FINANCIAL CONDUCT AUTHORITY

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**FINAL NOTICE**

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**To:** **Aviva plc**

**Date:** **26 October 2020**

## 1. ACTION

1.1. For the reasons given in this Notice, the Authority hereby publishes a statement (pursuant to section 91 of the Act) to the effect that on 8 March 2018 Aviva contravened certain provisions of the Listing Rules and the Transparency Rules.

1.2. Specifically, Aviva contravened Listing Rule 1.3.3R and Transparency Rule 1A.3.2. It did so by failing to take reasonable care to ensure that information in an announcement on 8 March 2018 regarding its ability to cancel certain Preference Shares issued by Aviva and General Accident at par, and its consideration of whether or not to do so, was not misleading and did not omit anything likely to affect the import of the information in the announcement.

## 2. SUMMARY OF REASONS

2.1. The UK listing regime relies on disclosure and transparency to allow investors to make fully informed decisions. It is of fundamental importance to achieving the Authority's strategic objective of ensuring the relevant markets function well, in addition to its operational objective of protecting and enhancing the integrity of the UK financial system, that market disclosures by listed companies, including

those made voluntarily, are not false, misleading or deceptive and do not omit anything likely to affect the import of the information that is disclosed. This ensures that they can be relied on by investors in making investment decisions to hold, buy or sell an investment.

2.2. In the 8 March Announcement Aviva included the following statement ("the Key Statement"):

"*This year, we expect to deploy £2 billion of excess cash, including £900 million in debt reduction, in excess of £500 million of capital returns to shareholders and about £600 million for bolt-on acquisitions.*

…

*Our priorities for deployment remain unchanged. Our objective is to use surplus cash to deliver sustainable benefits to shareholders. For 2018, we have outlined our intent to repay approximately £900 million of expensive hybrid debt, saving more than £60 million in annual pre-tax interest expense. We have allocated approximately £600 million for bolt-on M&A, which includes the €130 million already committed to the Friends First acquisition in Ireland. And we have indicated that in excess of £500 million will be used for capital returns, which may include liability management, share buy-back or special dividends.*

…

*In 2017, Aviva repaid debt of US$650 million and returned capital to shareholders via a £300 million share repurchase program. With our Solvency II cover ratio remaining above our working range, we have plans to reduce hybrid debt by a further £900 million in 2018…*

…

*Aviva's Group centre cash resources are £2.0 billion (February 2017: £1.8 billion). Our intention is to maintain this in a range of £1.0 billion to £1.5 billion over time. In view of our surplus capital and liquidity position and expected level of Group centre cash receipts over the coming year, we anticipate having £3 billion available for deployment in 2018 and 2019.*

*Our priorities for deployment of surplus cash and capital remain unchanged. We prioritise profitable organic growth in our existing businesses. After allowing for*

*this, we will look to reduce debt balances, consider bolt-on acquisitions and provide additional capital returns.*

*In 2018, we have signalled our intention to reduce hybrid debt by £900 million. We are targeting more than £500 million in additional capital returns, incorporating liability management and returns to shareholders. In this regard, we have the ability to cancel preference shares at par value through a reduction of capital subject to shareholder vote and court approval. The preference shares carry high coupons that are not tax-deductible and they will not count as regulatory capital from 2026. As we evaluate the alternatives, one of the things we are considering is how to balance the interests of ordinary and preferred shareholders.*"

2.3. The Key Statement focussed on Aviva's intentions in 2018. It accurately stated that Aviva had the ability to cancel the Preference Shares at par, subject to a shareholder vote and court approval. However, it then referred to reasons why it would make commercial and/or regulatory sense for Aviva to do so, without also: (i) stating that no decision had in fact been made by Aviva in that regard; (ii) referring to any countervailing reasons not to do so; and (iii) clarifying that other options were available to Aviva for retiring the Preference Shares, including the use of compensatory measures (that would enable holders of the Preference Shares to receive more than par). The Key Statement was reasonably capable of giving the holders of the Preference Shares and the market the impression that Aviva intended to retire some or all of the Preference Shares in 2018 and that it was probable Aviva would seek to do this by exercising the right to cancel at par without compensatory measures, when this was not the case ("the Key Statement Impression").

2.4. By failing to include in the Key Statement the information set out above, Aviva omitted from it information likely to affect its import. By reason of the Key Statement Impression, it was reasonably foreseeable that the holders of the Preference Shares and the market would be misled by the Key Statement. Aviva failed to take reasonable care to ensure that the Key Statement was not misleading and did not omit information that was likely to affect its import.

2.5. At the close of market on 8 March 2018, the market price for the Preference Shares had fallen by between 20% and 26%.

2.6. On 23 March 2018, Aviva issued a further announcement which expressly stated (reflecting a decision taken the previous day) that "*it has decided to take no action to cancel its preference shares".*

2.7. In deciding to issue a public censure against Aviva, the Authority has taken account of the following matters:

2.7.1. The fact that the Preference Shares are capable of being cancelled is a matter of law set out in statute. Aviva decided voluntarily to refer to this within the 8 March Announcement out of a desire to be transparent about rights associated with the Preference Shares, of which it believed the market was broadly not aware.

2.7.2. Whilst Aviva took steps in the preparation of the 8 March Announcement specifically to assess whether the information contained in it complied with its obligations under the Market Abuse Regulation, including obtaining independent advice from a number of professional sources, the Authority considers that these steps (which did not include obtaining specific advice with respect to its obligations under the Listing Rules and the Transparency Rules) were insufficient to meet all of Aviva's obligations, for the reasons set out below at paragraph 5.5.

2.7.3. On 30 April 2018, Aviva announced a payment scheme for shareholders who sold the Preference Shares in the period from 8 to 22 March 2018 (inclusive) at a share price that was lower than the price to which the Preference Shares returned following the 23 March Announcement. The scheme was launched on 31 July 2018 and closed on 31 January 2019. This scheme was intended to put those shareholders in the same financial position they would have been in had they sold their Preference Shares following the 23 March Announcement, rather than in the period 8 to 22 March 2018. A total of 927 claims were made to Aviva under the scheme, with an aggregate value of £7,258,373 paid by Aviva.

## 3. DEFINITIONS

3.1. In this Notice:

"the 8 March Announcement" means the 2017 Preliminary Final Year Results announcement for Aviva and General Accident issued on 8 March 2018, referred to at paragraph 1.2 above;

"the 23 March Announcement" means the announcement referred to at paragraph 2.7 above;

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

"Aviva" means Aviva plc;

"the Authority" means the Financial Conduct Authority;

"CEO" means Chief Executive Officer;

"CFO" means Chief Financial Officer;

"General Accident" means General Accident PLC;

"the Key Statement" has the meaning set out in paragraph 2.2 above;

"the Key Statement Impression" has the meaning set out in paragraph 2.3 above;

"the Listing Rules" means those rules contained in the part of the Handbook entitled 'Listing Rules';

"Main Market" means the London Stock Exchange's main market for the admission and trading of equity, debt and other securities;

"Market Abuse Regulation" means Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse;

"Preference Shares" means the Aviva Preference Shares and the General Accident Preference Shares;

"Aviva Preference Shares" means:

- the 100 million cumulative preference shares (described at the time of issue as "irredeemable") with a par value of £1 each, issued at 100.875 pence per share by Aviva (then known as Commercial Union Plc), on 20 May 1992 with a fixed dividend rate of 8.75%; and
- the 100 million cumulative preference shares (described at the time of issue as "irredeemable") with a par value of £1 each, issued at 100 pence per share by Aviva (then known as Commercial Union Plc), on 18 November 1992 with a fixed dividend rate of 8.375%;

"General Accident Preference Shares" means:

- the 140 million cumulative preference shares (described at the time of issue as "irredeemable") with a par value of £1 each, issued at 100.885 pence per share by General Accident on 2nd September 1992 with a fixed dividend rate of 8.875%; and
- the 110 million cumulative preference shares (described at the time of issue as "irredeemable") with a par value of £1 each, issued at 100.749 pence per share by General Accident on 2 March 1993 with a fixed dividend rate of 7.875%;

"RIS" means regulatory information service;

"Solvency II" means the EU legislative programme implemented in all 28 Member States of the European Union, including the UK, on 1 January 2016. It introduced a harmonised EU-wide insurance regulatory regime and implements a range of requirements on insurers from corporate governance to risk management. It also implements harmonised standards for the valuation of assets and liabilities; and

"the Transparency Rules" means those rules contained in chapter DTR1A of the part of the Authority's Handbook entitled 'Disclosure Guidance and Transparency Rules'.

