number 4039524 listed on the London Stock Exchange. Carnival plc is incorporated in the United Kingdom and its registered office address is Carnival House, 100 Harbour Parade, Southampton, Hampshire, United Kingdom, SO15 1ST. Carnival plc was admitted to trading on the main market of the London Stock Exchange on 23 October 2000 and has a premium listing.

5. Carnival Corporation is incorporated in Panama with folio (company registration) number 16585 (S). Its corporate headquarters are at Carnival Place, 3655 N.W. 87th Avenue, Miami, Florida 33178-2428 U.S.A. ("**Carnival Corp**"). Ordinary shares linked to Carnival Corp appear to be trading on the main market of the London Stock Exchange with an Issue Date of 18 January 2018[1].

6. Carnival plc and Carnival Corp (together, "**Carnival**"), together with their consolidated subsidiaries, carry on business as a leisure travel (cruise ships) operator in the consumer services market. Carnival operates a 'dual listed company arrangement', whereby the businesses of Carnival Corp and Carnival plc are combined through a number of contracts and provisions in Carnival Corp's Articles of Incorporation and By-Laws and Carnival plc's Articles of Association. The two companies are stated to operate as a single economic enterprise with a single senior executive management team and identical Boards of Directors, but each has retained its separate legal identity[2].

[1] See relevant details on the website of the London Stock Exchange, here, and corresponding Financial Times securities listings for Carnival Corp here.
[2] Page 9, 'Carnival Corporation & plc 2020 Annual Report' (11 March 2021)

7. The market capitalisation of the London listed element of Carnival is approximately £2.7 billion (as at 17 August 2021).

8. Each of Carnival plc's directors is a person 'discharging managerial responsibilities' within Carnival for the purposes of Schedule 10A of the Financial Services and Markets Act 2000. We have sent a courtesy copy of this Referral to Carnival.

2.3. Materiality of climate risk and investor expectations

9. 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, targets and adaptation strategy[3]. 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[4].

10. The Financial Reporting Council ("**FRC**") has acknowledged and confirmed these expectations in its recent Climate Thematic Review, which states that investors "*expect to see disclosures regarding the financial implications of climate change*" [5], and reminds directors and auditors of their obligation to consider climate-related issues, and to ensure material climate factors are properly reflected in financial statements and reporting.

11. Similarly, the FCA 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*" [6].

12. Elsewhere, the FCA notes the FRC's findings 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*" [7].

13. Annual reports are a key resource, which enable 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[8]. In recent years, ClientEarth has repeatedly brought these matters to the attention of both the FRC and FCA[9].

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[3] 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
[4] Investor Expectations for Paris-aligned Accounts (November 2020, IIGCC)
[5] Page 4, Summary Report of the FRC's Climate Thematic Review 2020
[6] 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)
[7] Ibid, paragraph 2.8
[8] See Larry Fink's 2021 Letter to CEOs (2021)
[9] Most recently, see ClientEarth's report, 'Accountability Emergency: A review of UK-listed companies' climate change-related reporting (2019-20)' (4 February 2021)

14. Clear, consistent and ongoing regulatory supervision and, where necessary, enforcement on reporting activities is therefore 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.

15. With the above in mind, the FCA must take action to ensure that information material to Carnival's climate change-related risks and opportunities is both (i) in the public domain and (ii) is accurate, comprehensive and complies with the law.

2.4. Role of the FCA

16. Among other things, the FCA is responsible for enforcing the provisions of the Disclosure Guidance and Transparency Rules ("**DTRs**"), the Listing Rules ("**LRs**"), and the EU Market Abuse Regulation (as amended by the Market Abuse Exit Regulations 2019) ("**UK MAR**"). In discharging its functions, the FCA is required to pursue its statutory objectives to make markets function well, protect consumers, enhance financial market integrity and promote competition[10]. 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[11].

17. In the circumstances, consistent and correct reporting on global, systemic financial risks such as climate change is critical both to ensuring the smooth operation of financial markets, and to support the government's commitment to achieve a net-zero economy by 2050.

18. Given the above and the matters giving rise to this Referral, we are concerned that the FCA is not currently taking adequate steps to ensure that regulated entities, including Carnival, are complying with existing reporting obligations in relation to material climate change-related information. 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[12]. While we agree with the overall sentiment of these statements, any such regulatory intervention (including the recently introduced reporting requirement drawing in the Financial Stability Board's Task Force on Climate-related Disclosures' Recommendations and Recommended Disclosures[13]), must incorporate robust and effective enforcement mechanisms.

