

Cathay International Holdings Limited has the right to refer its 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: **Cathay International Holdings Limited**

Suites 1203-4, 12/F
Li Po Chun Chambers
189 Des Voeux Road Central
Hong Kong

24 May 2019

1. ACTION

- 1.1. For the reasons given in this notice, the Authority has decided to impose on Cathay International Holdings Limited ("Cathay") a financial penalty of £411,000, pursuant to section 91 of the Financial Services and Markets Act 2000 (the "Act") because of a number of breaches by Cathay of the Listing Principles and the Disclosure Rules and Transparency Rules.

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 Lansen Pharmaceutical Holdings Limited ("Lansen"). Between 21 August 2015 and 29 December 2015 ("the 2015 Relevant Period"), Cathay had an average market capitalisation of £69,602,132.

- 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. There were serious procedures, systems and controls failings at Cathay which meant that Cathay did not monitor the full impact of these issues on its expected financial performance for the year ending 31 December 2015.

Listing Principle 1 breach

- 2.4. Listing Principle 1 requires a listed company to take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations. As a premium listed company, the obligations imposed on Cathay included the Authority’s Disclosure Rules and Transparency Rules (“DTRs”).
- 2.5. Cathay breached Listing Principle 1, as during the 2015 Relevant Period:
 - (a) Cathay did not have adequate procedures, systems and controls to comply with its obligations under Chapter 2 of the DTRs in relation to how it would forecast and monitor how it was performing against market expectations of its financial performance. In particular, in August 2015 Cathay had been advised by its appointed advisers in relation to its disclosure obligations and Cathay gave an assurance that it would monitor its financial performance. However, Cathay did not take reasonable steps in this regard;
 - (b) until 6 December 2015, Cathay failed to produce any completed year-end forecasts covering the whole of its business as to its expectations of its financial performance for the financial year ending 31 December 2015; and
 - (c) performance monitoring did not include any means of assessing whether the performance of Cathay constituted inside information satisfying the test set out in section 118C of the Act.

- 2.6. Cathay's senior management appreciated the risk that their actions or inaction could result in a failure to take reasonable steps to establish and maintain adequate procedures, systems and controls, and failed adequately to mitigate that risk. Cathay thereby acted recklessly.

DTR 2.2.1R and Premium Listing Principle 6 breaches

- 2.7. DTR 2.2.1R requires an issuer to notify the market as soon as possible of any inside information which directly concerns it, unless DTR 2.5.1R applies. Premium Listing Principle 6 requires a listed company to communicate information to holders and potential holders of its listed equity shares in such a way as to avoid the creation of a false market in those listed equity shares.
- 2.8. As a result of the failings in its procedures, systems and controls, Cathay failed to disclose to the market as soon as possible on or shortly after 6 December 2015 a material change in its actual and expected financial performance for the year ending 31 December 2015 when, as a result of the deterioration of Cathay's performance, Cathay was aware of circumstances in which there was projected to be a 56% deviation from market expectations of the loss after tax¹. Cathay therefore breached DTR 2.2.1R. Cathay's senior management were aware, including from advice given to Cathay by its appointed advisers, of the risk of a breach if Cathay did not make an appropriate disclosure but failed to do so. Cathay thereby acted recklessly.
- 2.9. Further, Cathay recklessly breached Premium Listing Principle 6 when it failed, between 6 December 2015 and 29 December 2015, to release relevant information to the market, and so created a false market in its listed equity shares.

Listing Principle 2 breach

- 2.10. Listing Principle 2 requires a listed company to deal with the Authority in an open and co-operative manner.

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.

- 2.11. 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, 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.
- 2.12. 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.

The nature and effect of the breaches

- 2.13. The Authority considers the breaches by Cathay to be particularly serious. Cathay was unable to comply with its obligations as a listed company, and its procedures, systems and controls were so inadequate that it was unable to keep the market properly informed of its financial performance. As a result, there was a risk that investors would make decisions based on incomplete information.
- 2.14. Further, the Authority relies on listed companies 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.
- 2.15. The Authority has therefore decided to impose a financial penalty on Cathay in the amount of £411,000 pursuant to section 91 of the Act. This financial penalty consists of:
- (a) a penalty of £261,000 for breaches during the 2015 Relevant Period; and
 - (b) a penalty of £150,000 for breaches during the 2016 Relevant Period.

2.16. 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;

"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;

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;

"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. 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. Cathay also had representatives on Lansen's Board of Directors. Lansen and its subsidiaries primarily engage in the manufacturing and trading of pharmaceutical products in the People's Republic of 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 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.

