Financial Services Authority

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 PAC referred the matter to the Tribunal but has withdrawn its reference.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.