19. The FCA must now alter its approach to ensure that Carnival, and other actors, make the appropriate climate change disclosures. 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, and its fulsome and timely disclosure is essential to the efficient operation of well-functioning financial markets.

[10] Section 1B(2), Financial Services and Markets Act 2000 (as amended)
[11] 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).
[12] CP21/18**: Enhancing climate-related disclosures by standard listed companies and seeking views on ESG topics in capital markets (22 June 2021)
[13] LR9.8.6R and the FCA's Policy Statement PS20/17: Proposals to enhance climate-related disclosures by listed issuers (December 2020)

3. Carnival's Annual Reports

3.1. Carnival's exposure to climate change risk

"*The shipping sector is one of the big carbon emitters, and is responsible for more than 2% of global emissions. If the industry was a country it would be the sixth biggest polluter, above Germany.*"[14]

20. As a cruise ship company operating in the leisure travel business, Carnival's business is materially exposed to the trends and risks associated with climate change and the low carbon transition.

21. Such trends and risks, including the associated impact on share price performance[15] and the potential for greenwash[16], have now been widely recognised by investors[17], banks[18], governments[19], regulators[20] and many of Carnival's peers. For example:

    21.1. In support of the position that the shipping industry must cut emissions and tackle climate change, peer organisations such as Cruise Lines International Association and the World Shipping Council have recently called on the world's governments to tax the industry's carbon emissions[21];

    21.2. The United Nations International Maritime Organisation is calling for the international shipping industry to reduce its greenhouse gas ("**GHG**") emissions as a matter of urgency[22], and has introduced new mandatory measures to cut carbon emissions by at least 50% by 2050 in line with its 2018 Initial IMO Strategy for Reducing GHG Emissions from Ships[23];

    21.3. The International Energy Agency's Net Zero by 2050 Roadmap, published in May this year, highlights that pledges made by governments and others to date, even if fully achieved – still fall well short of what is required by the shipping industry, and beyond, to bring global energy-related carbon dioxide emissions to next zero by 2050 and give the world an even chance of limiting the global temperature rise to 1.5°C[24];

    21.4. On 14 July 2021, the European Commission adopted a series of legislative proposals setting out how it intends to achieve climate neutrality in the European Union by 2050, including the immediate target of an at least 55% net reduction in GHG emissions by 2030. The package

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[14] Climate change: Shipping industry calls for new global carbon tax (BBC, 21 April 2021)
[15] Climate change and corporates Past the tipping point with customers and stockmarkets (September 2019)
[16] See Paragraph 1.10, FCA Feedback Statement FS19/6 'Climate Change and Green Finance: summary of responses and next steps Feedback to DP18/8' (October 2019); UK Government press release, 'CMA to examine if 'eco-friendly' claims are misleading' (2 November 2020)
[17] Ibid. at footnotes 2, 3, and 7
[18] Becoming a net zero bank | HSBC Holdings plc; Our ambition to be a net zero bank by 2050 | Climate | Barclays (home.barclays); Climate Change: Net-Zero Financed Emissions | Morgan Stanley
[19] Worried About the Climate? Skip that Cruise. (Bloomberg, 29 September 2019); UK enshrines new target in law to slash emissions by 78% by 2035 (20 April 2021); FACT SHEET: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies (22 April 2021)
[20] Climate change and sustainable finance | FCA
[21] Climate change: Shipping industry calls for new global carbon tax (BBC, 21 April 2021);
[22] IMO Action to reduce GHG emissions from shipping leaflet
[23] UN body adopts climate change strategy for shipping (13 April 2018); and more recently, IMO working group agrees further measures to cut ship emissions (23 October 2020)
[24] 'Net Zero by 2050: A Roadmap for the Global Energy Sector' (International Energy Agency, May 2021)

includes proposals to include shipping emissions for the first time in the EU's Emissions Trading Scheme[25]; and

21.5. The UK Climate Change Committee's Sixth Carbon Budget Advice, Methodology and Policy reports, which now cover the shipping and aviation sectors, specifically highlight the need for improvements in shipping vessel efficiency (including electricity), and the use of zero-carbon fuels (principally ammonia made from low-carbon hydrogen and air separation) to displace fossil marine fuels, including liquefied natural gas[26]. For the shipping sector, biofuel routes were expressly excluded because analysis suggests that its use in shipping achieves lower GHG savings compared to uses in other sectors[27].

