FSA fines Prudential £30 million and censures CEO for failing to inform regulator of 2010 acquisition plans

FSA/PN/031/2013
27 Mar 2013

The Financial Services Authority (FSA) has fined companies in the Prudential Group (Prudential) a total of £30 million for breaching FSA Principles and UKLA Listing Principles. The fines relate to Prudential's failure to inform the FSA at the appropriate time that it was seeking to acquire AIA, the Asian subsidiary of AIG, in early 2010. The FSA has also censured Tidjane Thiam, Prudential's Group Chief Executive.

Prudential failed to deal with the FSA in an open and cooperative manner when it was seeking to acquire AIA in early 2010, because it did not inform the FSA of the proposed acquisition until after it had been leaked to the media on 27 February 2010.

Prudential should have informed the FSA at the earliest opportunity to allow the FSA to decide whether to approve or reject the deal on regulatory grounds. It failed to disclose the proposed transaction even when, at a meeting between the FSA and Prudential executives on 12 February 2010, the FSA asked detailed questions about Prudential's strategy for growth in the Asian market and its plans for raising equity and debt capital.

The proposed transaction's size and scale would have transformed the Group's financial position, strategy and risk profile and involved a planned rights issue of £14.5bn, which would have been the biggest ever in the UK. The transaction had the potential to impact upon the stability and confidence of the financial system in the UK and abroad.

In the circumstances the FSA had a regulatory responsibility to conduct an intensive, detailed and thorough scrutiny of the proposed transaction. The failure to inform the FSA was significant because it resulted in the FSA having to consider highly complex issues within a compressed timescale before making a decision as to whether to suspend Prudential's shares. It narrowed the FSA's options in scrutinising the transaction, risked delaying the publication of Prudential's subsequent rights issue prospectus and hampered the FSA's ability to assist overseas regulators with their enquiries in relation to the transaction.

The FSA considers that Prudential wrongly allowed its judgement to be overly influenced by its concern about the risk of leaks. This concern meant Prudential failed to give due weight to the importance of complying with its regulatory obligations, even when explicitly advised by its own advisers of the importance of keeping the regulator informed.

As Prudential's Group Chief Executive, Tidjane Thiam played a significant role, with others, in the decision not to contact the FSA about the proposed acquisition. Therefore, he was knowingly concerned in this breach. In censuring him, the FSA made no finding of lack of fitness and propriety in relation to Tidjane Thiam.

Tracey McDermott, FSA director of enforcement and financial crime, said:

"The FSA expects to have an open and frank relationship with the firms it supervises and with listed companies. It is essential that firms give due consideration to their regulatory obligations at all times. In particular, timely and proactive communication with the FSA is of fundamental importance to the functioning of the regulatory system and the integrity of the market.

"Prudential, led by Thiam as CEO, failed to give due consideration to its obligation to inform the FSA of this transaction, which would have had a huge impact on the group had it gone through. That was a serious error of judgement for which Prudential is paying the price. Firms should be in no doubt as to the importance of early communication with the regulator in respect of transformational transactions to avoid market and investor disruption.

"Thiam has also been censured in relation to his role in this matter. This case should send a clear message to all board members of their collective and individual responsibility for the decisions they make on behalf of their companies."

The investigation was into past events and does not concern the current conduct of the management of the Prudential Group. The FSA accepts that Prudential did consider their obligations in forming their assessment in respect of informing the regulator. Therefore, although the FSA considers that the circumstances of these breaches are serious, the FSA does not consider they were reckless or intentional.

Notes to editors

1. Prudential plc was fined £14m for failing to deal with the FSA in an open and co-operative manner, thereby breaching the FSA's Listing Principle 6.
2. The Prudential Assurance Company Limited (PAC) was fined £16m for failing to deal with the FSA in an open and co-operative manner, thereby breaching Principle 11 of the FSA's Principles for Businesses.

   Tidjane Thiam was censured for being knowingly concerned in PAC's breach of Principle 11.
3. Listing Principle 6 provides that: "A listed company must deal with the FSA in an open and co-operative manner."
4. Principle 11 states "A firm must deal with its regulators in an open and co-operative way, and must disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice."
5. The FSA regulates the financial services industry and has four objectives under the Financial Services and Markets Act 2000: maintaining market confidence; securing the appropriate degree of protection for consumers; fighting financial crime; and contributing to the protection and enhancement of the stability of the UK financial system.
6. The FSA will be replaced by the Financial Conduct Authority and Prudential Regulation Authority in 2013 as required by the Financial Services Act 2012.

Financial Services Authority

FINAL NOTICE

To: **Prudential plc**

Address: **Laurence Pountney Hill**
London
EC4R 0HH

Dated: **27 March 2013**

TAKE NOTICE: The FSA of 25 The North Colonnade, Canary Wharf, London E14 5HS gives you final notice that it has taken the following action:

1. ACTION

1.1. For the reasons set out in this notice and pursuant to section 91 of the Act, the FSA hereby imposes a financial penalty of £14 million on Prudential for failing to deal with the FSA in an open and co-operative manner in breach of Listing Principle 6.

1.2. Following written and oral representations, the FSA issued a decision notice to Prudential which notified Prudential that it had decided to take the above action. Prudential referred the matter to the Tribunal but has withdrawn its reference.

2. REASONS FOR THE ACTION

2.1. The UKLA has responsibility for monitoring and enforcing compliance with the UKLA Listing Rules. As a markets regulator the UKLA frequently has to deal with real time issues requiring urgent resolution. This means that it sometimes has to react very quickly to market situations. The UKLA does not supervise listed companies, so it does not have the ongoing dialogue with and information about a company that the FSA would for an authorised firm which was subject to close and continuous supervision. Accordingly, the UKLA relies on its ability to trust listed companies to be open and co-operative with it.

2.2. On Monday 1 March 2010, Prudential announced its intention to acquire AIA, a wholly owned subsidiary company of AIG. The original consideration proposed was $35.5 billion, including $20 billion cash, to be funded via a rights issue. Given AIA's size, the transaction would have been transformative for Prudential. The proposed rights issue, which was planned to raise £14.5 billion, would have been the biggest ever in the UK. Subsequently, facing significant doubts about the extent to which it had secured the requisite shareholder support, Prudential sought to renegotiate the terms of the transaction. AIG refused to accept a lower price and on 3 June 2010 Prudential withdrew from the deal, shortly before its shareholders were due to vote on the proposed rights issue.

2.3. Prudential failed to deal with the UKLA in an open and co-operative manner in breach of Listing Principle 6 when it was seeking to acquire AIA from AIG in early 2010, because Prudential did not contact the UKLA about the proposed acquisition until after it had been leaked to the media on 27 February 2010. The FSA considers that Prudential should have informed the UKLA about the proposed acquisition well before 27 February 2010 (and in any event no later than 17 February 2010).

2.4. Prudential's failure to inform the UKLA of the proposed acquisition well before 27 February 2010 (and in any event no later than 17 February 2010), resulted in a significant risk that the wrong regulatory decision would be made. Prudential's conduct also risked delay to the publication of Prudential's subsequent rights issue prospectus.

3. DEFINITIONS

3.1. The following definitions are used in this notice:

"the Act" means the Financial Services and Markets Act 2000.

"AIA" means AIA Group Limited.

"AIG" means American International Group Incorporated.

"Credit Suisse"	means Credit Suisse Securities (Europe) Limited, who were appointed by Prudential to act as lead sponsor. As lead sponsor, Credit Suisse was required to advise Prudential in relation to compliance with the FSA's Listing Rules, including interaction with the UKLA. Credit Suisse was authorised by the FSA to act in that capacity.
"DEPP"	means the FSA's Decision Procedure and Penalties Manual.
"EG"	means the FSA's Enforcement Guide.
"the FSA"	means the Financial Services Authority.
"IPO"	means Initial Public Offering.
"Listing Principle 6"	means Principle 6 of the Listing Principles set out at LR7.2.1R which apply to every listed company with a premium listing of equity shares in respect of all their obligations arising from the listing rules and the disclosure rules and transparency rules.
"Newco"	means a newly incorporated holding company.
"PAC"	means The Prudential Assurance Company Limited.
"Principle 11"	means Principle 11 of the FSA's Principles for Business (Relations with regulators).
"Prudential"	means Prudential plc a FTSE 100 UK listed company and one of the UK's largest insurance companies. At the end of February 2010 it had a market capitalisation of £15.2 billion.
"Prudential Group"	means Prudential and the group of companies of which Prudential was the parent company.
"the SPA"	means the Share Purchase Agreement relating to the sale and purchase of all of the issued share capital of AIA Group Limited between AIA Aurora LLC, American International Group Inc, Petrohue (UK) Investments Limited and Prudential agreed on 1 March 2010 including previous drafts.
"Supervision"	means the Insurance Division of the Financial Services Authority who supervise the Prudential Group through PAC.

"the Tribunal"	means the Upper Tribunal (Tax and Chancery Chamber).
"the UKLA"	means the United Kingdom Listing Authority. The FSA, when acting as the competent authority under Part VI of the Act, is referred to as the UKLA. The UKLA has responsibility for monitoring and enforcing compliance with the UKLA Listing Rules.
"the US Treasury"	means the United States Department of the Treasury.

4. FACTS AND MATTERS

Early stages of the transaction

4.1. During 2009, AIG began preparations to dispose of AIA by way of an IPO or third party sale. The disposal was to take place as part of a restructuring programme, intended to enable AIG to repay the US governmental financial assistance it had received during the liquidity crisis of 2008.

4.2. In October 2009, Prudential set up an insider list regarding a possible purchase of AIA, to which Prudential's non-executive directors were added on 5 November 2009.

4.3. In December 2009, the CEO of AIG asked the Chief Executive of Prudential, Mr Thiam, whether Prudential would be interested in putting forward an offer for AIA. This led to formal discussions between AIG and Prudential, and the commencement of due diligence in early January 2010. The parties signed a confidentiality agreement on 12 January 2010.

4.4. On 31 January 2010, the directors of Prudential met to be briefed on the proposed transaction by Credit Suisse. There was a consensus between the directors of Prudential at this meeting that:

(1) a leak was the key risk to the transaction;

(2) the FSA was one of a number of parties which might be the cause of a leak; and

(3) Prudential wished to fulfil its obligations to inform the FSA in such a way that leak risk was kept to a minimum.

4.5. Prudential remained highly sensitive to the possibility of a leak until 27 February 2010. This materially influenced Prudential's judgment about when to inform the UKLA about the transaction.

4.6. On 1 February 2010, Prudential was advised by Credit Suisse of the need to inform the UKLA and Supervision of the proposed transaction well in advance of

its execution. At that stage, with an announcement timetabled for 15 February 2010, Credit Suisse's advice was to approach the FSA by 3 February 2010. Credit Suisse's advice around early contact with the FSA was reflected in timetables repeatedly prepared and provided to Prudential in the weeks leading up to the announcement of the transaction.

4.7. Prudential considered that there was insufficient certainty as to the transaction's prospects of success, such that an approach to the FSA would be premature.

Leak strategy and the decision to approach the UKLA

4.8. In early February 2010, Prudential decided that if there was a leak, it would, in order to protect its share price and avoid any chance of a protracted suspension, abandon the deal and issue a 'no discussions' announcement. Prudential understood that as and when it adopted a 'discussions happening' announcement strategy, that would necessitate informing the UKLA.

4.9. In this instance, the reasons why a change in leak strategy from 'no discussions' to 'discussions happening' would require an approach to the UKLA were as follows:

(1) a willingness to admit and continue discussions in the face of a leak would serve as a strong indicator that Prudential was in serious, advanced discussions which it regarded as likely to come to fruition; and

(2) once the leak strategy had switched to 'discussions happening', any leak of the deal into the public domain would require the immediate involvement of the UKLA to make a decision in relation to suspension of Prudential's shares. With information regarding the potential deal already in the market, the UKLA would need to make a hurried if not immediate decision as to whether the interests of investors and the market were best served by allowing trading to continue (on limited information about the deal) or suspending the shares. As Prudential understood, the intense pressure of such a scenario is highly undesirable and can be avoided if the UKLA are approached, at the very latest, as soon as a leak strategy changes from 'no discussions' to 'discussions happening'.

4.10. At a Prudential Board meeting on 3 February 2010, the Board considered a timetable which identified 17 February 2010 as the date on which the FSA was to be informed of the proposed transaction. Additionally, the minutes of the meeting confirm the Board's intention that, *"[w]ith an announcement date of 26 February [2010] currently being targeted, a further Board meeting would be scheduled for 17 February [2010]. The intention was that the Board should have sufficient information at that stage to be able to confirm, should a talks announcement be required, its interest in proceeding."*

4.11. The minutes of Prudential's Board meeting of 3 February 2010 suggest that the prospects of a deal between Prudential and AIG had improved markedly by this stage, because (*inter alia*), *"[i]t was becoming increasingly clear that the AIA IPO was running into difficulties, which gave Prudential a strong negotiating hand"*.

Development of the transaction

4.12. On 5 February 2010, Mr Thiam and the then Chairman of Prudential held a meeting in London with the CEO of AIG and gave him a letter signed by Mr Thiam that had been approved by the Prudential Board which set out a detailed 'indicative non-binding proposal'. The letter set out, among other things: a preliminary price range of $30-34 billion in the absence of up to date financial information; a proposed debt and equity financing structure; a proposed transaction structure in which Prudential and AIA would be acquired by a Newco; and a proposed timetable according to which the transaction would be announced on 26 February 2010.

4.13. By 8 February 2010, timetables prepared by Credit Suisse and provided to Prudential reflected that the announcement date was now scheduled for 26 February 2010. The approach to the FSA was nevertheless scheduled to take place on 15 February 2010, thereby permitting 11 days' advance notice.

4.14. On 9 February 2010, Mr Thiam and the then Chairman of Prudential travelled to Washington to meet with the US Treasury and AIG. Mr Thiam reported to the Prudential Board on 11 February 2010 that:

(1) the US Treasury, which controlled 80% of AIG's shares, and which the Prudential Board thought would be 'very influential' in the final decision were 'much more supportive' than it had been previously;

(2) the AIG special committee, which was managing the process and which had previously been hostile to the Prudential bid and favoured the IPO, had voted to keep negotiations ongoing. The AIG special committee recognised that a sale to the Prudential would be 'an attractive option' (although it was still supportive of the IPO); and

(3) the Prudential Board meeting initially scheduled for 17 February 2010 was cancelled as progress had been "at a slower pace than initially expected". (The meeting was however reinstated shortly afterwards and did take place.)

4.15. By 12 February 2010, negotiations had progressed sufficiently for Prudential to send a revised indicative non-binding proposal to AIG. A key revision to the proposal was the inclusion of a specific price of $35.5 billion (the same as the ultimately agreed price), albeit that the proposal remained subject to a number of caveats, including some relating to the availability of financial information.

4.16. Also on 12 February 2010, Mr Thiam and another director of Prudential and PAC met with Supervision. The meeting was one of a series of regular meetings in the supervisory process, and was the annual meeting focused on allowing Supervision to gain an understanding of the Prudential Group's strategy. Supervision asked detailed questions about Prudential's strategy for growth in the Asian market and its intentions to raise equity and debt capital, but Prudential did not disclose the proposed acquisition of AIA, the potential change in control that was in prospect, or the rights issue and debt issuance that were proposed to fund the acquisition.

4.17. On 15 February 2010 AIG provided a draft of the SPA to Prudential.

4.18. The progress of the transaction was reported to the Prudential Board at a meeting on 17 February 2010, as follows:

(1) the US Treasury had recognised Prudential as a "credible buyer";

(2) AIG's Special Committee had agreed to take Prudential's proposal to the AIG Board;

(3) the AIG Board had asked for the CEO of AIA to be informed of the proposal;

(4) a draft SPA was being negotiated between the parties; and

(5) Prudential's largest shareholder had agreed to be made an insider to the transaction (meaning that it could not trade in Prudential's shares until the transaction had been announced or abandoned). The shareholder had been informed of the details of the transaction and had indicated its support.

Change in leak strategy

4.19. At the same meeting, Mr Thiam reported to the Prudential Board that the CEO of AIG had agreed with Mr Thiam that in the event of a leak, a 'discussions happening' announcement would be issued confirming that the parties were in talks around the transaction. The Prudential Board agreed that the transaction was sufficiently advanced whereby, if necessary, Prudential would confirm that discussions with AIG were ongoing. Notwithstanding the fact that Prudential understood that the adoption of that leak strategy warranted an approach to the UKLA, no such approach was made.

Events leading up to the approach to the UKLA

4.20. On 18 February 2010, during a meeting between Credit Suisse and Prudential senior management, the importance of making an approach to UKLA was reinforced. Credit Suisse sought permission on this occasion to approach UKLA on a 'no-names' basis. Credit Suisse were informed that Prudential would consider the matter internally and revert.

4.21. Work around the transaction continued to progress, and Mr Thiam, with the knowledge and approval of the Prudential Board, met with the CEO of AIA on 19 and 21 February 2010. During that period, the CEO of AIG confirmed to Mr Thiam that he favoured Prudential's bid over the IPO. Additionally, AIG imposed on Prudential a deadline of 25 February 2010 for agreement of the SPA.

4.22. Absent any response from Prudential as to Credit Suisse's request to approach UKLA about the transaction on a 'no-names' basis, Credit Suisse again raised the issue of approaching the UKLA on 22 February 2010. Prudential did not authorise Credit Suisse to make an approach, on a 'no-names' basis or otherwise.

4.23. On 23 February 2010, Prudential considered a timetable which scheduled an approach to the FSA to take place on 24 February 2010. During the meeting, it was agreed that that approach should be postponed to 26 February 2010, to coincide with the timing of the AIG Board's decision whether to accept Prudential's offer in place of an IPO.

4.24. The Prudential Board met on 24 February 2010. The minutes of the meeting record (*inter* alia) that, *"…the due diligence work continued with good progress being made and no 'showstoppers' have been identified. Further progress had been made on the SPA"*. The timetable which the Prudential Board considered at the meeting on 24 February 2010 scheduled the approach to the FSA to take place on 26 February 2010.

4.25. During the meeting, Credit Suisse highlighted the importance of approaching UKLA, on a "named" basis. Credit Suisse were concerned that no approach had been made, and regarded it as an immediate priority. Following the meeting Prudential decided that no approach should be made.

4.26. On 25 February 2010, Mr Thiam sent a letter that had been approved by the Prudential Board to his counterpart at AIG, reconfirming the previous price proposal of $35.5 billion. Mr Thiam also set out the progress that had been made in respect of the transaction, including:

(1) "*Substantial progress towards agreeing an SPA … we are confident that this brings us meaningfully closer to an announceable transaction*";

(2) "*The draft SPA contains only necessary conditions … we believe that these … will be seen as representing a low risk to consummation of the transaction*";

(3) "*We have now been able to consult with our two top shareholders, representing together in excess of 16% of our share register, who have both expressed support for the proposed transaction. Our willingness to approach them should be an indication to you of the seriousness and determination with which we approach this transaction*";

(4) "*With respect to financing … we expect to be able tomorrow to provide you with agreed drafts of the definitive underwriting commitments that will be signed at the time we sign the sale and purchase agreement*."

4.27. A timetable accompanying the correspondence to AIG proposed the execution of the SPA on 1 March 2010, with an announcement of the transaction on 2 March 2010.

4.28. The same timetable was included in a document prepared by Credit Suisse on the morning of 26 February 2010. That document scheduled the approach to the FSA to take place on 1 March 2010. The SPA was timetabled to be signed on the same day, with announcement of the transaction to take place on 2 March 2010.

4.29. During the evening of 26 February 2010, it became apparent to Prudential that a leak of the deal was likely. Notwithstanding this, no approach was made to the UKLA.

4.30. On the morning of 27 February 2010, a report of a rumour about the transaction was published in the media. Prudential informed the FSA in the afternoon.

4.31. In the early hours of Sunday 28 February 2010 a letter was sent to the UKLA, on behalf of Prudential, outlining their proposals around the structure of the transaction. It was acknowledged that, if structured as a direct acquisition, the transaction would amount to a reverse takeover for the purpose of the Listing Rules. Later that morning, Prudential was informed that the AIG Board had agreed to enter into a transaction with Prudential for the sale of AIA.

4.32. At that stage, Prudential hoped that AIA's audited accounts could be published prior to, or very shortly following, the opening of the markets on Monday 1 March 2010. It was intended that this would obviate the need for a suspension of trading, as would ordinarily be the case in the absence of publicly available information sufficient to inform the market about a reverse takeover transaction.

4.33. The letter outlined an alternative option, namely a Newco structure, and maintained that proceeding in this way would render the guidance applying to reverse takeovers irrelevant. Prudential believed that the UKLA was likely to allow the announcement of a Newco transaction without imposing a suspension, while being aware that the UKLA might decide to the contrary.

4.34. The UKLA had to decide whether to permit a direct acquisition structure without a suspension, or whether to impose a suspension if a Newco structure was adopted, before Prudential had to make an announcement at the start of trading on the morning of Monday 1 March 2010.