Cathay's business in 2015

4.6. In March 2015, Cathay's Board set an internal budget for the year ending 31 December 2015 with a budgeted profit after tax 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.

4.7. In May 2015, Cathay engaged N+1 as its new financial adviser and corporate broker. 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.

4.8. 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.

- 4.9. 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 Ginkgo 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.
- 4.10. 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.

Cathay's financial reporting process

- 4.11. 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 would also meet with its subsidiaries each month to understand the key issues in the business, although these meetings were not always formally documented or recorded.
- 4.12. 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, 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. 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. This consolidation would, on occasion, be sent to the directors of Cathay.

4.13. Cathay also consolidated the monthly results in advance of the regular Board meetings for the purposes of reviewing its financial performance. As with the monthly consolidations, 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

4.14. 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.

4.15. Individuals at Cathay were directly involved in the preparation of forecasts from its subsidiaries except Lanser. As with its monthly results, Lanser 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 Lanser, but generally accepted the forecasts as submitted.

4.16. The forecasts compared the profit estimate against the budget, as well as a comparison to the preceding financial year. During the 2015 Relevant Period, Cathay did not compare the forecasts to the market expectations for the year ending 31 December 2015.

The 2015 interim results

The August 2015 Board meeting

4.17. 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. The consolidated results, alongside year-end forecasts for the subsidiaries (except year-end forecasts for Lanser), were included in the Board pack which was sent to the

Cathay Board shortly in advance of the meeting. 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.

- 4.18. 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.
- 4.19. 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. Instead, Lansen provided an oral update to the Board at the meeting on 26 August 2015, which did not include any numbers or forecasts.
- 4.20. Cathay has stated to the Authority that it understood that Lansen did not provide a forecast for the August 2015 Board meeting due to resourcing constraints at the time as a result of the ongoing inspection of the Ginkgo production business by the CFDA, and because it would have been difficult for Lansen to produce a meaningful forecast at that time.
- 4.21. 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. Senior management at Cathay considered that it was inappropriate to create its own forecast for Lansen, as it would not have been considered or approved by the Lansen Board in accordance with Lansen's own processes.
- 4.22. In the absence of forecasts from Lansen, Cathay's Board only considered year-end forecasts for the remaining subsidiaries. Consequently, Cathay was unable to predict properly its year-end results at the August 2015 Board meeting, and so it only assessed forecasts for approximately 20% to 30% of its business.

4.23. 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. Until discussions were held with N+1, Cathay did not turn its mind to whether its performance might constitute inside information.

Concerns raised by N+1

4.24. On 25 August 2015, N+1 raised concerns that, due to the interim results, it was likely that Cathay would significantly miss the full year market 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 had considered the impact of Cathay's interim results on the full year performance of Cathay and whether Cathay held inside information.

4.25. On 27 August 2015, N+1 advised again 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 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'*.

4.26. The Board 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. Cathay also considered 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), and how this might impact year-end, and so the announcement would not benefit from the additional clarification proposed by N+1.

4.27. On 28 August 2015, N+1 repeated its advice and further advised that Cathay 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 Cathay to the fact that N+1 would need to downgrade market expectations for Cathay, through the issuance of a new analyst note. Cathay 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.

- 4.28. Despite N+1 having expressly advised that a rule breach might occur, Cathay did not consider this to be sufficient information to reconsider its decision, as the sentence proposed by N+1 had already been rejected by the Board. As a result, 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. Cathay released its interim results announcement shortly after these discussions with N+1, and did not include any statement that it would not meet market expectations.
- 4.29. 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 4.10.

Period following the interim results

- 4.30. During conversations with N+1 at the time of finalising Cathay's interim results, Cathay's senior management assured N+1 that Cathay would continue to monitor its performance, so that it could identify whether 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.
- 4.31. 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.

- 4.32. During the same period, N+1 attempted to obtain from 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.

The December Announcement

Earlier advice received by Cathay

- 4.33. On 13 November 2015, N+1 made a further attempt to receive 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. 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).
- 4.34. On 27 November 2015 individuals at Cathay, including those to be on the call, 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. Therefore, at the time of the call with N+1 on 27 November 2015, Cathay was aware of a significant cost to Lansen which would need to be announced to the market once the settlement process had been finalised with the CFDA.
- 4.35. During the call with N+1 on 27 November 2015, Cathay described in general how each subsidiary, and therefore Cathay itself, was performing. Cathay stated that as trends that had occurred during the first six months of the year had continued during the second half of the year, it considered that its overall performance was 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, Cathay informed N+1 that it could not make a decision on whether to publish an update, and so would have to 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).