22. Carnival is itself a member of the Global Maritime Forum's 'Getting to Zero Coalition'[28], an alliance of organizations across the maritime, energy, infrastructure and finance sectors committed to accelerating the decarbonisation of the international shipping industry[29]. On joining, and in support of the initiative, Carnival publicly stated that "*The health and vitality of our oceans and seas, along with the hundreds of communities we visit across the globe, are absolutely essential to our business. We have a deep commitment to safety, environmental responsibility and consistently exceeding guest expectations, and being an active part of the Getting to Zero Coalition is another important step for the environment*." [emphases added]. In other words, Carnival accepts that managing environmental (including climate change-related) risk is "*essential*" to its business.

23. The threats posed by climate change to Carnival's financial position are particularly material in light of its already unstable trajectory. Notably:

23.1. Since March 2020, in part due to the COVID-19 pandemic, Moody's and S&P Global Ratings have downgraded the credit ratings of Carnival Group to non-investment grade, with a negative outlook, respectively[30].

23.2. Carnival may be subject to "*material*" impacts on its financial results (including potential pricing actions) from the numerous reputational, legal, and other challenges it faces due to its handling of COVID-19[31].

23.3. Carnival has "*a substantial amount of debt and significant debt service obligations*" which "*could have important negative consequences*", including an increase in vulnerability to adverse

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[25] See the EU's press release, 'European Green Deal: Commission proposes transformation of EU economy and society to meet climate ambitions' (14 July 2021)
[26] See page 9 of the Sixth Carbon Budget sector summary: Shipping, and its sector summary for Aviation (UK Climate Change Committee, 9 December 2020)
[27] Ibid, Sixth Carbon Budget sector summary: Shipping (UK Climate Change Committee, 9 December 2020)
[28] Getting to Net Zero Coalition: Accelerating maritime shipping's decarbonisation with the development and deployment of commercially viable deep sea zero emissions vessels by 2030
[29] Carnival Corporation Joins Getting to Zero Coalition for Zero Emission Operations (17 December 2019)
[30] Page 33 and 41, Carnival plc Strategic Report and IFRS Financial Statements for the year ended 2020, as filed at Companies House (18 May 2021); Carnival Corp. Ratings Lowered To 'BBB'; Ratings Remain On CreditWatch Negative (S&P, 13 March 2021), and, more recently, Carnival Corp. Issuer Credit Rating Lowered To 'B' From 'BB-', Outlook Negative; Debt Ratings Lowered (S&P, 5 November 2020); Moody's confirms carnival's B1 CFR; outlook negative (Moody's, 15 April 2021)
[31] Page 40, Carnival plc Strategic Report and IFRS Financial Statements for the year ended 2020, as filed at Companies House (18 May 2021)

general economic or industry conditions[32]. This could include the economic consequences of climate change.

23.4. On Carnival's own admission, due to compounding factors "*There is no guarantee that debt or equity financings will be available in the future to fund our obligations, or that they will be available on terms consistent with our expectations. Additionally, the impact of COVID-19 on the financial markets may adversely impact our ability to raise funds.*"[33]

24. Based on the above, Carnival may struggle to weather even gradual shifts, already crystallising, in the global political, regulatory and legal landscape in relation to addressing climate change risk.

25. Carnival can reasonably be expected to be aware that climate change is a priority issue for its own investors, several of which have made public statements on its materiality to their investment decision-making and/or have themselves committed to reach net-zero or net-zero financed emissions by 2050[34].

26. It is clear from the above that Carnival is highly exposed to climate change as a material financial and business risk, and is aware of the fact.

3.2. Carnival's obligations in relation to climate change

27. Carnival plc is required to disclose in its annual report and accounts material climate change-related information via:

27.1. its financial accounts, prepared using International Financial Reporting Standards[35];

27.2. the principal risks and uncertainties facing its business, including analysis and information relating to environmental matters[36];

27.3. the main trends and factors likely to affect the future development, performance and position of its business[37];

27.4. its environmental impacts, and the policies, due diligence processes and key performance indicators associated with them[38];

27.5. the implications of its environmental impacts for its business model[39];