4.35. The UKLA decided that if AIA audited accounts were available by the start of trading on 1 March 2010, Prudential could announce a direct acquisition and a

suspension would not be imposed. It also decided that if those accounts were not available, Prudential could announce a Newco structure and, again, a suspension would not be imposed.

4.36. In the event, it became clear on the afternoon of 28 February 2010 that the AIA audited accounts would not be available. As suspension was unacceptable to Prudential, it decided to announce a Newco structure.

The announcement of the transaction

4.37. The SPA had not been signed by the start of trading on 1 March 2010, and a holding announcement was issued at 7:52am. Prudential's shares were temporarily suspended until the SPA was signed and the full transaction announcement was issued.

4.38. The holding statement issued by Prudential included the following:

'The company confirms it is not currently contemplating the implementation of such a combination through a structure that would be classified as a reverse takeover under the Listing Rules of the UK Listing Authority and intends that any combination, if agreed, would be effected through a new holding company.'

4.39. The full transaction announcement was issued at 10:09am, following which the suspension was lifted. The summary at the start of the announcement contained the following statement:

"*The transaction will be effected through the acquisition of both Prudential (by way of a scheme of arrangement, "the scheme") and AIA by a new company (New Prudential).*"

4.40. Press and investor reaction to the announcement was mixed, and included speculation as to whether Prudential would achieve the 75% shareholder approval threshold required for the Newco structure. Concerns within Prudential around the likelihood of achieving that threshold strengthened its desire to revert to a reverse takeover structure, which would have necessitated only 50% shareholder approval.

Regulatory impact and the end of the transaction

4.41. Prudential's preferred structure for the transaction was a direct acquisition of AIA by Prudential. However, due to the size of AIA this would have been categorised as a reverse takeover (see Appendix for provisions relating to the categorisation of transactions as reverse takeover). In those circumstances, the UKLA will often consider a suspension to be appropriate, pending the publication of sufficient information in the market about the transaction.

4.42. Because of the substantial impact on Prudential and the market that a lengthy suspension would have had, Prudential planned to structure the transaction as a direct acquisition of Prudential and AIA by a Newco. The UKLA retained discretion to require suspension in those circumstances. However, having taken advice, Prudential took the view that the UKLA was likely to allow the announcement of a Newco acquisition transaction without imposing a suspension, while being aware that the UKLA might decide to the contrary.

4.43. After the leak on 27 February 2010, Prudential proposed to the UKLA a direct acquisition as the preferred choice, with a Newco acquisition structure as an alternative if the UKLA were not prepared to allow a direct acquisition without imposing a suspension. The UKLA was therefore obliged to consider whether to:

(1) permit a direct acquisition structure without imposing a suspension; and

(2) suspend Prudential's shares even if a Newco structure was announced.

4.44. If Prudential had informed the UKLA on or before 17 February 2010 (as it should have), at which stage the only option Prudential was considering was a Newco structure, the UKLA would have had considerably more time to make its important decision on whether it should suspend Prudential's shares, which could potentially have had a very large market impact. Prudential is a FTSE 100 company and its shares are therefore widely held. A lengthy suspension could have significantly affected the liquidity of the portfolios of tens of thousands of investors, from individuals to the largest funds. Conversely, allowing the shares to be traded where there was insufficient information in the market about the proposed transaction could have jeopardised the smooth operation of the market for a considerable period.

4.45. Amongst other things, the UKLA had to consider whether there was sufficient financial information on AIA available to the market, and whether Prudential would be able to keep the market informed without delay of any developments concerning AIA's business that the enlarged group would have had to release if it were listed.

4.46. On 1 June 2010, Prudential issued an announcement to the market, noting a prior announcement by AIG to the effect that it would not consider a revision of the terms of the sale of AIA. Prudential's announcement explained that it had proposed revised terms that would have reduced the price of acquiring AIA to $30.375 billion. On 3 June 2010, Prudential announced the termination of its agreement with AIG in respect of the transaction.

5. REGULATORY PROVISIONS AND GUIDANCE

5.1. The regulatory provisions and guidance relevant to this notice are set out in the Appendix.

6. REPRESENTATIONS AND FINDINGS

6.1. Below is a brief summary of the key written and oral representations made by Prudential and how they have been dealt with. In making the decision which gave rise to the obligation to give this notice, the FSA has taken into account all of Prudential's representations, whether or not set out below.

6.2. Prudential denied the allegation that it was in breach of Listing Principle 6. Prudential submitted that the allegation is wrong in law and is not established by reference to the actions of Prudential and the events which occurred. Prudential asserted that the FSA has misunderstood and mis-stated the events which occurred. Prudential also submitted that the proposed penalty is erroneous and wrong in law. Prudential also asserted that the proposed financial penalty is unprecedented and grossly disproportionate.

Prudential's threshold legal objection to the allegation that it breached Listing Principle 6

6.3. Prudential made representations that the allegation it breached Listing Principle 6 is wrong in law.

6.4. Prudential submitted that:

(1) Listing Principle 6 is a statement of obligation of a very broad and general nature which carries with it the threat of regulatory sanction. Therefore, the FSA could and should construe Listing Principle 6 narrowly. The ambit of the obligation imposed by Listing Principle 6 (considered in the light of a lack of FSA guidance) must be assessed with proper regard to the requirements of legal certainty and the legal principle against doubtful penalisation. Any ambiguity in the ambit of Listing Principle 6 must be resolved in favour of Prudential. Further, where FSA guidance provides or suggests that an action does not breach Listing Principle 6, then it would not be consistent with the requirements of legal certainty and the legal principle against doubtful penalisation for the FSA to find a breach. In essence, Prudential must be able to reasonably predict, at the time of the act or omission concerned, whether its conduct would breach the relevant regulatory principle(s)/obligation(s) under Listing Principle 6. That is, there must be violation of a clear, foreseeable and unambiguous application of Listing Principle 6 by Prudential. The FSA's formulation of Listing Principle 6 violates the requirements of legal certainty and wrongly seeks to turn Listing Principle 6 into a freestanding disclosure obligation. Although Listing Principle 6 contains wording in relation to the importance of dealing with the UKLA in an open and co-operative manner which is similar to the wording used in Principle 11, there is a fundamental distinction. Unlike Principle 11, Listing Principle 6 contains no positive duty of disclosure. It provides that "[a] listed company must deal with the FSA in an open and co-

operative manner”. This wording is similar to the first part of Principle 11 but, unlike Principle 11, Listing Principle 6 contains no equivalent to the words “and must disclose appropriately anything relating to the firm of which the FSA would reasonably expect notice”. This is an important distinction and not only does the express wording in Principle 11 indicate the limited ambit of Listing Principle 6 but it is also reflected in the fact that there is no guidance as to the specific matters which must be disclosed to the UKLA pursuant to Listing Principle 6. The FSA wrongly seeks to turn Listing Principle 6 into a freestanding disclosure obligation.

(2) Listing Rule 8 demonstrates that the FSA’s formulation of Prudential’s obligations under Listing Principle 6 is wrong. Listing Rule 8 (which applies to sponsors), provides (at LR8.3.5R) that “[a] Sponsor must at all times … deal with the FSA in an open and co-operative way”. Prudential asserted that it is plain that this provision imposes no positive duty of disclosure as the FSA has considered it appropriate to impose such a duty through an express and separate provision – LR8.3.5AR - which provides “[a] Sponsor must in relation to a sponsor service disclose to the FSA in a timely manner any material information relating to the Sponsor or a listed company or applicant of which it has knowledge which concerns non-compliance with the listing rules or disclosure rules or transparency rules”. Prudential contended that this provision is entirely inconsistent with the suggestion that any positive duty of disclosure is incorporated within the general “open and co-operative” wording contained in Listing Principle 6. Prudential also asserted that it is highly significant that none of its sponsors, retained to advise it in relation to the potential transaction, felt it necessary to report any non-compliance with Listing Principle 6 – which is itself a Listing Rule, LR7.2.1R – to the UKLA.

(3) the FSA’s reliance on LR 1.2.5G is misconceived. LR 1.2.5G is not a rule, and does not relate to Listing Principle 6 but merely offers general guidance as to consulting the UKLA (when otherwise required under the rules) “at the earliest possible stage” if, *inter alia*, there is doubt about how the Listing Rules apply in a particular situation. Prudential asserted that LR 1.2.5G also does not provide any self-standing obligation to approach or notify the UKLA.

(4) at the time the Listing Principles were introduced the FSA represented in unqualified terms, in consultation paper CP04/16 (and also in a speech by Hector Sants, made around the same time as CP04/16 was published) that, given the detailed Listing Rules which existed and set out specific and defined obligations, disciplinary action that relied solely upon the Listing Principles would only be “available … against a minority of issuers who deliberately circumvent the rules”. Prudential asserted that the assurance has never been withdrawn and (in this instance) the FSA has accepted that Prudential’s alleged breach of Listing Principle 6 was neither reckless nor

deliberate/intentional. It would therefore be improper, as ignoring applicable FSA policy and as an abuse of power, for the FSA to find that Prudential breached Listing Principle 6 in the circumstances of this case.

6.5. The FSA has found that:

(1) Listing Principle 6 does not offend against the requirement of legal certainty or the legal principle against doubtful penalisation. The requirement to be "open and co-operative" pursuant to Listing Principle 6 is clear and unambiguous albeit necessarily broad in nature. This is because Listing Principle 6 is a fundamental obligation applicable to all issuers and covers all of their dealings with the UKLA. Guidance as to specific matters which must be disclosed to the UKLA pursuant to Listing Principle 6 would only serve to restrict its necessarily broad ambit. As part of the obligation to deal with the UKLA in an open and co-operative manner, such communication must include within its scope full and timely disclosure. However, the FSA notes that LR 1.2.5G does offer general guidance to issuers (such as Prudential) as to consulting the UKLA "at the earliest possible stage" if there is doubt as to how a Listing Rule (such as Listing Principle 6 – which is a Listing Rule, LR7.2.1R) applies in a particular situation (such as Prudential's proposed acquisition of AIA). The FSA does not accept Prudential's contention that the ambit of Listing Principle 6 is (and/or should be) limited in light of the distinction that can arguably be drawn between the words in Principle 11 and the words in Listing Principle 6. The FSA considers that the additional words in Principle 11 are relevant in the context of the ongoing dialogue and continuous contact between the FSA and authorised firms. The broader wording used in Listing Principle 6 is necessary because the UKLA does not supervise listed companies. Therefore, it does not have the ongoing dialogue with and information about a company that the FSA would for an authorised firm which was subject to close and continuous supervision.

(2) it does not accept that the express and separate provision under Listing Rule 8 – LR8.3.5AR - is inconsistent with the suggestion that any positive duty of disclosure is incorporated within the general "open and co-operative" wording contained in LR8.3.5R (and therefore by implication Listing Principle 6). The FSA notes that LR8.3.5AR is not a general disclosure obligation on sponsors. Instead it relates to a specific situation (i.e. a sponsor's obligation to notify the FSA of a breach of the rules by an issuer). Therefore the FSA has found that the ambit of LR8.3.5R (the requirement that a sponsor be "open and co-operative" with the UKLA) is not limited in light of LR8.3.5AR (contrary to Prudential's submission). The FSA has found that LR8.3.5R extends to communications with the FSA generally, albeit in a very specific situation (relating to regulatory breaches by an issuer) there is a specific provision requiring specific disclosure. The FSA notes Prudential's assertion that it is highly significant that none of the

Sponsors retained to advise it in relation to the potential transaction felt it necessary to report any non-compliance with Listing Principle 6 – which is itself a Listing Rule, LR7.2.1R – to the UKLA but does not consider that it alters the FSA's foregoing findings.

(3) it accepts Prudential's representations that LR 1.2.5G is not a rule, and does not relate to Listing Principle 6 but offers general guidance as to consulting the UKLA (when otherwise required under the rules) "at the earliest possible stage" if, *inter alia*, there is doubt about how the Listing Rules apply in a particular situation. However, the FSA rejects Prudential's submission that the FSA's reliance on LR 1.2.5G is misconceived. The FSA notes that although LR 1.2.5G does not provide any self-standing obligation to approach or notify the UKLA, it does offer general guidance to issuers (such as Prudential) as to consulting the UKLA "at the earliest possible stage" if there is doubt as to how a Listing Rule (such as Listing Principle 6 – which is a Listing Rule, LR7.2.1R) applies in a particular situation (such as Prudential's proposed acquisition of AIA). The FSA considers that given Prudential's uncertainty as to the ambit of the obligation requiring it to be "open and co-operative" with the UKLA in the particular situation of its contemplated acquisition of AIA, it could (and should) have been guided by LR 1.2.5G and consulted the UKLA "at the earliest possible stage" as to the application of Listing Principle 6.

(4) it does not accept that the FSA represented in unqualified terms, in consultation paper CP04/16 (and also in a speech by Hector Sants, made around the same time as CP04/16 was published) that disciplinary action that relied solely upon the Listing Principles would only be "available … against a minority of issuers who deliberately circumvent the rules". The FSA notes that the relevant part of CP04/16 states that "[i]n enforcing the Listing Principles, [the FSA] will need to demonstrate that an issuer has been at fault. [The FSA] will exercise such enforcement powers reasonably and on a proportionate basis. Most disciplinary cases are likely to be based on breaches of particular rules. However, the Listing Principles will be available to use against a minority of issuers who deliberately circumvent the rules". The FSA does not consider this to be an unqualified assurance that the Listing Principles would *only* (emphasis added) be used against those who deliberately circumvent the rules. Further, the FSA considers that nothing in CP04/16 (which was a consultation paper aimed at eliciting the views of market participants) overrides or otherwise circumscribes the formal guidance provisions of DEPP and EG in which the FSA's policy is clearly stated. In essence, the FSA's formal guidance clearly states that the FSA is prepared to take disciplinary action on the basis of the Listing Principles alone, taking account of the standard of conduct required by the Listing Principle in question. For the foregoing reasons, the FSA rejects

Prudential representations that it would be improper for the FSA to find that Prudential breached Listing Principle 6 in the circumstances of this case.

No breach of Listing Principle 6 by Prudential, even if Prudential's threshold legal objection is not accepted

6.6. In the alternative (and without prejudice to Prudential's primary submissions above), Prudential made representations that the correct approach to Listing Principle 6 involves consideration of when it should have been apparent to Prudential that disclosure of the transaction to the UKLA was reasonably necessary for the UKLA to properly discharge a regulatory function. Such an analysis necessarily involves issues of fact. Accordingly, in making its alternative argument Prudential also made representations as to what it asserted is the correct factual matrix against which its regulatory obligations under Listing Principle 6 should be considered. That is, Prudential asserted that the allegation that it was in breach of Listing Principle 6 was also wrong on the facts.

6.7. Prudential submitted that:

(1) if the obligation regarding disclosure to the UKLA under Listing Principle 6 is not limited in the circumstances of this case by the distinctive nature of the obligation itself (particularly when compared to PAC's obligation to approach the FSA under Principle 11 as set out in Prudential's primary submissions), the proper approach to Listing Principle 6 is that notification can only be required in respect of that which the UKLA can "reasonably expect notice". Having regard to the requirements of legal certainty and the legal principle against doubtful penalisation, the UKLA can only "reasonably expect notice" if: (a) it has made it clear by way of guidance in the FSA Handbook that notification of an event is required at a particular time; or (b) it is otherwise clear to the firm that such notification is required: in other words, if it should have been clearly apparent to the firm that the information was reasonably necessary at a specified point in time for the UKLA properly to discharge a regulatory function. In the absence of any clear guidance mandating notification at a particular point, the FSA must establish a clear reasonable necessity for notification for regulatory purposes. Prudential contended that there can have been no possible reasonable necessity in advance of a stage before the transaction was highly likely. Until that stage there was no conceivable regulatory function (as opposed to, at most, some administratively desirable pre-planning) which could or should have been undertaken by the UKLA and therefore Prudential is not at fault. It is necessary for the FSA to show "fault" on the part of Prudential (DEPP 6.2.17 and DEPP 6.2.18 indicate that disciplinary cases brought on the basis of the Listing Principles alone would require not just "fault" but "a clear contravention") and because the allegations against Prudential are that it neither deliberately nor recklessly breached Listing Principle 6, the FSA must necessarily establish that Prudential's conduct

was at least negligent. The FSA has accepted that, far from its case involving an allegation of a "clear contravention" it is, at the lowest, arguable that Listing Principle 6 requires that the firm must be aware that it is not dealing openly and/or co-operatively with the FSA – a factual situation which the FSA has accepted does not arise in this case.

(2) the FSA's reliance on an unqualified duty of notification by 17 February 2010 (at the latest) under Listing Principle 6 is not coherent. The correct approach to Listing Principle 6 involves consideration of when it should have been clearly apparent to Prudential that it was reasonably necessary for the UKLA to be asked to express a view on the application of the Listing Rules to the potential transaction (for the reasons set out at 6.2(1) above). Prudential's approach, based on the likelihood of the transaction, should be preferred. Any intelligible test must incorporate reference to likelihood. There is no basis for a finding that a "highly unlikely" transaction must be notified to the FSA. Prudential did not dispute that the fact it was entering into a substantial transaction involving AIA would be information which the UKLA would "reasonably expect notice of". Prudential contended that the issue is at what stage (if any) prior to the point where the transaction was sufficiently advanced was Prudential required to approach the UKLA for its view on how the Listing Rules would apply (in order to comply with its obligation to be "open and co-operative"). This analysis involves issues of fact. On the facts, there is no credible reason why Prudential should have assessed the prospects of the proposed transaction as being more than possible – let alone likely – until the FSA was in fact approached following the leak. At which point the UKLA had to decide whether the proposed structure of the transaction required a suspension of Prudential's shares. Prudential contended that this was a relatively uncontroversial decision which could be taken in a matter of a few hours (as it was in this case). The FSA's case to the contrary rests on a number of misconceptions as to the true factual position (including an incorrect understanding of decisions taken by Prudential's Board) and a failure to recognise the significance of other matters, including:

(a) a misunderstanding of the likelihood of the transaction and the resultant failure to give proper weight to the fact that an IPO was the established and favoured mechanism for disposing of AIA until a very late stage. It was not until the morning of 28 February 2010 that Prudential learned that AIG had ultimately decided to end the IPO process. The FSA fails to take account of the IPO's primacy, until a very late stage, in the minds of AIG, AIA and (as an observer) Prudential. A high likelihood for the IPO process meant a low likelihood of the transaction proceeding for Prudential.

(b) the absence of any advice from its sponsors that disclosure/notification was required for regulatory reasons (as

opposed to transactional reasons). Prudential asserted that there is an important distinction between a regulatory obligation and a self-interested decision to approach the regulator at an early stage for transactional management reasons which the FSA has failed to recognise. Prudential understood that in not approaching the UKLA earlier than it did, it was at all times acting in accordance with its regulatory obligations and the views of its sponsors. Prudential's sponsors had concurrent and identical obligations to approach the UKLA; none of them did so.

(c) Prudential's consistent intention for the transaction to be announced on 09 March 2010, rather than the 02 March 2010 date which the FSA relies on to assert late notification. Prudential asserted that there can be no legitimate criticism of delay in notification between the first occasion on which the possibility of the leak arose (on 26 February 2010) and the approach to the FSA (on 27 February 2010), the next day.

(d) the FSA's distinct lack of concern that it had not been informed of the offer which Prudential had made to acquire AIA in 2009. This is an important factor in considering the reasonableness of Prudential's approach to its regulatory obligations. An equally important factor is that the FSA did not request that Prudential inform it at an earlier stage if such matters were in contemplation in the future.

(e) the perceived risk of a transaction leak emanating from the FSA is irrelevant to the issue of whether Prudential properly complied with its obligations or not. Prudential asserts that it did not allow the perceived risk of a transaction leak emanating from the FSA to affect its judgment as to when regulatory obligation required an approach to the UKLA. It was always understood not to be a relevant factor in that decision. It was only relevant to whether Prudential should make an earlier approach than was required.

(3) at all material times, Prudential honestly held the view that it was not required to approach the UKLA prior to the time that it did so. Until a very late stage before the announcement of the transaction on 01 March 2010, Prudential considered that it was highly uncertain whether the transaction would go ahead, both because of substantial doubts as to whether AIG would agree to sell and substantial doubts as to whether Prudential would wish to purchase at a price acceptable to AIG, given the lack (until a late stage) of key financial data.

