

Mr Eric Ka Chi Siu has the right to refer his Notice to the Upper Tribunal to determine what (if any) the appropriate action is for the Authority to take, and remit the matter to the Authority with such directions as the Tribunal considers appropriate.



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DECISION NOTICE

To: **Eric Ka Chi Siu**
Date of birth: November 1962
24 May 2019

1. ACTION

1.1. For the reasons given in this notice, the Authority has decided to impose on Eric Ka Chi Siu a financial penalty of £40,200 pursuant to section 91 of the Financial Services and Markets Act 2000 (the "Act") because Mr Siu was knowingly concerned in a breach by Cathay International Holdings Limited ("Cathay") of the Authority's Listing Principles.

2. SUMMARY OF REASONS

2.1. Cathay is a holding company based in Hong Kong, and is premium listed on the London Stock Exchange in the UK. Cathay operates through a number of subsidiaries, and during 2015 between 70% and 80% of its revenue derived from Lansan Pharmaceutical Holdings Limited ("Lansan"). Between 21 August 2015 and 29 December 2015 ("the 2015 Relevant Period"), Cathay had an average market capitalisation of £69,602,132. At all material times, Mr Siu was Cathay's Finance Director ("FD").

- 2.2. On 29 December 2015, Cathay issued a trading update (“the December Announcement”). The December Announcement informed the market that due to operating expenses being significantly higher than anticipated, it expected a material loss before tax for the year ending 31 December 2015, a performance which would be markedly below market expectations. It also disclosed a significant financial penalty imposed on a subsidiary of Lansen. On the day of the December Announcement, Cathay’s share price dropped by 18.2%.
- 2.3. The deterioration in Cathay’s financial performance over the course of 2015 was the result of a number of issues across Cathay’s group.

Cathay’s Listing Principle 2 breach

- 2.4. Listing Principle 2 requires a listed company to deal with the Authority in an open and co-operative manner.
- 2.5. Between 29 February 2016 and 16 August 2016 (“the 2016 Relevant Period”), Cathay corresponded with the Authority about the timing of the December Announcement. The Authority’s requests for information clearly required explanations of the events surrounding the December Announcement. In that correspondence, which was drafted and signed by Mr Siu, Cathay provided information to the Authority about its forecasting procedures and its forecasts in 2015 which was materially different to the actual processes followed in 2015 and was not contemporaneous with the period leading up to the December Announcement. While the Authority accepts Cathay’s explanation that it did not intend to mislead the Authority, Cathay had decided to provide this information to the Authority and was aware that the information being provided was not an accurate record. Cathay did not in that correspondence either state that, or provide an explanation of why, it was providing non-contemporaneous information.
- 2.6. During the 2016 Relevant Period Cathay failed to be open and co-operative with the Authority when it provided, without any explanation, materially different information to the Authority about its forecasting procedures to the actual procedures followed at the relevant times during 2015. Cathay therefore breached Listing Principle 2.

Mr Siu being knowingly concerned in Cathay’s breach

- 2.7. Mr Siu was a director and FD of Cathay at all material times and, by virtue of that role and his knowledge of, and involvement in, the matters which gave rise to

Cathay's breach, he was knowingly concerned in the breach of Listing Principle 2 throughout the 2016 Relevant Period. Mr Siu was responsible for drafting the correspondence with the Authority and knew that the information being provided was not a contemporaneous record of events.

- 2.8. The Authority relies on listed companies and their directors to provide clear, accurate and complete information to it in order effectively to monitor and regulate the integrity of the financial markets in the UK. The provision of inaccurate information to the Authority impacts its ability to do this.
- 2.9. The Authority has therefore decided to impose a financial penalty on Mr Siu in the amount of £40,200 for the 2016 Relevant Period pursuant to section 91 of the Act.
- 2.10. The Authority does not make any criticism of any other person or entity in this Notice.

3. DEFINITIONS

- 3.1. The definitions below are used in this Notice:

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

the "Authority" means the Financial Conduct Authority;

the "Board" means the Cathay board of directors;

"Cathay" means Cathay International Holdings Limited;

"CEO" means Chief Executive Officer;

"CFDA" means the China Food and Drug Administration;

the "December Announcement" means the trading update made to the market (by way of Regulatory Information Service) by Cathay on 29 December 2015;

"DEPP" means the Authority's Decision Procedure and Penalties Manual;

"DTR" or "DTRs" means the Disclosure Rules and Transparency Rules, part of the Handbook;

"FD" means Finance Director;

"GBP" means Pounds Sterling;

the "Handbook" means the Authority's Handbook of rules and guidance;

"Lansen" means Lansen Pharmaceutical Holdings Limited;

"Listing Principles" means the Listing Principles set out in the Listing Rules, part of the Handbook;

"Mr Lee" means Mr Jin-Yi Lee, Cathay's CEO at all material times;

"N+1" means N+1 Singer, Cathay's financial adviser and broker during the 2015 Relevant Period;

"RMB" means Ren Min Bi;

the "Tribunal" means the Upper Tribunal (Tax and Chancery Chamber);

"USD" means United States Dollars;

the "2015 Relevant Period" means 21 August 2015 to 29 December 2015; and

the "2016 Relevant Period" means 29 February 2016 to 16 August 2016.

4. FACTS AND MATTERS

Background

- 4.1. Cathay is a holding company based in Hong Kong, which is premium listed on the London Stock Exchange. It specialises in investing and operating in the healthcare sector in the People's Republic of China, as well as in luxury hotels. It operates through a number of subsidiaries, including Lansen (listed on the main board of the Hong Kong Stock Exchange) which accounted during the 2015 Relevant Period for 70% to 80% of Cathay's revenue. During the 2015 Relevant Period, Cathay had an average market capitalisation of approximately £69,602,132.
- 4.2. Cathay's financial performance and interim and year-end accounts were determined by the consolidation of the performance of its five subsidiaries, and the costs to run its corporate office, as it did not carry out its own business activities. Cathay was therefore reliant on the provision of information from its subsidiaries to understand its actual and expected financial performance during the 2015 Relevant Period. Mr Siu was responsible for reviewing the consolidated financial information received from Cathay's subsidiaries. During the 2015 Relevant Period,

Cathay's performance was overseen by its Board, which consisted of four executive directors and three non-executive directors.

- 4.3. During the 2015 Relevant Period, Cathay was the majority shareholder of Lansen, owning 50.56% of its shares. Lansen and its subsidiaries primarily engage in the manufacturing and trading of pharmaceutical products in China. Its wholly-owned subsidiaries include Ningbo Liwah, a pharmaceutical company based in the People's Republic of China.
- 4.4. The Board met on four occasions each financial year, and in 2015 the Board met:
- (a) in March, primarily to review the year-end results for the previous financial year, and to set the internal budget for Cathay's operations for the year ending 31 December 2015;
 - (b) in June, primarily to coincide with Cathay's Annual General Meeting. This meeting also considered Cathay's financial performance against the internal budget;
 - (c) in August, primarily to review Cathay's six-month interim results up to 30 June 2015, to obtain an update on the operations of each subsidiary, to prepare an outlook statement and to forecast Cathay's expectations for the year-end; and
 - (d) in December, primarily to review Cathay's ten-month results, and to obtain an update on the operations of each subsidiary, and Cathay's forecast expectations for the year-end.
- 4.5. There was no similar formal meeting structure for Cathay's executive committee; but the executive directors, including Mr Siu, worked within the same office in close proximity to each other, and so regularly met informally. However, in practice, decisions that were not business as usual in nature would not be taken by the executive directors or the executive committee, and would be escalated to the Board.

Mr Siu

- 4.6. Mr Siu has been a director of Cathay, and its FD, since 21 January 2010. During the 2015 and 2016 Relevant Periods, he was responsible for managing the financial

and transaction-related activities, and investor relationships of the Cathay group (excluding the Lansen group). Mr Siu was responsible for reviewing and presenting corporate finance information to the Board. As part of his role, Mr Siu was also responsible for liaising with Cathay's financial advisers and legal advisers with regard to regulatory reporting and updates. He was then to alert the Board and bring to its attention any irregularity and lack of compliance as well as any material issues requiring its consideration. Mr Siu reported on important matters relating to Cathay's business on a regular basis.