## 4. FACTS AND MATTERS

### Aviva

4.1. Aviva is an insurance provider, the largest general insurer and a leading life and pensions provider in the UK. It is a Main Market listed company in the FTSE 100.

4.2. General Accident is part of the Aviva Group. In 2005 General Accident transferred its interest in its subsidiaries to its parent company, Aviva. Aviva owns 100% of General Accident's ordinary issued share capital. The General Accident Preference Shares remained listed on the Main Market following the merger in 2005.

### The Preference Shares

4.3. The Preference Shares were issued in 1992 and 1993. The Preference Shares have cumulative fixed dividend rates of between 7.875% and 8.875%, and these coupon payments are not tax deductible. In the relevant listing particulars, the Preference Shares were stated to be "irredeemable". Nevertheless (due to the terms under which the shares were issued and section 641 of the Companies Act 2006) Aviva has the ability to cancel the shares at par, subject to a shareholder vote and court approval. Alternatively, any issuer wishing to cancel shares has the option of doing so on a voluntary basis by offering (tendering) to buy back such securities from the holders.

4.4. At the time of the 8 March Announcement, Aviva understood that retail investors held about 28% to 45% of the Preference Shares.

### Aviva's consideration of the Preference Shares

4.5. In around June 2017, Aviva began considering whether it should take steps to reduce or remove the population of Preference Shares in issuance. This work became known as 'Project Silver'. The reasons for this included the following:

4.5.1. Aviva's financial position had improved over a number of years and Aviva was in a strengthened capital position, with a cash surplus. It was

therefore considering how to use the surplus cash, with possible options including increasing investment in the business, support for the company's ongoing dividend, potential mergers and acquisitions and returning capital, including a liability management exercise and paying down high-cost debt.

4.5.2. Aviva was considering the impact of Solvency II on its regulatory capital. Under the Solvency II programme, additional classification requirements were being introduced, which meant that certain types of security would not count towards regulatory capital requirements from 2026. The Preference Shares did not, and do not, meet these classification requirements. Consequently, the Preference Shares would cease to count as part of Aviva's regulatory capital in 2026.

4.6. As a result, from June 2017 Aviva began considering the Preference Shares in light of the Solvency II requirements and the surplus cash position. As a part of this consideration, Aviva:

4.6.1. sought external advice on what options were available to it in relation to any potential cancellation of the Preference Shares;

4.6.2. sought external advice on the Solvency II risk; and

4.6.3. undertook an independent survey of shareholders to obtain general feedback and analysis on Aviva's strategy and its ordinary share price.

4.7. In early October 2017, Aviva received confirmation that the cancellation of the Preference Shares was a legally viable option, subject to obtaining the approval of the preference and ordinary shareholders, voting as a single class, and court approval. From this point Aviva started detailed work to explore in detail the options, including:

4.7.1. undertaking the preparatory work required to execute any of the options of tender at a premium, tender at a lower price or capital cancellation at par;

4.7.2. engaging with the Authority and notifying the Prudential Regulation Authority of the possible intention of removing the Preference Shares;

4.7.3. considering Aviva's disclosure requirements and whether they were in possession of inside information;

4.7.4. considering reputational risk which might arise if it cancelled the Preference Shares from its issued share capital;

4.7.5. understanding the share ownership and the potential shareholder reaction to cancellation of the Preference Shares; and

4.7.6. obtaining external advice on the options, including how the court might view the various options.

4.8. Aviva was concerned that exercising the right to cancel the Preference Shares at par could harm its relations with investors and its ability to access the capital markets, and could be challenged. Aviva was not confident that it could secure the necessary approval of 75% of all shareholders, that would be required to cancel the Aviva Preference Shares, unless appropriate incentives were offered. Aviva's Treasury team, when exploring the possibility of exercising the right to cancel the Preference Shares at par, assumed that although the technical mechanism used would be cancellation at par, Aviva would provide additional compensation to the Preference Shareholders and therefore effectively pay a premium to par. As at 22 December 2017, the working assumption which the Treasury team had adopted was that Aviva would pay 1.4 times the par value of any Preference Shares that were retired.

4.9. During the course of its consideration of possible action in relation to the Preference Shares, Aviva referred publicly to some of the work which was under way in relation to the surplus cash position. For example, on 30 November 2017 at its Capital Markets Day, Aviva informed the market it was considering a number of options in relation to deploying surplus cash. It stated that it was expecting to deploy £3 billion of excess capital and cash in 2018 and 2019 including deleveraging, bolt-on mergers and acquisitions and capital returns. At the Capital Markets Day, Aviva stated it expected to deploy £900 million for deleveraging and referred to hybrid debt repayment as part of the programme. Aviva also stated it expected to deploy approximately £500 million on capital returns which would include liability management and returns to shareholders; however, Aviva did not provide any specifics for what any liability management or returns to shareholders would be.

**Board consideration of the Preference Shares**

4.10. On 31 January 2018, Aviva held a Board meeting at which preliminary discussions were held about the Preference Shares. One aspect of that discussion related to a presentation on the various actions Aviva could take to remove the Preference Shares from its issued capital and the risks, financial implications, next steps and approval required to effect this. Four options in relation to dealing with the Preference Shares were presented to the Board:

4.10.1. Offer to buy back the Preference Shares at a premium to market value;

4.10.2. Cancel the Preference Shares at par through a shareholder and court approved reduction of capital (in accordance with section 641(4)(b)(ii) of the Companies Act 2006);

4.10.3. A combined tender offer and capital reduction, with tender at below market price and any remaining Preference Shares post-tender cancelled at par; or

4.10.4. Leave some or all of the Preference Shares in Aviva's capital structure for the mid-longer term.

4.11. The Board Paper stated: "*Whilst the most legally robust option to remove 100% of the prefs. is to cancel them through a court sanctioned reduction of capital and return par value to investors, there is a real risk that the Aviva pref. investors would be able to block the necessary shareholders' resolution (>75% approval of ordinary and preference shareholders voting together) … This option is very aggressive and would carry higher reputation and litigation risks than other more consensual options*."

4.12. At the Board meeting on 31 January 2018 there was strong disagreement among Aviva's Board members as to whether any ability to cancel the Preference Shares could or should be exercised, and if so how. There were those who thought that Aviva and General Accident should do nothing, as some of the preference shareholders were the companies' core customers and cancelling the shares would damage Aviva's and General Accident's reputations; those who thought that it was in the companies' best interests to cancel the shares at par; and those whose views lay somewhere in between. The then Chairman of Aviva was of the view that any cancellation should not expose the preference shareholders to financial loss. The perception of Aviva's then CEO was that there were "*incredibly divergent views*" among the Board members; that there was less consensus on this issue than on any other in five years; and that "*when you've got a board that was so fractured over the whole issue, it was hardly a thing that was going to be imminent*".

4.13. At the conclusion of the meeting the Board members were divided as to the way forward. The Board concluded that more work needed to be done on the potential options, particularly from a reputational perspective, and requested immediately after the Board meeting a further review to be completed before any decision could be made. The Board did not accept a recommendation to set up a sub-committee to work on developing specific options.