6.8. The FSA has found that:

(1) its approach to the obligations contained in Listing Principle 6 is based on the clear and unambiguous words of Listing Principle 6 itself. Therefore, the FSA does not accept Prudential's submission that in the absence of any clear guidance mandating notification at a particular point, the FSA must establish a clear reasonable necessity for notification for regulatory purposes. Such a restrictive approach to Listing Principle 6 is both unnecessary and incorrect (for the reasons already provided at 6.5(1) above). Further, the broader wording used in Listing Principle 6 is necessary because the UKLA does not supervise listed companies. Therefore, it does not have the ongoing dialogue and information about those companies that the FSA would for an authorised firm which was subject to close and continuous supervision. The UKLA relies on its ability to trust listed companies to be open and co-operative with it, and to engage with it in a timely fashion - including through the provision of full and timely disclosure. Timely disclosure is essential since a listed company cannot know exactly how and within what timescales the UKLA will deal with any issue or what steps it may take in response to being informed, which may include requests for further information from the firm or elsewhere. DEPP 6.2.17G provides that "[i]n determining whether a Listing Principle has been broken, it is necessary to look to the standard of conduct required by the Listing Principle in question. Under each of the Listing Principles, the onus will be on the FSA to show that a listed company has been at fault in some way. This requirement will differ depending upon the Listing Principle". In this instance, Prudential can (and should) only be liable for breaching Listing Principle 6 in circumstances where Prudential should have appreciated or did appreciate that timely disclosure to the UKLA was required as part of its obligation to be "open and co-operative" (i.e. where Prudential is "at fault"). Prudential was aware that timely disclosure of the transaction was required as part of its obligation to deal "openly and co-operatively" with the UKLA. However, Prudential's high sensitivity to the possibility of a leak materially influenced its judgment about when to inform the UKLA about the transaction. Accordingly, although the FSA accepts that Prudential neither deliberately nor recklessly breached Listing Principle 6, it considers that Prudential's conduct fell below that required by Listing Principle 6 in its failure to inform the UKLA about the transaction by 17 February 2010.

(2) it does not accept Prudential's submissions that the FSA's approach to the obligation created by Listing Principle 6 is not coherent (for the reasons set out herein). The FSA's approach to Listing Principle 6 is consistent with the fact that the UKLA does not supervise listed companies and so it does not have the ongoing dialogue with and information about a company that the FSA would have for an authorised firm which was subject to close and continuous supervision. However, even on Prudential's approach to the obligation created by Listing Principle 6 (based on the likelihood of the

transaction), the FSA considers that it was understood by Prudential that it would be "reasonably necessary" to inform the UKLA about the proposed transaction following the change in leak strategy (as at 17 February 2010), because following this change the UKLA would potentially be required to make an immediate and real-time decision on suspension in the event of a leak. The FSA considers that the likelihood of the transaction is simply one consideration when a listed company is considering its obligation to be "open and co-operative" under Listing Principle 6. The other equally important consideration is the impact of the transaction on the markets. Prudential should have informed the UKLA on 17 February 2010 (at the latest) to allow the UKLA more time to make decisions which could potentially have had a very large market impact. In relation to Prudential's assertions as to the "true" factual position and the FSA's alleged failure to recognise the significance of other matters, the FSA has found that it:

(a) has not misunderstood the likelihood of the transaction on the facts or failed to give proper weight to the fact that an IPO was the established and favoured mechanism for disposing of AIA. As already noted, the likelihood of the transaction is simply one consideration when a listed company is considering its obligation to be "open and co-operative" under Listing Principle 6. The other equally important consideration is the impact of the transaction on the markets. When Prudential's obligations under Listing Principle 6 are considered in this light, it is clear (by way of example only), that it would have been open and co-operative, and the UKLA could reasonably have expected, to be notified of the transaction following the change in leak strategy (as at 17 February 2010), because following this change the UKLA would potentially be required to make an immediate and real-time decision on suspension in the event of a leak.

(b) accepts that Prudential's sponsors did not advise it that disclosure was "required for regulatory reasons". However, the FSA has found that on 01 February 2010, Credit Suisse advised Prudential of the need for Prudential to inform the UKLA of the proposed transaction well in advance of its execution. Credit Suisse repeatedly advised Prudential to make early contact with the UKLA, such advice being reflected in timetables repeatedly prepared and provided to Prudential in the weeks leading up to the announcement of the transaction. Further, the FSA considers that it is not acceptable for an issuer to ignore its sponsor's advice to approach the UKLA, irrespective of whether the sponsor explicitly states that the issuer will be in breach of its regulatory obligations. Notwithstanding the foregoing, the FSA finds that Prudential itself was aware at the time

that it should approach the UKLA when its leak strategy changed, but did not.

(c) does not accept that it has failed to recognise the significance of/downplayed Prudential's asserted consistent intention for the transaction to be announced on 09 March 2010. As already noted, the FSA has found that Prudential was aware at the time that it should approach the UKLA when its leak strategy changed, but did not. Accordingly, the FSA's case is not that the transaction was "highly likely" as characterised by Prudential, nor that that is the appropriate test. Rather, the FSA's case is that by 17 February 2010, when Prudential's leak strategy changed, the transaction had reached a stage, in all of the circumstances, whereby Prudential acting "openly and co-operatively" in its dealings with the UKLA (in the language of Listing Principle 6) would have notified the UKLA of it. Prudential's asserted subjective intention for the transaction to be announced on 09 March 2010 is irrelevant for the purposes of the approach set out in the clear and unambiguous language of Listing Principle 6. In the circumstances, it is unnecessary for the FSA to consider whether or not there was a delay in notification between the first occasion on which the possibility of the leak arose (on 26 February 2010) and the approach to the FSA (on 27 February 2010), the next day.

(d) was not aware of the details regarding Prudential's actions to acquire AIA in February 2009 until late in 2011. At the time of the events, neither Prudential nor AIG made any announcements about an offer, or the fact that they were or had been in discussions. The details of the attempted earlier acquisition were raised for the first time in December 2011 as part of Prudential's response to the preliminary investigation report. Further, at the time of the events in 2009, Prudential informed the FSA that it had made no bid for AIA (when in fact a bid was made – a fact which Prudential has now sought to rely on). As a result, the FSA does not accept Prudential's assertion that its acts or omissions in relation to its regulatory obligations in the circumstances of this case were reasonable by reference to its previous attempt to acquire AIA in 2009.

(e) Prudential has acknowledged in its submissions that the perceived risk of a transaction leak emanating from the FSA " … was relevant to whether Prudential should make an earlier approach than was required". The FSA considers that Prudential's acknowledgement supports its finding that the perceived leak risk materially influenced Prudential's judgment about when to inform the UKLA about the transaction pursuant to Listing Principle 6. As already set out above, Listing Principle 6 requires listed companies to be "open and co-

operative" in their dealings with the UKLA. This is because Listing Principle 6 is a fundamental obligation applicable to all issuers and covers all of their dealings with the UKLA. The need for early communication is understandable and necessary since an issuer cannot know exactly how or within what timescale the UKLA will deal with any issue, or what steps it may take in response to being notified. Such early communication is especially important if the subject matter to be raised with the UKLA is a transaction of very significant size with potential wide impact. Prudential was cognisant, or should reasonably have been aware, that it would assist the UKLA to be contacted earlier but wrongly convinced itself not to. Accordingly, the FSA considers that the perceived risk of a transaction leak emanating from the FSA was relevant to the issue of whether Prudential properly complied with its obligations or not.

(3) notwithstanding Prudential's representation that at all material times it honestly held the view that it was not required to approach the UKLA prior to the time that it did so, Prudential's conduct fell below that required by Listing Principle 6. This is because Prudential's sensitivity to the possibility of a leak materially influenced its judgment about when to inform the UKLA.

Standard of proof

6.9. Prudential made representations as to the applicable standard of proof. Prudential submitted that in light of the penal nature of the matter, and the very significant financial, reputational and personal consequences of a finding of a breach, the FSA should apply the criminal standard of proof in these circumstances. In support of this submission, Prudential asserted that:

(1) the House of Lords has stated that the "sliding scale" civil standard of proof previously applied by the Financial Services and Markets Tribunal is not part of English law and that, where the consequences of the proceedings are serious, notwithstanding the proceedings are civil, the particular issue involved made it appropriate to apply the criminal standard; and

(2) the Privy Council has made it clear that the criminal standard of proof is the correct standard of proof to be applied in all disciplinary proceedings concerning the legal profession (and it is hard to see any principled reason why the position should be different in relation to financial services).

6.10. The FSA has found that the FSA's administrative decision making process is not subject to the criminal standard of proof. The FSA has made its decision having regard to the following:

(1) the FSA, in accordance with section 91 of the Act, may impose a penalty if it considers that Prudential has contravened a requirement imposed on it by or under the Act; and

(2) the Tribunal, in regulatory cases, applies the civil standard of proof i.e. the balance of probabilities (is it 'more likely than not' that what is alleged actually occurred?).

Sanction

6.11. Prudential made representations that the financial penalty is premised on a basis which is misconceived and wrong in law. Further (and in any event), Prudential asserted that the financial penalty is unprecedented and grossly disproportionate. Prudential also contended that the FSA should have regard to the totality of the financial penalty to be levied upon the Prudential Group in assessing fairness and proportionality.

6.12. Prudential submitted that:

(1) the proposed financial penalty is flawed as a matter of law, since its size is principally justified by a need to deter behaviour which is not alleged against Prudential. That is, Prudential asserted that the FSA's primary basis for imposing the financial penalty is to deter other firms from deliberately refraining to contact the UKLA. However, the FSA does not allege, and never has alleged, that Prudential acted deliberately or recklessly in breaching Listing Principle 6. Prudential submitted that it cannot lawfully be fined a "very substantial" amount on the basis that it is necessary to deter firms other than itself from committing a different and far more serious type of breach than has ever been alleged against it. The FSA's own guidance emphasises deterrence is only a legitimate objective in respect of "similar breaches". However, the conduct which the FSA seeks to deter is not remotely similar to the misconduct alleged against Prudential. Accordingly, the FSA's primary justification for the scale of fine imposed is misconceived and unlawful.

(2) the alleged breach by Prudential did not have any actual effect on markets, nor did it result in a serious risk of substantial market disruption. Even on the facts of the alleged breach, the time which was available to the UKLA was not such as to create any risk of market disruption caused by a wrong or "sub-optimal" regulatory decision. Prudential also asserted that the timing of its approach to the regulator had nothing to do with the postponement of the rights issue prospectus.

(3) the proposed financial penalty is inconsistent with the FSA's acceptance that Prudential did not act deliberately or recklessly in breaching Listing Principle 6 and is therefore unfair. That is, the proposed financial penalty is

disproportionate for what is (even on the FSA's "best case") a non-reckless breach over a relatively short time period. Further, Prudential asserted that that it was at no time advised by its sponsors that it would be in breach of a regulatory obligation if it did not approach the UKLA.

(4) reasonable people have taken and do take different views as to the ambit of the relevant vague and general regulatory obligation in circumstances where there are no relevant enforcement/disciplinary precedents. If Prudential breached Listing Principle 6 (which is denied), then this is a novel breach and the nature of the obligation breached cannot be said to be so clear that the proposed financial penalty is justified. If it had been clear then Prudential's sponsors could not have refrained from advising that Prudential risked breaching that obligation. There are also no previous relevant FSA decisions with which to compare this case. If the FSA finds Prudential breached Listing Principle 6 in these circumstances, it would represent the demarcation of a regulatory obligation which was never made clear to Prudential or other firms before it was allegedly breached. It would be unfair and disproportionate to impose a substantial financial penalty in these circumstances.

(5) the FSA should have regard to the totality of the financial penalty to be imposed on the Prudential Group in assessing whether it is fair and proportional to the alleged misconduct because whilst Prudential and PAC are separate entities and their alleged breaches are of different regulatory obligations, there is a very considerable measure of common conduct. This is particularly important because the proposed total financial penalty to be imposed on the Prudential Group is unprecedented and implies that the present case is one of the most serious breaches of regulatory obligations ever dealt with by the FSA. That is unjustifiable on the facts. Prudential also contended that it should not receive a large financial penalty simply because the Prudential Group is large. The FSA's assessment of the financial penalty as a proportion of market capitalisation does not do justice to the complexity of the facts of an individual case.

6.13. The FSA has found that:

(1) it accepts Prudential's submission that the main purpose for which the FSA has imposed the financial penalty in this case is deterrence. However, it does not accept that the imposition of the financial penalty is based on a desire to deter other firms from doing something which Prudential did not do. The FSA notes that he imposition of the financial penalty is intended "to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business". Deterrence is a particularly significant factor in this case, given the

fundamental importance to the regulatory system of listed companies being "open and co-operative" and engaging in timely and proactive communication with the UKLA. It is essential for the FSA to impose a punishment which is seen as a credible deterrent to firms of Prudential's size and financial position. The FSA accepts that Prudential's conduct was not "deliberate", in the sense that it did not knowingly breach its regulatory obligations. However, the FSA considers that Prudential failed to give due weight to the importance of complying with its regulatory obligations under Listing Principle 6, and allowed inappropriate considerations around leak risk to materially affect its judgment. The size of regulatory fines is relevant to the weight firms put on compliance with their regulatory obligations. Accordingly (and contrary to Prudential's assertions), the deterrence aspect of the financial penalty to be imposed on Prudential is based on the need to deter (i) Prudential from failing to deal openly and co-operatively with the UKLA in the future; and (ii) other firms who might fail to deal openly and co-operatively with the UKLA, albeit not deliberately.. This is in accordance with the guidance in DEPP 6.1.2 and therefore the FSA considers that its justification for the scale of fine imposed is entirely appropriate and lawful.

(2) it accepts Prudential's submission that its conduct did not have any actual effect on markets in this instance. However, it does not accept Prudential's assertion that its conduct did not result in a serious risk of substantial market disruption. The FSA considers that the lateness of the notification created a significant risk that the wrong regulatory decisions could have been made, due to a lack of proper information and/or time to properly consider it. Whilst the UKLA considers that the correct decisions were made in the time available in this instance, the FSA notes that it is not for a firm or issuer to determine how much time the UKLA would require in addressing any concerns it may have.

(3) the financial penalty is not inconsistent with its acceptance that Prudential did not act deliberately or recklessly in breaching Listing Principle 6. Whilst the FSA accepts that Prudential has committed a non-reckless breach over a relatively short time period, the FSA considers that had Prudential acted recklessly or deliberately in breaching Listing Principle 6, a larger financial penalty would have been imposed. Although the FSA accepts that Prudential was not explicitly advised by its sponsors that a failure to inform the UKLA of the proposed transaction well before it had been leaked to the media would amount to a breach of a regulatory obligation, Prudential was nonetheless advised to inform the UKLA about the proposed transaction in advance of the leak but declined to take that advice.

(4) Prudential breached Listing Principle 6 (for the reasons provided herein), and contrary to Prudential's assertion, the FSA considers the nature of the obligation breached to be clear and unambiguous - the financial penalty is

therefore justified. The FSA notes that whilst Prudential may not have been explicitly advised that the need to inform the UKLA was a "regulatory requirement", it was advised to inform the UKLA by its sponsor acting in its capacity as Prudential's adviser but Prudential declined to follow that advice. The FSA accepts Prudential's submission that there are no previous relevant FSA decisions with which to compare this case. However, the FSA has properly considered its policies regarding the imposition of financial penalties and past FSA decisions, to the limited extent that they offer assistance. Accordingly, the FSA considers the financial penalty to be both fair and proportionate in all the circumstances of this case.

(5) it had proper regard to the totality of the financial penalty to be imposed on the Prudential Group in assessing whether Prudential's financial penalty is fair and proportional to Prudential's misconduct. The FSA accepts that whilst Prudential and PAC are separate entities and their breaches are of different regulatory obligations, there is a very considerable measure of common conduct. However, the FSA does not accept Prudential's assertion that the proposed total financial penalty to be imposed on the Prudential Group is unprecedented and implies that the present case is one of the most serious breaches of regulatory obligations ever dealt with by the FSA. The FSA considers that a number of factors other than the innate seriousness of the breach are reflected in the financial penalty (as set out in DEPP 6.5). - in particular, the size and impact of the transaction. Further, the FSA considers that the size and financial resources of the Prudential Group is highly relevant to deterrence (which is the principal purpose for the imposition of the financial penalty in this case). If the level of financial penalty bore no relationship to the size and financial resources of the firm, it is unlikely that the required deterrent effect would be achieved and the penalty risks being inconsequential. It is essential for the FSA to impose a punishment which is seen as a credible deterrent to firms of Prudential's size and financial position.

6.14. For the foregoing reasons, the FSA considers that the financial penalty to be imposed on Prudential and on the Prudential Group as a whole is appropriate and proportionate. It properly takes into account the facts and matters (as set out herein), the relevant FSA policies and past cases, to the limited extent that they offer assistance. Accordingly, the FSA rejects Prudential's submission that the financial penalty is unlawful.

7. THIRD PARTY

7.1. Below is a brief summary of the key written representations made by Credit Suisse (as third party) and how they have been dealt with. In making the decision which gave rise to the obligation to give this notice, the FSA has taken into account all of Credit Suisse's representations, whether or not explicitly set out below.

7.2. Credit Suisse made representations that it was inaccurate for it to be described as "lead sponsor". Although it initially acted as the sole sponsor to the proposed transaction, from 20 February 2010 it was communicating the collective advice of all the sponsors. Further, the concept of "lead sponsor" is not referred to in the Listing Rules.

7.3. The FSA has found that whilst it accepts Credit Suisse's submission that the concept of "lead sponsor" is not referred to in the Listing Rules, that is not a reason for this notice not to reflect the factual reality that: (1) between 31 January 2010 and 20 February 2010, Credit Suisse was the sole sponsor; and (2) from 20 February 2010, it was taking the lead as between the sponsors in communicating advice to Prudential (i.e. Credit Suisse continued to act as the primary interface with the client).

8. FAILINGS

8.1. The FSA considers that between 17 February 2010 and 27 February 2010, Prudential failed to deal with the UKLA in an open and co-operative manner, in breach of Listing Principle 6.

8.2. As at 1 February 2010, one month in advance of the execution of the SPA, Prudential recognised that it would be necessary to approach the UKLA by, at the latest, the point at which it was prepared to publicly acknowledge, in the event of a leak, that discussions were taking place with AIG. That stage was reached at a Prudential Board meeting on 17 February 2010, when Prudential moved to a position whereby it intended to confirm discussions should a leak occur. Prudential failed to inform the UKLA of the transaction at any time prior to news of the transaction having leaked to the media on 27 February 2010 despite repeatedly receiving advice that an approach should be made well in advance of the transaction, and in circumstances where that transaction was transformative and raised significant and complex market confidence issues for consideration by the UKLA.

9. SANCTION

9.1. The FSA's policy on the imposition of financial penalties and public censures is set out in DEPP and EG. In determining the financial penalty, the FSA has had regard to this guidance. The FSA considers the following factors to be particularly important.

Deterrence (DEPP 6.5.2G(1))

9.2. Given the circumstances of this case, the FSA considers it necessary to send a clear message to issuers as to the fundamental importance of behaving openly and co-operatively towards the UKLA.

Seriousness and impact of the breach (DEPP 6.5.2(2))

9.3. The FSA considers the breaches in this case to be particularly serious for the following reasons:

(1) Timely and proactive communication with the UKLA is of fundamental importance to the functioning of the regulatory system. It is vital that the regulator be appropriately informed about transactions with potentially significant market and regulatory implications. That importance is heightened in the context of transformative transactions with global implications. The transaction in this case was so significant that it had potentially far-reaching consequences for tens of thousands of investors and for the stability and confidence of the financial system in the UK and abroad.

(2) Prudential had numerous opportunities and was repeatedly advised to inform the UKLA of the transaction, but did not do so. Prudential remained highly concerned about the risk of a leak throughout the transaction, and this sensitivity clearly affected its judgment about when to inform the UKLA. Because of this, Prudential failed to give due weight to the importance of complying with its regulatory obligations. Prudential should not have allowed its fear that the UKLA would leak the transaction to play a material part in its decision making.

(3) As a consequence of the delay in informing the FSA, the UKLA was required to make far-reaching decisions regarding complex issues within a compressed timescale. The FSA is satisfied that appropriate decisions were made. However, Prudential's failure to appropriately inform the UKLA on a timely basis created a significant risk that the wrong regulatory decisions could be made, due to lack of proper information and/or time to properly consider it. This was especially important given the size and significance of the transaction (with its resultant impact) and market concerns around prudential and capital adequacy issues following the financial crisis in 2008.

The extent to which the breach was deliberate or reckless (DEPP 6.5.2(3))

9.4. Prudential formed an intention to delay approaching the UKLA which was based on inappropriate considerations and on an assessment by Prudential of its regulatory obligations which the FSA views as misconceived. However, the FSA accepts that Prudential did consider its obligations in forming its assessment about when to inform the UKLA about the transaction. Although the FSA considers that the circumstances of Prudential's breach are serious, the FSA does not consider that the breach was deliberate or reckless.

The size, financial resources and other circumstances of the firm (DEPP 6.5.2(5))

9.5. In deciding on the level of penalty, the FSA has had regard to the size of the financial resources of Prudential. Prudential is a leading international financial services group which had a market capitalisation at the relevant time of £15.2 billion. Prudential's 2010 results reported net profits of £1,431 million.

The amount of profits accrued or the loss avoided (DEPP 6.5.2(6))

9.6. Prudential has not profited from the breaches.

Conduct following the breach (DEPP 6.5.2(8))

9.7. Prudential was obliged by the FSA under section 166 of the Act to commission a Skilled Person's Report into aspects of its conduct in relation to the transaction. The FSA recognises that Prudential has committed significant resources in this regard.

