

The Rt Hon Liam Byrne MP  
Chair of the Business and Trade Committee  
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Dear Mr Byrne,

### **Make Work Pay: Employment Rights Bill – evidence to Committee inquiry**

Thank you for your letter dated 9 January. I set out below the FCA's role in the listings process and then address your specific question on the checks we conduct to ensure all legal risks are disclosed.

The listings regime as a whole is designed to balance investor confidence with proportionality.<sup>1</sup> A key focus is on ensuring an applicant's material legal risks and other important factors are disclosed to investors in the prospectus.

Broadly speaking, the FCA must satisfy itself that the document contains:

- all the information specifically required by the UK Prospectus Regulation for a transaction of the type being undertaken,<sup>2</sup> including any material litigation and risk factors;<sup>3</sup>
- any additional facts necessary for an investor to make an informed assessment of the offering, including the financial position and prospects of the issuer.

### **Checks prior to approval**

The issuer and its directors are responsible for the factual accuracy of the prospectus, and liable for any material mis-statements. Our approval process does not involve a detailed verification exercise of the factual accuracy of the prospectus. The FCA's role is to ensure that the requisite disclosures have been made so that potential investors can understand the risks.

We review draft prospectuses to ensure they are compliant with the rules. We check that all the mandatory requirements of the Prospectus Regulation have been covered. We also check that the prospectus includes the other necessary

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<sup>1</sup> The framework for listing is set out in s.75 of the Financial Services and Markets Act 2000 (FSMA). The relevant framework for prospectus approval is set out in s.87A of FSMA.

<sup>2</sup> UK version of Regulation No 2017/1129 of the European Parliament and of the Council of 14 June 2017 [as onshored]

<sup>3</sup> UK version of Regulation No 2019/980 of the European Commission [as onshored]

information to enable a prospective investor to make an informed assessment.<sup>4</sup> Where a disclosure requirement has not been met, is in our view inadequate, or where we need to ask further questions to understand the context or challenge a disclosure that appears inconsistent or thinly based, we send comments on the draft document and can discuss those with the applicant and its advisors. A prospectus may go through several rounds of drafting to respond to our comments before we can be satisfied that the requisite disclosures have been made such that we are in a position to approve it.

Our review process also involves certain background checks on the company, its senior managers and board members, largely using publicly available information and commercial databases.

As noted above, a key part of the regime is that the issuer and the directors are responsible for the factual accuracy of the statements made in a prospectus and are subject to a range of legal liabilities as a consequence. It is for the issuer and its directors to confirm that the information provided is accurate. Beyond the process described above, the FCA does not undertake independent verification of the factual statements in a prospectus: in fact, we have no investigatory powers that would enable us to do so.

While we consider this process to be robust (including in comparison with international peers), it does not feature some of the detailed due diligence that may be found in other corporate transactions. For example, we do not conduct site visits or inspections, nor do we routinely call for and inspect underlying documentation.

The prospectus system has been recently reviewed by government and balances the need for investor confidence in the system, the competitiveness of UK markets and proportionality of obligations on the part of those seeking to raise capital.<sup>5</sup>

Once a prospectus has been published, we have powers to investigate and, if appropriate, take action against persons responsible for misleading investors through misleading statements (including material omissions) in information published in prospectuses; or where the FCA itself is misled including in relation to dealings with the FCA prior to approval of a prospectus.

There is also a right of private action through the UK courts whereby investors who can show losses resulting from inaccuracies in the information in the prospectus or omissions of information can pursue compensation for those losses.<sup>6</sup> Large firms that are listed or seeking listing often have significant investor relations teams that would answer a range of queries from prospective investors, particularly during IPO roadshows.

In addition, some of the information in a prospectus will be historical financial information which will have been subject to independent audit.

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<sup>4</sup> This information may vary depending on factors such as the nature of the issuer, the type of securities and the circumstances of the issuer.

<sup>5</sup> <https://www.gov.uk/government/consultations/uk-prospectus-regime-a-consultation>. The consultation led to the previous government enacting the Public Offers and Admissions to Trading Regulations 2024 (SI 2024/105) which will, once fully implemented, replace the UK Prospectus Regulation.

<sup>6</sup> Set out in s90 of FSMA

Finally, the vast majority of companies are not listed and capital markets regulation is focused on the needs of the market. A prospectus is not intended to provide all of the corporate information other stakeholders such as suppliers, employees or customers might need. Other bodies of policy, law or regulation would more properly consider these other elements of corporate activity.

I hope this addresses your question and assists the Committee in its work.

Yours sincerely,

**Nikhil Rathi**  
**Chief Executive**