- 4.36. On 28 November 2015, N+1 followed this call up with written advice reflecting the advice provided on the call. On both occasions, N+1 requested information from Cathay showing the financial performance of Cathay.
- 4.37. A second call with N+1 was arranged for 2 December 2015. 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, and nine months' results for Lansen. In the call, Cathay provided further information about the performance of Lansen, which it stated was underperforming. Cathay 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 an update needed to be made. However, Cathay's view was that there was a choice about when that announcement could be made. Specifically, Cathay wished to provide the trading update to coincide 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 Cathay was incorrect in its 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 to take its advice. Again, N+1 requested information showing the financial performance of Cathay.
- 4.38. On 2 December 2015, Cathay sought legal advice (which it has disclosed to the Authority under a waiver of legal advice privilege) on whether it could delay an announcement on Cathay's performance to coincide with the announcement of the penalty on Lansen. However, the legal advice, received by Cathay on 3 December 2015, 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.

- 4.39. Following this, Cathay contacted N+1 on 4 December 2015, and confirmed that it 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

- 4.40. 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. Between 4 and 6 December 2015, an individual at Cathay orally enquired as to 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. Cathay did not ask Lansen to make any revisions to its forecast.
- 4.41. Cathay consolidated these results and forecasts by 6 December 2015, and sent 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 (which was not discussed or analysed in the Board papers) was a loss after tax of USD 6,300,000. Therefore, Cathay's forecast figure represented an approximate 56% deviation from N+1's analyst note which set the market expectations. This significant deterioration in Cathay's performance should have formed part of its consideration of the need for an announcement to the market and its timing.
- 4.42. Cathay knew prior to the Board meeting that the CFDA would not change the amount of the penalty, 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 payment by instalments agreement was subsequently confirmed by the CFDA in a notice to Ningbo Liwah dated 11 December 2015. The penalty was not included in the forecast figures provided to the Board for the 10 December 2015 meeting, and Cathay was aware that its financial performance would be further adversely impacted by the penalty.
- 4.43. On 10 December 2015, the Board 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 at paragraph 4.39. 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.

- 4.44. 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.
- 4.45. 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

- 4.46. On 11 December 2015, Cathay 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. Cathay also held a call with N+1 to discuss the content of any update. Cathay stated during this call that the penalty to be imposed on Ningbo Liwah might be announced by Lansen in the following week, and that it hoped Cathay's trading update could go out at the same time so that negative news did not hit the market twice. Cathay also noted that it did not want its trading update to trigger an announcement for Lansen. Cathay made no other statement about when it might

issue the December Announcement, and did not impose on N+1 any deadline for a response on the draft trading update.

- 4.47. Between 11 and 17 December 2015, Cathay 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 detailed comments to Cathay on the drafting of the December Announcement, which it did on 17 December 2015.
- 4.48. However, also on 18 December 2015, it was confirmed to Cathay that Lansen would shortly be announcing the CFDA penalty to the market. Cathay redrafted the trading update so that it could incorporate the penalty. 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 Cathay approved the December Announcement by email.
- 4.49. The December Announcement was released to the market on 29 December 2015, the first working day after approval had been granted. 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

- 4.50. 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, the Authority wrote to 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).
- 4.51. In a letter dated 29 February 2016, Cathay responded to this request 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.

4.52. In a letter dated 2 March 2016, 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'*.

4.53. In response, in a letter dated 15 April 2016, Cathay stated *'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.

4.54. Throughout its correspondence with the Authority, when commentating on the forecasts, 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.

Cathay's 2015 interim forecasts

- 4.55. Despite the forecast figures provided to the Authority taking into account forecasts from Lansen, as noted in paragraph 4.19 Cathay did not 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 Cathay responded to the Authority with contemporaneous information from its actual projection exercise, it should have provided the forecast which was put to the Board on 26 August 2015, including blank forecasts for Lansen.
- 4.56. 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.
- 4.57. 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.
- 4.58. 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.

Cathay's 2015 year-end forecasts

- 4.59. Despite the forecast figures provided to the Authority taking into account substantial profit from new product sales at Lansen, as noted at paragraph 4.56 Lansen's own forecasts sent to Cathay on 4 December 2015 did not actually include any, or any material, profits from new product sales.

- 4.60. 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 provided to the Authority 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.
- 4.61. 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.