Disciplinary record and compliance history (DEPP 6.5.2(9))

9.8. Prudential has not been the subject of previous disciplinary action.

Other action taken by the FSA (DEPP 6.5.2(10))

9.9. In determining the level of financial penalty, the FSA has taken into account penalties imposed by the FSA on other authorised persons for similar behaviour. The FSA has also had regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory conduct.

Conclusions

9.10. The FSA considers in all the circumstances that:

(1) the seriousness of the breaches merits a substantial financial penalty; and

(2) a financial penalty of £14 million is appropriate.

10. PROCEDURAL MATTERS

Decision Maker

10.1. The decision which gave rise to the obligation to give this notice was made by the Settlement Decision Makers.

10.2. This Final Notice is given under and in accordance with section 390 of the Act.

Manner of and time for payment

10.3. The financial penalty must be paid in full by Prudential to the FSA by no later than 10 April 2013, 14 days from the date of the Final Notice.

If the financial penalty is not paid

10.4. If all or any of the financial penalty is outstanding on 11 April 2013, the FSA may recover the outstanding amount as a debt owed by Prudential and due to the FSA.

Publicity

10.5. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as it considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish such information if such publication would, in the opinion of the FSA, be unfair to the recipient or prejudicial to the interests of consumers.

FSA contacts

10.6. For more information concerning this matter generally, Prudential should contact Celyn Armstrong (020 7066 2818) or Charles Hastie (020 7066 6836) at the FSA.

Jamie Symington
Head of Department
FSA Enforcement and Financial Crime Division

APPENDIX

RELEVANT LEGISLATION, REGULATORY REQUIREMENTS, GUIDANCE AND COMMENTARY

Legislation

1. The UKLA is the part of the FSA that acts as the competent authority under Part VI of the Financial Services and Markets Act 2000 (“the Act”). Under that Part, it has responsibility for making and maintaining the Listing Rules (“LRs”), the Disclosure and Transparency Rules and the Prospectus Rules.

2. The FSA is authorised pursuant to section 91 of the Act, if it considers that an issuer of listed securities has contravened a requirement imposed by or under the Listing or Disclosure and Transparency rules, to impose on the issuer a penalty in respect of the contravention, of such amount as it considers appropriate. If it considers that a person, who was at the material time a director of the issuer, was knowingly concerned in the contravention, the FSA is also authorised under section 91 of the Act to impose on that person a penalty of such amount as it considers appropriate.

Regulatory requirements and guidance

Rules and Principles

3. Listing Principle 6 provides that:

   “A listed company must deal with the FSA in an open and co-operative manner.”

Power of suspension

4. LR 5.1.1R provides that:

   “The FSA may suspend, with effect from such time as it may determine, the listing of any securities if the smooth operation of the market is, or may be, temporarily jeopardised or it is necessary to protect investors”.

5. Various examples of situations in which the FSA may suspend the listing of securities are set out in LR 5.1.2G, including where it appears to the FSA that:

   “(3) the issuer is unable to assess accurately its financial position and inform the market accordingly; or

(4) there is insufficient information in the market about a proposed transaction; …"

Reverse takeovers

6. LR 10.2.2R (4) defines a reverse takeover as a transaction consisting of an acquisition by a listed company of a business, an unlisted company or assets where any percentage ratio is 100% or more or which would result in a fundamental change in the business or in a change in board or voting control of the listed company.

7. LR 10.6.3G provides that:

"Before a listed company announces a reverse takeover which has been agreed or is in contemplation or where details of the reverse takeover have leaked, a listed company should consider whether a suspension of listing is appropriate. Generally, when a reverse takeover is announced or leaked, because of its significant size there will be insufficient information in the market about the proposed transaction and the company will be unable to assess accurately its financial position and inform the market accordingly. So, suspension will often be appropriate (see LR 5.1.2 G (3) and (4)). But, if the FSA is satisfied that there is sufficient information in the market about the proposed transaction it may agree with the company that a suspension is not required."

Importance of early consultation with UKLA

8. LR 1.2.5 G states that "*an issuer or sponsor should consult with the FSA at the earliest possible stage if it:*

(1) is in doubt about how the listing rules apply in a particular situation; or

(2) considers that it may be necessary for the FSA to dispense with or modify a listing rule."

FSA

FINAL NOTICE

To: **The Prudential Assurance Company Limited**

FRN: **139793**

Address: **Laurence Pountney Hill**
London
EC4R 0HH

Dated: **27 March 2013**

TAKE NOTICE: The FSA of 25 The North Colonnade, Canary Wharf, London E14 5HS has decided to take the following action:

1. ACTION

1.1. For the reasons set out in this notice and pursuant to section 206 of the Act, the FSA hereby imposes a financial penalty of £16 million on The Prudential Assurance Company Limited for failing to deal with the FSA in an open and co-operative manner and for failing to disclose appropriately information of which the FSA would reasonably expect notice in breach of Principle 11 of the FSA's Principles for Businesses (Relations with regulators).

1.2. Following written and oral representations, the FSA issued a decision notice to PAC which notified PAC that it had decided to take the above action. PAC referred the matter to the Tribunal but has withdrawn its reference.

2. REASONS FOR THE ACTION

2.1. On Monday 1 March 2010, Prudential announced its intention to acquire AIA, a wholly owned subsidiary company of AIG. The original consideration proposed was $35.5 billion, including $20 billion cash, to be funded via a rights issue. Given AIA's size, the transaction would have been transformative for Prudential. The proposed rights issue was planned to raise £14.5 billion and would have been the biggest ever in the UK. Subsequently, facing significant doubts about the extent to which it had secured the requisite shareholder support, Prudential sought to renegotiate the terms of the transaction. AIG refused to accept a lower price, and on 3 June 2010 Prudential withdrew from the deal, shortly before its shareholders were due to vote on the proposed rights issue.

2.2. Supervision has supervisory responsibilities for Prudential's UK regulated subsidiaries. In addition, Prudential, though not itself authorised by the FSA, is a controller of FSA-authorised entities and is an Insurance Holding Company for the purposes of supplementary supervision under the IGD. Supervision is responsible under the IGD for undertaking supplementary supervision of PAC, and is also lead global supervisor for the Prudential Group, responsible for coordinating supervisory college activities and information sharing amongst international regulators. Therefore Supervision's role included responsibility for understanding the Group's solvency, risk profile, intra-Group exposures and transactional issues, and liaising with overseas regulators. Where it is necessary to require the Prudential Group to take action, the FSA imposes requirements on PAC.

2.3. If the transaction had proceeded it could have led to a change in corporate controller of PAC, a UK regulated insurance company with £130bn in UK liabilities and 7 million UK customers. As Supervision has supervisory responsibilities for the Prudential Group's UK regulated subsidiaries including PAC (Prudential is not itself authorised by the FSA), PAC was (amongst other things) required to notify the FSA of the proposed change of control and the FSA would have to decide whether to consent, or reject it on regulatory grounds.

2.4. Irrespective of the possible change in control, the proposed transaction involved substantial changes to the financial position, strategy and risk profile of the Prudential Group as a whole, including potential impacts on the UK regulated entities within the group. The transaction's size and scale was of particular regulatory significance when viewed against the background of the financial crisis in late 2008, in which certain major financial institutions had required Government intervention and recapitalisation following similarly transformative transactions. Further, the impact and significance to Prudential, PAC, AIG (which itself had had to obtain financial assistance from the US Treasury and the Federal Reserve Bank of New York during the financial crisis) and AIA meant that the transaction had the potential to impact upon the stability and confidence of the financial system in the UK and abroad. In the circumstances the FSA's

regulatory responsibility was to undertake intensive, detailed and thorough scrutiny of the proposed transaction.

2.5. PAC failed to inform the FSA that Prudential was seeking to acquire AIA from AIG in early 2010, until after the proposed transaction had been leaked to the media on 27 February 2010. Accordingly, PAC breached Principle 11 by failing to deal with the FSA in an open and co-operative way and by failing to disclose appropriately information of which the FSA would reasonably expect notice. In particular, PAC failed to:

(1) discuss with the FSA, at the earliest opportunity (and by 11 February 2010 at the latest) the proposed transaction which could have led to a change in corporate controller of PAC; and

(2) disclose the proposed transaction at the meeting with Supervision on 12 February 2010. The express purpose of that meeting was to discuss the Prudential Group's strategy. At the meeting, the FSA asked detailed questions about Prudential's strategy for growth in the Asian market and its plans for raising equity and debt capital, and PAC discussed the strategy for expansion in Asia at length, but PAC omitted to mention the proposed acquisition.

2.6. The FSA expects to have an open and frank relationship with the firms it supervises. It is essential that firms give due consideration to their regulatory obligations at all times. In particular, timely and proactive communication with the FSA is of fundamental importance to the functioning of the regulatory system.

2.7. PAC's conduct resulted in a significant risk that the wrong regulatory decision would be made and hampered the FSA's ability to assist overseas regulators with their enquiries in relation to the transaction.

3. DEFINITIONS

3.1. The following definitions are used in this notice:

"the Act"	means the Financial Services and Markets Act 2000.
"AIA"	means AIA Group Limited.
"AIG"	means American International Group Incorporated.
"Credit Suisse"	means Credit Suisse Securities (Europe) Limited, who were appointed by Prudential to act as lead Sponsor. This required Credit Suisse to advise Prudential in relation to compliance with the FSA's Listing Rules, including interaction with the UKLA. Credit Suisse was authorised by the FSA to act in that capacity. Credit Suisse had no

	mandate or duty to advise PAC in relation to its obligations as an FSA authorised firm.
"DEPP"	means the FSA's Decision Procedure and Penalties Manual.
"EG"	means the FSA's Enforcement Guide.
"the FSA"	means the Financial Services Authority.
"the IGD"	means the EC Directive on Insurance Groups –98/78/EC.
"IPO"	means Initial Public Offering.
"Newco"	means a newly incorporated holding company.
"PAC"	means The Prudential Assurance Company Limited.
"Principle 11"	means Principle 11 of the FSA's Principles for Businesses (Relations with regulators).
"Prudential"	means Prudential plc, a FTSE 100 UK listed company and one of the UK's largest insurance companies. At the end of February 2010 it had a market capitalisation of £15.2 billion.
"Prudential Group"	means Prudential and the group of companies of which Prudential was the parent company.
"the SPA"	means the Share Purchase Agreement relating to the sale and purchase of all of the issued share capital of AIA Group Limited between AIA Aurora LLC, American International Group Inc, Petrohue (UK) Investments Limited and Prudential agreed on 1 March 2010 including previous drafts.
"Supervision"	means the Insurance Division of the FSA who supervised the Prudential Group through PAC.
"the Tribunal"	means the Upper Tribunal (Tax and Chancery Chamber).
"the UKLA"	means the United Kingdom Listing Authority. The FSA, when acting as the competent authority under Part VI of the Act, is referred to as the UKLA. The UKLA has responsibility for monitoring and enforcing compliance with the UKLA Listing Rules.

"the US Treasury" means the United States Department of the Treasury.

4. FACTS AND MATTERS

Early stages of the transaction

4.1. During 2009, AIG began preparations to dispose of AIA by way of an IPO or third party sale. The disposal was to take place as part of a restructuring programme, intended to enable AIG to repay the US governmental financial assistance it had received during the liquidity crisis of 2008.

4.2. In October 2009, Prudential set up an insider list regarding a possible purchase of AIA, to which Prudential's non-executive directors were added on 5 November 2009.

4.3. In December 2009 the CEO of AIG asked the Chief Executive of Prudential, Mr Cheick Tidjane Thiam, whether Prudential would be interested in putting forward an offer for AIA. Mr Thiam was also the Chairman of PAC and an approved person holding Controlled Function 1 at PAC. This led to formal discussions between AIG and Prudential. In early January 2010, Prudential commenced due diligence and on 12 January 2010 the parties signed a confidentiality agreement.

4.4. On 31 January 2010, the directors of Prudential met to be briefed on the proposed transaction by Credit Suisse. There was a consensus among the directors of Prudential at this meeting that:

(1) a leak was the key risk to the transaction;

(2) the FSA was one of a number of parties which might be the cause of a leak; and

(3) Prudential wished to fulfil their obligations to inform the FSA in such a way that leak risk was kept to a minimum.

4.5. Prudential remained highly sensitive to the possibility of a leak of the proposed transaction during February 2010. This materially influenced its judgment about when to inform the regulator about the proposed transaction.

4.6. On 1 February 2010, Prudential was advised by Credit Suisse of the need to inform UKLA and Supervision of the proposed transaction well in advance of its execution. At that stage, with an announcement timetabled for 15 February 2010, Credit Suisse's advice was to approach the FSA by 3 February 2010. Credit Suisse's advice around early contact with the FSA was reflected in timetables repeatedly prepared and provided to Prudential in the weeks leading up to the announcement of the transaction. Prudential considered that the transaction's prospects at this stage lacked sufficient certainty, such that an approach to the FSA would be premature.

Leak strategy and the decision to approach the FSA

4.7. In early February 2010, Prudential decided that if there were to be a leak it would, in order to protect the share price and avoid any chance of a protracted suspension, abandon the deal and issue a 'no discussions' announcement. Prudential understood that as and when it adopted a 'discussions happening' announcement strategy that would necessitate informing the FSA.

4.8. In this case, the reason why a change in leak strategy from 'no discussions' to 'discussions happening' would necessitate an approach to the FSA was that a willingness to admit and continue discussions in the face of a leak would serve as a strong indicator that Prudential was in serious, advanced discussions which it regarded as likely to come to fruition.

4.9. At a Prudential Board meeting on 3 February 2010, the Prudential Board considered a timetable which identified 17 February 2010 as the date on which the FSA was to be informed of the proposed transaction. Additionally, the minutes of the meeting state the Board's intention that, *"[w]ith an announcement date of 26 February [2010] currently being targeted, a further Board meeting would be scheduled for 17 February [2010]. The intention was that the Board should have sufficient information at that stage to be able to confirm, should a talks announcement be required, its interest in proceeding."*

4.10. The minutes of Prudential's Board meeting of 3 February 2010 suggest that the prospects of a deal between Prudential and AIG had improved markedly by this stage, owing to the fact that, among other reasons, *"[i]t was becoming increasingly clear that the AIA IPO was running into difficulties, which gave Prudential a strong negotiating hand"*.

Development of the transaction

4.11. On 5 February 2010, Mr Thiam and the then Chairman of Prudential held a meeting in London with the CEO of AIG and gave him a letter signed by Mr Thiam that had been approved by the Prudential Board which set out a detailed indicative non-binding proposal. The letter set out, among other things: a preliminary price range of $30-34 billion in the absence of up to date financial information; a proposed debt and equity financing structure; a proposed transaction structure in which Prudential and AIA would be acquired by a Newco; and a proposed timetable according to which the transaction would be announced on 26 February 2010.

4.12. By 8 February 2010, timetables prepared by Credit Suisse and provided to Prudential reflected that the announcement date was now scheduled for 26 February 2010. The approach to the FSA was nevertheless scheduled to take place on 15 February 2010, thereby permitting 11 days' advance notice.

4.13. On 9 February 2010, Mr Thiam and the then Chairman of Prudential travelled to Washington to meet with the US Treasury and AIG. Mr Thiam reported to the Prudential Board on 11 February 2010 that:

(1) the US Treasury, which controlled 80% of AIG's shares, and which the Prudential Board thought would be 'very influential' in the final decision were 'much more supportive' than previously;

(2) the AIG special committee, which was managing the process and which had previously been hostile to the Prudential bid and favoured the IPO, had voted to keep negotiations ongoing. The AIG special committee recognised that a sale to the Prudential would be 'an attractive option' (although it was still supportive of the IPO); and

(3) the Prudential Board meeting initially scheduled for 17 February 2010 was cancelled as progress had been "at a slower pace than initially expected". (The meeting was however reinstated shortly afterwards and did take place.)

4.14. By 12 February 2010, negotiations had progressed sufficiently for Prudential to send a revised indicative non-binding proposal to AIG. A key revision to the proposal was the inclusion of a specific price of $35.5 billion, albeit that the proposal remained subject to a number of caveats, including some relating to the provision of financial information.

4.15. Also on 12 February 2010, Mr Thiam and another director of Prudential and PAC met with Supervision. The meeting was one of a series of regular meetings in the supervisory process, and was the annual meeting focused on allowing Supervision to gain an understanding of the Prudential Group's strategy. The FSA asked detailed questions about Prudential's strategy for growth in the Asian market and its intentions to raise equity and debt capital, but Prudential did not disclose the proposed acquisition of AIA, the potential change in control that was in prospect, or the rights issue and debt issuance that were proposed to fund the acquisition.

4.16. On 15 February 2010 AIG provided a draft of the SPA to Prudential.

4.17. The progress of the transaction was reported to the Prudential Board at a meeting of 17 February 2010 as follows:

(1) the US Treasury had recognised Prudential as a "credible buyer";

(2) AIG's Special Committee had agreed to take Prudential's proposal to the AIG Board;

(3) the AIG Board had asked for the CEO of AIA to be informed of the proposal;

(4) a draft SPA was being negotiated between the parties; and

(5) Prudential's largest shareholder had agreed to be made an insider to the transaction (meaning that it could not trade in Prudential's shares until the transaction had been announced or abandoned). The shareholder had been informed of the details of the transaction and had indicated its support.

Change in leak strategy

4.18. At the same meeting, Mr Thiam reported to the Prudential Board that the CEO of AIG had agreed with Mr Thiam that in the event of a leak, a 'discussions happening' announcement would be issued confirming that the parties were in talks around the transaction. The Prudential Board agreed that the transaction was sufficiently advanced whereby, if necessary, Prudential would confirm that discussions with AIG were ongoing.

Events leading up to the approach to the FSA

4.19. Work around the transaction continued to progress, and Mr Thiam, with the knowledge and approval of the Prudential Board, met with the CEO of AIA on 19 and 21 February 2010. During that period, the CEO of AIG confirmed to Mr Thiam that he favoured Prudential's bid over the IPO. Additionally, AIG imposed on Prudential a deadline of 25 February 2010 for agreement of the SPA.

4.20. On 23 February 2010, Prudential considered a timetable which scheduled an approach to the FSA to take place on 24 February 2010. During the meeting, it was agreed that that approach should be postponed to 26 February 2010, to coincide with the timing of the AIG Board's decision whether to accept Prudential's offer in place of an IPO.

4.21. The Prudential Board met on 24 February 2010. The minutes of the meeting record that, *"…the due diligence work continued with good progress being made and no 'showstoppers' have been identified. Further progress had been made on the SPA"*.

4.22. The timetable which the Prudential Board considered at the meeting on 24 February 2010 scheduled the approach to the FSA to take place on 26 February 2010.

4.23. On 25 February 2010, Mr Thiam sent a letter that had been approved by the Prudential Board to his counterpart at AIG, reconfirming the previous price proposal of $35.5 billion. Mr Thiam also set out the progress that had been made in respect of the transaction, including:

(1) "*Substantial progress towards agreeing an SPA … we are confident that this brings us meaningfully closer to an announceable transaction*";

(2) "*The draft SPA contains only necessary conditions … we believe that these … will be seen as representing a low risk to consummation of the transaction*";

(3) "*We have now been able to consult with our two top shareholders, representing together in excess of 16% of our share register, who have both expressed support for the proposed transaction. Our willingness to approach them should be an indication to you of the seriousness and determination with which we approach this transaction*";

(4) "*With respect to financing … we expect to be able tomorrow to provide you with agreed drafts of the definitive underwriting commitments that will be signed at the time we sign the sale and purchase agreement*."

4.24. A timetable accompanying the correspondence to AIG proposed the execution of the SPA on 1 March 2010, with an announcement of the transaction on 2 March 2010.

4.25. The same timetable was included in a document prepared by Credit Suisse on the morning of 26 February 2010. That document scheduled the approach to the FSA to take place on 1 March 2010. The SPA was timetabled to be signed on the same day, with announcement of the transaction to take place on 2 March 2010.

4.26. During the evening of 26 February 2010, it became apparent to Prudential that a leak of the deal was likely. Notwithstanding this, no approach was made to the FSA.

4.27. On the morning of 27 February 2010, a report of a rumour about the transaction was published in the media. Prudential informed the FSA in the afternoon...

4.28. In the morning of Sunday 28 February 2010 Prudential was informed that the AIG Board had agreed to enter into a transaction with Prudential for the sale of AIA..

The announcement of the transaction

4.29. The SPA had not been signed by the start of trading on 1 March 2010, and a holding announcement was issued at 7:52am. Prudential's shares were temporarily suspended until the SPA was signed and the full transaction announcement was issued.