Cathay's business in 2015

- 4.7. In March 2015, Cathay's Board, of which Mr Siu was a member, set an internal budget for the year ending 31 December 2015 with a budgeted profit after tax¹ totalling USD 3.4 million. In the publication of its annual results for 2014 to the market on 27 March 2015, it also released an outlook statement which discussed the various challenges and prospects for Cathay in 2015, but ultimately stated that Cathay anticipated operating cash flow to improve in all business segments. The outlook statement did not, however, provide any quantified guidance to the market on Cathay's year-end expected profit or revenue.
- 4.8. In May 2015, Cathay engaged N+1 as its new financial adviser and corporate broker. Mr Siu was involved in providing information required by N+1 to perform its work. As part of its role, N+1 would provide advice on Cathay's financials, act as a sponsor where required, and release analyst notes to the market. On 11 May 2015 analysts at N+1 released a note to the market setting out N+1's expectations for Cathay for the year ending 31 December 2015. N+1's expectations were that Cathay would make a loss after tax of USD 0.1 million for the year. This note was prepared in conjunction with Cathay. It constituted the first occasion on which the market was informed of any expectations for Cathay's financial performance for the year ending 31 December 2015, and as such constituted the best indicator of market expectations.

¹ In this Notice references to profit or loss after tax, in relation to Cathay, mean profit or loss (as the case may be) attributable to Cathay's owners.

- 4.9. Over the course of 2015, Cathay's business was impacted by a number of issues. As a result, during 2015 Cathay saw its financial performance for the year ending 31 December 2015 being negatively impacted. Mr Siu was sent the monthly consolidated management accounts for his review and attended regular business meetings to discuss Cathay's financial performance.
- 4.10. At the relevant time Cathay was affected by the fact that Lansen, which specialises in pharmaceutical products, had a number of significant issues occur, which impacted on its trading and profitability. During 2015 the CFDA carried out a nationwide inspection of the Gingko production industry. As a result of that investigation, Ningbo Liwah incurred a number of expenses, including product recall costs, inventory write off and, in December 2015, a substantial penalty imposed by the CFDA. Mr Siu was aware of the CFDA's investigation of Lansen through the media and internal communications within Cathay at the time.
- 4.11. During 2015 Cathay, through its subsidiaries, also had a number of initiatives which would seek to improve its financial performance. One of those initiatives was the diversification of Lansen's product portfolio. In May 2015, Lansen added two new products to its portfolio: Bio-Rad, a diagnostic kit for autoimmune diagnosis, and Fillderm, a collagen injectable filler produced by Botai, a subsidiary of Lansen. Lansen created a new budget for these products (i.e. comprising matters such as launch costs and aims for future performance), which it sent to Cathay in May 2015 and which provided for expected revenue from the new products of USD 11,392,000 for the year ending 31 December 2015. Mr Siu was aware of the addition of both of Lansen's new products.

Cathay's financial reporting process

- 4.12. Cathay did not have any written process for how it collated and considered results from its subsidiaries. However, Cathay normally received monthly results from each of its subsidiaries; generally between two and four weeks after the month end. Management of Cathay, including Mr Siu, met with Cathay's subsidiaries each month to understand the key issues in the business, although these meetings were not always formally documented or recorded.
- 4.13. Individuals within Cathay were directly involved in the preparation of the financial results from all subsidiaries except Lansen. Lansen, as a separately listed company, had its own process for compiling its monthly results. Once it had gone through that process, it sent its results to Cathay (occasionally outside the two to four-week

window). Cathay, on occasion, and not through Mr Siu, made enquiries about the reasoning or assumptions behind the numbers in the results, but would generally accept the numbers as presented due to its awareness of the sign-off process for the numbers at Lansen.

- 4.14. On receipt of the results from its subsidiaries each month, Cathay's finance department consolidated the results, and (from April 2015 onwards) compared Cathay's performance to the budget set by the Board in March 2015. Mr Siu was involved in reviewing the consolidated management results and compared them against the budget.
- 4.15. Cathay also consolidated the monthly results in advance of the regular Board meetings for the purposes of reviewing its financial performance. Mr Siu was involved in challenging the subsidiaries, except Lansen, in seeking explanations on the monthly results. As with the monthly consolidations by Cathay's finance department, the figures prepared for the Board were compared to the figures in Cathay's internal budget, set by the Board in March 2015, as well as the published results for the previous financial year. However, Cathay did not compare its actual financial performance to market expectations for the year ending 31 December 2015.

Cathay's forecasting process

- 4.16. Cathay had no documented procedures which set out how it forecast its expected financial performance, including what factors it took into consideration when determining whether it held inside information. However, twice a year, in advance of the interim and end of year Board meetings in August and December, Cathay also received year-end forecasts from its subsidiaries, which it would consolidate alongside the results, in order to assess how it was performing against the budget set by the Board in March. The interim forecast was based on six months' results, and six months' forecasts, and the year-end forecast was normally based on ten months' results and two months' forecasts. Once the forecasts were consolidated, Mr Siu and others reviewed them prior to circulating them to the Board.
- 4.17. Mr Siu and others at Cathay were directly involved in the preparation of the forecasts from its subsidiaries except Lansen. As with its monthly results, Lansen followed its own forecasting process and submitted the forecasts to Cathay following approval. As with the monthly results, Cathay could make enquiries as to

the reasoning or assumptions behind the figures for Lansen, but generally accepted the forecasts as submitted.

- 4.18. The forecasts compared the profit estimate against the budget, as well as a comparison to the preceding financial year. During the 2015 Relevant Period, Mr Siu and others at Cathay did not compare the forecasts to the market expectations set out by analysts at N+1, and therefore in the absence of this, the Board did not consider the forecast against market expectations for the year ending 31 December 2015 in their review of the forecasts.

The 2015 interim results

The August 2015 Board meeting

- 4.19. In advance of a Board meeting on 26 August 2015, Cathay received results from all of its subsidiaries for the first six months of the year, up to 30 June 2015. Individuals within Cathay consolidated the results and prepared draft interim results announcements. Mr Siu, with others, prepared the Board pack, which included the consolidated results and year-end forecasts for the subsidiaries (except year-end forecasts for Lansen), for consideration at the Board meetings.
- 4.20. Cathay also submitted its interim results, and associated draft commentary, to N+1 on 21 August 2015 for N+1's advice and comments on the drafting of the interim results announcement and associated documents. Mr Siu sent the draft interim statement to N+1 for its review prior to the interim statement's circulation to the Board.
- 4.21. The interim results showed that Cathay had weaker financial performance than at the same point in the preceding year, with six-month revenue totalling USD 62,156,000 and operating at a loss after tax of USD 4,266,000. This was significantly below market expectations as set by analysts at N+1, who had predicted a loss after tax of USD 0.1 million for the full financial year. Despite this, Cathay did not consider revising its own expectations for the year-end, or whether the deteriorating performance of Cathay constituted inside information. The interim results were also not considered by Cathay against the market expectations set by analysts at N+1.
- 4.22. While it received monthly results from Lansen up until June 2015 to be included in Cathay's interim results, Cathay was not provided with a forecast from Lansen setting out its expectations for the year-end. Mr Siu was aware that Lansen had

not provided its forecast for the year-end. Instead, Lansen provided an oral update to the Board at the meeting on 26 August 2015, which did not include any numbers or forecasts.