General statements made by Cathay

- 4.62. As noted at paragraph 4.51 above, Cathay stated to the Authority that it prepared additional year-end projections if Cathay 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 4.20 to 4.23 above, there was no monitoring of interim projections by Cathay due to the absence of information from Lansen.

5. FAILINGS

- 5.1. The facts and matters referred to above resulted in Cathay breaching the following Listing Principles and DTRs of the Authority in force at the time of the breach: Listing Principle 1, DTR 2.2.1R and Premium Listing Principle 6 and Listing Principle 2. These breaches are set out below and the provisions referred to are set out at Annex A to this Notice.

The 2015 Relevant Period

Listing Principle 1

Cathay's obligations

- 5.2. Listing Principle 1 requires a listed company to take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations.
- 5.3. Cathay's obligations during the 2015 Relevant Period included compliance with the DTRs. The guidance at DTR 2.2.8G provides that the directors of the issuer should carefully and continuously monitor whether changes in circumstances of the issuer are such that an announcement obligation has arisen. The Authority had also issued a technical note in December 2012 (ref: UKLA / TN / 521.1) on assessing and handling inside information. As noted at paragraph 4.38, this was the technical note Cathay's legal advisers provided to Cathay.

Cathay's breaches

- 5.4. During the 2015 Relevant Period, the shortcomings in Cathay's procedures, systems and controls meant that Cathay was unable to comply with its obligations set out in paragraph 5.3, because it:
- (a) failed to put in place adequate processes and consistent procedures for compliance with its obligations under the DTRs, in relation to how it would forecast and monitor how it was performing against market expectations;
 - (b) failed to have in place any procedures, systems or controls to calculate its expected financial performance where it did not obtain year-end forecasts from its main subsidiary, Lanser, so that it could not assess and carefully and continuously monitor whether its year-end expectations for financial performance matched, or deviated from, market expectations; and
 - (c) due to (a) and (b) Cathay and its Board did not assess whether the financial performance of Cathay and its comparison to market expectations amounted to inside information under section 118C of the Act, and whether this gave rise to an obligation to make an announcement.
- 5.5. Cathay's senior management failed adequately to mitigate the risk, which they appreciated, that their actions or inaction could result in a failure to take reasonable

steps to establish and maintain adequate procedures, systems and controls. Cathay thereby acted recklessly.

5.6. The Authority expects that a premium listed company would have in place procedures, systems and controls which would help it identify and disclose inside information, such that it could inform the market of any changes arising from that inside information in a timely manner. As provided for by the Authority's listing regime and the technical note referred to in paragraph 5.3, in order to identify information which may be inside information requiring disclosure to the market:

- (a) the Authority expects a premium listed company regularly to monitor changes in its financial performance and its expectations of year-end performance; and
- (b) the Authority expects a premium listed company to be aware of market expectations regarding its financial performance and to check regularly whether its own expectations of financial performance are in line with market expectations.

5.7. The only procedures that Cathay had in place during the 2015 Relevant Period were inadequate and did not comply with Cathay's obligations, because:

- (a) during the 2015 Relevant Period, Cathay was reliant on Lansen providing accurate and complete financial information to it so that it could assess Cathay's overall financial performance given that Lansen amounted to 70% to 80% of its business. However, Cathay failed to put in place a forecasting process which would enable it properly to consider its financial performance in the event that Lansen did not provide the relevant information;
- (b) when Lansen failed to provide a forecast to Cathay in August 2015, Cathay, in the absence of any documented procedure for this issue, then did not take adequate steps to gather the information required, in order to ensure that it could comply with its own regulatory obligations by carefully and continuously monitoring whether there had been changes in Cathay's circumstances. Instead, Cathay simply chose not to complete its forecasts;
- (c) the Authority does not agree with Cathay's assertion that because Lansen was separately listed and had its own forecasting procedures Cathay could not have put in place a contingency plan to forecast Lansen's financial

performance. The Authority considers that there were a number of options available to Cathay; and

(d) the absence of a forecast from Lansen meant that it was not until 6 December 2015 that Cathay had a completed year-end forecast for Cathay for the year ending 31 December 2015.