4.30. The full transaction announcement was issued at 10:09am, following which the suspension was lifted.

Supervisory issues and the end of the transaction

4.31. Numerous supervisory issues arose out of the transaction announced by Prudential, completion of which was conditional on regulatory approval. Those

issues therefore had to be considered over the weeks following the announcement. In particular, Supervision had to consider the size and complexity of the transaction, its transformative nature for group strategy, the solvency and risk profile of the proposed enlarged group, the proposed internal controls, and the geographic scope of the deal (including the legitimate interests of overseas authorities). It was therefore agreed that Prudential would not publish its rights issue prospectus until it had received confirmation that the FSA would not be minded to object to the transfer on supervisory grounds.

4.32. In the event, by 5 May 2010 (the date scheduled for publication of the prospectus), Prudential was unable to satisfy Supervision that the enlarged group would have a sufficiently resilient financial position, including whether it would have a robust regulatory capital position and whether regulatory capital surpluses held in certain jurisdictions could be applied to meet potential capital demands which might arise in other areas of the group. As a consequence, Prudential was unable to publish its prospectus by the scheduled date. The delay contributed to the considerable speculation surrounding the deal. The prospectus was ultimately published on 18 May 2010.

4.33. On 1 June 2010, Prudential issued an announcement to the market, noting a prior announcement by AIG to the effect that it would not consider a revision of the terms of the sale of AIA. Prudential's announcement explained that it had proposed revised terms that would have reduced the price of acquiring AIA to $30.375 billion. On 3 June 2010, Prudential announced the termination of its agreement with AIG in respect of the transaction.

5. REGULATORY PROVISIONS AND GUIDANCE

5.1. The regulatory provisions and guidance relevant to this notice are set out in the Appendix.

6. REPRESENTATIONS AND FINDINGS

6.1. Below is a brief summary of the key written and oral representations made by PAC and how they have been dealt with. In making the decision which gave rise to the obligation to give this notice, the FSA has taken into account all of PAC's representations, whether or not set out below.

6.2. PAC denied the allegation that it was in breach of Principle 11. PAC submitted that the allegation is wrong in law, and in any event not established by reference to the actions of PAC and the events which occurred. PAC asserted that the FSA has misunderstood and mis-stated the events which occurred. PAC also submitted that the proposed penalty is grossly disproportionate and premised on a basis which is on its face erroneous in law.

PAC's threshold legal objection to the allegation that it breached Principle 11

6.3. PAC made representations that the allegation that it breached Principle 11 is wrong in law.

6.4. PAC submitted that:

(1) Principle 11 is a statement of obligations of a very broad and general nature which carries with it the threat of regulatory sanction. Therefore, the FSA could and should construe Principle 11 narrowly. The ambit of the obligation imposed by Principle 11 (considered in the light of relevant FSA guidance) must be assessed with proper regard to the requirements of legal certainty and the legal principle against doubtful penalisation. Any ambiguity in the ambit of Principle 11 must be resolved in favour of PAC. Further, where FSA guidance provides or suggests that an action does not breach Principle 11, then it would not be consistent with the requirements of legal certainty and the legal principle against doubtful penalisation for the FSA to find a breach. In essence, PAC must be able to reasonably predict, at the time of the act or omission concerned, whether its conduct would breach the relevant regulatory principle(s)/obligation(s) under Principle 11. That is, there must be violation of a clear, foreseeable and unambiguous application of Principle 11 by PAC

(2) the FSA's formulation of PAC's obligations under Principle 11: (i) contradicts the relevant FSA guidance in force at the material time; and (ii) seeks to create liability by reference to vague and unpredictable standards (such as the "earliest opportunity") which would make it impossible for a firm to regulate its conduct by reference to its terms. In the circumstances it is simply not open to the FSA to allege that PAC has breached Principle 11. The FSA relies upon specific guidance - SUP 11.4.8G - relating to proposed transactions which will or may lead to a relevant change of control, for which notification to the FSA is required by virtue of Part XII of the Act. SUP 11.4.8G states *inter alia* that "[a] firm should discuss with the FSA, at the earliest opportunity, any prospective changes of which it is aware, ...". SUP 11.4.8G goes on to state that as a minimum, the FSA considers that such discussions should take place before: (i) a formal agreement is concluded; or (ii) the relevant shares or other instruments are purchased. SUP 11.4.8G gives explicit guidance as to the minimum requirements for compliance with Principle 11 in the particular situation of a prospective change of control. SUP 11.4.8G is consistent with the more general guidance applicable to Principle 11 set out at SUP 15.3.9G (which the FSA also seeks to rely on to the extent that it is relevant). SUP 15.3.9G refers to notification to the FSA "at an early stage, before making any internal or external commitments". Accordingly, the requirements of Principle 11 in a change of control situation have been encapsulated in guidance which the FSA has chosen to issue, which sets clear minimum standards for

notification. As a result, it is PAC's contention that the obligation to disclose information to the FSA under Principle 11, as applicable to the facts of this case, is triggered by PAC entering into internal or external commitments. There is no allegation on the facts that PAC failed to comply, or ever intended to act in a way which failed to comply, with this obligation.

6.5. The FSA has found that:

(1) Principle 11 does not offend against the requirement of legal certainty or the legal principle against doubtful penalisation. Principle 11 has two elements: the requirement to deal with the FSA (and other regulators) in an open and co-operative way and the requirement to disclose to the FSA appropriately anything relating to a firm of which the FSA would reasonably expect notice. The requirement to be "open and co-operative" is clear and unambiguous albeit necessarily broad in nature. This is because Principle 11 is a fundamental obligation applicable to all FSA regulated firms and covers all of their dealings with the FSA. The FSA considers that the second element of Principle 11 is relevant in the context of the on-going dialogue and continuous contact between the FSA and authorised firms. That is, if PAC is aware of information of which, objectively, the FSA would reasonably expect notice (in this instance, the substantial/transformative transaction), PAC will breach Principle 11 if it fails to disclose that information appropriately. For the reasons given, the obligation on PAC under Principle 11 is clear and unambiguous and the FSA does not consider it necessary for Principle 11 to be construed narrowly. In all the circumstances, PAC should have appreciated that disclosure of the transaction was required to the FSA. PAC failed to do so appropriately, particularly when considered in light of the size of the transaction as well as its potential regulatory and market impact. Notwithstanding the foregoing, where FSA guidance provides or suggests that an action does not breach Principle 11, the FSA accepts that it would not be consistent with the requirements of legal certainty and the legal principle against doubtful penalisation for the FSA to find a breach.

(2) PAC's obligations under Principle 11: (i) are consistent with FSA guidance; and (ii) do not seek to create liability by reference to vague and unpredictable standards. PAC's obligations to the FSA under Principle 11, as applicable to the facts of this case, are not limited to a situation or situations which will or may lead to a relevant change of control for which notification to the FSA is required by virtue of Part XII of the Act. Such a situation is only one example of PAC's obligation to disclose information to the FSA under Principle 11. The guidance at SUP 11.4.8G is illustrative of the requirements under Principle 11 for PAC to "deal with its regulators in an open and co-operative way, and … disclose to the FSA appropriately" anything relating to PAC of which the FSA would reasonably expect notice.

This includes by way of example, a possible change of control. Accordingly, although the FSA does accept that SUP 11.4.8G expressly states a minimum standard for notification to the FSA of any relevant change of control, for the reasons given herein, it is unnecessary to consider whether the minimum standard stipulated in SUP 11.4.8G is met on the facts of this case. Similarly, SUP 15.3.9G (which refers to notification to the FSA "at an early stage, before making any internal or external commitments") is also merely illustrative of PAC's obligation to disclose information to the FSA under Principle 11. As already set out above, PAC's obligation to disclose information to the FSA under Principle 11 is triggered by the existence of anything relating to PAC of which the FSA would reasonably expect notice. This includes, by way of example, the possible change in control. The proposed transaction was vast in scale, with a potentially huge regulatory and market impact. The proposed rights issue (planned to raise £14.5 billion) would have been the biggest ever in the UK. As a result, irrespective of the possible change of control, the proposed transaction involved substantial changes to the financial position, strategy and risk profile of the Prudential Group as a whole, including significant potential impacts on the UK regulated entities within the Prudential Group which necessitated appropriate communication with the FSA under Principle 11. PAC failed to communicate the transaction to the FSA at the appropriate time . Because the transaction had the potential to impact upon the stability and confidence of the financial system in the UK (and abroad), PAC should have appropriately disclosed the transaction to the FSA at the earliest opportunity to enable the FSA (and other regulators) as much time as possible to undertake the intensive, detailed and thorough scrutiny required of the proposed transaction.

No breach of Principle 11 by PAC, even if PAC's threshold legal objection is not accepted

6.6. In the alternative (and without prejudice to PAC's primary submissions above), PAC made representations that the correct approach to Principle 11 involves consideration of when it should have been apparent to PAC that disclosure of the transaction to the FSA was reasonably necessary for the FSA properly to discharge a regulatory function. Such an analysis necessarily involves issues of fact. Accordingly, in making its alternative argument PAC also made representations as to what it asserted is the correct factual matrix against which its regulatory obligations under Principle 11 should be considered. That is, Prudential asserted that the allegation that it was in breach of Principle 11 is also wrong on the facts.

6.7. PAC submitted that:

(1) the proper approach to Principle 11 is that notification can only be required in respect of that which the FSA can "reasonably expect notice" (if the

obligations under Principle 11 are not limited in the circumstances of this case to the entering into of an agreement or other internal or external commitments). Having regard to the requirements of legal certainty and the legal principle against doubtful penalisation, the FSA can only "reasonably expect notice" if: (a) it has made it clear by way of guidance in the FSA Handbook that notification of an event is required at a particular time; or (b) it is otherwise clear to the firm that such notification is required: in other words, if it should have been clearly apparent to the firm that the information was reasonably necessary at a specified point in time for the FSA properly to discharge a regulatory function. In the absence of any clear guidance mandating notification at a particular point, the FSA must establish a clear reasonable necessity for notification for regulatory purposes. PAC contended that there can have been no possible reasonable necessity in advance of a stage before the transaction was highly likely. Until that stage there was no conceivable regulatory function (as opposed to, at most, some administratively desirable pre-planning) which could or should have been undertaken by the FSA and therefore PAC is not at fault. It is necessary for the FSA to show "fault" on the part of PAC (DEPP 6.2.15) and because the allegations against PAC are that it neither deliberately nor recklessly breached Principle 11, the FSA must necessarily establish that PAC's conduct was at least negligent.

(2) the FSA's reliance on an unqualified duty of notification at the "earliest opportunity" is not coherent. The correct approach to Principle 11 involves consideration of what information it should have been clearly apparent to the regulated firm that it was reasonably necessary for the FSA to be given, and when it should have been apparent that it was reasonably necessary for the FSA to receive it (for the reasons set out at 6.7(1) above). PAC's approach, based on the likelihood of the transaction, should be preferred. Any intelligible test must incorporate reference to likelihood. There is no basis for a finding that a "highly unlikely" transaction must be notified to the FSA. PAC did not dispute that the fact Prudential was entering into a substantial transaction involving AIA would be information which Supervision would "reasonably expect notice of". PAC contended that the issue is at what stage (if any) prior to the point where the transaction was sufficiently advanced was PAC required to inform Supervision that the transaction may occur (in order to fulfil its obligation under Principle 11 to "disclose appropriately"). On the facts, there is no credible reason why PAC should have assessed the prospects of the proposed transaction as being more than possible – let alone likely – until the FSA was in fact approached following the leak. The FSA's case to the contrary rests on a number of misconceptions as to the true factual position including an incorrect understanding of decisions taken by Prudential's Board and a failure to recognise the significance of other matters (including):

(a) a misunderstanding of the likelihood of the transaction and the resultant failure to give proper weight to the fact that an IPO was the established and favoured mechanism for disposing of AIA until a very late stage. Therefore, the pre-arranged meeting with Supervision on 12 February 2010 does not assist the FSA's case because, although it presented an opportunity to discuss matters with the FSA, it was not opportunity that was lacking; it was obligation (on the facts). The FSA relies on an alleged crystallisation of PAC's awareness that the transaction was "significantly advanced" by virtue of Mr Thiam's update to the Prudential Board on 11 February 2010. In fact, matters were moving at a slower pace than expected. In light of this, PAC asserted that the PAC executives were justified in taking the view that a pre-arranged discussion of Prudential's settled strategy with the FSA did not require discussion of a speculative possible transaction, even a "transformational" one, which the Prudential Board had resolved would not yet be disclosed by way of approach.

(b) the FSA's distinct lack of concern that it had not been informed of the offer which Prudential had made to acquire AIA in 2009. This is an important factor in considering the reasonableness of PAC's approach to its regulatory obligations. An equally important factor is that the FSA did not request that Prudential and/or PAC inform it at an earlier stage if such matters were in contemplation in the future.

(c) the FSA wrongly downplayed Prudential's consistent intention for the transaction to be announced on 09 March 2010, rather than the 02 March 2010 date which the FSA relies on to assert late notification. There can be no legitimate criticism of delay in notification between the first occasion on which the possibility of the leak arose (on 26 February 2010) and the approach to the FSA (on 27 February 2010), the next day.

(d) the perceived risk of a transaction leak emanating from the FSA is irrelevant to the issue of whether PAC properly complied with its obligations or not. PAC contended that it did not allow the perceived risk of a transaction leak emanating from the FSA to affect its judgment as to when regulatory obligation required an approach to the FSA. It was always understood not to be a relevant factor in that decision. It was only relevant to whether Prudential should make an earlier approach than was required.

6.8. The FSA has found that:

(1) Principle 11 required PAC to disclose the potential transaction to the FSA because it is information of which, objectively, the FSA would reasonably expect notice, appropriately in all the circumstances (for the reasons set out

in the FSA's findings above). The FSA's approach to Principle 11 is based on the clear, objective language of Principle 11 itself and the FSA accepts PAC's submission that this is the proper approach to Principle 11. However, the FSA does not accept PAC's additional submission that in the absence of any clear guidance mandating notification at a particular point, the FSA must establish a clear reasonable necessity for notification for regulatory purposes. Such a restrictive approach to the obligations under Principle 11 is both unnecessary and incorrect. Principle 11 does not offend against the requirement of legal certainty or the legal principle against doubtful penalisation (for the reasons already set out in the FSA's findings above). Notwithstanding the foregoing, PAC can (and should) only be liable for breaching Principle 11 in circumstances where PAC should reasonably have appreciated that disclosure to the FSA was required – i.e. where PAC was "at fault". Although the FSA accepts that PAC neither deliberately nor recklessly breached Principle 11, it considers that PAC's conduct fell below that required by Principle 11 in its failure to disclose the proposed transaction to the FSA appropriately. Whilst PAC did appreciate that the proposed transaction was something of which the FSA would reasonably have expected notice, it failed to disclose it to the FSA at the earliest opportunity. Put another way (and without prejudice to the above), the FSA considers that under the objective approach to Principle 11 disclosure, it should have been apparent to PAC that the information about the transaction was reasonably necessary at the earliest opportunity in order for the FSA properly to discharge its regulatory functions. The failure to inform the FSA at the earliest opportunity created a serious risk of regulatory failure in that a sub-optimal regulatory decision could have been made by Supervision. The regulatory system relies on early communication since a firm cannot know exactly how and within what timescales the FSA will deal with any issue, or what steps the FSA may take in response to being notified, which may include requests for further information from the firm or elsewhere.

(2) Principle 11: (i) is consistent with FSA guidance; and (ii) does not seek to create liability by reference to vague and unpredictable standards (for the reasons already set out in the FSA's findings above) and the FSA rejects PAC's submission that it relies on an unqualified duty of notification at the "earliest opportunity". PAC's obligation to disclose information to the FSA under Principle 11 is triggered by the existence of anything relating to PAC of which the FSA would reasonably expect notice. Further, the FSA's analysis of the obligations under Principle 11 is consistent with the FSA's supervisory approach which places the appropriate degree of reliance on firms and their senior management to ensure timely and proactive communication with the FSA, which is of fundamental importance to the effective functioning of the regulatory system. The FSA considers that the likelihood of the transaction is simply one consideration as to when

Principle 11 is triggered (by the existence of anything relating to PAC of which the FSA would reasonably expect notice). The other equally important consideration is the impact of the transaction on the financial system. In this instance, because the transaction had the potential to impact upon the stability and confidence of the financial system in the UK (and abroad), PAC should have appropriately disclosed the transaction to the FSA at the earliest opportunity to enable the FSA (and other regulators) as much time as possible to undertake the intensive, detailed and thorough scrutiny required of the proposed transaction. In relation to PAC's assertions as to the "true" factual position and the FSA's alleged failure to recognise the significance of other matters, the FSA has found that:

(a) it has not misunderstood the likelihood of the transaction on the facts or failed to give proper weight to the fact that an IPO was the established and favoured mechanism for disposing of AIA. As already noted, the likelihood of the transaction is simply one consideration when Principle 11 is triggered. Other equally important considerations are: (i) the size and impact of the transaction on the financial system; and (ii) its transformative effect on the Prudential Group. When PAC's obligations under Principle 11 are considered in light of the size and impact of the transaction and its transformative effect on the Prudential Group, it is clear (by way of example only), that it would have been open and co-operative to notify the FSA, and the FSA could reasonably have expected to be notified, of the transaction at the strategy meeting on 12 February 2010 at which Prudential's strategy in Asia was discussed.

(b) it was not aware of the details regarding Prudential's actions to acquire AIA in February 2009 until late in 2011. At the time of the events, neither Prudential nor AIG made any announcements about an offer, or the fact that they were or had been in discussions. The details of the attempted earlier acquisition were raised for the first time on 30 December 2011, in Prudential's response to the preliminary investigation report. Further, at the time of the events in 2009, Prudential informed the FSA that it had made no bid for AIA (when in fact a bid was made – a fact which Prudential has now sought to rely on). As a result, the assertion that its acts or omissions in relation to its regulatory obligations in the circumstances of this case were reasonable by reference to its previous attempt to acquire AIA in 2009 is not sustainable.

(c) it has not "downplayed" Prudential's alleged consistent intention for the transaction to be announced on 09 March 2010, rather than the 02 March 2010 date which the FSA relies on to assert late notification. As already noted, the FSA's assertion that PAC failed to appropriately disclose the transaction to the FSA relies on the clear, objective

language found in the wording of Principle 11 itself (for the reasons already set out above). Principle 11 required PAC to disclose to the FSA anything relating to PAC of which the FSA would reasonably expect notice. Accordingly, the FSA's case is not that the transaction was "highly likely" as characterised by PAC, nor that that is the appropriate test. Rather, the FSA's case is that by 11 February 2010, the transaction had reached a stage, in all of the circumstances, whereby the FSA (in the language of Principle 11) would reasonably have expected to be notified of it. Prudential's alleged subjective intention for the transaction to be announced on 09 March 2010 is irrelevant for the purposes of the objective approach to PAC's obligations set out in Principle 11. In the circumstances, it is unnecessary for the FSA to consider whether or not there was a delay in notification between the first occasion on which the possibility of the leak arose (on 26 February 2010) and the approach to the FSA (on 27 February 2010), the next day.

(d) PAC has acknowledged in its submissions that the perceived risk of a transaction leak emanating from the FSA was relevant to whether PAC "should make an earlier approach than was required". The FSA considers that PAC's acknowledgement supports its finding that the perceived leak risk materially influenced Prudential's judgment about when to inform the FSA about the transaction pursuant to Principle 11. As already set out above, Principle 11 requires firms to deal with the FSA in an open and co-operative way and to disclose to the FSA anything relating to the firm of which the FSA would reasonably expect notice. The associated FSA guidance in the FSA Handbook makes reference to these requirements being interpreted by reference to communication with the FSA "at the earliest opportunity", "at an early stage" and "as soon as possible" in the context of reverse takeover transactions. The need for early communication is understandable and necessary since a firm cannot know exactly how or within what timescale the FSA will deal with any issue, or what steps it may take in response to being notified. Such early communication is especially important if the subject matter to be raised with the FSA is a transaction of very significant size with potential wide impact. PAC was cognisant, or should reasonably have been aware, that it would assist the FSA to be contacted earlier but wrongly convinced itself not to.

Standard of proof

6.9. PAC made representations as to the applicable standard of proof. PAC submitted that in light of the penal nature of the matter, and the very significant financial, reputational and personal consequences of a finding of a breach, the FSA should

apply the criminal standard of proof in these circumstances. In support of this submission, PAC asserted that:

(1) the House of Lords has stated that the "sliding scale" civil standard of proof previously applied by the Financial Services and Markets Tribunal is not part of English law and that, where the consequences of the proceedings are serious, notwithstanding the proceedings are civil, the particular issue involved made it appropriate to apply the criminal standard; and

(2) the Privy Council has made it clear that the criminal standard of proof is the correct standard of proof to be applied in all disciplinary proceedings concerning the legal profession (and it is hard to see any principled reason why the position should be different in relation to financial services).

6.10. The FSA has found that the FSA's administrative decision making process is not subject to the criminal standard of proof. The FSA has made its decision having regard to the following:

(1) the FSA, in accordance with section 206 of the Act, may impose a penalty if it considers that PAC has contravened a requirement imposed on it by or under the Act; and

(2) the Tribunal, in regulatory cases, applies the civil standard of proof i.e. the balance of probabilities (is it 'more likely than not' that what is alleged actually occurred?).