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[32] Page 42, Carnival plc Strategic Report and IFRS Financial Statements for the year ended 2020, as filed at Companies House (18 May 2021)
[33] Page 41, Carnival plc Strategic Report and IFRS Financial Statements for the year ended 2020, as filed at Companies House (18 May 2021)
[34] BlackRock Inc, for example, expressly requires companies to disclose a business plan aligned with the goal of limiting global warming to well below 2ºC, consistent with achieving net-zero global GHG emissions by 2050, stating that these disclosures are "*essential to helping investors assess a company's ability to transition its business to a low-carbon world and to capture value-creation opportunities created by the climate transition*". On Carnival's other 'material interest' investors see, for example, Climate Change: expectations to companies (Norges Bank, 2021), and Our ambition to be a net zero bank by 2050 (Barclays plc)
[35] Section 395 Companies Act 2006
[36] FCA Handbook, DTRs 4.1.8R and 4.1.9R; Sections 414C(2)(b), 414C(7)(a)-(b) Companies Act 2006;
[37] Ibid. Companies Act 2006
[38] Section 414CB Companies Act 2006
[39] Section 414CB Companies Act 2006: a company's non-financial information statement must contain information about how the environmental matters it has identified will impact its business model

27.6. its GHG emissions, including (where appropriate) Scope 3 emissions[40]; and

27.7. its long-term viability and prospects in light of identified risks and trends[41].

28. Carnival plc's directors must ensure that Carnival plc's management report contains a "*fair review*" of its business[42], 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[43].

29. Carnival plc must also take reasonable care to ensure that information notified in its 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[44].

30. In addition to these specific content requirements Carnival plc and, based on our understanding of the business, Carnival Corp must also disclose any inside information that relates to climate change[45], and not engage in market manipulation through the omission of material information[46]. 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*"[47].

3.3. Breaches of legal duties

3.3.1. Content of the Annual Report

31. Despite clear evidence of the materiality of detailed climate change-related information from investors, regulators, and industry peers, the 'Carnival Corporation & plc 2020 Annual Report' (the "**Consolidated Annual Report**") makes no reference to climate change.

32. The information Carnival plc provides in its 'Strategic Report and IFRS Financial Statements for the year ended 2020' (the "**UK Report**") is limited, unclear, and potentially misleading:

A. the UK Report states throughout that "*the most appropriate representation*" of Carnival plc's business strategy, viability, and results and financial position is "*by reference to*" the Consolidated Annual Report, "*because all significant financial and operating decisions affecting* [Carnival] *are made on a joint basis to optimize the consolidated performance as a single economic entity*".[48]

[40] Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018/1155
[41] Section 4 UK Corporate Governance Code 2018 and LR9.8.6(3)R
[42] FCA Handbook, DTR4.1.8R
[43] FCA Handbook, DTR4.1.11R
[44] 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)
[45] Article 17 UK MAR
[46] Articles 12 and 15 UK MAR
[47] Recital 47 UK MAR; and see also the FCA's Primary Technical Note TN/801.1 (December 2020)
[48] See for example, pages 1, 51, and 61, Carnival plc Strategic Report and IFRS Financial Statements for the year ended 2020, as filed at Companies House (18 May 2021)

33. As mentioned above, the Consolidated Annual Report makes no reference to climate change or climate change-related risk. The Strategic Report (contained in the UK Report), which contains limited environmental risk analysis, is presented separately to the Consolidated Annual Report and does not appear to have been incorporated into it. Combined with the statements above, this leaves investors without a clear picture of (i) what information to rely on, and (ii) how Carnival is managing its exposure to climate risk, despite its materiality to investor/stakeholder decision-making.

B. Where Carnival plc does mention climate change in its UK Report, statements are vague and provide no 'decision useful' information or analysis as to how it is managing the associated risks (nor whether, or how, it is harnessing opportunities). For example:

33.1. considering the impact of adverse weather conditions, the Strategic Report states that "*Changes in climate may increase the frequency and intensity of adverse weather patterns, make certain destinations less desirable or impact our business in other ways*"[49] ; and

33.2. considering "*changes in… laws and regulations*" under which Carnival operates, the Strategic Report states, "*In addition, there is increased global focus on climate change, which may lead to additional regulatory requirements*"[50].

34. As is evident from the above, Carnival plc provides no detail or analysis of how climate change is likely to affect the future development, performance and position of its business, or how its business model might be impacted positively or negatively (whether through Carnival's own activities, or by external factors). For example, we would expect to see at a minimum narrative reporting on the climate change exposures mentioned in section 3.1 above, and for those to be fed through into financial statements (in other words, how those are anticipated to impact profit).