4.14. There was no decision by Aviva, either at or following the Board meeting, to take action in respect of any of the Aviva Preference Shares in 2018, although Aviva continued to consider it an option for future debt reduction. Action in relation to the

General Accident Preference Shares in 2018 also remained a possibility. Any action in relation to the General Accident Preference Shares would be subject to approval by the Board of General Accident, which had not considered what, if any, action to take in relation to the General Accident Preference Shares. The minutes of a meeting of a subcommittee of Aviva and General Accident held on 5 February 2018 to consider whether Aviva and General Accident were in possession of inside information in relation to the possible cancellation of the Preference Shares recorded in the relevant part: "*It was explained that Project Silver had been discussed at the Aviva plc Board meeting on 31 January 2018. It was noted that whilst all options remained under consideration, the Aviva plc Board was unlikely to take any action to retire the Aviva Preference Shares at this stage due to the expense of a consensual buy-back and the potential reputational impact of a resolution to cancel the Aviva Preference Shares failing to receive sufficient support at the Aviva plc AGM.*

*It was further explained that the Aviva plc Board was more actively continuing to consider its options in relation to the retirement of the GA plc Preference Shares, including cancelling the GA plc Preference Shares through a Court sanctioned reduction of capital (either at par or with an enhanced return to investors by means of a special dividend) or leaving them in the Group's capital structure for the mid-longer term.*

*It was noted that the Aviva plc Board had been unable to reach a decision on which of these options to pursue at this stage. It was explained that whilst there were clear benefits to Aviva plc in retiring the GA Preference Shares at par, there were also significant reputational risks associated with taking this action. It was noted that further analysis was being conducted to better understand (i) the risk of Aviva's future access to the fixed income market becoming restricted as a result of the GA preference Shares being cancelled at par; and (ii) the potential impact on the value of the 'GA' and 'Aviva' brands given the retail holding of the GA Preference Shares.*

*…*

*It was also noted that the GA plc Board had yet to consider Project Silver and that any corporate action taken in respect of the GA Preference Shares would be subject to the approval of the GA plc Board.*

*…*

*On the basis of the foregoing, it was agreed that the Group was not currently in possession of inside information as a result of Project Silver and as such that no announcement was presently required. In particular, it was agreed that it was too*

*early to say that there was a 'realistic prospect' that the GA plc Preference Shares would be cancelled until the full impact analysis had been concluded. …*"

**Inclusion of the Preference Shares issue in the 8 March Announcement**

4.15. By February 2018, Aviva had not settled upon a firm approach for its surplus cash including any potential liability management exercise. Despite this, it was due to provide an update on its progress in March 2018 (through its announcement relating to its 2017 year-end results) to make the market aware that the deployment of the surplus cash and the liability management exercise was still something it was actively considering.

4.16. Although Aviva had not formed an intention to cancel the Preference Shares in 2018, it was cognisant that this was an option it had actively considered, and one which it had not previously identified to the market in the context of the liability management exercise, unlike options such as the buyback of hybrid debt. Aviva was also concerned that there was a lack of awareness in the market about the existence of the ability to cancel the Preference Shares at par. In February 2018, Aviva therefore began to consider whether it should include within its final year results (i.e. the 8 March Announcement) details about the ability to cancel the Preference Shares at par. The reasons for including this information were:

4.16.1. to ensure that the market was aware that the Preference Shares could be cancelled at par and would not necessarily have to be purchased at above market price through a tender offer; and

4.16.2. to be transparent with the market about options under consideration by Aviva, of which the market was not aware.

4.17. From 5 February 2018, Aviva was actively engaged with a variety of external advisers regarding the proposed inclusion of the liability management exercise and the Preference Shares in the 8 March Announcement. Specifically, during this period, Aviva actively considered, with its external advisers, whether:

4.17.1. it could or should confirm that it was continuing to consider exercises on more expensive instruments and those that would not be admissible under the Solvency II capital requirements by 2026;

4.17.2. the market would incorrectly interpret any such statement as an indication that Aviva was going to make a tender offer at above market price;

4.17.3. it should note the ability for some of the securities to be cancelled under their terms on a reduction of capital, even if it had not formed an intention to take that corporate action in the immediate future;

4.17.4. it had an obligation under the Market Abuse Regulation to make an announcement about the right of cancellation; and

4.17.5. in making such a statement it would be in compliance with the Market Abuse Regulation. Aviva also asked its advisers to review the draft statement in the light of *"its more general disclosure obligations"*.

4.18. Aviva's first draft of the 8 March Announcement was circulated internally on 16 February 2018 and included wording about the Preference Shares in the 'Capital & Cash' section. Aviva's Board and certain other senior individuals, as well as its external advisers, engaged throughout the drafting processes and a number of drafts of the wording of the 8 March Announcement in relation to the Preference Shares were created to reflect those discussions. In particular, on 16 February 2018 the draft stated "*In 2018, we have signalled our intention to reduce hybrid debt by £900 million. We are targeting more than £500 million in additional capital returns, incorporating liability management and returns to shareholders. In this regard, we are considering all options with respect to General Accident plc and Aviva plc preference shares, which we are able to cancel at par, subject to ordinary and preference shareholder vote. These securities carry high coupons that are not tax-deductible and they will not count as regulatory capital from 2026".*

4.19. On 19 February 2018, senior individuals within Aviva discussed whether to include the reference to the ability to cancel the Preference Shares, mindful of the need to ensure they were prepared for a significant level of enquiries from holders of the Preference Shares and others, to which they expected the inclusion of such a reference to lead, even where no firm commitment to cancel the Preference Shares was to be made.

4.20. Changes were made by senior individuals to the wording in relation to the Preference Shares on 20 February 2018, to remove the words "*we are considering all options in respect to General Accident plc and Aviva plc preference shares, which we are able to cancel at par"* and replace them with "*we have the ability to cancel preference shares through a reduction of capital"*.

4.21. An Aviva external adviser recommended on 22 February 2018 the inclusion, at the end of the wording relating to Preference Shares, of the following: "*We also note that in the terms of the preference shares the issuer of the shares has the ability to cancel those shares at par value through a reduction of capital, subject to the approval of the relevant issuer's ordinary and preference shareholders. We have taken no decision*

*as to the way in which we will implement those additional capital returns and will continue to evaluate all available options"*.

4.22. On 27 February 2018, Aviva sought advice from an external adviser on the wording of the relevant aspects of the 8 March Announcement. On 28 February 2018, the external adviser commented that they had a concern that including a reference to the ability to cancel the Preference Shares might have a negative effect if Aviva then did not follow through with the cancellation. There was no further discussion on this point.

4.23. Subsequently in February and early March 2018, a number of sub-committees of the Board considered the draft wording relating to the Preference Shares in the 8 March Announcement. They did not make any changes to the wording. However, it was suggested that a reference to Aviva's desire to balance the interest of ordinary and preference shareholders be added. This was reflected in draft wording on 6 March 2018 removing the external adviser's recommended wording (referred to at paragraph 4.21 above) and replacing it with: "*As we evaluate the alternatives, one of the things we are considering is how to balance the interests of ordinary and preferred shareholders.*" This wording appeared in the final version of the Key Statement. Aviva's external advisers saw this change of wording and did not object to it.

4.24. On 4 March 2018, a sub-committee of the Board was convened to consider whether any information relating to the Preference Shares was inside information and Aviva's obligations in relation to any such information. The sub-committee noted that there had been no further substantial developments in relation to Project Silver since the Aviva Board meeting on 31 January 2018, when it was determined not to progress Project Silver with a view to being ready to announce at the same time as the announcement of the 2017 preliminary results. In particular, it noted that no further discussions had been held in relation to Project Silver by either the Aviva Board or the General Accident Board, that further impact analysis of any proposed course of action was still required and that, as a result, no recommended course of action had been identified. The sub-committee considered the Key Statement and whether there was any law or regulation which would prevent Aviva from including the Key Statement in the 8 March Announcement, noting that the Key Statement was likely to have a negative impact on the market price of the Preference Shares. The sub-committee concluded that information relating to the Preference Shares was not inside information as there was still insufficient certainty about Project Silver. It also concluded that the Key Statement could be included in the 8 March Announcement for reasons including that the terms and conditions of the Preference Shares were publicly available documents, the Solvency II measures were a matter of public record and

Aviva had sought advice on its obligations under the Market Abuse Regulation and had been advised that the Key Statement could be included.