Sanction

6.11. PAC made representations that the financial penalty is premised on a basis which is misconceived and wrong in law. Further (and in any event), PAC asserted that the financial penalty is unprecedented and grossly disproportionate. PAC also contended that the FSA should have regard to the totality of the financial penalty to be levied upon the Prudential Group in assessing fairness and proportionality.

6.12. PAC submitted that:

(1) the financial penalty to be imposed on it is flawed as a matter of law, since its size is principally justified by a need to deter behaviour which is not alleged against PAC. That is, PAC asserted that the FSA's primary basis for imposing the financial penalty is to deter other firms from deliberately refraining to contact the FSA. However, the FSA does not allege, and never has alleged, that PAC acted deliberately or recklessly in breaching Principle 11. PAC submitted that it cannot lawfully be fined a "very substantial" amount on the basis that it is necessary to deter firms other than itself from committing a different and far more serious type of breach than has ever been alleged against it. The FSA's own guidance emphasises deterrence is

only a legitimate objective in respect of "similar breaches". However, the conduct which the FSA seeks to deter is not remotely similar to the misconduct alleged against PAC. Accordingly, the FSA's primary justification for the scale of fine imposed is misconceived and unlawful.

(2) the alleged breach by PAC did not have any actual effect on markets, nor did it result in a serious risk of substantial market disruption. Even on the facts of the alleged breach, the time which was available to the FSA was not such as to create any risk of market disruption caused by a wrong or "sub-optimal" regulatory decision. PAC also asserted that the timing of its approach to the regulator had nothing to do with the postponement of the rights issue prospectus.

(3) the financial penalty is inconsistent with the FSA's acceptance that PAC did not act deliberately or recklessly in breaching Principle 11 and is therefore unfair. That is, the financial penalty is disproportionate for what is (even on the FSA's "best case") a non-reckless breach over a relatively short time period. Further, the size of the transaction is only sensibly of substance in relation to penalty if a firm has been reckless as to its obligations: in that situation the size of the transaction makes the recklessness more culpable because of its wider impact. But where, as in the present case, it is common ground that any breach was at worst the result of an honestly held and considered opinion which turns out to be wrong, the size of the transaction can hardly be decisive or even of great significance.

(4) the financial penalty is out of line with any previous FSA decisions. In making this submission, PAC noted that there are no equivalent/similar FSA decisions with which to compare this case. PAC contended that in light of the dearth of comparator cases, the financial penalty should be dramatically reduced in order to be in any way justifiable.

(5) the FSA should have regard to the totality of the financial penalty to be imposed on the Prudential Group in assessing whether it is fair and proportional to the alleged misconduct because whilst Prudential and PAC are separate entities and their alleged breaches are of different regulatory obligations, there is a very considerable measure of common conduct. This is particularly important because the proposed total financial penalty to be imposed on the Prudential Group is unprecedented and implies that the present case is one of the most serious breaches of regulatory obligations ever dealt with by the FSA. That is unjustifiable on the facts. PAC also contended that it should not receive a large financial penalty simply because the Prudential Group is large. The FSA's assessment of the financial penalty as a proportion of market capitalisation does not do justice to the complexity of the facts of an individual case.

6.13. The FSA has found that:

(1) it accepts PAC's submission that the main purpose for which the FSA has imposed the financial penalty in this case is deterrence. However, it does not accept that the imposition of the financial penalty is based on a desire to deter other firms from doing something which PAC did not do. Instead, the imposition of the financial penalty is intended "to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business". Deterrence is a particularly significant factor in this case, given the fundamental importance to the regulatory system of firms being "open and co-operative" and engaging in timely and proactive communication with the FSA. It is essential for the FSA to impose a punishment which is seen as a credible deterrent to firms of PAC's size and financial position. The FSA accepts that PAC's conduct was not "deliberate", in the sense that it did not knowingly breach its regulatory obligations. However, the FSA considers that PAC failed to give due weight to the importance of complying with its regulatory obligations under Principle 11 and allowed inappropriate considerations around leak risk to materially affect its judgment. The size of regulatory fines is relevant to the weight firms put on compliance with their regulatory obligations. Accordingly (and contrary to PAC's assertions), the deterrence aspect of the financial penalty to be imposed on Prudential is based on the need to deter (i) PAC from failing to deal openly and co-operatively with the FSA in the future and from failing to disclose appropriately information of which the FSA would reasonably expect notice; and (ii) other firms who might fail to deal openly and co-operatively with the FSA in similar circumstances to PAC. This is in accordance with the guidance in DEPP 6.1.2 and therefore the FSA considers that its primary justification for the scale of fine imposed is entirely appropriate and lawful.

(2) it accepts PAC's submission that its conduct did not have any actual effect on markets in this instance. However, it does not accept PAC's assertion that its conduct did not result in a serious risk of substantial market disruption. The FSA considers that the lateness of the notification created a significant risk that the wrong regulatory decisions could have been made, due to a lack of proper information and/or time to properly consider it. Whilst the FSA considers that the correct decisions were made in the time available in this instance, the FSA notes that it is not for a firm or issuer to determine how much time Supervision would require in addressing any concerns it may have. The FSA also considers that there is a clear link between the postponement of the rights issue prospectus and the timing of PAC's approach. That is, if PAC had approached the regulator earlier, the supervisory decisions that had to be made could have been taken in less

time-pressured circumstances and Prudential would have likely avoided having to postpone the rights issue prospectus. The FSA also notes that the longer the period between announcement of the transaction and publication of the rights issue prospectus, the more likelihood there was of on-going uncertainty concerning the transaction and significant market disruption as a result.

(3) the financial penalty is not inconsistent with its acceptance that PAC did not act deliberately or recklessly in breaching Principle 11. Whilst the FSA accepts that PAC has committed a non-reckless breach over a relatively short time period, the FSA considers that had PAC acted recklessly or deliberately in breaching Principle 11, a larger financial penalty would have been imposed. Further, the FSA considers that the size of transaction is highly relevant to deterrence (which is the principal purpose for the imposition of the financial penalty in this case). If the level of financial penalty bore no relationship to the size of the transaction, it is unlikely that the required deterrent effect would be achieved and the penalty risks being inconsequential. It is essential for the FSA to impose a punishment which is seen as a credible deterrent to firms of PAC's size and financial position.

(4) The FSA accepts PAC's submission that there are no previous relevant FSA decisions with which to compare this case. However, the FSA has properly considered its policies regarding the imposition of financial penalties and past decisions, to the limited extent that they offer assistance. Accordingly, the FSA considers the financial penalty to be both fair and proportionate in all the circumstances of this case.

(5) it had proper regard to the totality of the financial penalty to be imposed on the Prudential Group in assessing whether Prudential's financial penalty is fair and proportional to Prudential's misconduct. The FSA accepts that whilst Prudential and PAC are separate entities and their breaches are of different regulatory obligations, there is a very considerable measure of common conduct. However, the FSA does not accept PAC's assertion that the proposed total financial penalty to be imposed on the Prudential Group is unprecedented and implies that the present case is one of the most serious breaches of regulatory obligations ever dealt with by the FSA. The FSA considers that a number of factors other than the innate seriousness of the breach are reflected in the financial penalty (as set out in DEPP 6.5). Further, the FSA considers that the size and financial resources of the Prudential Group is highly relevant to deterrence (which is the principal purpose for the imposition of the financial penalty in this case). If the level of financial penalty bore no relationship to the size and financial resources of the firm, it is unlikely that the required deterrent effect would be achieved and the penalty risks being inconsequential. It is essential for the FSA to impose a punishment which is seen as a credible deterrent to firms of PAC's size and financial position.

6.14. For the foregoing reasons, the FSA considers that the financial penalty to be imposed on PAC and on the Prudential Group as a whole, is appropriate and proportionate. It properly takes into account the facts and matters (as set out herein) and the relevant FSA policies and past cases, to the limited extent that they offer assistance. Accordingly, the FSA rejects PAC's submission that the financial penalty is unlawful.

7. THIRD PARTY

7.1. Below is a brief summary of the key written representations made by Credit Suisse (as third party) and how they have been dealt with. In making the decision which gave rise to the obligation to give this notice, the FSA has taken into account all of Credit Suisse's representations, whether or not explicitly set out below.

7.2. Credit Suisse made representations that:

(1) it was inaccurate for it to be described as "lead sponsor". Although it initially acted as the sole sponsor to the proposed transaction, from 20 February 2010 it was communicating the collective advice of all the sponsors. Further, the concept of "lead sponsor" is not referred to in the Listing Rules; and

(2) references to it in the context of PAC's obligations under Principle 11 risk suggesting that Credit Suisse had a mandate or duty to advise PAC in relation to its obligations as an authorised firm under Principle 11. Credit Suisse stated that it had no mandate or duty to advise PAC.

7.3. The FSA has found that:

(1) whilst it accepts Credit Suisse's submission that the concept of "lead sponsor" is not referred to in the Listing Rules, that is not a reason for this notice not to reflect the factual reality that: (1) between 31 January 2010 and 20 February 2010, Credit Suisse was the sole sponsor; and (2) from 20 February 2010, it was taking the lead as between the sponsors in communicating advice to Prudential (i.e. Credit Suisse continued to act as the primary interface with the client);

(2) it does not accept that references to Credit Suisse in the context of PAC's obligations under Principle 11 (in this notice) risk suggesting that Credit Suisse had a mandate or duty to advise PAC in relation to its obligations as an authorised firm under Principle 11 because, in this notice, the FSA has used an amended definition of Credit Suisse to make an explicit statement that Credit Suisse had no mandate or duty to advise PAC in relation to its obligations as an FSA authorised firm.

8. FAILINGS

Principle 11

8.1. Between 11 February 2010 (at the latest) and 27 February 2010, PAC was in breach of Principle 11 by failing to deal with the FSA in an open and co-operative way and by failing to disclose appropriately information of which the FSA would reasonably expect notice. Specifically:

(1) PAC failed to discuss with the FSA, at the earliest opportunity, the prospective transaction which could have led to a change in corporate controller of PAC. In the circumstances of the proposed transaction, waiting to inform the FSA until there was a formal agreement in respect of the proposed transaction (i.e. when the SPA was signed) would not fulfil PAC's obligations under Principle 11 to: (i) be open and co-operative with the FSA; and (ii) disclose appropriately information of which the FSA would reasonably expect notice. PAC failed to inform the FSA of the proposed transaction at any time prior to news of the transaction having been leaked to the media on 27 February 2010. In any event, PAC should have informed the FSA at the earliest opportunity (and by 11 February 2010 at the latest) of the proposed transaction which could have led to the change in corporate controller of PAC. As a result of the developments referred to in Mr Thiam's update to the Prudential Board on that date, PAC was aware that the transaction was significantly advanced. In the circumstances of the proposed transaction, PAC's omission was contrary to PAC's obligations under Principle 11 to be open and co-operative with the FSA and to disclose appropriately information of which the FSA would reasonably expect notice.

(2) PAC failed to disclose the proposed transaction at the meeting with the FSA on 12 February 2010. The express purpose of that meeting was to discuss the Prudential Group's strategy, the FSA asked detailed questions about Prudential's strategy for growth in the Asian market and its plans for raising equity and debt capital, and PAC discussed the strategy for expansion in Asia at length, but PAC omitted to mention the transaction. In the circumstances of the proposed transaction, PAC's omission was contrary to PAC's obligation under Principle 11 to be open and co-operative with the FSA.

9. SANCTION

9.1. The FSA's policy on the imposition of financial penalties and public censures is set out in DEPP and EG. In determining the financial penalty, the FSA has had regard to this guidance. The FSA considers the following factors to be particularly important.

Deterrence (DEPP 6.5.2G(1))

9.2. Given the circumstances of this case, the FSA considers it necessary to send a robust message to firms as to the fundamental importance of behaving openly and co-operatively towards the FSA.

Seriousness and impact of the breach (DEPP 6.5.2(2))

9.3. The FSA considers the breach in this case to be particularly serious for the following reasons:

(1) Timely and proactive communication with the FSA is of fundamental importance to the functioning of the regulatory system. It is vital that the FSA be appropriately informed about transactions with potentially significant market and regulatory implications. That importance is heightened in the context of transformative transactions with global implications. The transaction in this case was so significant that it had potentially far-reaching consequences for tens of thousands of investors and for the stability and confidence of the financial system in the UK and abroad.

(2) At the meeting on 12 February 2010, PAC failed to mention the proposed transaction in the face of detailed questions from the FSA about aspects of Prudential Group strategy to which the transaction was clearly highly relevant.

(3) PAC had numerous opportunities to inform the FSA of the transaction, but did not do so. PAC remained highly concerned about leak risk throughout the transaction, and this sensitivity clearly affected its judgment about when to inform the FSA. Because of this, PAC failed to give due weight to the importance of complying with its regulatory obligations. PAC should not have allowed its unwarranted fear that the FSA would leak the transaction to play a material part in its decision making.

(4) As a consequence of the delay in informing the FSA, Supervision was required to make far-reaching decisions regarding complex issues within compressed timescales. The FSA is satisfied that appropriate decisions were made. However, PAC's failure to appropriately inform the FSA on a timely basis:

(a) hampered the FSA's ability to meet its obligations by responding adequately to overseas' supervisors' enquiries and requests for assistance when news of the deal broke; and

(b) the lateness of the notification created a significant risk that the wrong regulatory decisions could be made, due to lack of proper information

and/or time to properly consider it. This was especially important given the size and significance of the transaction, its implications in the UK and abroad, and heightened regulatory and market concerns around prudential and capital adequacy issues following the financial crisis in 2008.

The extent to which the breach was deliberate or reckless (DEPP 6.5.2(3))

9.4. PAC's failure to approach the FSA was based on inappropriate considerations and on an assessment by PAC of its regulatory obligations which the FSA views as misconceived and incorrect. However, the FSA accepts that PAC did consider its obligations in forming its assessment. Although the FSA considers that the circumstances of PAC's breach are serious, the FSA does not consider that this breach was deliberate or reckless.

The size, financial resources and other circumstances of the firm (DEPP 6.5.2(5))

9.5. In deciding on the level of penalty, the FSA has had regard to the size of the financial resources of PAC. PAC, a member of the Prudential Group, has approximately 7 million UK customers with £130 billion in insurance liabilities. PAC's 2010 results reported net profits of £1,063 million.

The amount of profits accrued or the loss avoided (DEPP 6.5.2(6))

9.6. PAC did not profit from its breach.

Conduct following the breach (DEPP 6.5.2(8))

9.7. PAC was obliged by the FSA under section 166 of the Act to commission a Skilled Person's Report into aspects of its conduct in relation to the transaction. The FSA recognises that PAC has committed significant resources in this regard.

Disciplinary record and compliance history (DEPP 6.5.2(9))

9.8. PAC has not been the subject of previous disciplinary action.

Other action taken by the FSA (DEPP 6.5.2(10))

9.9. In determining the level of financial penalty, the FSA has taken into account penalties imposed by the FSA on other authorised persons for similar behaviour. The FSA has also had regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory conduct.

Conclusions

9.10. The FSA considers in all the circumstances that:

(1) the seriousness of the breach merits a substantial financial penalty; and

(2) a financial penalty of £16 million is appropriate.

10. PROCEDURAL MATTERS

Decision Maker

10.1. The decision which gave rise to the obligation to give this notice was made by the Settlement Decision Makers.

10.2. This Final Notice is given under and in accordance with section 390 of the Act.

Manner of and time for payment

10.3. The financial penalty must be paid in full by PAC to the FSA by no later than 10 April 2013, 14 days from the date of the Final Notice.

If the financial penalty is not paid

10.4. If all or any of the financial penalty is outstanding on 11 April 2013, the FSA may recover the outstanding amount as a debt owed by PAC and due to the FSA.

Publicity

10.5. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as it considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish such information if such publication would, in the opinion of the FSA, be unfair to the recipient or prejudicial to the interests of consumers.

FSA contacts

10.6. For more information concerning this matter generally, PAC should contact Celyn Armstrong (020 7066 2818) or Charles Hastie (020 7066 6836) at the FSA.

Jamie Symington
Head of Department
FSA Enforcement and Financial Crime Division

APPENDIX

RELEVANT LEGISLATION, REGULATORY REQUIREMENTS, GUIDANCE AND COMMENTARY

Legislation

1. The FSA is authorised, pursuant to section 206 of the Act, if it considers that an authorised person has contravened a requirement imposed on him by or under the Act, to impose on such person a penalty in respect of the contravention of such amount as it considers appropriate in the circumstances.

Regulatory requirements and guidance

2. Principle 11 of the Principles provides that:

   "A firm must deal with its regulators in an open and co-operative way, and must disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice."

Scope of Principle 11

3. SUP 15.3 contains guidance on firms' requirement to communicate with the FSA in accordance with Principle 11. SUP 15.3.8 G states that compliance with Principle 11 includes, but is not limited to, giving the FSA notice of any proposed restructuring, reorganisation or business expansion which could have a significant impact on the firm's risk profile or resources, and any action which a firm proposes to take which would result in a material change in its capital adequacy or solvency.

4. SUP 15.3.10 G states that:

   "*The period of notice given to the FSA will depend on the event, although the FSA expects a firm to discuss relevant matters with it at an early stage, before making any internal or external commitments.*"

Content and timing of notification regarding a change of control

5. SUP 11.4.2R provides as follows:

"A UK domestic firm, other than a non-directive firm, must notify the FSA of any of the following events concerning the firm:

(i) a person acquiring control;

(ii) an existing controller increasing control;

(iii) an existing controller reducing control;

(iv) an existing controller ceasing to have control.

6. SUP 11.4.8G provides as follows:

"Principle 11 requires firms to be open and co-operative with the FSA. A firm should discuss with the FSA at the earliest opportunity, any prospective changes of which it is aware, in a controllers or proposed controllers shareholdings or voting power (if the change is material). These discussions may take place before the formal notification requirement in SUP 11.4.2R or SUP 11.4.4R arises. (See also SUP 11.3.2G). As a minimum, the FSA considers that such discussions should take place before a person:

(1) enters into any formal agreement in respect of the purchase of shares or a proposed acquisition or merger which would result in a change in control (whether or not the agreement is conditional upon any matter, including the FSA's approval); or

(2) purchases any share options, warrants or other financial instruments, the exercise of which would result in the person acquiring control or any other change in control.

Financial Services Authority

FSA®

FINAL NOTICE

To: **Mr Cheick Tidjane Thiam**

IRN: **CTT01007**

Dated: **27 March 2013**

TAKE NOTICE: The FSA of 25 The North Colonnade, Canary Wharf, London E14 5HS gives you final notice that it has taken the following action:

1. ACTION

1.1. For the reasons set out in this notice and pursuant to section 66 of the Act, the FSA has decided to publish a statement that Mr Thiam was knowingly concerned in a contravention by Prudential Assurance Company Limited of Principle 11 of the FSA's Principles for Businesses (Relations with regulators).

1.2. Following written and oral representations, the FSA issued a decision notice to Mr Thiam which notified him that it had decided to take the above action. Mr Thiam referred the matter to the Tribunal but has withdrawn his reference.

2. REASONS FOR THE ACTION

2.1. On Monday 1 March 2010, Prudential announced its intention to acquire AIA, a wholly owned subsidiary company of AIG. The original consideration proposed

was $35.5 billion, including $20 billion cash, to be funded via a rights issue. Given AIA's size, the transaction would have been transformative for Prudential. The proposed rights issue was planned to raise £14.5 billion, would have been the biggest ever in the UK. Subsequently, facing significant doubts about the extent to which it had secured the requisite shareholder support, Prudential sought to renegotiate the terms of the transaction. AIG refused to take a lower price, and on 3 June 2010, Prudential withdrew from the deal, shortly before its shareholders were due to vote on the proposed rights issue.

2.2. Supervision has supervisory responsibilities for Prudential's UK regulated subsidiaries. In addition, Prudential, though not itself authorised by the FSA, is a controller of FSA-authorised entities and is an Insurance Holding Company for the purposes of supplementary supervision under the IGD. Supervision is responsible under the IGD for undertaking supplementary supervision of PAC, and is also lead global supervisor for the Prudential Group, responsible for coordinating supervisory college activities and information sharing amongst international regulators. Therefore Supervision's role included responsibility for understanding the Group's solvency, risk profile, intra-Group exposures and transactional issues, and liaising with overseas regulators. Where it is necessary to require the Prudential Group to take action, the FSA imposes requirements on PAC.