- 5.8. The Authority considers that this failed to meet the required standard for a premium listed company to monitor its own financial performance and relevant market expectations.
- 5.9. Further, when Cathay did monitor its financial performance, either in its forecasts or in its monthly results, it did not consider its financial performance against market expectations. Instead, Cathay considered its financial performance against Cathay's budget, and Cathay's outlook statement. This process was not sufficient, as neither the budget, nor the outlook statement, were comparable to the market expectations set by N+1. The outlook statement, while referring to issues which might impact Cathay's performance, did not quantify or set any guidance as to what the year-end position might be. Therefore, during the 2015 Relevant Period, Cathay should have taken into account the market expectations set by analysts at N+1.
- 5.10. N+1 provided advice to Cathay on its disclosure obligations on a number of occasions during the 2015 Relevant Period, in particular Cathay's need to identify and disclose inside information. Cathay did not take adequate steps properly to consider that advice in relation to the specific matters raised by N+1 and consistently chose to act against the advice. Further, Cathay failed to engage with the substance of the advice when considering what it should take into account in future when reviewing its financial performance on an ongoing basis, including whether it had inside information to disclose.
- 5.11. This meant that, in August 2015, senior management at Cathay did not consider that advice pertaining to a potential rule breach was sufficiently serious to escalate to the Board.
- 5.12. In fact, Cathay's failures in its procedures, systems and controls were so serious that in August 2015 it took Cathay's advisers to identify to Cathay that it might miss market expectations. While N+1's own forecasts were not comparable to Cathay's own understanding of its financial performance, Cathay should, when it discussed the advice with N+1, have attempted to form its own view as to whether

it would miss expectations, but it did not. Cathay then resisted attempts to persuade it to clarify its financial performance to the market, and did not use the advice either to assist Cathay in forecasting what its 2015 financial performance would be, or to change its procedures to enable Cathay and the Board continuously and carefully to monitor whether changes in Cathay's circumstances were such that inside information was held which had to be disclosed. The Authority considers that Cathay relied on the fact that N+1 would downgrade market expectations on the same day as the interim results announcement as a reason not to make its own announcement on the issue.

5.13. It also meant that in December 2015, when N+1 again advised Cathay of a need to disclose what N+1 considered to be inside information (which advice was confirmed by Cathay's legal advisers), Cathay did not have in place a consistent procedure to ensure that by continuous monitoring it could identify inside information that had to be disclosed to the market as soon as possible.

5.14. Therefore, Cathay acted recklessly and did not have adequate procedures, systems and controls in the 2015 Relevant Period to enable it to give the market important information as to a material change in its expected financial performance in a timely manner.

DTR 2.2.1R and Premium Listing Principle 6

Cathay's obligations

5.15. In the 2015 Relevant Period, DTR 2.2.1R stated:

"An issuer must notify a [Regulatory Information Service] as soon as possible of any inside information which directly concerns the issuer unless DTR 2.5.1R applies".

5.16. DTR 2.5.1R stated:

"An issuer may, under its own responsibility, delay the public disclosure of inside information, such as not to prejudice its legitimate interests provided that:

(1) such omission would not be likely to mislead the public;

(2) any person receiving the information owes the issuer a duty of confidentiality, regardless of whether such duty is based on law, regulations, articles of association or contract; and

(3) the issuer is able to ensure the confidentiality of that information”.

5.17. Premium Listing Principle 6 stated:

“A listed company must communicate information to holders and potential holders of its listed equity shares in such a way as to avoid the creation of a false market in those listed equity shares”.

Cathay’s breaches

5.18. Over the course of the 2015 Relevant Period, Cathay’s monitoring of its financial performance (through its monthly results) continued to identify that the performance of Cathay was very poor.

5.19. The information collated on 6 December 2015 met the statutory test set out in section 118C of the Act for inside information, set out in the Annex to this Notice. Each of the relevant criteria is set out below:

- (a) the information must be precise. The material consolidated on 6 December 2015 included Cathay’s internal projection of a year-end loss after tax of USD 9,866,000 compared to N+1’s forecast for year-end of a loss after tax of USD 6,300,000 (around 56% below market expectations). This demonstrated that Cathay’s financial performance would fall markedly below market expectations. This information was specific enough to allow for the conclusion that it would have an impact on Cathay’s share price;
- (b) the 6 December 2015 consolidated group forecast financial information showed a material deviation from market expectations. The Authority concludes that because Cathay held this forecast on 6 December 2015, this was information which satisfied the test in section 118C of the Act for inside information as it indicated circumstances that existed, or might reasonably be expected to come into existence, of Cathay’s year-end financial performance being materially lower than the market expectations which had been set by N+1 analyst’s note on 28 August 2015. The forecast financial information consolidated on 6 December 2015 also corroborated the position set out by N+1 in its calls on 27 November 2015 and 2 December 2015, and

in its email of 28 November 2015. The Authority accepts Cathay's assertion that at the 10 December 2015 Board meeting a discussion occurred about the prospects of new product sales. Although Cathay has stated (as noted in paragraph 4.45) that Lansen informed it that Lansen was confident by the 10 December 2015 Board meeting new sales could occur, this would have been so uncertain that Cathay could not appropriately have decided that it displaced the circumstances that existed or might reasonably be expected to come into existence such that Cathay held information subject to section 118C of the Act;