- 4.23. Cathay stated to the Authority that it attempted to obtain a forecast from Lansen for the August 2015 Board meeting but found it difficult due to resourcing constraints at the time as a result of the ongoing inspection of the Ginkgo production business by the CFDA.
- 4.24. However, Cathay did not have any procedure in place to generate forecasts for its own year-end expectations where it was not provided with information from a subsidiary. Mr Siu knew that Cathay did not have such a procedure.
- 4.25. In the absence of forecasts from Lansen, Cathay's Board, which included Mr Siu, only considered year-end forecasts for the remaining subsidiaries and the Board did not possess sufficient information to monitor carefully by assessing Cathay's overall year-end financial performance. In the course of preparing the Board papers, Mr Siu did not take any steps to ensure that Cathay completed its year-end forecasts for the whole of its business which included Lansen.
- 4.26. As noted above, the monthly results were not considered against market expectations. Neither was the interim forecast. Both were only considered against Cathay's internal budget, and the 2014 performance. In fact, Cathay could not compare the forecast effectively against market expectations as it had not taken steps to assess what would be its total year-end position.

Concerns raised by N+1

- 4.27. On 25 August 2015, N+1 raised concerns to Mr Siu and others that, due to the interim results, it was likely that Cathay would significantly miss the full year expectations set out in N+1's note of 11 May 2015. This was because the interim results showed poor performance in the first six months of the reporting period. Cathay was not aware that it would miss expectations as this was the first occasion on which relevant people at Cathay, including Mr Siu, had considered the impact of Cathay's interim results on its full year performance and whether Cathay held inside information.
- 4.28. On 27 August 2015, N+1 advised Mr Siu and others that Cathay needed to include in its announcement information about the fact it might miss market expectations for the full year. N+1 proposed an amendment to a sentence which was sent to Mr

Siu, and of which he was aware, to address this concern in Cathay's draft interim results, which would have stated that *'the Company anticipates that operational performance for the full year will be significantly lower than its previous expectation'*.

- 4.29. The Board, including Mr Siu, did not agree with N+1's advice, and removed the entire sentence from the draft of Cathay's interim results announcement shortly before publication. The Board considered that it was too soon to understand the financial impact of certain events on the group's business, and that the situation might change before year-end.
- 4.30. On 28 August 2015 Mr Siu spoke to N+1. Mr Siu also informed N+1 that the announcement itself, while not providing quantified guidance as to what it expected its position to be, provided the reader with sufficient information as to the state of Cathay's business (by way of the poor performance in the first six months), such that they could come to their own conclusions as to how this might impact year-end, and so the announcement would not benefit from the additional clarification proposed by N+1.
- 4.31. On 28 August 2015, N+1 repeated its advice to Mr Siu and further advised Cathay that it might be in breach of the DTRs if it did not include a line in its interim results announcement on whether it would meet market expectations, as N+1 considered that Cathay held inside information about its expected financial performance for the second half of the year. N+1 also alerted Mr Siu to the fact that it would need to downgrade market expectations for Cathay, through the issuance of a new analyst note. Mr Siu considered that the revised analyst note, alongside the interim results, was sufficient to inform the market of the impact of the interim results on full year expectations.
- 4.32. Mr Siu sent Mr Lee a copy of N+1's advice. Despite N+1 having expressly advised that a rule breach might occur, the senior individuals at Cathay including Mr Lee and Mr Siu did not reconsider Cathay's position, as the sentence proposed by N+1 had already been rejected by the Board. Although all material matters would normally be escalated to the Board, Cathay did not take any steps to reconsider its position in light of the further advice from N+1 or to consider whether it did hold inside information, and the Board as a whole was not informed that N+1 had advised of a potential rule breach. Having discussed the matter with Mr Lee, Mr Siu released Cathay's interim results announcement shortly after these discussions with N+1, and it did not include any statement that Cathay would not meet market

expectations. Mr Siu was named as Cathay's first point of contact for further enquiries in relation to Cathay's interim results announcement.

- 4.33. On 28 August 2015, as a result of Cathay's poor performance in the first half of the year, N+1 downgraded its expectations for Cathay's performance in a published analyst note. N+1's revised expectations for Cathay were that it would make a loss after tax of USD 6.3 million at year-end. This downgrade did not include consideration of any revenue (or profits) from the new products referred to in paragraph 4.11.

Period following the interim results

- 4.34. During conversations with N+1 at the time of finalising Cathay's interim results, Mr Siu assured N+1 that Cathay would continue to monitor its performance, so that it could identify and inform N+1 if and when a trading update was needed in the future. However, between 28 August 2015 and the year-end December Board meeting, Cathay did not monitor its performance against the market expectations set out by N+1 in the analyst note. Instead, Cathay monitored its performance against its internal budget, and continued to assess whether the facts in the unquantified outlook statement in the interim results remained true.
- 4.35. Between Cathay's interim results and the consolidation of its ten-month results for the 10 December 2015 Board meeting, Cathay's performance was so poor that it failed to generate even half of the revenue it had budgeted for internally. Despite Cathay continuing to perform well below its budget for the year, it did not consider whether this deterioration in performance might amount to inside information, and whether it should issue a trading update. Cathay did not monitor its financial performance by comparing its actual results against the market expectations set out by N+1 in the analyst note.
- 4.36. During the same period, N+1 attempted to obtain from Mr Siu and others at Cathay year-end forecasts on multiple occasions, but was not provided with them. Cathay failed to inform N+1 that the year-end forecasts did not, at this point, exist. Mr Siu was aware that forecasts were only produced twice a year, and that Cathay had not completed a forecast in August 2015. Until year-end forecasts were produced in early December 2015 (see below), he was aware that no other forecasts existed.

The December Announcement

Earlier advice received by Cathay

- 4.37. On 13 November 2015, N+1 made a further request to Mr Siu to obtain forecasts from Cathay for its year-end performance. As a result of this contact from N+1, a call was arranged for 27 November 2015 with Mr Siu and another individual from Cathay. At this point, Cathay had actual financial results for ten months plus two months' forecasts for all of its subsidiaries except Lansen (but did have nine months' actual financial results from Lansen).
- 4.38. On 27 November 2015, Mr Lee received notification of a penalty intended to be imposed by the CFDA on Ningbo Liwah of RMB 18,290,177.32, equivalent to approximately USD 2,860,000 at the relevant time. Mr Lee provided the details of that penalty to individuals at Cathay (including Mr Siu) who would be on the call with N+1. At the time of the call with N+1 on 27 November 2015, Mr Siu was aware of a significant cost to Lansen.
- 4.39. During the call with N+1 on 27 November 2015, Mr Siu assisted in describing in general how each subsidiary, and therefore Cathay, was performing. Based on Cathay's financial performance over the first six months of the year, Mr Siu considered that the financial performance in the second half of the year was expected to be similar to the first half of the year. However, N+1 advised that Cathay was performing below market expectations, and that a trading update should be made as soon as possible. N+1 further stressed that while it had not seen Cathay's results, from the comments made by Cathay, it appeared that the gap in performance compared to market expectations was impossible to close, and that if Cathay were to wait to make a trading update, it would be in breach of its regulatory obligations. At this point, Mr Siu and the other individual on the call informed N+1 that they could not make a decision on whether to publish an update, and that they would have to speak with Mr Lee and obtain Board approval (due to the fact that, as noted in paragraph 4.5, decisions that were not business as usual would in practice be approved by the Board).
- 4.40. On 28 November 2015, N+1 followed this call up with written advice to Mr Siu and another individual at Cathay reflecting the advice provided on the call. On both occasions, N+1 requested information from Mr Siu and another individual at Cathay showing Cathay's financial performance. Mr Siu sent a copy of N+1's written advice shortly after receipt to Mr Lee.