2.3. PAC failed to inform the FSA that Prudential was seeking to acquire AIA from AIG in early 2010, until after the proposed transaction had been leaked to the media on 27 February 2010. Accordingly, PAC breached Principle 11 by failing to deal with the FSA in an open and co-operative way and by failing to disclose appropriately information of which the FSA would reasonably expect notice. In particular, PAC failed to:

(1) discuss with the FSA, at the earliest opportunity (and by 11 February 2010 at the latest) the proposed transaction which could have led to the change in corporate controller of PAC; and

(2) disclose the proposed transaction at the meeting with Supervision on 12 February 2010. The express purpose of that meeting was to discuss the Prudential Group's strategy. At the meeting, the FSA asked detailed questions about Prudential's strategy for growth in the Asian market and its plans for raising equity and debt capital. Mr Thiam, the Chief Executive of Prudential, discussed the strategy for expansion in Asia at length, but neither he nor the other Prudential representatives present mentioned the proposed acquisition. At all material times, Mr Thiam was also the Chairman of PAC and an approved person holding Controlled Function 1 at PAC.

2.4. Mr Thiam was knowingly concerned in PAC's failure to deal with the FSA in an open and co-operative manner and for failing to disclose appropriately information of which the FSA would reasonably expect notice when Prudential

was seeking to acquire AIA from AIG in early 2010. Mr Thiam was at all material times Chairman of PAC and an approved person, holding Controlled Function 1 at PAC.

2.5. PAC should have informed the FSA about Prudential's proposed acquisition of AIA well before 27 February 2010. Mr Thiam played a significant role in the decision not to contact the FSA about the proposed acquisition until after it had been leaked to the media on 27 February 2010.

2.6. The FSA expects to have an open and frank relationship with the firms it supervises. It is essential that firms give due consideration to their regulatory obligations at all times. In particular, timely and proactive communication with the FSA is of fundamental importance to the functioning of the regulatory system.

2.7. The failure to inform the FSA was significant because it resulted in the FSA having to consider highly complex issues within a compressed timescale. The failure to inform the FSA narrowed the FSA's options in scrutinising the transaction and hampered the FSA's ability to assist overseas regulators with their enquiries in relation to the transaction.

3. DEFINITIONS

3.1. The following definitions are used in this notice:

"the Act"	means the Financial Services and Markets Act 2000.
"AIA"	means AIA Group Limited.
"AIG"	means American International Group Incorporated.
"Credit Suisse"	means Credit Suisse Securities (Europe) Limited, who were appointed by Prudential to act as lead Sponsor. This required Credit Suisse to advise Prudential in relation to compliance with the FSA's Listing Rules, including interaction with the UKLA. Credit Suisse was authorised by the FSA to act in that capacity. Credit Suisse had no mandate or duty to advise PAC in relation to its obligations as an FSA authorised firm.
"DEPP"	means the FSA's Decision Procedure and Penalties Manual.
"EG"	means the FSA's Enforcement Guide.
"the FSA"	means the Financial Services Authority.
"IPO"	means Initial Public Offering.

“Newco”	means a newly incorporated holding company.
“PAC”	means The Prudential Assurance Company Limited.
“Principle 11”	means Principle 11 of the FSA’s Principles for Businesses (Relations with regulators).
“Prudential”	means Prudential plc, a FTSE 100 UK listed company and one of the UK’s largest insurance companies. At the end of February 2010 it had a market capitalisation of £15.2 billion.
“Prudential Group”	means Prudential and the group of companies of which Prudential was the parent company.
“the SPA”	means the Share Purchase Agreement relating to the sale and purchase of all of the issued share capital of AIA Group Limited between AIA Aurora LLC, American International Group Inc, Petrohue (UK) Investments Limited and Prudential agreed on 1 March 2010 including previous drafts.
“Supervision”	means the Insurance Division of the FSA who supervised the Prudential Group through PAC.
“the Tribunal”	means the Upper Tribunal (Tax and Chancery Chamber).
“the UKLA”	means the United Kingdom Listing Authority. The FSA when acting as the competent authority under Part VI of the Act, is referred to as the UKLA. The UKLA has responsibility for monitoring and enforcing compliance with the UKLA Listing Rules.
“the US Treasury”	means the United States Department of the Treasury.

4. FACTS AND MATTERS

Mr Thiam

4.1. Mr Thiam joined Prudential in March 2008 as Chief Financial Officer. In September 2009, he became Prudential Group Chief Executive. Mr Thiam was at all material times Chairman of PAC. He is an approved person, holding Controlled Function 1 at PAC.

The transaction

4.2. Prudential announced its intention to acquire AIA, a wholly owned subsidiary company of AIG, on Monday 1 March 2010. The original consideration was $35.5 billion, including $20 billion cash, to be funded via a rights issue. Given AIA's size, the transaction would have been transformative for Prudential. The proposed rights issue (planned to raise £14.5 billion) would have been the biggest ever in the UK.

4.3. Subsequently, facing significant doubts about the extent to which they had secured the requisite shareholder support, Prudential sought to renegotiate the terms of the transaction. AIG refused to take a lower price, and on 3 June 2010, Prudential withdrew from the deal, shortly before its shareholders were due to vote on the proposed rights issue.

Early stages of the transaction

4.4. During 2009, AIG began preparations to dispose of AIA by way of an IPO or third party sale. The disposal was to take place as part of a restructuring programme, intended to enable AIG to repay the governmental financial assistance it had received during the liquidity crisis of 2008.

4.5. In October 2009, Prudential set up an insider list regarding a possible purchase of AIA, to which Prudential's non-executive directors were added on 5 November 2009. In December 2009 the CEO of AIG asked the Chief Executive of Prudential, Mr Thiam, whether it would be interested in putting forward an offer for AIA. This led to formal discussions between the two parties, and the commencement of due diligence in early January 2010. The parties signed a confidentiality agreement on 12 January 2010.

4.6. The directors of Prudential, including Mr Thiam, met on 31 January 2010 to be briefed on the proposed transaction by Credit Suisse. There was a consensus between the directors of Prudential at this meeting that:

(1) a leak was the key risk to the transaction;

(2) the FSA was one of a number of parties which might be the cause of a leak; and

(3) Prudential wished to fulfil their obligations to inform the FSA in such a way that leak risk was kept to a minimum.

4.7. Prudential and Mr Thiam remained highly sensitive to the possibility of a leak of the proposed transaction during February 2010. This materially influenced their judgment about when to inform the FSA.

4.8. On 1 February 2010, Prudential was advised by Credit Suisse of the need to inform the FSA of the proposed transaction well in advance of its execution. At that stage, with an announcement timetabled for 15 February 2010, Credit Suisse's advice was to approach the FSA by 3 February 2010. Credit Suisse's advice around early contact with the FSA was reflected in timetables repeatedly prepared and provided to Prudential in the weeks leading up to the announcement of the transaction.

4.9. As of 1 February 2010, Prudential considered that the transaction's prospects at this stage lacked sufficient certainty, such that an approach to the FSA would be premature.

Leak strategy and the decision to approach FSA

4.10. In early February 2010, Mr Thiam decided that if there were to be a leak Prudential would, in order to protect the share price and avoid any chance of a protracted suspension, abandon the deal and issue a 'no discussions' announcement. Mr Thiam understood that as and when it adopted a 'discussions happening' announcement strategy that would necessitate informing the FSA.

4.11. In this case, the reason why a change in leak strategy from 'no discussions' to 'discussions happening' would necessitate an approach to the FSA was that a willingness to admit and continue discussions in the face of a leak would serve as a strong indicator that Prudential was in serious, advanced discussions which it regarded as likely to come to fruition.

4.12. At a Prudential Board meeting on 3 February 2010, the Prudential Board considered a timetable which identified 17 February 2010 as the date on which the FSA was to be informed of the proposed transaction. Additionally, the minutes of the meeting state the Prudential Board's intention that, *"[w]ith an announcement date of 26 February [2010] currently being targeted, a further Board meeting would be scheduled for 17 February [2010]. The intention was that the Board should have sufficient information at that stage to be able to confirm, should a talks announcement be required, its interest in proceeding."*

4.13. The minutes of Prudential's Board meeting of 3 February 2010 suggest that the prospects of a deal between Prudential and AIG had improved markedly by this stage, owing to the fact that, among other reasons, *"[i]t was becoming increasingly clear that the AIA IPO was running into difficulties, which gave Prudential a strong negotiating hand"*.

Development of the transaction

4.14. On 5 February 2010, Mr Thiam and the then Chairman of Prudential held a meeting in London with the CEO of AIG and gave him a letter signed by Mr Thiam that had been approved by the Prudential Board which set out a detailed indicative non-binding proposal. The letter set out, among other things: a preliminary price range of $30-34 billion in the absence of up to date financial information; a proposed debt and equity financing structure; a proposed transaction structure in which Prudential and AIA would be acquired by a Newco; and a proposed timetable according to which the transaction would be announced on 26 February 2010.

4.15. By 8 February 2010, timetables prepared by Credit Suisse and provided to Prudential reflected that the announcement date was now scheduled for 26 February 2010. The approach to the FSA was nevertheless scheduled to take place on 15 February 2010, thereby permitting 11 days' advance notice.

4.16. On 9 February 2010, Mr Thiam and the then Chairman of Prudential travelled to Washington to meet with the US Treasury and AIG. Mr Thiam reported to the Prudential Board on 11 February 2010 that:

(1) the US Treasury, which controlled 80% of AIG's shares, and which the Prudential Board thought would be 'very influential' in the final decision were 'much more supportive' than previously; and

(2) the AIG special committee, which was managing the process and which had previously been hostile to the Prudential bid and favoured the IPO, had voted to keep negotiations ongoing. The AIG special committee recognised that a sale to the Prudential would be 'an attractive option' (although it was still supportive of the IPO); and

(3) the Prudential Board meeting initially scheduled for 17 February 2010 was cancelled as progress had been "at a slower pace than initially expected". (The meeting was however reinstated shortly afterwards and did take place.)

4.17. By 12 February 2010, negotiations had progressed sufficiently for Prudential to send a revised indicative non-binding proposal to AIG. A key revision to the proposal was the inclusion of a specific price of $35.5 billion, albeit that the proposal remained subject to a number of caveats, including some relating to the provision of financial information.

4.18. Also on 12 February 2010, Mr Thiam and another director of Prudential and PAC met with Supervision. The meeting was one of a series of regular meetings in the supervisory process, and was the annual meeting focused on allowing Supervision to gain an understanding of the Prudential Group's strategy. The FSA asked detailed questions about Prudential's strategy for growth in the Asian market and

its intentions to raise equity and debt capital, but Prudential did not disclose the proposed acquisition of AIA, the potential change in control that was in prospect, or the rights issue and debt issuance that were proposed to fund the acquisition.

4.19. On 15 February 2010 AIG provided a draft of the SPA to Prudential.

4.20. The progress of the transaction was reported to the Prudential Board at a meeting of 17 February 2010 as follows:

(1) the US Treasury had recognised Prudential as a "credible buyer";

(2) AIG's Special Committee had agreed to take Prudential's proposal to the AIG Board;

(3) the AIG Board had asked for the CEO of AIA to be informed of the proposal;

(4) a draft SPA was being negotiated between the parties; and

(5) Prudential's largest shareholder had agreed to be made an insider to the transaction (meaning that it could not trade in Prudential's shares until the transaction had been announced or abandoned). The shareholder had been informed of the details of the transaction and had indicated its support.

Change in leak strategy

4.21. At the same meeting, Mr Thiam reported to the Prudential Board that the CEO of AIG had agreed with Mr Thiam that in the event of a leak, a 'discussions happening' announcement would be issued confirming that the parties were in talks around the transaction. The Prudential Board agreed that the transaction was sufficiently advanced whereby, if necessary, Prudential would confirm that discussions with AIG were ongoing.

Events leading up to the approach to the FSA

4.22. Work around the transaction continued to progress, and Mr Thiam, with the knowledge and approval of the Prudential Board, met with the CEO of AIA on 19 and 21 February 2010. During that period, the CEO of AIG confirmed to Mr Thiam that he favoured Prudential's bid over the IPO. Additionally, AIG imposed on Prudential a deadline of 25 February 2010 for agreement of the SPA.

4.23. On 23 February 2010, Prudential considered a timetable which scheduled an approach to the FSA to take place on 24 February 2010. During the meeting, it was agreed that that approach should be postponed to 26 February 2010, to coincide with the timing of the AIG Board's decision whether to accept Prudential's offer in place of an IPO.

4.24. The Prudential Board met on 24 February 2010. The minutes of the meeting record that, *"…the due diligence work continued with good progress being made and no 'showstoppers' have been identified. Further progress had been made on the SPA"*.

4.25. The timetable which the Prudential Board considered at the meeting on 24 February 2010 scheduled the approach to the FSA to take place on 26 February 2010.

4.26. On 25 February 2010, Mr Thiam sent a letter that had been approved by the Prudential Board to his counterpart at AIG, reconfirming the previous price proposal of $35.5 billion. Mr Thiam also set out the progress that had been made in respect of the transaction, including:

(1) "*Substantial progress towards agreeing an SPA … we are confident that this brings us meaningfully closer to an announceable transaction*";

(2) "*The draft SPA contains only necessary conditions … we believe that these … will be seen as representing a low risk to consummation of the transaction*";

(3) "*We have now been able to consult with our two top shareholders, representing together in excess of 16% of our share register, who have both expressed support for the proposed transaction. Our willingness to approach them should be an indication to you of the seriousness and determination with which we approach this transaction*";

(4) "*With respect to financing … we expect to be able tomorrow to provide you with agreed drafts of the definitive underwriting commitments that will be signed at the time we sign the sale and purchase agreement*."

4.27. A timetable accompanying the correspondence to AIG proposed the execution of the SPA on 1 March 2010, with an announcement of the transaction on 2 March 2010.

4.28. The same timetable was included in a document prepared by Credit Suisse on the morning of 26 February 2010. That document scheduled the approach to the FSA to take place on 1 March 2010. The SPA was timetabled to be signed on the same day, with announcement of the transaction to take place on 2 March 2010.

4.29. During the evening of 26 February 2010, it became apparent to Prudential that a leak of the deal was likely. Notwithstanding this, no approach was made to the FSA.

4.30. On the morning of 27 February 2010, a report of a rumour about the transaction was published in the media. Prudential informed the FSA in the afternoon.

4.31. In the morning of Sunday 28 February 2010 Prudential was informed that the AIG Board had agreed to enter into a transaction with Prudential for the sale of AIA.

The announcement of the transaction

4.32. The SPA had not been signed by the start of trading on 1 March 2010, and a holding announcement was issued at 7:52am. Prudential's shares were temporarily suspended until the SPA was signed and the full transaction announcement was issued.

4.33. The holding statement issued by Prudential included the following:

'The company confirms it is not currently contemplating the implementation of such a combination through a structure that would be classified as a reverse takeover under the Listing Rules of the UK Listing Authority and intends that any combination, if agreed, would be effected through a new holding company.'

4.34. The full transaction announcement was issued at 10:09am, following which the suspension was lifted. The summary at the start of the announcement contained the following statement:

"*The transaction will be effected through the acquisition of both Prudential (by way of a scheme of arrangement, "the scheme") and AIA by a new company (New Prudential).*"

Supervisory issues and the end of the proposed transaction

4.35. Numerous supervisory issues arose out of the transaction announced by Prudential, completion of which was conditional on regulatory approval. Those issues therefore had to be considered over the weeks following the announcement.. In particular, Supervision had to consider the size and complexity of the transaction, its transformative nature for group strategy, the solvency and risk profile of the proposed enlarged group, the proposed internal controls, and the geographic scope of the deal (including the legitimate interests of overseas authorities). It was therefore agreed that Prudential would not publish its rights issue prospectus until it had received confirmation that the FSA would not be minded to object to the transfer on supervisory grounds.

4.36. In the event, by 5 May 2010 (the date scheduled for publication of the prospectus), Prudential was unable to satisfy Supervision that the enlarged group would have a sufficiently resilient financial position, including whether it would have a robust regulatory capital position and whether regulatory capital surpluses held in certain jurisdictions could be applied to meet potential capital demands which might arise in other areas of the group. As a consequence, Prudential was unable to publish its prospectus by the scheduled date. The delay contributed to

the considerable speculation surrounding the deal. The prospectus was ultimately published on 18 May 2010.

4.37. On 1 June 2010, Prudential issued an announcement to the market, noting a prior announcement by AIG to the effect that it would not consider a revision of the terms of the sale of AIA. Prudential's announcement explained that it had proposed revised terms that would have reduced the price of acquiring AIA to $30.375 billion. On 3 June 2010, Prudential announced the termination of its agreement with AIG in respect of the transaction.

5. REGULATORY PROVISIONS AND GUIDANCE

5.1. The regulatory provisions and guidance relevant to this notice are set out in the Appendix.

6. REPRESENTATIONS AND FINDINGS

6.1. Below is a brief summary of the key written and oral representations made by Mr Thiam and how they have been dealt with. In making the decision which gave rise to the obligation to give this notice, the FSA has taken into account all of Mr Thiam's representations, whether or not set out below.

6.2. PAC made separate representations that it had not breached Principle 11. The FSA's summary of PAC's key written and oral representations (and how they have been dealt with) is set out in PAC's notice dated 22 March 2013. Mr Thiam stated that he endorsed and adopted all PAC's representations that it had not breached Principle 11 and if the case against PAC failed, there would be no case for Mr Thiam to answer. Accordingly, Mr Thiam's representations herein relating to the allegation that he was "knowingly concerned" in PAC's breach of Principle 11 (and the FSA's findings in relation to the same) are made on the basis that the FSA has found that PAC contravened Principle 11 for the reasons set out in PAC's notice dated 22 March 2013.

6.3. Mr Thiam denied the allegation that he was knowingly concerned in PAC's breach of Principle 11. He made representations that this action against him is contrary to FSA policy and is not established by reference to his actions and the events which occurred. Mr Thiam asserted that the FSA has misunderstood and mis-stated the events which occurred. Mr Thiam also asserted that the proposed sanction is unprecedented and unwarranted.

The action against Mr Thiam is contrary to FSA policy

6.4. Mr Thiam submitted that he has a legitimate expectation that the FSA will adhere to its policies and public statements as to the circumstances in which its disciplinary powers could or might be exercised against him. The FSA's stated position is that it will not pursue approved persons for being "knowingly

concerned" in an authorised firm's breach unless it identifies behaviour/conduct on the part of that approved person which is "blameworthy" and "unreasonable" and "personal" to the individual in question in all the circumstances in which he found himself at the time. Mr Thiam therefore contended that the action against him (under section 66 of the Act) is contrary to the FSA's published guidance on when disciplinary action will be taken against an individual and is therefore unlawful. In particular, Mr Thiam contended that the FSA's action against him is contrary to policies set out in:

(1) DEPP and EG. Section 6 of DEPP sets out the FSA's policy with respect to the imposition of penalties against approved persons such as Mr Thiam. DEPP 6.2.4 provides (*inter alia*) that "... the FSA may take disciplinary action against an approved person where there is evidence of personal culpability on the part of that approved person. Personal culpability arises where the behaviour was deliberate or where the approved person's standard of behaviour was below that which would be reasonable in all the circumstances at the time of the conduct concerned". Mr Thiam contended that the adverb "personally" connotes that the individual has engaged in conduct differentiating him from others. Chapter 2 of EG provides further guidance as to the FSA's approach to exercising its disciplinary powers and confirms that "[t]he FSA will not pursue senior managers where there is no personal culpability" (EG 2.31); and

(2) the FSA's Board Report on the failure of the Royal Bank of Scotland dated December 2011 (the "RBS Report") and the Tribunal decision of *Pottage v FSA* [Reference FS/201/33] (the "Pottage decision"). Mr Thiam asserted that some of the clearest statements of the FSA's prevailing policies as to the exercise of its disciplinary powers against approved persons can be found in the RBS Report. Mr Thiam contended that the RBS Report provides that the FSA will only pursue individuals when in possession of "very strong evidence" of their "personal culpability". Personal culpability entails dishonesty, recklessness or incompetence and incompetence entails acting "unreasonably". Mr Thiam contended that the test for "unreasonable" conduct is straightforward and has been confirmed by the Tribunal in the Pottage decision. Further, it bears some resemblance to the test in *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582 at 587-588 (the "Bolam test") by which the common law judges professionals generally: a professional who acts in accordance with a practice accepted as proper by a responsible body of professional opinion is not treated as negligent "merely because there is a body of opinion which would take a contrary view". Accordingly, Mr Thiam contended that he could legitimately expect that he would not face disciplinary action if other credible persons in his position might have acted as he did or sanctioned his conduct as consistent with regulatory obligations. To put it another way, Mr Thiam should only find himself at risk of disciplinary action if his conduct

was “so obviously wrong at the time that it was clearly outside the bounds of reasonableness”.