35. Without these material disclosures, Carnival plc's investors cannot assess its ability to transition to a low-carbon world and to capture value-creation opportunities created by the climate transition (an express ask of one investor[51]). By omitting to provide such information, Carnival has failed to adequately describe the principal risks and uncertainties it faces.

C. Carnival claims that its entire management team and boards of directors are *"committed to addressing climate change and defining* [Carnival's*] path to decarbonization*" and that *"key components*" of its strategy include the use of Liquefied Natural Gas ("**LNG**") and bio-LNG, and expanding its investments in that regard[52]. Carnival's 200-page sustainability report (the "**2019 Sustainability Report**"), published separately, repeats these claims a number of times and claims switching to LNG, among other things, "*provides many air emissions benefits*"[53].

36. However, none of the Consolidated Annual Report, the UK Report, or the 2019 Sustainability Report inform investors of the immense environmental impacts associated with natural gas reliance, such as the significant and damaging methane emissions[54]. Moreover, as we highlight above, the UK Climate Change Committee's Sixth Carbon Budget analysis expressly excludes the largescale use of biofuels

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[49] Page 47, Carnival plc Strategic Report and IFRS Financial Statements for the year ended 2020, as filed at Companies House (18 May 2021)
[50] Ibid.
[51] See the BlackRock Global Executive Committee's client letter, 'Net Zero: a fiduciary approach' (2021)
[52] Carnival plc Director' Report, Carnival plc Strategic Report and IFRS Financial Statements for the year ended 2020, as filed at Companies House (18 May 2021)
[53] Sustainability From Ship to Shore FY2019 Sustainability Report (2019)
[54] Natural gas is a much 'dirtier' energy source than we thought (National Geographic, 19 February 2020)

such as bio-LNG in the shipping sector's transition pathways. This is on the basis that biofuels are an undesirable substitute because they:

36.1. have a lower GHG savings potential compared with alternatives; and

36.2. are likely to delay the transition to zero-carbon ammonia (which also carries cheaper projected costs, including the ability to retrofit ship engines)[55].

37. Analysis of how this information impacts Carnival, and how it is prepared to adapt, is essential to investors who seek to facilitate the massive reallocation of capital required to achieve the net-zero transition[56]. However, consideration of these issues is wholly absent from Carnival's reporting. As such, it falls far short of the standard required. It is also inconsistent with recently proposed guidance that for environmental claims about consumer goods and services to be genuine they must "*properly describe the impact of the product, service, brand or business*" and "*not hide or misrepresent crucial information*"[57].

38. Further, the claims made are not substantiated or otherwise reflected in Carnival's financial statements, making its longer term viability difficult for a reasonable investor to assess.

39. Accordingly, these statements, and omissions of 'decision useful' information, are potentially or actually misleading and expose investors to a significant risk of greenwash. In other words, they are led to believe that Carnival's business or product has environmental sustainability characteristics when this may not be the case, with the potential negative consequences of (i) blocking the timely reallocation of investor capital to greener initiatives, and (ii) slowing down the global energy transition pathway away from carbon-intensive energy reliance towards Paris alignment.

40. By failing to disclose adequate information in relation to climate change in either of the Consolidated Annual Report or the UK Report, Carnival plc has:

40.1. omitted information that is likely to affect the import of the information contained in the Annual Report as a whole;

40.2. failed to give a fair review of its business, adequately describe the principal risks and uncertainties it faces, or to report properly on its long term viability and prospects; and

40.3. provided information that is potentially or actually misleading.

41. Accordingly, Carnival plc is in breach of DTRs 1A.3.2R, 4.1.8R, LR 1.3.3R and LR9.8.6(3)R of the FCA Handbook. To the extent that Carnival Corp is subject to these provisions, it may also be in breach of the same.

42. Should Carnival plc's directors be deemed to have knowingly or recklessly failed to comply with associated Companies Act 2006 requirements, the criminal provisions under sections 414 and 414D Companies Act 2006 may also be enlivened.

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[55] See pages 9 and 15 on the role of biofuels, See page 9 of the Sixth Carbon Budget sector summary: Shipping (UK Climate Change Committee, 9 December 2020)

[56] Paragraph 1.6 of discussion paper, 'Options for greening the Bank of England's Corporate Bond Purchase Scheme' (Bank of England, 21 May 2021)

[57] See paragraph 2.8 of the Competition & Markets Authority's 'Draft guidance on environmental claims on goods and services' (21 May 2021)

3.3.2. Financial statements

43. As explained above, Carnival plc is also required to disclose material climate change-related information via its financial accounts.

