FSA®

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 Prudential referred the matter to the Tribunal but has withdrawn its reference.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."