4.25. On 7 March 2018, the Board of Aviva met and discussed the draft of the 8 March Announcement to be released to the market the next day and noted that "*No decisions had been taken and there was no current intention to take any action in respect of* [the Preference Shares]". The draft of the 8 March Announcement presented to the Board contained the Key Statement. The Board approved the draft 8 March Announcement and did not comment on the wording of the Key Statement.

4.26. Aviva expected that the price of the Preference Shares would fall as a result of the 8 March Announcement and that some holders of the Preference Shares would be upset or angered by the announcement.

**Results Announcement**

4.27. On 8 March 2018, Aviva published the 8 March Announcement through the London Stock Exchange's Regulatory News Service and it included the Key Statement.

4.28. At the same time as the 8 March Announcement was being prepared, Aviva also prepared notes and a script for its staff who were to give the presentation to analysts relating to it. Aviva sought advice from its external professional advisers on the script. These notes included a section called *"Content for CEO Script"* which included the bullet points: "*To be clear though, it is our intention to return in excess of 500m of capital to shareholders this year"* and: *"We intend to do these returns through a combination of preference and ordinary shares*." In his oral presentation of the 2017 preliminary results, which largely followed the script prepared beforehand, the CEO stated:

> "*Turning now to capital. Now, at our investor day in November we outlined our intention to deploy £2 billion in 2018 and a further £1 billion in 2019. And today, I want to add some specific guidance about the use of that capital … Of the £500 million plus earmarked for capital returns, we're working through our plans but we are not yet ready to announce the dates or the exact mechanisms today. To be very clear though, it is our intention to return at least £500 million of capital to shareholders this year. We intend to do this through a combination of preference and ordinary shares. Now, for the prefs, you should note that we have the ability to cancel these prefs at par, with shareholder approval. These prefs carry very high coupons and will no longer count for regulatory capital from 2026. In addition, we're in a very fortunate position with our cash and capital that we now have the*

*ability to do something about it. So we intend to. [Our CFO] will take you through the detail of this in a moment."*

The CFO then said in his oral presentation:

"…a*s [the CEO] said, one of the things we're looking at is the possibility of a liability management exercise concerning one or more tranches of preferred securities issued by either our General Accident subsidiary or Aviva plc. The rating agencies don't count them as capital anymore and they likely will not count for capital for Solvency II purposes from 2026 so they no longer serve their originally intended purpose. Essentially they're now just the equivalent of very expensive senior debt with coupons that are not tax deductible. So while we've not taken any decisions we note that these securities are subject to cancellation at par upon a capital reduction approved by ordinary and preferred shareholders voting as a single class. Now that we're in excess cash and capital position, it may make sense for the company to address these securities now or some time prior to 2026. So as we work through the alternatives, one of the things we're considering is how best to balance the respective interests of ordinary and preferred shareholders…"*

4.29. The CEO's statement in his oral presentation that Aviva intended to return at least £500 million to shareholders in 2018 through a combination of preference and ordinary shares was consistent with the wording in the Key Statement and was incorrect: Aviva had not formed such an intention in relation to the Preference Shares. A holder of the Preference Shares and the market would have been entitled to take into account the CEO's oral presentation when interpreting the Key Statement, notwithstanding the statement which followed by the CFO that no decisions in relation to the Preference Shares had been taken.

4.30. Following the 8 March Announcement, the market price of all the Preference Shares fell substantially over the next two days and between 20% and 26% of market value was lost. At least some holders of the Preference Shares: interpreted the Key Statement to mean that Aviva intended to cancel the Preference Shares at par in 2018; and/or concluded that such cancellation at par was more likely than it in fact was; and/or failed to appreciate that it was probable that any exercise of the right to cancel at par would be accompanied by compensatory measures.

4.31. On 15 March 2018, Aviva published a statement on its website noting the speculation caused by the 8 March Announcement. This statement provided a more detailed explanation of the mechanism through which the Preference Shares might be

cancelled and said Aviva was continuing to consider its options in relation to the Preference Shares.

4.32. On 23 March 2018, Aviva published the 23 March Announcement (reflecting a decision taken the previous day), expressly stating that it had decided to take no action to cancel its Preference Shares. The CEO stated that he and the Board had a duty to consider not just the financial implications of their actions but also the impact on Aviva's wider reputation, and that he hoped that the decision went some way towards restoring the trust of customers and investors.

## 5. FAILINGS

5.1. The regulatory provisions relevant to this Notice are referred to in Annex A.

**Breach of LR 1.3.3R and DTR 1A.3.2R**

5.2. LR 1.3.3R sets out that an issuer must take reasonable care to ensure that any information it notifies to a regulatory information service or makes available through the Authority is not misleading, false or deceptive and does not omit anything likely to affect the import of the information.

5.3. DTR 1A.3.2R sets out that an issuer must take all reasonable care to ensure that any information it notifies to a regulatory information service is not misleading, false or deceptive and does not omit anything likely to affect the import of the information.

5.4. The following circumstances are relevant to the assessment of whether Aviva took reasonable care to ensure that the Key Statement was not misleading and did not omit anything likely to affect the import of the information in it.

5.4.1. Aviva expected that the price of the Preference Shares would fall as a result of the 8 March Announcement.

5.4.2. Aviva knew that there were significant retail holdings of the Preference Shares.

5.4.3. Aviva expected that some investors would be upset or angered by the 8 March Announcement.

5.4.4. Aviva knew that if the Key Statement misled investors or omitted information that was material to its import then market confidence could be affected.

5.4.5. Aviva had substantial legal, financial and personnel resources available to it, and access to external professional advice.

5.5. In issuing the 8 March Announcement (which was notified to a regulatory information service), Aviva failed to take reasonable care to ensure that the Key Statement was

not misleading and did not omit anything likely to affect the import of the information contained in it.

5.5.1. As set out in paragraph 2.4 above, it was reasonably foreseeable that holders of the Preference Shares and the market more generally would be misled by the Key Statement, as it omitted matters that were likely to affect the import of the information in it.

5.5.2. Aviva failed correctly to assess its obligations under LR 1.3.3R and DTR 1A.3.2R.

5.5.3. Although Aviva sought advice from external professional advisers, it failed to obtain specific advice in relation to compliance with LR 1.3.3R and DTR 1A.3.2R.

5.5.4. The potential for the Key Statement to mislead the holders of the Preference Shares and the market by the omission of information that was likely to affect the import of the information contained in the Key Statement, should have been obvious to Aviva if it had properly considered its obligation under the Listing Rules and the Transparency Rules. In all the circumstances, the Authority considers that Aviva failed to do so and therefore failed to take reasonable care to ensure that the Key Statement did not omit anything likely to affect the import of the information that was disclosed in it and did not mislead the holders of the Preference Shares and the market.

## 6. SANCTION

6.1. The principal purpose of issuing a public censure is to promote high standards of regulatory 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 behaviour.

6.2. DEPP 6.4.1G provides that the Authority will consider all the relevant circumstances of the case when deciding whether to impose a penalty or issue a public censure. DEPP 6.4.2G provides that the criteria for determining that question include the factors that the Authority will consider in determining the amount of penalty, set out in DEPP 6.5AG. DEPP 6.4.2G also sets out some particular considerations that may be relevant in determining whether it is

appropriate to issue a public censure rather than impose a financial penalty. The Authority considers that the factors below are particularly relevant in this case.

**Deterrence (DEPP 6.4.2G(1))**

6.3. In determining whether to issue a public censure, the Authority has had regard to the need to publish a statement of Aviva's misconduct to ensure that firms take seriously their obligations to publish information to the market that is not misleading. The Authority considers that a public censure should be imposed to demonstrate to Aviva and the market the seriousness with which the Authority regards Aviva's failings, and that deterrence may be effectively achieved by doing so.