- (c) the information was not generally available. The 6 December 2015 material was not generally available as only senior management received the information and were in the position of being able to understand its implications for the year-end;
- (d) the information related, directly or indirectly, to one or more issuers of the qualifying investments. The information related directly to Cathay, which is an issuer of shares listed in the UK; and
- (e) if generally available, a 56% deviation from market expectations (that being a material loss after tax), would be likely to have had a significant effect on Cathay's share price, and a reasonable investor would be likely to use it as part of the basis for their investment decisions. This is supported by the 18.2% drop in Cathay's share price on the day of the December Announcement.

5.20. The Authority considers that Cathay's decision not to make a trading update on or shortly after 6 December 2015 was influenced by the fact that it was aware that a substantial penalty was due to be announced by Lansen, which would have required Cathay to make a further announcement. Cathay was more concerned with ensuring that its own announcement did not trigger one for Lansen, and the prospect of multiple bad news announcements, than it was with complying with its own obligations, as set out at paragraph 5.3.

5.21. The Authority also does not consider that there existed any of the grounds under DTR 2.5.1R for Cathay to have delayed disclosure. Specifically, this is because the Authority considers that DTR 2.5.1R could not be satisfied because the omission, by Cathay not informing the market of Cathay's deteriorating financial performance, was likely to mislead the public.

- 5.22. The Authority therefore considers that the December Announcement was delayed without proper justification in order to allow Cathay to announce the financial penalty on Ningbo Liwah at the same time, despite Cathay having received advice that it should not do this. Cathay should have made an announcement to the market on, or shortly after, 6 December 2015.
- 5.23. As a result of Cathay's failure to disclose inside information to the market, it created a false market in its listed equity shares, as investors were not informed that Cathay was performing markedly below market expectations. This false market was in existence between 6 December 2015 and 29 December 2015.
- 5.24. Cathay breached DTR 2.2.1R and Premium Listing Principle 6 by failing to inform the market of its deteriorating financial performance at an earlier date than 29 December 2015. Cathay had received and consolidated all of its year-end forecasts by 6 December 2015, and that information was sufficiently clear and precise that it should have at least issued a holding statement putting the market on notice of a potential material change to its expected financial performance on or soon after 6 December 2015. Cathay's senior management were aware, including from advice given to Cathay by its appointed advisers, of the risk of a breach if Cathay did not make an appropriate disclosure, but failed to do so. Cathay thereby acted recklessly.

The 2016 Relevant Period

Listing Principle 2

Cathay's obligations

- 5.25. 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

- 5.26. 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.

- 5.27. 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.
- 5.28. 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.
- 5.29. The Authority is dependent on companies 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.

- 5.30. 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.
- 5.31. 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.

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 Authority considers that the breaches within the 2015 Relevant Period and 2016 Relevant Period relate to two serious but separate issues, and so has decided to impose separate penalties for each period.
- 6.3. The total financial penalty which the Authority has decided to impose on Cathay is £411,000. 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.

2015 Relevant Period penalty

Step 1 – Disgorgement

- 6.4. Pursuant to DEPP 6.5A.1G, at Step 1, the Authority seeks to deprive a firm of the financial benefit derived directly from the breach. Cathay did not derive any financial benefit from the breaches and so there is no amount subject to disgorgement.

Step 2 – Seriousness of the breach

- 6.5. Pursuant to DEPP 6.5A.2G at Step 2, the Authority determines a figure that reflects the seriousness of the breach. Where the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential harm that its breach may cause, that figure will be based on a percentage of the firm's revenue from the relevant products or business area.
- 6.6. However, in this case, the Authority considers that the revenue generated by Cathay is not an appropriate indicator as it does not reflect the harm or risk of harm resulting from Cathay's breaches.
- 6.7. The Authority considers the appropriate indicator is Cathay's average daily market capitalisation throughout the period of the breach as it reflects the harm or risk of harm resulting from the breaches. The Authority considers that the period of the breaches should be the 2015 Relevant Period. Cathay's average daily market capitalisation over this period was £69,602,132.