- 4.41. A second call with N+1 was arranged for 2 December 2015 so that Mr Lee could speak with N+1. At this point, Cathay still did not have a forecast from Lansen for the year-end, but as with the 27 November 2015 call, had two months' forecasts and ten months' financial performance for all of its subsidiaries except Lansen, but only nine months' results for Lansen. In the call, Mr Lee provided further information about the performance of Lansen, which he stated was underperforming. Mr Lee covered a number of factors impacting Lansen's performance, such as the CFDA penalty on Ningbo Liwah, and stated that there was no argument that a trading update to the market needed to be made. Mr Siu was present on the call although his participation was minimal.
- 4.42. However, on the 2 December 2015 call Mr Lee said that his view was that there was a choice about when that announcement could be made. Mr Lee anticipated making an announcement in three weeks' time and considered that the role of N+1 was to assist Cathay in how it could delay disclosure. Specifically, he wished to coincide the trading update with Lansen's announcement of the penalty imposed on Ningbo Liwah, in order to avoid multiple announcements to the market. N+1 advised on a number of occasions during the call that Mr Lee was incorrect in his view, and that a trading update needed to be made irrespective of the fact that a later announcement would need to be made about Lansen. N+1 further stated that it appeared there was no argument that a trading update was needed, and urged Cathay and Mr Lee to take its advice. Again, N+1 requested information showing the financial performance of Cathay.
- 4.43. On 2 December 2015, Mr Siu sought legal advice on behalf of Cathay (which it has disclosed to the Authority under a waiver of legal advice privilege) on whether Cathay could delay an announcement on its financial performance to coincide with the announcement of the penalty on Lansen. On 3 December 2015 the legal advice was received by Mr Siu and Mr Lee received a copy on the same day. However, the legal advice agreed with N+1, and noted that it appeared an announcement would need to be made. The legal advice specifically advised Cathay that it could not choreograph its announcements and delay disclosure to coincide with the announcement of Lansen's penalty. The legal adviser attached the Authority's technical note on assessing and handling inside information which had been published in December 2012. The technical note stated that it was not acceptable for issuers to attempt to choreograph the assessment and possible disclosure of various and offsetting information that might individually meet the tests for inside information. The technical note also stated that issuers should have a consistent

procedure for determining what information is sufficiently significant for it to be deemed inside information and for the release of that information to the market.

- 4.44. Following this, Mr Siu contacted N+1 on 4 December 2015, and confirmed that Cathay would begin drafting a trading update to put to the Board for approval on 10 December 2015. However, a trading update was not drafted and put to the Board.

The December forecast

- 4.45. Lansen provided its results and forecasts for the full financial year to Cathay on 4 December 2015. Lansen's ten months' results showed that it had realised a profit after tax of USD 7,149,000, which was 44% below its own expectations. Mr Lee received those results and forecasts. Between 4 and 6 December, Mr Lee called Lansen to query the basis of Lansen's forecasts. These enquiries established that Lansen had incorporated the costs of its new products, but did not forecast any revenue from the new products as Lansen had adopted a conservative approach to its forecasts. Mr Lee did not ask Lansen to make any revisions to its forecasts. This was because Lansen had its own process to follow, and Mr Lee as CEO on behalf of Cathay accepted the figures that had been provided by Lansen. On 6 December 2015, Mr Siu received the forecast.
- 4.46. Individuals at Cathay consolidated these results and forecasts by 6 December 2015. Mr Siu was involved in reviewing the forecasts and preparing the Board papers and, following review by Mr Lee, sending them to the Board as part of its Board pack for the Board meeting taking place on 10 December 2015. The forecasts showed that Cathay was now projecting a year-end loss after tax of USD 9,866,000. N+1's market forecast for year-end was a loss after tax of USD 6,300,000. This year-end net loss was not analysed or discussed in the Board papers and Cathay's calculations were reviewed by Mr Lee and approved by him to form the Board pack. Therefore, Cathay's forecast figure represented an approximate 56% deviation in losses after tax from N+1's analyst note which set the market expectations, and confirmed the position set out by N+1 to Mr Lee in the call on 2 December 2015 in which Mr Siu also participated.
- 4.47. Prior to the Board meeting, Mr Lee was involved in discussions with the CFDA about the penalty to be imposed on Ningbo Liwah, and whether the penalty could be either reduced or paid by instalments. However, Mr Lee knew prior to the Board meeting that the CFDA would not change the amount of the penalty. Mr Lee

accordingly knew the final figure and that the penalty might be paid by instalments, the first of which, totalling RMB 3,658,177,32 (equivalent to approximately USD 566,688), might be payable before year-end. The CFDA subsequently confirmed that Ningbo Liwah was permitted to make payment by instalments in a notice to Ningbo Liwah dated 11 December 2015. The penalty was not included in the forecast figures provided for the Board meeting on 10 December 2015. Mr Siu was aware that Cathay's financial performance would be further adversely impacted by the penalty because Mr Lee forwarded to him notification of the penalty against Ningbo Liwah.

- 4.48. On 10 December 2015, the Board, including Mr Siu, convened and considered the results and expected financial performance of Cathay, and heard oral updates from each of its subsidiaries on factors that had impacted performance. The Board was not provided with a draft trading update at this meeting, as set out in paragraph 4.44; nor was there any document in the Board pack relating to Mr Lee's call with N+1 on 2 December 2015, in which Mr Siu also participated. The Board pack included information on the forecast loss after tax of USD 9,866,000 by Cathay, but did not include any document showing the financial penalty for Lansen. The performance of Cathay was acknowledged in the minutes. Mr Siu provided the Board with a report on the Ningbo Liwah incident but did not alert the Board to the adverse impact that a penalty would have on Cathay's financial performance. The performance of Cathay, including its full year financial projections was discussed at the Board meeting. Cathay has stated, and the Authority accepts, that an oral update was given about potential significant new product sales by Lansen which might occur before year-end, in such volumes that Lansen would meet or exceed its new product budget set in May 2015. This would mean that Lansen would have to generate revenue of USD 11,305,000 for new products, despite having only generated USD 87,000 in revenue between May (the first time Lansen could sell the products) and October 2015. Had this level of revenue been generated in the short period from October 2015 to year-end, Cathay's performance might not have missed the market expectations set by N+1's analyst note in August 2015. Cathay has stated to the Authority that it was agreed at the Board meeting that, should these new sales not materialise by 18 December 2015, an announcement would need to be made to the market.
- 4.49. Cathay has stated to the Authority that Lansen informed it that it was "confident" that such new sales could occur, and that Cathay thought concluding such sales before year-end was "an achievable scenario". On 10 December 2015, the Board

had the 6 December 2015 forecast incorporating what Cathay's senior management later described to the Authority as a "conservative scenario" for Lansen and that Cathay was at the time of the Board meeting projecting a year-end loss after tax of USD 9,866,000, excluding the CFDA penalty. Nevertheless, these deliberations or conclusions were not minuted; nor was there contemporaneous documentary evidence at Cathay or Lansen referring to or discussing such new potential sales or the Board's analysis of, or conclusions in relation to, them.

Preparation of the December announcement

- 4.50. On 11 December 2015, Mr Siu sent the completed forecasts and results to N+1, with a draft trading update. This was the first time N+1 had seen Cathay's financial performance. Mr Siu also held a call with N+1 to discuss the content of any update. Mr Siu stated during this call that the penalty to be imposed on Ningbo Liwah might be announced by Lansen in the following week, and that he hoped Cathay's trading update could go out at the same time so that negative news did not hit the market twice. Mr Siu also noted that Cathay did not want its trading update to trigger an announcement for Lansen. Mr Siu made no other statement about when Cathay might issue the December Announcement, and did not provide N+1 with any deadline for a response on the draft trading update.
- 4.51. Between 11 and 17 December 2015, Mr Siu and N+1 attempted to speak on a number of occasions to discuss the wording of the December Announcement. It was only after a conversation had taken place, in which N+1 sought clarification on Cathay's results and forecasts, that N+1 was able to provide Mr Siu with detailed comments on the drafting of the December Announcement, which it did on 17 December 2015.
- 4.52. However, also on 18 December 2015, it was confirmed by Mr Siu that he received information from Mr Lee that Lansen would shortly be announcing the CFDA penalty to the market. Mr Siu redrafted the trading update so that it could incorporate the penalty, which Mr Lee then reviewed prior to circulation to the Board. Cathay has stated to the Authority that it had to liaise with Lansen on the wording of the announcement, to ensure consistency of messaging. As a consequence of re-drafting the trading update, and multiple sign-off procedures, it was not until 24 December 2015 that the Board approved the December Announcement by email.
- 4.53. The December Announcement was released to the market on 29 December 2015, the first working day after approval had been granted by the Board. The

announcement stated that, due to operating expenses being significantly higher than anticipated, Cathay expected to report a material loss before tax for the year ending 31 December 2015, a performance which would be markedly below market expectations. It also disclosed the CFDA penalty. On the day of the December Announcement, Cathay's share price dropped by 18.2%.