**Seriousness (DEPP 6.4.2G(3))**

6.4. In determining whether to impose a public censure or a financial penalty the Authority will have regard to the seriousness of the breaches. The Authority, in particular, considers the following factors set out in DEPP 6.5AG to be relevant in this case:

6.4.1. the breaches were not committed deliberately or recklessly;

6.4.2. Aviva did not make any profits or avoid any losses as a result of the breaches, either directly or indirectly;

6.4.3. there was a significant risk of loss, and realised loss, to Aviva and General Accident's preference shareholders;

6.4.4. the breaches caused distress to Aviva and General Accident's preference shareholders;

6.4.5. in committing the breach Aviva took steps to comply with its legal and regulatory obligations (including by seeking external professional advice); however, those steps were inadequate.

**Co-operation and redress payment scheme (DEPP 6.4.2G (5))**

6.5. In determining whether to issue a public censure the Authority has had regard to the statements Aviva issued on 15 March 2018 and 23 March 2018. The Authority has also taken into consideration Aviva's payment scheme offered to shareholders who sold the Preference Shares in the period 8 March to 22 March 2018 at a price lower than the price to which the Preference Shares returned following the 23 March Announcement. The payment scheme was announced on 30 April 2018, shortly after the 8 March Announcement. It opened for claims on 31 July 2018 and was closed on 31 January 2019.

**Conclusion**

6.6. The Authority considers that failing to take reasonable care to ensure that information provided to the market, by notification to an RIS, is not misleading and does not omit anything likely to affect the import of the information is a serious failing. However, in the circumstances of this case, having regard to the steps Aviva has taken to ensure that those who suffered loss were compensated for those losses, the Authority decided that issuing a public censure is appropriate in the interest of deterrence.

## 7. REPRESENTATIONS

7.1. Annex B contains a brief summary of the key representations made by:

(1) Aviva; and

(2) the individual who was Aviva's CEO at the relevant time, a third party identified in the reasons set out in this Notice, and to whom in the opinion of the Authority the matter is prejudicial

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 Aviva and that individual, whether or not set out in Annex B.

## 8. PROCEDURAL MATTERS

8.1. This Notice is given under, and in accordance with, section 390 of the Act.

**Decision maker**

8.2. The decision which gave rise to the obligation to give this Notice was made by the Regulatory Decisions Committee.

**Publicity**

8.3. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Notice relates. Under those provisions, the Authority must publish such information about the matter to which this Notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to the person with respect to whom the action was taken or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

**Contact**

8.4. For more information concerning this matter generally, contact Kerri Scott at the Authority (direct line: 020 7066 4620 /email: kerri.scott@fca.org.uk).

**Sadaf Hussain**
Head of Department
Financial Conduct Authority, Enforcement and Market Oversight Division

## ANNEX A

## RELEVANT STATUTORY AND REGULATORY PROVISIONS

1.1. The Authority's statutory objectives include:

(1) the strategic objective, set out in section 1B(2) of the Act, of *"ensuring that the relevant markets… function well"*; and

(2) the operational objectives set out in section 1B(3) of the Act, which include the integrity objective, further defined in section 1D of the Act as *"protecting and enhancing the integrity of the UK financial system"*.

1.2. Section 91 of the Act provides:

*"(1) If the [Authority] considers that:*

*(a) an issuer of listed securities, or*

*(b) an applicant for listing*

*has contravened any provisions of listing rules, it may impose on him a penalty of such amount as it considers appropriate*

*…*

*(3) If the Authority is entitled to impose a penalty on a person under this section in respect of a particular matter it may, instead of imposing a penalty on him in respect of that matter, publish a statement censuring him."*

RELEVANT REGULATORY PROVISIONS

*Listing Rules*

1.3. LR 1.3.3R states:

*"(1) An issuer must take reasonable care to ensure that any information it notifies to a RIS or makes available through the [Authority] is not misleading, false or deceptive and does not omit anything likely to affect the import of the information."*

*Disclosure Guidance and Transparency Rules*

1.4. DTR 1A.3.2R states:

*"(1) An issuer must take all reasonable care to ensure that any information it notifies to a RIS is not misleading, false or deceptive and does not omit anything likely to affect the import of the information."*

*DEPP*

1.5. Chapter 6 of DEPP, which forms part of the Authority's Handbook, sets out the Authority's statement of policy with respect to imposing penalties and issuing public censures under the Act.

*The Enforcement Guide*

1.6. The Enforcement Guide sets out the Authority's approach to exercising its main enforcement powers under the Act.

1.7. Chapter 7 of the Enforcement Guide sets out the Authority's approach to exercising its power to impose financial penalties and other sanctions, including the power to publish a statement.

## ANNEX B

## REPRESENTATIONS

**Representations of Aviva**

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

   The relevant rules (DTR 1A.3.2R and LR 1.3.3R)

2. *The rules do not apply to communications with the market which are neither notified to an RIS nor made available through the Authority. Other communications by Aviva such as the results presentation to analysts made after the publication of the 8 March Announcement are not caught by the rules. Nor can they to be taken into account in assessing an alleged breach of the rules on the grounds that market participants would be entitled to take them into account in interpreting an RIS announcement:*

   a. *The rules apply to an RIS announcement itself and cannot apply to any communication later in time, whether by treating it as part of the background to the announcement or otherwise.*

   b. *An interpretation of the rules which extends their application in this way would involve a significant and unjustified departure from the express language used in the rules. This would be contrary to the principle of regulatory certainty and could lead to a breach of the rules from facts which no reasonable issuer properly advised could have anticipated would be treated as a breach.*

   c. *This is not a lacuna which needs to be remedied by purposive interpretation of the rules. Communications with the market generally are governed by other rules. The more stringent standards set out in the relevant rules reflect the special and authoritative status held by RIS announcements in the market.*

3. The Authority agrees that the rules apply only to communications notified to an RIS or (in the case of LR 1.3.3R) made available through the Authority but considers that what was said in the results presentation is relevant to the assessment of whether Aviva took reasonable care to ensure that the 8 March Announcement was not misleading and did not omit anything likely to affect the import of the information it contained. This is because Aviva would have been well aware that the 8 March Announcement would be interpreted by holders of the Preference Shares and the market in the light of the results presentation, to be given later the same morning, which was designed to explain the 8 March Announcement and the content of which was prepared at the same time as the announcement itself. Accordingly, when preparing the 8 March Announcement, Aviva should have taken the intended results presentation into account in considering how holders of the Preference Shares and the market could reasonably be expected to understand the 8 March Announcement. Nonetheless, even without having regard to the results presentation, the Authority considers that the 8 March Announcement did omit information which was likely to affect the import of the information included in the announcement and was reasonably capable of misleading holders of the Preference Shares and the market, for the reasons given in this Notice.

The status of Aviva's decision-making as at 8 March 2018

4. *A variety of views was expressed when Project Silver was considered at the 31 January 2018 Board meeting. 9 out of the 12 directors (including the CEO) were in favour of some action to retire the Preference Shares and the Chairman's evidence is that it appeared that a majority of those favoured cancellation at par. No decision was taken whether to retire the Preference Shares at all, or (if so): which to retire; when to retire them; or the terms and mechanism for doing so including the pricing of any tender offer or any compensatory measures to be offered in the case of a cancellation by return of capital. There was agreement that the next step was to investigate the options further. Following that meeting, all options remained open, not just in the formal sense that no decision had been taken by the Board, but also in the practical sense that they all remained possibilities for Aviva, in 2018 as well as subsequently. The Board did not meet to discuss the matter again prior to the 7 March 2018 Board meeting, and at that meeting did not further debate the options.*

5. *The most importance piece of evidence as to the state of the Board's decision-making at the date of the 8 March Announcement is the text of the 8 March Announcement itself, because it was approved by the Board. There was specific consideration of the Key Statement and broad consensus that it ought to be included.*

6. The Authority does not dispute the summary of the status of Aviva's decision-making set out in paragraph 4 above, which is consistent with paragraphs 4.12 to 4.25 of this Notice, although it considers that action to retire the Aviva Preference Shares at par in 2018 was unlikely, for the reasons set out in the minutes referred to at paragraph 4.14 of this Notice. Notwithstanding the Board's approval of the 8 March Announcement, the Authority considers that the 8 March Announcement gave the Key Statement Impression (as explained further below).