44. However, Carnival plc's financial statements do not include any consideration of climate change related risks and impacts. PriceWaterhouseCoopers LLP ("**PwC**"), Carnival plc's independent auditors, also appear to have failed to consider these matters in the independent audit of the financial statements. As such, Carnival plc may have failed to ensure that its financial statements give a true and fair view of its assets, liabilities, financial position and profit or loss[58]. PwC may also have failed to comply with its associated audit obligations to ensure that the Annual Reports have been prepared in accordance with the applicable legal requirements and do not contain material misstatements by virtue of the omission of information. We have sent a copy of this Referral to PwC and to the FRC.

45. Accordingly, Carnival plc may be in breach of DTR4.1.7R and Sections 393 and 395 Companies Act 2006. To the extent that Carnival Corp is subject to DTR4.1.7R, it may also be in breach of the same.

3.3.3. Inside information in relation to climate change

46. Finally, Carnival plc and, we understand, Carnival Corp must also disclose any inside information that relates to climate change[59], and not engage in market manipulation through the omission of material information[60].

47. As companies operating in the leisure travel (cruise ships) sector and consumer services market, information in relation to climate change insofar as it affects Carnival and its sector and market, may amount to inside information for the purposes of the UK MAR.

48. 'Inside information' for these purposes means "*information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments*"[61].

49. 'Financial instruments' includes Carnival's shares, being shares which are admitted to trading on a UK regulated market[62].

50. To the extent that Carnival's failure to provide climate-related information is likely to have a significant effect on the price of its shares or on the price of related derivative financial instruments, its failure to provide such information may also constitute market manipulation by the omission of material information under the UK MAR.

51. Accordingly, by failing to provide that information, Carnival may be in breach of Articles 12, 15 and/or 17 UK MAR.

[58] DTR4.1.7R and Section 393 Companies Act 2006
[59] Article 17 UK MAR
[60] Articles 12 and 15 UK MAR
[61] Article 7(1)(a) UK MAR, and see also the FCA's Best practice note - Identifying, controlling and disclosing inside information (9 June 2020)
[62] Article 2(1)(a) UK MAR

4. Referral for FCA investigation

52. In view of:

52.1. the FCA's remit as described in paragraph 2.4 above;

52.2. the now widespread market recognition that companies are not disclosing the material climate change-related information that investors expect and are demanding; and

52.3. the nature, seriousness and impact[63] of the legal breaches detailed above;

ClientEarth requests that the FCA investigates Carnival's reporting failures[64] and:

52.4. imposes a financial penalty in an amount it considers appropriate on Carnival plc (and Carnival Corp, insofar as the FCA is empowered to do so);

52.5. publishes a statement in accordance with section 91(3) of the Financial Services and Markets Act 2000 ("**FSMA**") censuring Carnival plc (and Carnival Corp, insofar as the FCA is empowered to do so);

52.6. requires Carnival plc (and Carnival Corp, insofar as the FCA is empowered to do so) to publish information so as to rectify the above-referenced deficiencies in its Consolidated Annual Report and/or UK Report;[65] and/or

52.7. take any other step(s) it deems appropriate in light of the above potential infringements of the UK MAR.

53. Finally, we note that Carnival Corp is also subject to regulation by the United States Securities and Exchange Commission (the "**SEC**"), which has recently consulted on improving climate change-related disclosures under the Biden administration[66]. Given the FCA's commitment to close cooperation and information sharing under its existing supervisory cooperation arrangements with the SEC, we ask that the FCA liaise with the SEC in relation to Carnival Corp's potential misconduct.

5. Conclusion

54. The FCA is required to pursue its statutory objectives to make markets function well, protect consumers, enhance financial market integrity and promote competition. The FCA has been asked to discharge its functions in a manner consistent with delivering a financial system that supports and enables a net-zero economy.

55. In light of consistent and repeated failures by companies to disclose material climate change-related information, the FCA must take a robust approach to the matters raised in this Referral in order to achieve its objectives.

56. Please do not hesitate to contact us if we can be of any further assistance in relation to this Referral.

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[63] DEPP6.2.1(1)R
[64] DEPP6.2R
[65] Sections 89K and 91 FSMA; DTR1A.3.1R(1)
[66] Public Input Welcomed on Climate Change Disclosures (SEC, 15 March 2021). ClientEarth US submitted its response, 'SEC Request for Public Input: Climate Change Disclosures – ClientEarth US Response' on 14 June 2021.

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