Communications with the Authority

Statements in communications

- 4.54. Between 29 February 2016 and 16 August 2016, Cathay corresponded with the Authority about the timing of the December Announcement. In a letter dated 4 February 2016 marked for the attention of Mr Siu, the Authority wrote to the directors of Cathay to request information about the December Announcement. The Authority asked Cathay, amongst other things, to provide *'details of any re-forecasting undertaken by the Company as a matter of course or in light of the additional spending identified above'* (the spending being the increase in operating expenses referred to in the December Announcement).
- 4.55. In a letter dated 29 February 2016, Mr Siu responded to this request on behalf of Cathay by stating *'the Company prepares its year-end projections twice a year, one in late July (based on 6 months actual and 6 months projection) prepared for a regular August board meeting, and another in late November (based on 10 months actual and 2 months projection) prepared for a regular December board meeting; and at such other times as may be necessary (for example when the actual numbers are not performing in line with the management's expectation or with market expectations)'*. Cathay did not provide any supporting contemporaneous evidence, nor did it provide the figures for the relevant 2015 forecasts.
- 4.56. In a letter dated 2 March 2016 marked for the attention of Mr Siu, the Authority asked Cathay to provide *'projected figures for the period sourced from projections as they were at the time along with any updated projections, indicating when any such update was made'*.
- 4.57. In response, in a letter dated 15 April 2016, Mr Siu stated on behalf of Cathay: *'as noted in our reply on 29 February 2016, Cathay prepares its year-end projections twice a year, one in late July (based on 6 months actual and 6 months projection) prepared for a regular August board meeting, and another in late November (based on 10 months actual and 2 months projection) prepared for a regular December*

board meeting, and at such other times as may be necessary. The projections in late July and late November 2015 are shown below'. Cathay provided the following information about its 2015 forecasts:

- (a) for the interim forecasts, it provided complete forecasts including figures attributed to Lansen. Those figures suggested that Cathay had forecast a profit before tax of USD 6,514,000; and
- (b) for the year-end forecasts, it provided complete forecasts, including figures representing substantial profits from new product sales at Lansen. Those figures suggested that Cathay had forecast a profit before tax of USD 55,000.

4.58. Throughout its correspondence with the Authority, when commentating on the forecasts, Mr Siu, in letters sent on behalf of Cathay, used the phrases '*in the projection exercise conducted in late July 2015*', '*at the time of conducting this late November projection exercise*' and '*in July, Lansen provided the company with the new product projections*' to describe the timing of the forecasts.

4.59. Mr Lee reviewed and approved the communications prior to submission to the Authority.

Cathay's 2015 interim forecasts

4.60. Despite the forecast figures provided to the Authority taking into account forecasts from Lansen, as noted in paragraph 4.22 Cathay did not actually receive any interim year-end forecasts from Lansen, which at the time represented between 70% and 80% of its business. The Board therefore only considered forecasts for the remaining subsidiaries. The absence of any forecasts from Lansen is reflected in the Board pack for 26 August 2015, where Lansen's forecasts are blank. Therefore, had Mr Siu responded to the Authority on behalf of Cathay with contemporaneous information from its actual projection exercise, he should have provided the forecast which was put to the Board on 26 August 2015, including blank forecasts for Lansen.

4.61. The Board also did not have any contingency plan in place to forecast Lansen's financial performance in the event that Lansen was unable to provide a forecast. Further, the first time in 2015 that year-end forecasts for Lansen were received by

Cathay was on 4 December 2015, and these did not include any, or any material, forecast profits from new products.

- 4.62. Cathay's letter of 15 April 2016 to the Authority described the interim new products forecast which it included as having been based on six months' results and six months' projections. In fact, the figures included by Cathay in the letter attributable to Lansen's new product forecasts were based on the budget for the new products, which was set by Lansen in May 2015.
- 4.63. Further, the figures included by Cathay in its letters to the Authority attributable to interim forecasts for Lansen's existing business (that is, those reviewed by the Board at its meeting of 26 August 2015) were sourced from scenario based analysis figures created by Lansen in September 2015. The figures were not intended by Lansen to be a forecast, and were not treated by Cathay as a forecast during the 2015 Relevant Period. These figures did not exist at the time of the Board meeting in August 2015 and were therefore never set out in any paper provided to the Board or otherwise brought to the Board's attention for that meeting.
- 4.64. Mr Siu was responsible for drafting Cathay's letters to the Authority and was therefore aware prior to submission to the Authority that the figures provided to the Authority were created for the benefit of the Authority, and were not available to Cathay including its Board at the relevant times in 2015.

Cathay's 2015 year-end forecasts

- 4.65. Despite the forecast figures provided to the Authority taking into account substantial profit from new product sales at Lansen, as noted at paragraph 4.61, Lansen's own forecasts sent to Cathay on 4 December 2015 did not actually include any, or any material, profits from new product sales.
- 4.66. Therefore, the Board did not receive or consider a forecast which included any, or any material, profits from new products, as these were not contained in the Board pack for the 10 December 2015 Board meeting, which forecast a loss after tax of USD 9,866,000. Therefore, had Cathay responded to the Authority with information from the time of the Board meeting, it should have provided the forecast which was actually put to the Board on 10 December 2015. The information which Mr Siu provided to the Authority on behalf of Cathay in response to its request for information that Cathay forecast a profit (before tax) of USD 55,000 was wrong, and not contemporaneous with the Board meeting which had the loss (after tax)

figure of USD 9,866,000 actually forecast in the contemporaneous documents before the Board.

- 4.67. Cathay's letter of 15 April 2016 to the Authority described the year-end new products forecast which it included as having been based on ten months' results and two months' projections. In fact the figures included by Cathay in the letter attributable to Lansen's new product forecasts were based on the budget for the new products, which was set by Lansen in May 2015. Cathay did not inform the Authority during the 2016 Relevant Period that this was the case.
- 4.68. Mr Siu drafted the letters sent on behalf of Cathay prior to submission to the Authority, and signed them, and was aware that the original forecast in December 2015 did not include any forecasts for new product sales.

General statements made by Cathay

- 4.69. As noted at paragraph 4.55 above, Mr Siu stated to the Authority, on behalf of Cathay, that it prepared additional year-end projections if it was not performing in line with market or management expectations. However, as Cathay did not monitor its performance against market expectations in 2015, Cathay would have been unable to prepare additional projections in the event of a perceived failure to meet those expectations. In fact, in 2015, Cathay monitored its performance against its own internal budget, however this was not the same as the market expectations set out in analyst notes by N+1 in May and August 2015. As set out in paragraphs 4.25 and 4.26 above, there was no monitoring of interim projections by Cathay due to the absence of information from Lansen. Mr Siu was aware that these statements were incorrect as he knew that Cathay only created forecasts twice a year but still presented incorrect information to the Authority.

5. FAILINGS

- 5.1. The facts and matters referred to above resulted in Mr Siu being knowingly concerned in Cathay's breach of the Authority's Listing Principle 2. This breach is set out below and the provisions referred to are set out at Annex A to this Notice.

Listing Principle 2

Cathay's obligations

- 5.2. During the 2016 Relevant Period, Listing Principle 2 stated:

"A listed company must deal with the Authority in an open and co-operative manner."

It is a factual matter whether or not a company has been open and co-operative in how it responds to requests for information from the Authority.