The objective meaning of the 8 March Announcement

7. *The 8 March Announcement's objective meaning was consistent with the factual position as set out at paragraph 4 above.*

8. *The objective meaning of the express words of the 8 March Announcement was that:*

    a. *Aviva had the ability to cancel the Preference Shares at par value subject to shareholder vote and court approval;*

    b. *there were reasons of commercial and financial logic in favour of retiring the Preference Shares, namely that they carried high coupons which were not tax deductible and that they would not count as regulatory capital from 2026; and*

    c. *Aviva was evaluating alternatives in relation to the Preference Shares and in doing so was considering how to balance the interests of ordinary and preferred shareholders.*

9. *The 8 March Announcement carried the clear implication (on the basis of the express meaning identified at sub-paragraphs 8(a), (b) and (c) above) that Aviva had not reached any decision (as to cancellation at par or on any other terms), and was considering exercising its ability to cancel the Preference Shares as one of the*

*options available to it should it decide to retire the shares. It did not say anything, expressly or by implication, as to the timing of any possible action to retire the Preference Shares, or as to the pricing of any corporate action or set of actions to retire them. Although it referred to the ability to cancel at par, it is clear from the reference to continued consideration of* "how to balance the interests of ordinary and preferred shareholders*" that Aviva had not resolved that the retirement of the Preference Shares (were it to occur) would be at par or any other specific price. As market participants would have been well aware (although Aviva accepts this may be more clearly applicable to institutional investors than to retail investors), had Aviva formed an intention to cancel the Preference Shares it would have been obliged to announce this to prevent the existence or continuance of a false market in the Preference Shares.*

10. The Authority accepts that the 8 March Announcement contained express words with the meaning set out in paragraph 8 above. However, it considers that, by (in the context of outlining its plans for 2018): (a) expressly mentioning the ability to redeem the Preference Shares at par, and none of the other options available to Aviva; and (b) referring to the reasons in favour of cancellation at par and not to any countervailing reasons, it gave undue weight to that option, giving the impression that it was both probable and imminent.

11. The Authority also considers that the sentence *"As we evaluate the alternatives, one of the things we are considering is how to balance the interests of ordinary and preferred shareholders"* lacked clarity and accordingly fell short of being an adequate indication that no decision had been taken, as was in fact the case. For example, it was not clear that the alternatives referred to were alternatives to cancellation at par (such as cancellation with compensatory measures), rather than alternative ways of achieving that outcome: such as retiring only some of the Preference Shares, or retiring them at different times. Nor would it have been clear, particularly to retail investors, that balancing the interests of ordinary and preference shareholders might mean taking no action to retire the Preference Shares at all. The Authority considers that (as substantially acknowledged by Aviva) retail investors could not reasonably be expected to be aware of the obligation under the Market Abuse Regulation to announce any formed intention to cancel the Preference Shares, and notes that retail investors made up a substantial proportion of the holders of the Preference Shares.

<u>The 8 March Announcement did not give the Key Statement Impression</u>

12. *For the reasons set out above, the 8 March Announcement did not give the Key Statement Impression. The Authority's case that it did appears to be based on the following:*

    a. *comments made by the CEO of Aviva at the results presentation some two hours after publication of the 8 March Announcement;*

    b. *the fact that the market price of the Preference Shares fell after the 8 March Announcement; and*

    c. *an assertion that at least some holders of the Preference Shares interpreted the 8 March Announcement as giving some part of the Key Statement Impression.*

13. *For the reasons set out above, the results presentation cannot be used as an interpretive aid to the 8 March Announcement and remarks made in the presentation cannot constitute (or evidence) breaches of the rules. But in any event, the comments of the CEO, properly considered in the context of the results presentation, do not give or contribute to the Key Statement Impression. In connection with the planned return of capital, the CEO said* 'we intend to do this through a combination of preference and ordinary shares'*. In the context of the express statement that the mechanism of returning capital was not yet decided, the proper meaning to be attributed to this remark was simply that Aviva's Preference Shares and its ordinary shares were the two classes of its capital which were under consideration for the making of capital returns. This was consistent with the 8 March Announcement. The reference to the ability to cancel the Preference Shares at par was also consistent with the 8 March Announcement. It did not imply that a cancellation would not be accompanied by compensatory measures (or indeed that it would be: this had not been decided).*

14. *Furthermore, the CEO expressly referred his audience to the comments which the CFO would shortly be making in the presentation, which would explain the detail of the position with respect to the Preference Shares. While providing that detail, the CFO then expressly said that no decision had been taken in respect of the Preference Shares and that it* "may make sense" *for Aviva to take action in relation to the Preference Shares* "now or some time prior to 2026"*. He went on to say* "as we work through the alternatives, one of the things we are considering is how to balance the respective interests of ordinary and preferred shareholders"*. These comments were inconsistent with any alleged impression that Aviva had formed an intention to cancel the Preference Shares, that it had formed an intention to do so in 2018 and/or that it had formed an intention to do so at par value without compensatory measures. It is illegitimate to take account of only the comments of the CEO and not those of the CFO, especially where the CEO referred the audience to him for the detail.*

15. *It cannot be inferred from the decline in the market price of the Preference Shares that the 8 March Announcement gave the Key Statement Impression. It is clear from the fact that the price of preference shares of several other issuers also declined following the 8 March Announcement that the market had not generally appreciated that irredeemable preference shares of that kind were in fact subject to cancellation at par. The price decline is evidence not that the 8 March Announcement gave the Key Statement Impression but that it changed the market's understanding of the terms and legal position of the Preference Shares. Furthermore, the 8 March Announcement may have given the correct impression that cancellation at par was one of the options under consideration by Aviva, and this could have been a further reason for a decline in Aviva shares. The partial recovery in price after the 23 March Announcement reflected the fact that the option of cancellation at par had by then been ruled out by the Board (though they remained vulnerable to cancellation as a matter of law, which had not previously been widely understood in the market, and is no doubt why the Preference Shares did not recover to the pre-8 March 2018 price).*

16. *The Authority appears to rely on two pieces of evidence in support of the assertion that at least some of the holders of the Preference Shares interpreted the Key Statement to mean that Aviva intended to cancel the Preference Shares at par in 2018; and/or concluded that such cancellation at par was more likely than in fact*

*it was; and/or failed to appreciate that any exercise of the right to cancel at par was likely to be accompanied by compensatory measures:*

a. *A member of Aviva's staff referred in interview to communications with investors in the weeks following the 8 March Announcement. But insofar as that individual was describing an impression formed by investors as to Aviva's intentions (which is far from obvious from the interview transcript) it sheds no light on how those investors had understood the 8 March Announcement as opposed to the views they had formed based on press and analyst commentary, discussions with other market participants or their own analysis. Indeed, the evidence of the individual was that they thought the investors had been influenced by commentary after the 8 March Announcement.*

b. *On 20 March 2018, the Chairman of Aviva met a number of institutional investors who indicated they would not support any action by Aviva to cancel the Preference Shares. But the file note of that meeting discloses nothing as to how those investors had interpreted the 8 March Announcement.*

17. The Authority's view that the 8 March Announcement gave the Key Statement Impression is based on the meaning that recipients might reasonably be expected to take from it, by reason of the omission of significant information, as set out above. But the Authority considers that the three matters set out in sub-paragraphs 12(a) to (c) above are consistent with this conclusion.