Scale

- 6.8. The Authority considers that a scale of 0-0.5% of market capitalisation (applied according to the seriousness of the breach) is appropriate in order that the penalty properly reflects the seriousness of the breach. The range is divided into five fixed levels that represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level:

Level 1 – 0%

Level 2 – 0.125%

Level 3 – 0.25%

Level 4 – 0.375%

Level 5 – 0.5%

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. The impact of these failings was significant as they resulted in Cathay failing to release inside information to the market and created a risk of harm to consumers who were making investment decisions without the benefit of current and accurate information.
- 6.11. There was an effect on the orderliness of, or confidence in, markets as a result of the breaches. Cathay's failures created a false market in its listed equity shares. Investors would have placed reliance on the market expectations published by N+1 in its analyst note dated 28 August 2015, which were later shown to be unattainable but the market was not informed.

Nature of the breach

- 6.12. The nature of the breaches by Cathay is particularly serious. This is because:
- (a) Cathay's senior management were aware of the breaches and had been repeatedly advised by Cathay's advisers about its disclosure obligations; and
 - (b) the breaches revealed serious and systemic weaknesses in Cathay's procedures and/or in the management systems or internal controls relating to Cathay's business.
- 6.13. DEPP 6.5A.2G(11) sets out the factors which are likely to be considered 'level 4 factors' or 'level 5 factors'. Of these, the Authority considers the following factors to be relevant to the breaches:
- (a) the breaches revealed serious and systemic weaknesses in Cathay's procedures and/or in the management systems or internal controls relating to Cathay's business; and
 - (b) the breaches of Listing Principle 1, DTR 2.2.1R and Premium Listing Principle 6 were committed recklessly.
- 6.14. DEPP 6.5A.2G(12) 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 factor to be relevant:
- (a) no profits were made or losses avoided by Cathay as a result of the breaches, either directly or indirectly.

6.15. The Authority therefore considers the seriousness of the breaches to be level 4. Therefore the Step 2 figure is 0.375% of £69,602,132, which is £261,007.

Step 3 – mitigating and aggravating factors

6.16. Pursuant to DEPP 6.5A.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.

6.17. The Authority considers that there are no aggravating or mitigating factors. The Step 3 figure is therefore £261,007.

Step 4 – adjustment for deterrence

6.18. Pursuant to DEPP 6.5A.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the firm who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.

6.19. The Authority considers that no adjustment for deterrence is applicable. The Step 4 figure is therefore £261,007.

Step 5 – settlement discount

6.20. No settlement discount is applicable. The Step 5 figure is therefore **£261,000** (rounded down to the nearest £100).

2016 Relevant Period penalty

Step 1 – Disgorgement

6.21. Pursuant to DEPP 6.5A.1G, at Step 1, the Authority seeks to deprive a firm of the financial benefit derived directly from the breach. Cathay did not derive any financial benefit from the breaches and so there is no amount subject to disgorgement.

Step 2 – Seriousness of the breach

6.22. Pursuant to DEPP 6.5A.2G at Step 2, the Authority determines a figure that reflects the seriousness of the breach. Where the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential

harm that its breach may cause, that figure will be based on a percentage of the firm's revenue from the relevant products or business area.

6.23. The Authority considers the revenue generated by Cathay is not an appropriate indicator of the harm or potential harm caused by its breaches of Listing Principle 2 and there is no alternative indicator of harm or potential harm. Pursuant to DEPP 6.5A.2G(13), the Authority has determined the appropriate Step 2 amount by taking into account those factors which are relevant to an assessment of the seriousness of the breaches.

6.24. DEPP 6.5A.2G(6) sets out the factors relating to the impact of a breach. Of these, the Authority considers the following factors to be relevant to the breach:

- (a) The adverse effect on markets. The impact of the breach was such that, based on the information that Cathay provided to the Authority which was materially different to the actual processes followed in 2015, 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; and
- (b) The provision of inaccurate information to the Authority undermines its ability effectively to monitor and regulate the integrity of the financial markets in the UK.

6.25. DEPP 6.5A.2G(7) sets out the factors relating to the nature of a breach. Of these, the Authority considers the following factors to be relevant to the breach:

- (a) whether senior management were aware of the breach. Cathay's senior management were aware that the information provided to the Authority was not a contemporaneous reflection of matters known to Cathay at the relevant time;
- (b) the nature of the rule breached by Cathay. The listing regime relies on companies being open and co-operative with the Authority, and so Listing Principle 2 is fundamental to the effective functioning of the listing regime; and
- (c) the frequency of the breach. Cathay provided inaccurate information to the Authority on two occasions during the 2016 Relevant Period.