Cathay's breaches

- 5.3. Cathay's statements in the 2016 Relevant Period, and the financial information provided to the Authority, implied that during 2015 Cathay had stronger procedures, systems and controls in place for its forecasting and monitoring procedures than were actually in place. Cathay gave the impression to the Authority that forecasts were available to its Board when they were not. For example, Cathay's letter of 15 April 2016 to the Authority described the interim new products forecast which it included as having been based on six months' results and six months' projections. In fact, the figures included by Cathay in the letter attributable to Lansen's new product forecasts were based on the budget for the new products, which was set by Lansen in May 2015. By way of further example, the figures included by Cathay in its letters to the Authority attributable to interim forecasts for Lansen's existing business (that is, those reviewed by the Board at its meeting of 26 August 2015) were sourced from scenario based analysis figures created by Lansen in September 2015. The figures were not intended by Lansen to be a forecast, and were not treated by Cathay as a forecast during the 2015 Relevant Period. These figures did not exist at the time of the Board meeting in August 2015 and were therefore never set out in any paper provided to the Board or otherwise brought to the Board's attention for that meeting.
- 5.4. Further, the figures provided to the Authority by Cathay for its forecasts implied that Cathay might not have had a material deviation from market expectations (or might have had a smaller deviation than it actually did). These figures also implied that Cathay might not have needed to issue a trading update to the market during the 2015 Relevant Period. However, this implied position is not supported by any contemporaneous evidence. Had the Authority accepted Cathay's statements and figures as provided in its communications, the Authority might have considered

Cathay's financial performance at the relevant times to have been better than it was and chosen to conduct no further investigations.

- 5.5. The Authority considers that its requests were clear as to what information should be provided to it and that this concerned giving explanations of events surrounding the December Announcement. Accordingly, the Authority considers that Cathay understood the requests and knew that the information it provided did not respond to the Authority's requests. Cathay however did not provide any explanation that different information to that requested was being provided and it appeared that what was provided was responsive to the Authority's requests.
- 5.6. The Authority is dependent on companies and their directors providing clear and accurate information to it, in order to ensure that it can effectively monitor and regulate the integrity of the financial markets in the UK. It is a company's responsibility to deal with the Authority in an open and co-operative manner including providing complete and accurate information to the Authority.
- 5.7. The Authority has had regard to, and accepts, Cathay's explanation that it did not intend to mislead the Authority. However, Cathay provided different information to that which was requested and did so without any explanation. Cathay therefore acted unreasonably in the way that it dealt with the Authority's information requests.
- 5.8. The Authority therefore considers that Cathay did not deal with the Authority in an open and co-operative manner, in breach of Listing Principle 2.

Mr Siu's knowing concern in Cathay's breaches

- 5.9. The Act permits the Authority to impose a penalty, of such amount as it considers appropriate, on a director who was knowingly concerned in the contravention of the Authority's rules. A person is knowingly concerned when he or she has actual knowledge of the facts and is aware of his or her involvement in the contravention.
- 5.10. The Authority's requests were clear as to what information should be provided to it and that this concerned giving explanations of events surrounding the December Announcement. Mr Siu was aware of what was being requested. However, Cathay, without any explanation, provided inaccurate and incomplete information to the Authority regarding the forecasts it produced in 2015, and how it had calculated those forecasts. Mr Siu knew when he was drafting the relevant communications, by virtue of his membership of Cathay's Board and his involvement in the

forecasting and financial process for releasing market announcements, that the information provided was not a contemporaneous record of the financial information available to Cathay during the 2015 Relevant Period. Although Mr Siu had this knowledge, he drafted and signed the communications providing the non-contemporaneous information without any explanation.

- 5.11. The Authority has had regard to, and accepts, Mr Siu's explanation that the intention behind providing materially different financial information was not to mislead the Authority but to reflect Cathay's mind-set at that time. However, Mr Siu drafted and signed communications which provided different information to that which was requested and was involved in Cathay acting unreasonably in the way that it dealt with the Authority's information requests.
- 5.12. The Authority therefore considers that Mr Siu was knowingly concerned in Cathay's breaches of Listing Principle 2.

6. SANCTION

Financial penalty

- 6.1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In determining the appropriate financial penalty, the Authority has had regard to Chapter 6 of DEPP.
- 6.2. The total financial penalty which the Authority has decided to impose on Mr Siu for the 2016 Relevant Period is £40,200. This penalty is calculated as set out below. The Authority considers that taking this action helps to achieve its strategic objective of ensuring that the relevant markets function well and the operational objectives of protecting and enhancing the integrity of the UK financial system and ensuring an appropriate degree of protection for consumers.

Step 1 – Disgorgement

- 6.3. Pursuant to DEPP 6.5B.1G, at Step 1 the Authority has determined that Mr Siu did not derive any financial benefit directly from the breach. The Step 1 figure is therefore £0.

Step 2 – Seriousness of the breach

- 6.4. Pursuant to DEPP 6.5B.2G(1), at Step 2, the Authority determines a figure that reflects the seriousness of the breach based on a percentage of an individual's

relevant income. DEPP 6.5B.2G(2) provides that where the breach lasted less than 12 months, the relevant income will be that earned by the individual in the 12 months preceding the end of the breach. Relevant income is calculated based on the gross amount of all benefits received (including salary, bonus and share options) by the individual from the employment in connection with the occurrence of the breach and for the period of the breach.

- 6.5. Mr Siu's remuneration for the year ending 31 December 2015 was USD 274,000, comprising fees and salary of USD 253,000 and bonuses of USD 21,000. This equated to £185,939².
- 6.6. Mr Siu's remuneration for the year ending 31 December 2016 was USD 274,000, comprised fees and salary of USD 253,000, and bonuses of USD 21,000. This equated to £210,413³.
- 6.7. Mr Siu's relevant income is comprised of the income earned in the 12 months up to 16 August 2016 (i.e. the end of the 2016 Relevant Period). This is calculated by taking the proportion of the total 2015 income covering the period from 16 August 2015 to 31 December 2015 and adding the proportion of the total 2016 income covering the period from 1 January 2016 to 15 August 2016. Mr Siu's relevant income is therefore £201,372.

Scale

- 6.8. Pursuant to DEPP 6.5B.2G(5), the Authority considers that a sliding scale of 0-40% of relevant income (applied according to the seriousness of the breach) is appropriate in order that the penalty properly reflects the seriousness of the breach.

² Calculated using the GBP/USD exchange rate of 1.4736 as at 31 December 2015.

³ Calculated using the GBP/USD exchange rate of 1.3022 as at 16 August 2016.

Level of seriousness

- 6.9. In assessing the seriousness level for the purpose of penalty, the Authority takes into account various factors which reflect the impact and nature of the breach.

Impact of the breach

- 6.10. DEPP 6.5B.2G(8) sets out the factors relating to the impact of a breach. Of these, the Authority considers that a relevant factor is the adverse effect on markets. The information that Cathay provided to the Authority was materially different to the actual processes followed in 2015 and the Authority had to take further investigatory steps to uncover the true position in relation to Cathay's forecasts, and only uncovered the true position when Cathay was asked for contemporaneous evidence of its forecasts in 2015.
- 6.11. The provision of inaccurate information to the Authority undermines its ability to effectively monitor and regulate the integrity of the financial markets in the UK. Mr Siu drafted and signed the communications before submission to the Authority. He was aware that the information being provided to the Authority was not an accurate record of matters known either to the Board or the senior management of Cathay at the relevant times during 2015.

Nature of the breach

- 6.12. DEPP 6.5B.2G(9) sets out the factors relating to the nature of a breach. Of these, the Authority considers the following factors to be relevant to Mr Siu's knowing concern in Cathay's breach:
- (a) the nature of the rule breached by Cathay. The listing regime relies on companies being open and co-operative with the Authority, and Listing Principle 2 is fundamental to the effective functioning of the listing regime;
 - (b) the frequency of the breach. Cathay provided inaccurate information to the Authority on two occasions during the 2016 Relevant Period; and
 - (c) whether the individual held a senior position. Mr Siu held a senior position within Cathay as its FD.
- 6.13. DEPP 6.5B.2G(12) sets out the factors which are likely to be considered 'level 4 factors' or 'level 5 factors'. The Authority does not consider any of these factors

relevant; in particular the Authority has not seen any evidence showing that the breach was committed either deliberately or recklessly. While Mr Siu knew that the information provided did not correspond to the Authority's requests, he did not foresee the likely or actual consequences of his actions; namely, that by providing no explanation, the information may have appeared to the Authority to have been responsive to its requests.