18. As explained in paragraph 3 above, the Authority considers that the results presentation can be taken into account in assessing whether Aviva took reasonable care to ensure that the 8 March Announcement was not misleading and did not omit anything likely to affect the import of the information it contained. The incorrect statement by the CEO that Aviva intended to return at least £500 million to shareholders in 2018 through a combination of preference and ordinary shares was immediately followed by the statement that Aviva had the ability to cancel preference shares at par and then by the words "So we intend to". In the Authority's view, this indicated that Aviva intended to take such action in 2018, without compensatory measures, thereby reinforcing the Key Statement Impression. The prior statement that Aviva was not ready to announce the precise mechanisms was insufficient to negate that impression: it was reasonably foreseeable that an investor would have understood the "precise mechanisms" to refer to the detail of the planned action rather than whether it was to take place at all. The reference to the CFO's part of the presentation for the detail was also insufficient to negate that impression, since an investor was entitled to assume that what the CEO was saying was correct, even if the CFO was to provide more detail about the action which the CEO had indicated Aviva would be taking in 2018.

19. Nor was the misleading statement adequately corrected by the CFO in his oral statement. The CFO did not refer to what the CEO had said earlier or suggest that he was seeking to correct or qualify it. As noted above, an investor was entitled to assume the CEO was speaking accurately, and accordingly the CFO's statement that no decisions had been taken could reasonably have been understood as meaning that the precise combination of preference and ordinary shares had not yet been determined. Further, the CFO's statement that it *"may make sense for the company to address the preference shares now or some time prior to 2026"* could reasonably have been understood as meaning that the retirement of £500

million of a "*combination of preference shares and ordinary shares"* mentioned by the CEO could leave some of the Preference Shares outstanding.

20. The Authority recognises that, prior to the 8 March Announcement, the market may not generally have appreciated that irredeemable preference shares were in fact subject to cancellation. It also accepts that along with the prices of the Preference Shares, the prices of preference shares of other issuers also fell after the Key Statement was made on 8 March 2018, and subsequently rose after the 23 March Announcement, though not to the levels at which they had been prior to the 8 March Announcement. There therefore appears to be a correlation with the two announcements on those dates (although other factors could have contributed to the movements in the price of the other shares). However, it is the Authority's view that the market price of preference shares would be affected not only by the market's awareness of the existence of the right to cancel them at par but also by its assessment of the likelihood of the issuer exercising that right, the likely timeframe of any such action and the terms on which it might happen. The fact that other preference shares also rose in price after the 23 March Announcement, though not to their pre-8 March Announcement levels, does not appear to the Authority to be consistent with its view. The Authority notes that the prices of the Preference Shares fell more sharply on 8 March 2018 than those of other preference shares, which is consistent with particular concern on the part of investors over the position of the Preference Shares issued by Aviva and General Accident.

21. As to the contacts with investors mentioned at sub-paragraphs 16(a) and(b) above:

    a. The relevant interview transcript of the Aviva staff member does not provide any basis for attributing to anything other than the 8 March Announcement the impression on the part of investors, to which it refers, that Aviva intended to retire the Preference Shares at par. Further, insofar as that individual speculated that the investors concerned had been influenced by analysts' commentary after the event, that tends to suggest the individual considered that analysts had also received the Key Statement Impression.

    b. So far as the file note of the meeting between Aviva's Chairman and a number of institutional investors is concerned, contrary to Aviva's contention, the indication by such investors that they would not support action to cancel the Preference Shares, as set out in the note, and the force with which it was expressed, suggests they had also obtained the Key Statement Impression. Investors present at the meeting noted that the Chairman's tone in the meeting was very different from that of the 8 March Announcement.

<u>The 8 March Announcement was not misleading; nor did it omit anything affecting its import</u>

22. *For the reasons set out above, the objective meaning of the 8 March Announcement was consistent with the state of Aviva's decision-making in relation to the Preference Shares. The Board approved it, having had its attention specifically drawn to the language concerning the Preference Shares, including what was to be said about the state of the Board's decision-making. It is to be inferred from this that the Board was comfortable with the overall impression given by the 8 March Announcement as to the state of its consideration of the options.*

23. *With regard to the alleged omissions:*

    a. *It is true that the 8 March Announcement did not expressly state that Aviva had not formed an intention to retire some or all of the Preference Shares, either in 2018 or at all. But it was not necessary to do so since it did not imply that Aviva had formed such an intention. Further, it was clear from the express words used in the 8 March Announcement (*"as we evaluate the alternatives"; "balance the interests"*) that Aviva had not formed an intention one way or the other as to whether to retire some or all of the Preference Shares. There was therefore no omission, or if there was, it was not misleading and did not affect the import of the 8 March Announcement.*

    b. *Further, the 8 March Announcement explained that the Preference Shares would cease to count as regulatory capital from 2026. Although there is no reason why the Preference Shares could not have been cancelled as part of Aviva's 2018 capital returns, the 8 March Announcement made it clear that there was a window of several years before the regulatory capital status of the Preference Shares would be an issue. In the circumstances, the 8 March Announcement was not reasonably capable of giving the impression that Aviva had already formed an intention to retire the Preference Shares in 2018.*

    c. *It is correct that the 8 March Announcement identified specific reasons in favour of retirement of the Preference Shares. But it is incorrect to say it did not also identify any countervailing considerations. It was clear from the 8 March Announcement that cancellation was dependent on shareholder approvals (which clearly might not be forthcoming) and expressly stated, in clear language, that the Board's decision would involve balancing the interests of preferred and ordinary shareholders (which, because they required balancing, were opposed or different). It would have been transparently clear to readers that cancellation at par would, in the absence of compensatory measures, cause loss to holders of the Preference Shares. These relevant and material countervailing considerations were identified (expressly or by implication) as requiring still to be balanced, and they were the very considerations which ultimately caused Aviva to decide not to proceed with any retirement of the Preference Shares.*

24. The Authority accepts that the Board of Aviva gave consideration to, and approved, the 8 March Announcement but rejects the implication, if such is intended, that this demonstrates that the Key Statement was not misleading.

25. For the reasons set out at paragraphs 10 and 11 above, the Authority does not agree with Aviva's view as to the objective meaning of the 8 March Announcement. Accordingly, it considers that there was an omission with respect to stating clearly that no decision had been made by Aviva to cancel the Preference Shares at par, and that there were other options open to Aviva, including the use of compensatory measures, and that such omission was misleading. In the absence of such statement, the Key Statement was reasonably capable of giving the holders of the Preference Shares and the market the Key Statement Impression. The reference to 2026 was insufficient to negate the impression that Aviva had formed an intention to retire the Preference Shares in 2018, especially in light of its context, namely Aviva's plans for 2018, and the other commercial reason given in favour of doing so *("the preference shares carry high coupons that are not tax-deductible"*),

which was already applicable at that point in time, not just in the future. The reference to shareholder approvals, coming as it did as part of a statement about Aviva's intentions for 2018 and its ability to cancel the shares, did not, in the Authority's view, constitute, or clearly indicate the existence of, countervailing reasons. The reference to the balancing of *"the interests of ordinary and preferred shareholders"* was inadequate as set out at paragraph 11 above, and in any event did not refer to any such reasons.