6.5. The FSA has found that it accepts Mr Thiam’s submissions that he has a legitimate expectation that the FSA will adhere to its published policies as to the circumstances in which its disciplinary powers could or might be exercised against him. The FSA considers that the action against Mr Thiam is consistent with the FSA’s policy as to when it will take action against individuals. The FSA accepts that for it to take action against Mr Thiam he needs to have been personally culpable (i.e. his conduct fell below that which would be reasonable in all the circumstances at the relevant time). The FSA considers that the action against Mr Thiam is entirely consistent with its published guidance on when disciplinary action will be taken against an individual and is therefore lawful and appropriate. The FSA does not accept Mr Thiam’s representations that its action against him is contrary to its policies set out in:

(1) DEPP and EG. The FSA considers that the policies in both DEPP and EG provide that the FSA will take action against approved persons where there is evidence of personal culpability on their part, in that the behaviour was deliberate or the standard of behaviour was below that which would be reasonable in all the circumstances at the time of the conduct concerned (DEPP 6.2.4.G and EG 2.31). However, the FSA does not accept that the word “personally” connotes that Mr Thiam’s conduct has to be differentiated from that of others. The FSA considers that it is possible for more than one individual to be personally culpable for the same act or omission.

(2) the RBS Report and the Pottage decision. The RBS Report and the Pottage decision are not public statements of FSA policy. The FSA’s stated policy is found in DEPP and EG (as noted above). In any event, the FSA notes that the statements in the RBS Report are consistent with the guidance in DEPP and EG – namely that the FSA will pursue individuals where there is clear evidence of personal culpability. Further, the FSA considers that Mr Thiam’s submission that he should only find himself at risk of disciplinary action if his conduct was “so obviously wrong at the time that it was clearly outside the bounds of reasonableness” (supported by his reference to the Bolam test) is simply another way to express the need for personal culpability pursuant to DEPP 6.2.4G. The FSA accepts that the Pottage decision also confirms published FSA policy that requires an individual’s personal culpability be established before the FSA will pursue them.

Mr Thiam was not "personally culpable" for the conduct complained of

6.6. Mr Thiam made representations that he was not "personally culpable" for the conduct complained of by the FSA. Such an analysis necessarily involves issues of fact. Accordingly, Mr Thiam also made representations as to what he asserted is the correct factual matrix against which his personal culpability (if any) for the conduct complained of should be considered. The FSA's case to the contrary rests on a number of misconceptions as to the true factual position (including an incorrect understanding of decisions taken by Prudential's Board) and a failure to recognise the significance of other matters, such as:

(1) Mr Thiam's assessment as to the likelihood of the transaction proceeding. Mr Thiam asserted in interview with the FSA that he regarded the transaction as "highly unlikely, completely speculative … " until 28 February 2010. He contended that the FSA has failed to take account of the IPO's primacy (until a very late stage) in Mr Thiam's mind. That is, a high likelihood of the IPO meant a low likelihood of the transaction in Mr Thiam's mind. Mr Thiam submitted that his view as to the prospects of the transaction proceeding is relevant to a proper assessment of his conduct.

(2) the reasonableness of Mr Thiam's conduct in the course of PAC's meeting with Supervision on 12 February 2010. Mr Thiam asserted that the FSA's criticism of him for not disclosing the transaction to the FSA during the meeting with Supervision on 12 February 2010 overlooked the fact that: (1) Prudential and AIG were no longer working towards an announcement of the transaction on 26 February 2010 and were no longer working towards agreeing heads of terms on 17 February 2010; (2) the Prudential Board had collectively agreed an approach to bringing the regulator inside; and (3) Prudential's general interest in acquiring AIA was already well known to the FSA by reason of Prudential's failed bid for AIA in February 2009 which had been leaked to the press. In the circumstances, Mr Thiam contended that it would not be desirable for him to ride roughshod over his Board's decision in the manner required by the FSA. Notwithstanding the foregoing (and for completeness), Mr Thiam also asserted that a pre-scheduled meeting between PAC and the FSA could not and did not create an obligation of disclosure where otherwise none had arisen. Accordingly, Mr Thiam asserted that on no view was his conduct "so obviously wrong at the time that it was clearly outside the bounds of reasonableness".

(3) Mr Thiam's (and the Prudential Board's) consistent intention, that the FSA would be notified at the appropriate time, ahead of execution of the SPA. The assertion that Mr Thiam had a personal pre-occupation with the risk of leaks which blinded him as to his regulatory duty to the FSA has no basis in fact. It was always understood not to be a relevant factor in the decision as to when to approach the regulator. Mr Thiam submitted that it was only relevant to whether an earlier approach than was required should/would be

made. That is, it was only relevant in so far as Mr Thiam considered whether he should be more forthcoming in circumstances where he had no obligation.

(4) the collective decision of Prudential's Board, including Mr Thiam, that the FSA would be notified at the appropriate time, ahead of execution of the SPA. Mr Thiam submitted that the decision as to when to approach Supervision was never one for Mr Thiam alone and was discussed by the Prudential Board with advisers present on 31 January and 3 February and a consensus position was reached. Nothing occurred thereafter to render the decision outdated.

(5) the fact that Mr Thiam sought, obtained and acted on the advice of reputable experts. Mr Thiam submitted that as he sought, obtained and acted on the advice of reputable experts, on the face of it he should not be exposed to censure. In particular, Mr Thiam asserted that the absence of any advice from Prudential's sponsors that disclosure/notification to the regulator was required for regulatory reasons (as opposed to transactional reasons) must lie at the heart of any evaluation of whether disciplinary action against him is appropriate.

6.7. The FSA rejects Mr Thiam's representations that he was not "personally culpable" for the conduct complained of by the FSA. The contemporaneous evidence indicates that Mr Thiam was the individual most closely involved with the progress of the transaction. The FSA has considered Mr Thiam's assertions that the case against him rests on a number of misconceptions (including an incorrect understanding of decisions taken by Prudential's Board) and a failure to recognise the significance of other matters. The FSA has found that:

(1) it has not misunderstood the likelihood of the transaction or failed to give proper weight to the fact that an IPO was the established and favoured mechanism for disposing of AIA. The FSA considers that the likelihood of the transaction proceeding was only relevant to the extent that, when the transaction was in its very early stages, it may have been so speculative or so uncertain in its terms that no purpose would have been served by informing the FSA. However, the FSA notes that was not the position by 11 February 2010 (at the latest) when it was clear to Prudential that AIG was prepared to consider its offer. Further, although the FSA accepts that Mr Thiam's assessment of the likelihood of the transaction may have played a part in his conduct, the FSA considers that the likelihood of the transaction is simply one consideration that Mr Thiam should have borne in mind when considering his obligations as an approved person. Another equally important consideration is the impact of the transaction on the financial system. Mr Thiam was cognisant that the FSA could reasonably have expected to be informed of a transaction of this size, scale and transformational nature. Irrespective of whether the final outcome of the

then ongoing negotiations with AIG remained uncertain, Mr Thiam should have informed the FSA of the transaction by 11 February 2010 (at the latest). However, because he was highly sensitive to the possibility of a leak of the proposed transaction, his judgment about when to inform the FSA was materially influenced.

(2) Mr Thiam's assertion that the pre-scheduled strategy meeting between PAC and the FSA on 12 February 2010 could not and did not create an obligation of disclosure where otherwise none had arisen is misconceived. It is evident that PAC's obligations under Principle 11 can only properly be understood as part of the factual matrix which includes Mr Thiam's (and PAC's) meeting with Supervision. Such meetings are aimed at assisting the FSA in the discharge of its regulatory functions. Mr Thiam was the senior person representing PAC at the meeting and he acknowledged in interview that as at the date of the meeting with Supervision it was up to him (as opposed to the Prudential Board) to exercise his personal judgment as to whether or not to inform the FSA of the transaction. As already noted, Mr Thiam was cognisant that the FSA could reasonably have expected to be informed of a transaction of this size, scale and transformational nature. In those circumstances, it was unreasonable of him not to notify the FSA of the transaction at the strategy meeting with Supervision on 12 February 2010 (at which Prudential's strategy in Asia was discussed). For the foregoing reasons, the FSA does not accept that Mr Thiam's representations that: (1) the Prudential Board had collectively agreed an approach to bringing the regulator inside; (2) he did not want to ride "roughshod" over his Board's decision; and (3) Prudential's general interest in acquiring AIA was already well known to the FSA (by reason of Prudential's failed bid for AIA in February 2009 which had been leaked to the press) assist him.

(3) it accepts that Mr Thiam's consistent intention was that the FSA would be notified at the appropriate time, ahead of execution of the SPA. However, the FSA has also found that Mr Thiam's concerns about leak risk materially influenced his judgment as to what the appropriate time to inform the FSA was. In support of this finding, the FSA considers that there is significant contemporaneous evidence that leak risk was a significant factor in Mr Thiam's consideration as to when to inform the FSA about the transaction. In the FSA's view, Mr Thiam's high sensitivity regarding leak risk was the reason why the FSA was not approached earlier than it was (as required).

(4) whilst it accepts that Mr Thiam sought to keep Prudential's Board updated as to progress of the transaction, and that the Board was aware of the approach being adopted in relation to notification of the FSA, the FSA considers that the contemporaneous evidence is consistent with its view that the decision regarding timing of contact with the FSA about the transaction was primarily Mr Thiam's responsibility and Prudential's Board expected him to take the lead on this issue (and, as Mr Thiam put it in his interview

with the FSA, exercise his judgment). The contemporaneous evidence also shows that he was the Board member of PAC who was most closely involved with the progress of the transaction. In any event, the FSA notes that the fact that other individuals might also have been culpable does not exonerate Mr Thiam.

(5) it accepts that Mr Thiam sought and obtained the advice of reputable experts. However, whilst the FSA accepts Mr Thiam's assertion that he was not provided with advice from Prudential's sponsors that disclosure/notification to the regulator was "required for regulatory reasons", the FSA does not consider this argument to be persuasive. In any event, the FSA has found that Mr Thiam did not need advice (from experts or otherwise) to know to inform the FSA about the transaction because the contemporaneous evidence indicates that he was aware of the need to do so. However, because Mr Thiam was highly sensitive to the possibility of a leak of the transaction, his judgment about when to inform the FSA was materially influenced. Accordingly, the FSA considers that whether or not Prudential's sponsors advised Mr Thiam that disclosure/notification to the regulator was required for regulatory reasons is largely irrelevant to its evaluation of whether disciplinary action against Mr Thiam is appropriate in the circumstances.

The sanction is unwarranted and without precedent

6.8. Mr Thiam made representations that the action against him under section 66 of the Act is unwarranted and without precedent. It cannot and will not advance any of the FSA's regulatory objectives. By contrast it poses a grave threat to Mr Thiam's reputation and career.

6.9. Mr Thiam submitted that:

(1) without exception, the factors identified in DEPP 6.2.1 which are relevant to the FSA's decision as to whether or not to take disciplinary action against Mr Thiam militate against doing so; and

(2) there is no precedent for the FSA seeking to take action against an individual in circumstances comparable to those of Mr Thiam. Accordingly, the sanction is unwarranted in all the circumstances of the case.

6.10. The FSA has found that:

(1) it does not accept that Mr Thiam's submission that all the factors identified in DEPP 6.2.1 militate against taking action against him (for all the reasons provided herein). In particular the FSA considers that Mr Thiam's submission is inconsistent with the guidance at DEPP 6.2.1G(1)(e) which

states that one relevant factor is "the impact or *potential impact* (emphasis added) of the breach on the orderliness of markets including whether confidence in those markets has been damaged or put at risk". The FSA considers that the risk to market confidence was clear in this case; and

(2) whilst it accepts that there are no cases that are directly comparable on their facts to this one, it has properly considered all analogous cases (being cases against individuals at large firms where there was no finding of a lack of fitness and propriety). In any event the FSA considers that the sanction in this case is both appropriate and proportionate by reference to the factors set out in DEPP 6 (see the analysis below).

7. THIRD PARTY

7.1. Below is a brief summary of the key written representations made by Credit Suisse (as third party) and how they have been dealt with. In making the decision which gave rise to the obligation to give this notice, the FSA has taken into account all of Credit Suisse's representations, whether or not set out below.

7.2. Credit Suisse made representations that:

(1) it was inaccurate for it to be described as "lead sponsor". Although it initially acted as the sole sponsor to the proposed transaction, from 20 February 2010 it was communicating the collective advice of all the sponsors. Further, the concept of "lead sponsor" is not referred to in the Listing Rules; and

(2) references to it in the context of PAC's obligations under Principle 11 risk suggesting that Credit Suisse had a mandate or duty to advise PAC in relation to its obligations as an authorised firm under Principle 11. Credit Suisse stated that it had no mandate or duty to advise PAC.

7.3. The FSA has found that:

(1) whilst it accepts Credit Suisse's submission that the concept of "lead sponsor" is not referred to in the Listing Rules, that is not a reason for this notice not to reflect the factual reality that: (1) between 31 January 2010 and 20 February 2010, Credit Suisse was the sole sponsor; and (2) from 20 February 2010, it was taking the lead among the sponsors in communicating advice to Prudential (i.e. Credit Suisse continued to act as the primary interface with the client);

(2) it does not accept that references to Credit Suisse in the context of PAC's obligations under Principle 11 (in this notice) risk suggesting that Credit Suisse had a mandate or duty to advise PAC in relation to its obligations as an authorised firm under Principle 11 because, in this notice, the FSA has

used an amended definition of Credit Suisse to make an explicit statement that Credit Suisse had no mandate or duty to advise PAC in relation to its obligations as an FSA authorised firm.

8. FAILINGS

Principle 11

8.1. Between 11 February 2010 and 27 February 2010, Mr Thiam was knowingly concerned in PAC's breach of Principle 11 by failing to deal with the FSA in an open and co-operative way and by failing to disclose appropriately information of which the FSA would reasonably expect notice for the following reasons:

(1) PAC should have discussed with the FSA, at the earliest opportunity, the prospective change in control of PAC (SUP 11.4.8G). It is clear that, in the circumstances of the proposed transaction, waiting to inform the FSA until there was a formal agreement in respect of the change of control (i.e. when the SPA was signed) would not fulfil the obligation to be open and cooperative with the FSA.

(2) The FSA expected PAC to disclose the prospective transaction to the FSA by 11 February 2010 at the latest, given the developments contained in Mr Thiam's update to the Prudential Board on that date. As a result of the developments referred to in Mr Thiam's update to the Prudential Board on that date, Mr Thiam and PAC were aware that the transaction was significantly advanced. In particular, the FSA would have expected PAC and Mr Thiam to disclose the prospective transaction at the meeting with the FSA on 12 February 2010. The express purpose of that meeting was to discuss Prudential Group strategy, the FSA asked detailed questions about Prudential's strategy for growth in the Asian market and its plans for raising equity and debt capital, and Mr Thiam discussed growth in Asia at length, but omitted to mention the transaction.

9. SANCTION

9.1. The FSA's policy on the imposition of financial penalties and public censures is set out in DEPP and EG. Mr Thiam's misconduct occurred prior to 6 March 2010, the date on which the FSA's current penalty regime came into force. In determining the proposed sanction, the FSA has had regard to the guidance under the previous penalty regime. The FSA considers the following factors to be particularly important.

Deterrence (DEPP 6.4.2G(1))

9.2. Given the circumstances of this case the FSA considers it necessary to send a clear message to directors of firms as to the fundamental importance of behaving openly and co-operatively towards the FSA.

Seriousness and impact of the breach (DEPP 6.2.1(1))

9.3. The FSA considers Mr Thiam's conduct to be serious for the following reasons:

(1) Mr Thiam is the CEO of a highly prominent, FTSE 100 company. He is approved by the FSA, holds Controlled Function 1, and has extensive industry experience, including experience of mergers and acquisitions, and of interaction with regulators.

(2) Timely and proactive communication with the FSA is of fundamental importance to the functioning of the regulatory system. It is vital that the FSA be appropriately informed about transactions with potentially significant market and regulatory implications. That importance is heightened in the context of transformative transactions with global implications. The transaction in this case was so significant that it had potentially far-reaching consequences for tens of thousands of investors and for the stability and confidence of the financial system in the UK and abroad.

(3) At the meeting on 12 February 2010, Mr Thiam failed to mention the proposed transaction when questioned by the FSA about aspects of Prudential Group strategy to which the transaction was clearly highly relevant.

(4) Mr Thiam had numerous opportunities and was repeatedly advised of the need to inform the FSA of the transaction, yet played a significant role in PAC's failure to do so. Mr Thiam and PAC remained highly concerned about leak risk throughout the transaction, and this sensitivity clearly affected their judgment about when to inform the FSA. Because of this, they failed to give due weight to the importance of complying with PAC's regulatory obligations. Mr Thiam should not have allowed his high sensitivity that the FSA would leak the transaction to play a material part in his decision making.

(5) As a consequence of the delay in informing the FSA, Supervision was required to make far-reaching decisions regarding complex issues within compressed timescales. The FSA is satisfied that appropriate decisions were made. However, Mr Thiam's role in PAC's failure to appropriately inform the FSA had the following consequences:

(a) hampering the FSA's ability to meet its obligations by responding adequately to overseas' supervisors' enquiries and requests for assistance when news of the deal broke;

(b) narrowing the FSA's options in scrutinising the transaction generally, which was especially important given the size and significance of the transaction, its implications in the UK and abroad, and heightened regulatory and market concerns around prudential and capital adequacy issues following the financial crisis in 2008; and

(c) risking delay to the publication of the prospectus to the rights issue, thereby contributing to the significant speculation around the deal and the risk of loss to other market users.

The extent to which the breach was deliberate or reckless (DEPP 6.2.1(1)(a))

9.4. Mr Thiam was knowingly concerned in the formation by PAC of an intention to delay approaching the FSA which was based on inappropriate considerations and on an assessment by them of their regulatory obligations which the FSA views as misconceived. However, the FSA accepts that Mr Thiam and PAC did consider its obligations in forming its assessment. Although the FSA considers that the circumstances of Mr Thiam's breach are serious, the FSA does not consider that the breach was reckless or deliberate.

Whether the person has made a profit or avoided a loss (DEPP 6.4.2 (2))

9.5. Mr Thiam did not profit from the breach.

Disciplinary record and compliance history (DEPP 6.4.2(6))

9.6. Mr Thiam has not been the subject of previous FSA disciplinary action.

Other action taken by the FSA (DEPP 6.5.2(10))

9.7. In determining the appropriate sanction, the FSA has taken into account sanctions imposed by the FSA on other approved persons for similar behaviour. However, the FSA has also had regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory conduct.

Conclusions

9.8. The FSA considers in all the circumstances that the seriousness of the breach merits a public censure.

10. PROCEDURAL MATTERS

Decision Maker

10.1. The decision which gave rise to the obligation to give this notice was made by the Settlement Decision Makers.

10.2. This Final Notice is given under and in accordance with section 390 of the Act.

Publicity

10.3. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as it considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish such information if such publication would, in the opinion of the FSA, be unfair to the recipient or prejudicial to the interests of consumers.

10.4. This Final Notice will be published on the FSA's website on 27 March 2013.

FSA contacts

10.5. For more information concerning this matter generally, Mr Thiam should contact Celyn Armstrong (020 7066 2818) or Charles Hastie (020 7066 6836) at the FSA.

Jamie Symington
Head of Department
FSA Enforcement and Financial Crime Division

APPENDIX

RELEVANT LEGISLATION, REGULATORY REQUIREMENTS, GUIDANCE AND COMMENTARY

Legislation

1. The FSA is authorised, pursuant to section 66 of the Act, if it considers that an approved person has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under the Act, to publish a statement of his misconduct.

Regulatory requirements and guidance

2. Principle 11 of the Principles provides that:

   "A firm must deal with its regulators in an open and co-operative way, and must disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice."

Scope of Principle 11

3. SUP 15.3 contains guidance on firms' requirement to communicate with the FSA in accordance with Principle 11. SUP 15.3.8 G states that compliance with Principle 11 includes, but is not limited to, giving the FSA notice of any proposed restructuring, reorganisation or business expansion which could have a significant impact on the firm's risk profile or resources, and any action which a firm proposes to take which would result in a material change in its capital adequacy or solvency.

4. SUP 15.3.10 G states that:

   "*The period of notice given to the FSA will depend on the event, although the FSA expects a firm to discuss relevant matters with it at an early stage, before making any internal or external commitments*."

Content and timing of notification regarding a change of control

5. SUP 11.4.2R provides as follows:

   "A UK domestic firm, other than a non-directive firm, must notify the FSA of any of the following events concerning the firm:

(i) *a person acquiring control;*

(ii) *an existing controller increasing control;*

(iii) *an existing controller reducing control;*

(iv) *an existing controller ceasing to have control.*

6. SUP 11.4.8G provides as follows:

"Principle 11 requires firms to be open and cooperative with the FSA. A firm should discuss with the FSA at the earliest opportunity, any prospective changes of which it is aware, in a controllers or proposed controllers shareholdings or voting power (if the change is material). These discussions may take place before the formal notification requirement in SUP 11.4.2R or SUP 11.4.4R arises. (See also SUP 11.3.2G). As a minimum, the FSA considers that such discussions should take place before a person:

(1) *enters into any formal agreement in respect of the purchase of shares or a proposed acquisition or merger which would result in a change in control (whether or not the agreement is conditional upon any matter, including the FSA's approval); or*

(2) *purchases any share options, warrants or other financial instruments, the exercise of which would result in the person acquiring control or any other change in control.*