6.14. DEPP 6.5B.2G(13) sets out the factors which are likely to be considered 'level 1 factors', 'level 2 factors' or 'level 3 factors'. Of these, the Authority considers the following factors to be relevant to the breach:

(a) no profits were made or losses avoided by either Cathay or Mr Siu as a result of the breach, either directly or indirectly; and

(b) there was no loss to consumers, investors or other market users.

6.15. The Authority considers the seriousness of Mr Siu's knowing concern in the breach to be level 3. The calculation is therefore 20% of £201,372, which equates to £40,274.

6.16. The Step 2 figure is therefore £40,274.

Step 3 – mitigating and aggravating factors

6.17. Pursuant to DEPP 6.5B.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2 to take into account factors which aggravate or mitigate the breach.

6.18. The Authority has taken into account Cathay's (including Mr Siu's) co-operation in waiving privilege over the legal advice Cathay received on 3 December 2015, and that it later provided corrected information about the 15 April 2016 letter, and an apology. However, the Authority does not consider that those matters provide sufficient mitigation to warrant a reduction in the financial penalty. The Authority does not consider there to be any factors which aggravated Mr Siu's knowing concern in the breach and there should be no adjustment to the Step 2 figure.

6.19. The Step 3 figure is therefore £40,274.

Step 4 – adjustment for deterrence

- 6.20. Pursuant to DEPP 6.5B.4G, if the Authority considers the figure arrived at after Step 3 to be insufficient to deter the individual who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.
- 6.21. The Authority considers that the Step 3 figure of £40,274 represents a sufficient deterrent to Mr Siu, and so has not increased the penalty at Step 4.
- 6.22. The Step 4 figure is therefore £40,274.

Step 5 – settlement discount

- 6.23. No settlement discount is applicable. The Step 5 figure is therefore **£40,200** (rounded down to the nearest £100).

7. REPRESENTATIONS

- 7.1. Annex B contains a brief summary of the key representations made by Mr Siu and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken into account all of the representations made by Mr Siu, whether or not set out in Annex B.

8. PROCEDURAL MATTERS

- 8.1. The following paragraphs are important.

Decision maker

- 8.2. The decision which gave rise to the obligation to give this Notice was made by the Regulatory Decisions Committee.
- 8.3. This Notice is given under section 92 of the Act and in accordance with section 388 of the Act.

The Tribunal

- 8.4. Mr Siu has the right to refer the matter to which this Notice relates to the Tribunal. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Mr Siu has 28 days from the date on which this Notice is given to him to refer the matter to the Tribunal. A reference to the Tribunal is made by way of

a signed reference notice (Form FTC3) filed with a copy of this Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL (tel: 020 7612 9730; email fs@hmcts.gsi.gov.uk). Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website:

<http://www.justice.gov.uk/forms/hmcts/tax-and-chancery-upper-tribunal>

- 8.5. A copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Stephen Robinson at the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN.
- 8.6. Once any referral is determined by the Tribunal and subject to that determination, or if the matter has not been referred to the Tribunal, the Authority will issue a Final Notice about the implementation of that decision.

Access to evidence

- 8.7. Section 394 of the Act applies to this Notice.
- 8.8. The person to whom this Notice is given has the right to access:
 - (a) the material upon which the Authority has relied in deciding to give this Notice; and
 - (b) the secondary material which, in the opinion of the Authority, might undermine that decision.

Confidentiality and publicity

- 8.9. This Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). Section 391 of the Act provides that a person to whom this Notice is given or copied may not publish the Notice or any details concerning it unless the Authority has published the Notice or those details.
- 8.10. However, the Authority must publish such information about the matter to which a decision notice or final notice relates as it considers appropriate. Mr Siu should be

aware, therefore, that the facts and matters contained in this Notice may be made public.

Authority contacts

- 8.11. For more information concerning this matter generally, contact Stephen Robinson (direct line: 020 7066 1338) or Kevin Oh (direct line: 020 7066 4312) of the Enforcement and Market Oversight Division of the Authority.

Graham Collett, Manager, on behalf of

John A. Hull

Deputy Chair, Regulatory Decisions Committee

ANNEX A
RELEVANT STATUTORY AND REGULATORY PROVISIONS

The statutory and regulatory provisions set out below are the versions that were in force in the period between 29 February 2016 and 16 August 2016 (i.e. the 2016 Relevant Period).

1. RELEVANT STATUTORY PROVISIONS

1.1. The Authority's general duties established in section 1B of the Act include the strategic objective of ensuring that the relevant markets function well and the operational objectives of protecting and enhancing the integrity of the UK financial system and securing an appropriate degree of protection for consumers.

1.2. **Section 91(1) of the Act:**

"(1) If the [Authority] considers that-

(a) an issuer of listed securities, or

(b) an applicant for listing,

has contravened any provision of listing rules, it may impose on him a penalty of such amount as it considers appropriate."

1.3. **Section 91(2) of the Act:**

"(2) If, in the case of a contravention by a person referred to in subsection (1) [{"P"}], the [Authority] considers that another person who was at the material time a director of P was knowingly concerned in the contravention, it may impose upon him a penalty of such amount as it considers appropriate."

2. RELEVANT REGULATORY PROVISIONS

2.1. **Listing Principle 2:** *"A listed company must deal with the Authority in an open and co-operative manner".*

ANNEX B

REPRESENTATIONS

1. Mr Siu's representations (in italics), and the Authority's conclusions in respect of them, are set out below.

The letters of 29 February 2016 and 15 April 2016 presented a reasonable, full and accurate picture of events as they occurred in 2015

2. *The written projection material prepared for the Board in 2015 did not fully reflect the Board's considerations at the time. While the written projection material prepared for the Board in August 2015 contained no data for Lansen, at the August 2015 Board meeting the Cathay Board believed that Lansen was likely to perform similarly in the second half of the year to how it had performed in the first half, and was specifically aware of Lansen's budget for new product sales, which had been delivered to Cathay in May 2015. In December 2015, the written projection material prepared for the Board contained no data relating to potential new stocking orders for Lansen. In fact, the Cathay Board received an oral update at that meeting that Lansen still expected significant new product sales to occur before year-end in such volumes that Lansen would have met or exceeded its product budget set in May 2015. Thus, the data presented to the Authority in the letter of 15 April 2016 did reflect the financial information available to the Cathay Board in the broader sense. It was not made clear by the Authority in its requests that all that was required was written material; the information provided was in fact "sourced from projections as they were at the time", albeit those projections were reported orally.*
3. *The two letters from Cathay to the Authority made no representation about the strength or otherwise of Cathay's systems and controls, which were outside the scope of the correspondence at the time. The Authority told Cathay in 2016 that it was investigating whether Cathay had complied with DTR 2.2.1R and with another provision of the Listing Rules. In these circumstances, Cathay was rightly focused on explaining the information it considered during 2015, not on its written record-keeping or the processes followed by the Board.*
4. The Authority's finding that Cathay was in breach of Listing Principle 2 is not based only on the figures provided by it in its letter of 15 April 2016 regarding projected new product sales at Lansen. It is based on the statements made, and financial information provided, in its letters of 29 February 2016 and 15 April 2016.