Aviva took all reasonable care in making the 8 March Announcement

26. *Following the January Board meeting and up until the 8 March Announcement, Aviva gave extensive and careful consideration to whether it ought to include any statement concerning the Preference Shares in the 8 March Announcement and, if so, what that statement ought to be. The proposed language was reviewed by numerous senior staff in various teams. Aviva also consulted with and received advice both from internal and external professional advisers, and took that advice into account. A draft of the 8 March Announcement was shared with the Authority and reviewed by all the appropriate Aviva internal committees before it was ultimately approved by the Board. In deciding to include a statement to ensure the market was aware that the Preference Shares were capable of being cancelled at par, Aviva was acting responsibly and in accordance with regulatory best practice.*

27. *Aviva and its advisers took care to find a form of words that both corrected the apparent misunderstanding in the market about the terms of the Preference Shares and accurately reflected the state of the Board's decision-making and would not mislead the market. In particular:*

    a. *The process by which Aviva's external advisers proposed the wording mentioned at paragraph 4.21 of this Notice and this was replaced by the statement set out at paragraph 4.23, which more specifically explained the competing considerations involved in Aviva's continued evaluation of the options, shows that Aviva took care to ensure that it explained not only that the options remained under consideration but also the tension between the interests of different classes of shareholder which were to be balanced in any decision to retire the Preference Shares.*

    b. *Aviva's staff responsible for drafting and reviewing the 8 March Announcement and the members of their external advisory teams were all aware of the substance of the requirement imposed by the relevant rules, namely that the 8 March Announcement must not be false, misleading or deceptive (including the requirement that it must not be misleading by omission). This is a matter of common sense and common practice for any professional involved in the preparation of such announcements to be made by a public company to the market.*

    c. *Members of Aviva's staff explicitly asked its external legal advisers to consider its "general disclosure obligations" in addition to the Market Abuse Regulation, and to consider whether the draft 8 March Announcement raised any "red flags". They would have reasonably expected the advice provided to address the relevant rules, where applicable. It was not necessary to refer to the rules by name and number, and nothing can be inferred from*

*the fact that internal communications or communications with advisers did not do so.*

d. *Lawyers instructed to advise generally on the draft 8 March Announcement considered the relevant rules, and provided advice in that regard, where applicable. They were properly briefed on the current state of the Board's position and had this in mind when reviewing the drafts of the 8 March Announcement.*

e. *Members of the relevant internal committees and the Board were aware of Aviva's obligations under the Listing Rules, among the other rules and laws affecting the publication of the 8 March Announcement, and would have had the relevant rules in mind. Aviva's Chairman at the time has confirmed he would have had them high on his mental checklist when reviewing the 8 March Announcement.*

28. *The Authority appears to say that the alleged misleading impression given by the 8 March Announcement was reasonably foreseeable, such that Aviva's failure to notice and correct it, without more, evidences a failure to take reasonable care. Such an inference is inappropriate in circumstances where there is a considerable amount of primary evidence as to the steps taken by Aviva to ensure the 8 March Announcement was not misleading and did not omit anything material to its import.*

29. As set out at paragraph 11 above, the Authority does not accept that the wording set out in paragraph 4.23 of this Notice adequately explained the competing considerations in Aviva's evaluation of the options open to it in relation to the possible retirement of the Preference Shares, or the tension between the interests of different classes of shareholder.

30. The Authority does not rely, without more, on the fact that the misleading impression given by the 8 March Announcement was reasonably foreseeable, and Aviva's failure to identify and correct it, as evidence of a failure to take reasonable care. Rather, the Authority has considered the effectiveness of the steps taken by Aviva with regard to the drafting and review of the 8 March Announcement, and has concluded that they were inadequate to satisfy the duty to take reasonable care. The Authority acknowledges that the 8 March Announcement was the subject of a review process involving numerous staff of various disciplines within Aviva, and external professional advisers, but providing for review by so many participants of itself gave no guarantee that the 8 March Announcement would not omit information likely to affect the import of information contained in it and mislead, and did not equate to taking reasonable care that it would not do so.

31. In the Authority's view, Aviva's review of the drafts of the 8 March Announcement focused on the accuracy of the literal meaning of the words used in the Key Statement, and failed adequately to consider the potential for impact on holders of the Preference Shares and the market of those words by reason of the omission of matters affecting their import.

32. The Authority notes that the Listing Rules and Transparency Rules are not specifically mentioned (even in passing) in any of the contemporaneous documents relating to the review by Aviva and its external advisers of the 8 March Announcement. Nevertheless, it accepts that external professional advisers and staff within Aviva were aware of the Listing Rules and Transparency Rules and at

least some of them will have had them (or their substance) in mind when considering the drafts of the 8 March Announcement. However, it considers that, despite its expectation that some investors would be upset or angered by the Key Statement, Aviva failed adequately to focus on the likely impact of the Key Statement and to consider the drafting of the Key Statement accordingly, including how what it said might reasonably and foreseeably be interpreted by the market: particularly retail investors. It then failed to brief its external advisers expressly on that likely impact and obtain appropriate advice from them.

The implications for the market of censuring Aviva

33. *Aviva behaved responsibly (going beyond its obligations under the Market Abuse Regulation) in bringing the true position of the Preference Shares to the attention of the market. To censure it for doing so would give the market the message that Aviva should not voluntarily have made an announcement. This would be potentially damaging given the Authority has recently recognised in its revisions to the Listing Rules the importance of the market being kept aware of the material terms of issuers' securities.*

34. The Authority does not agree that the message sent to the market by this Notice should be the discouragement of voluntary announcements where appropriate; rather, it should be a reminder of the importance of ensuring that the information provided through an RIS is not misleading and does not omit anything likely to affect the import of the information in an announcement. It should further serve as a reminder of the need to take adequate account of the nature of the intended audience when considering the information that ought properly to be communicated.

**Third party representations of Aviva's then CEO**

35. The CEO's representations (in italics), and the Authority's conclusions in respect of them, are set out below.

36. *The CEO is strongly supportive of the representations made by Aviva, and adopts them in their entirety as if they were his own.*

37. The Authority repeats the points made above in relation to the representations by Aviva.

38. *As at 8 March and the results presentation, he was fully aware, as no doubt the rest of the Board was, that no intention to retire some or all of the Preference Shares in 2018 had been formed and understood that all options were still being evaluated and no decisions had been taken. It therefore falls to be considered why he would incorrectly suggest during the results presentation, as the Authority alleges, that Aviva had a fully-formed intention to retire some or all of the Preference Shares during 2018. He did not "mis-speak". In fact, on a true construction of the words used, they did not have the meaning alleged by the Authority.*

39. *The CEO closely followed a script on autocue at the presentation. The final script was the subject of much careful review, consideration and comments by individuals internally and by external advisers, and he discussed it with those present at a Board Audit Committee meeting on 5 March 2018. All Board members except one*

*were present, rather than only those who were formal members of the Committee. It is inconceivable that all the reviewers would not have taken issue with the proposed script if it had the meaning alleged.*

40. *When considering the meaning of the CEO's comments, any reasonable market participant would have considered them in the context of the results presentation as a whole. The CEO clearly indicated that the CFO would be providing the details of Aviva's capital plans. In essence, the CEO was just providing an introduction to this topic before handing over to the CFO, who was the natural person to provide such detail. A number of statements made by the CFO* ("So while we've not taken any decisions…"; "…it may make sense for the company to address these securities now or some time prior to 2026"; "So as we work through the alternatives, one of the things we're considering is how best to balance the respective interests of ordinary and preferred shareholders…"*) would leave any reasonable listener clear that Aviva was still considering its options in relation to the Preference Shares and that no decision had been taken in respect of them.*

41. *In any event, taking the CEO's comments in isolation, they do not have the meaning alleged. He first confirmed during the results presentation that Aviva's intention was to use at least £500 million for capital returns, then noted that* "we're working through our plans, but we are not yet ready to announce the dates or the exact mechanisms today". *In this context, the proper meaning of the subsequent comment that* "we intend to do this through a combination of preference and ordinary shares" *was that these were the two classes of capital through which Aviva was considering making the £500 million of capital returns. He was not saying that Aviva had reached a decision to retire some or all of the Preference Shares in 2018.*

42. The review of the script by numerous personnel was no guarantee that it would not mislead.

43. The Authority considers the plain meaning of the statement that "… *it is our intention to return at least £500 million of capital to shareholders this year. We intend to do this through a combination of preference and ordinary shares*", and that Aviva had the ability to cancel preference shares at par, followed by the words "*So we intend to*", was that cancellation at par was planned for 2018. Whether or not the CEO "mis-spoke", his statement was wrong. For the reasons set out at paragraphs 18 and 19 above, the Authority does not consider that anything said subsequently at the presentation either by the CEO himself or by the CFO, was adequate to correct that statement.