5. The Authority considers that its requests for information were clear and that the responses provided by Cathay in the two letters were inaccurate and misleading. In its letter of 4 February 2016, the Authority requested “*details of any re-forecasting undertaken by the Company as a matter of course or in light of the additional spending identified above*”. Cathay’s letter of 29 February 2016 incorrectly stated that it prepared twice-yearly projections and additional projections when it was not performing in line with the management’s expectations or with market expectations. In 2015 Cathay did not, in fact, monitor its performance against market expectations, and did not monitor interim projections due to the absence of information from Lansen. The letters thereby implied that Cathay’s procedures, systems and controls were better than was in fact the case.
6. Further, the request by the Authority in its letter of 2 March 2016 was clear in requesting figures sourced from projections “*as they were at the time*” along with any updated projections, indicating when those were made. This was a clear request to provide contemporaneous figures from actual projection exercises, and it was clear from the Authority’s letter that it needed the information in order to understand how Cathay was able to monitor its financial performance against market expectations. The figures set out in Cathay’s letter of 15 April 2016 did not reflect actual projection exercises as they were at the time, but the letter suggested (in several places) that they did. Further, if Cathay considered it would have been misleading to provide the Authority with only the written material (or figures from written material) because it would not have accurately reflected Cathay’s view of Lansen’s anticipated performance, it could and should have explained this in its letter.
7. In fact, however, the Authority considers that the data in the letter of 15 April 2016 does not accurately represent the information considered by the Board at the time. For example, certain figures that were said by Cathay to have been considered by the Board in August 2015 were from September 2015 and thus did not exist, and could not have been considered by the Board, when they were said to have been so considered.

Procedural unfairness

8. *The Authority failed to ask Mr Siu questions in interview about his personal involvement in and/or knowledge of the potential breach of Listing Principle 2 by Cathay. The topic of the 2016 communications was covered extremely briefly and it is clear from the interview transcripts that he was answering questions put to*

him in his capacity as a representative of Cathay rather than as an individual. He was not being asked (or responding) by reference to his own awareness of the facts contained in the letters. It is unfair for the Authority to pursue a case of knowing concern against Mr Siu without having asked basic relevant questions at interview and thereby allowing him the opportunity to explain his position and state of mind.

9. Mr Siu was asked some questions in interview about his involvement in the drafting of the letters and his state of mind at the time. The Authority considers that he has had ample opportunity to put forward evidence on his own behalf, both before the issue of the Warning Notice to him on 18 December 2018 and afterwards (which he has done in his written and oral representations summarised here). The Authority does not consider Mr Siu has suffered any procedural unfairness.

Mr Siu was not knowingly concerned in any breach because he lacked the relevant knowledge

10. *"Knowing concern" requires actual awareness at the time of the alleged contravention by the company of all the material facts which give rise to the contravention. This is a wholly subjective test, focusing on Mr Siu's state of knowledge. There is no objective element; it is not enough to say that the person in question should have known of the facts which made the act complained of a contravention.*
11. *Mr Siu did not complete all the drafting of the 15 April 2016 letter himself. He delegated the preparation of the financial data contained in the letter to another member of his team, and did not give instructions as to how this should be done. After inserting the details into the letter, that individual did not explain the approach he had taken. When Mr Siu reviewed the letter, he could see that the projection data included data showing Cathay's 2015 expectations regarding new product sales, but did not recall that in August and December 2015 the written projection materials produced for the Board had not included such data. He did not find the inclusion of information about new product sales surprising, since he was aware that such sales had been very much in the consciousness of the Cathay Board in 2015: in July because the budget for new product sales had recently been delivered by Lansen and in December because the Board had received an oral update that Lansen was expecting significant new product sales before year-end, in such volumes that Lansen would meet or exceed its new product budget set in May 2015.*

12. *Mr Siu did not check the figures provide by his team member against the contemporaneous materials submitted to the Board because it was not his role to do so, and he would not have had time given his other work.*
13. *Further, he did not appreciate that the Authority expected Cathay to provide projection data based only on contemporaneous written projections, or wanted Cathay to distinguish between information in contemporaneous written projection documents provided to the Board and other information considered by the Board at the time of reviewing the projections. He would therefore not have had cause to check the figures in the 15 April 2016 letter even if he had recalled that the figures relating to new product sales had not been included in the 2015 Board materials.*
14. *The Authority rightly recognises that Mr Siu did not intend to mislead, and this must be because it is satisfied either that he was not conscious of the meaning of the Authority's request and/or of the difference between the request and the response.*
15. The Authority notes that Mr Siu's representations only address the question of the figures included in Cathay's letter of 15 April 2016, but (as set out above) the Authority's concerns are wider than that. Cathay's letter of 29 February 2016 incorrectly stated that it prepared twice-yearly projections and additional projections when it was not performing in line with the management's expectations or market expectations, and this was substantially repeated in the letter of 15 April 2016. The letters thereby implied that Cathay's procedures, systems and controls were better than was in fact the case. Mr Siu has not disputed that he understood what was being requested or that the statement in the letters was incorrect, and the Authority considers there to be sufficient evidence that he knew that in the 2015 Relevant Period Cathay only created twice-yearly forecasts.
16. In relation to the figures in the letter of 15 April 2016, the Authority considers it is clear that it was asking for projection figures sourced from contemporaneous projection exercises, and that is what the letter purported to provide. In the letter, Mr Siu told the Authority that the figures were sourced from projection exercises conducted in July and November 2015, and prepared for Board meetings in August and December 2015. The Authority does not consider he would have been unaware, at the time of preparing the letter, that the projections prepared for the Board in 2015 lacked Lansen data. The Authority considers that he would have remembered the lack of projected figures for Lansen in July 2015 and the lack of data relating to substantial new product sales in December 2015, given the strained

and difficult discussions which Cathay had with its advisers about its projections, its inability to meet market expectations and its obligation to make disclosure.

17. The Authority considers that Mr Siu must have been aware that the figures compiled by his delegate did not exist at the time of the relevant Board meetings and that therefore the information provided in the draft response prepared by his delegate was different to that requested by the Authority. Mr Siu was responsible for providing information to the Authority on behalf of Cathay, and therefore had actual involvement in Cathay's breach, whether or not he delegated the task of compiling the data and preparing the draft response.
18. Further, Cathay's lawyers' later letter correcting the position explained that, in the absence of any July forecast from Lansen, Cathay sought to use the next best data available. This is inconsistent with Mr Siu's representation that he did not recall that the projections prepared for the Board in 2015 lacked the data about Lansen.
19. The Authority accepts that Mr Siu did not intend to mislead the Authority, in the sense that he did not foresee the actual or likely consequence of his actions; namely, that the information may have appeared to the Authority to have been responsive to its requests. However, it does not consider he was unaware of the meaning of the Authority's request or of the difference between the request and the response.

Having regard to all the circumstances, the Authority should not take disciplinary action

20. *If the Authority considers Mr Siu to have been knowingly concerned in the alleged breach by Cathay, having regard to all the circumstances of the case and in particular the factors listed in DEPP 6.2.1G, the Authority should not take disciplinary action. As the Authority accepts, Mr Siu was not attempting to mislead the Authority (DEPP 6.2.1(1)(a) and DEPP 6.2.1(2)(f)); he behaved reasonably and diligently in the way he went about preparing the letter, delegating parts appropriately while taking responsibility for other parts, sharing drafts appropriately and seeking input from advisers; he voluntarily corrected (through Cathay) the information provided once the issue was brought to Cathay's attention, apologised and cooperated fully with the Authority's investigation (DEPP 6.2.1(2)); and he has never previously been investigated or disciplined by an employer or regulator (DEPP 6.2(3)).*

21. *A disciplinary sanction, regardless of the size of the financial penalty imposed, would have a very serious impact on Mr Siu's career and future earnings. It will likely make it much more difficult for him to find future employment and may impact his pay in any work he can find. Given the stage of Mr Siu's career, the cumulative financial impact on Mr Siu is not proportionate to the conduct alleged.*
22. The Authority has considered the full circumstances of the case, including (to the extent relevant) the representations referred to at paragraph 20 above, in reaching the conclusion that disciplinary action is justified in this case. The Authority does not consider the taking of disciplinary action against Mr Siu to be disproportionate in all the circumstances.