- 6.26. DEPP 6.5A.2G(11) 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 to be relevant; in particular, the Authority has not seen any evidence showing that the breach was committed either deliberately or recklessly. While the Authority considers that senior management of Cathay knew that the information provided did not correspond to the Authority's requests, they did not foresee the likely or actual consequences of their actions; namely, that by providing no explanation, the information may have appeared to the Authority to have been responsive to its requests.
- 6.27. DEPP 6.5A.2G(12) 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 Cathay as a result of the breach, either directly or indirectly; and
 - (b) there was no loss to consumers, investors or other market users.
- 6.28. The Authority considers the seriousness of the breaches to be level 3. In particular, it notes that Cathay provided inaccurate information to the Authority without intending to mislead. The Authority also notes that no consumers, investors or market participants were impacted by Cathay's breach, and it did not significantly impact the investigation of the breaches of Listing Principle 1, DTR 2.2.1R and Premium Listing Principle 6.
- 6.29. Taking all of the factors into account including that while Cathay did not intend to mislead the Authority, it deliberately provided information, without any explanation, that did not respond to the Authority's requests, the Authority considers the Step 2 figure should be £150,000.

Step 3 – mitigating and aggravating factors

- 6.30. Pursuant to DEPP 6.5A.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.
- 6.31. The Authority has taken into account Cathay's co-operation in waiving privilege over the legal advice it 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 considers that there are no aggravating factors. The step 3 figure is therefore £150,000.

Step 4 – adjustment for deterrence

6.32. Pursuant to DEPP 6.5A.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the firm who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.

6.33. The Authority considers that the Step 3 figure of £150,000 represents a sufficient deterrent to Cathay and others, and so has not increased the penalty at Step 4.

6.34. The Step 4 figure is therefore £150,000.

Step 5 – settlement discount

6.35. No settlement discount is applicable. The Step 5 figure is therefore **£150,000**.

7. REPRESENTATIONS

7.1. Annex B contains a brief summary of the key representations made by Cathay 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 Cathay, 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. Cathay 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, Cathay has 28 days from the date on which this Notice is given to it 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. 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

- 8.6. Section 394 of the Act applies to this Notice.
- 8.7. 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

- 8.8. 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.

- 8.9. However, the Authority must publish such information about the matter to which a decision notice or final notice relates as it considers appropriate. Cathay should be aware, therefore, that the facts and matters contained in this Notice may be made public.

Authority contacts

- 8.10. 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 periods between 21 August 2015 and 29 December 2015 (i.e. the 2015 Relevant Period) and 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 118C of the Act:

"(1) This section defines "inside information" for the purposes of this Part.

(2) In relation to qualifying investments, or related investments, which are not commodity derivatives, inside information is information of a precise nature which—

(a) is not generally available,

(b) relates, directly or indirectly, to one or more issuers of the qualifying investments or to one or more of the qualifying investments, and

(c) would, if generally available, be likely to have a significant effect on the price of the qualifying investments or on the price of related investments.

...

(5) Information is precise if it—

(a) indicates circumstances that exist or may reasonably be expected to come into existence or an event that has occurred or may reasonably be expected to occur, and

(b) is specific enough to enable a conclusion to be drawn as to the possible effect of those circumstances or that event on the price of qualifying investments or related investments.

(6) Information would be likely to have a significant effect on price if and only if it is information of a kind which a reasonable investor would be likely to use as part of the basis of his investment decisions.

...

(8) Information which can be obtained by research or analysis conducted by, or on behalf of, users of a market is to be regarded, for the purposes of this Part, as being generally available to them."

1.3. **Section 91 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."

2. RELEVANT REGULATORY PROVISIONS

2.1. Unless otherwise stated, the regulatory provisions set out below were in force at all material times.

Listing Principles

2.2. **Listing Principle 1:** *"A listed company must take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations".*

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

2.4. **Premium Listing Principle 6:** *"A listed company must communicate information to holders and potential holders of its listed equity shares in such a way as to avoid the creation of a false market in those listed equity shares".*

Disclosure Rules and Transparency Rules

- 2.5. **DTR 2.2.1R:** *“An issuer must notify a RIS as soon as possible of any inside information which directly concerns the issuer unless DTR 2.5.1R applies”.*
- 2.6. **DTR 2.5.1R:** *“An issuer may, under its own responsibility, delay the public disclosure of inside information such as not to prejudice its legitimate interests provided that:*
- (1) such omission would not be likely to mislead the public;*
 - (2) any person receiving the information owes the issuer a duty of confidentiality, regardless of whether such duty is based on law, regulations, articles of association or contract; or*
 - (3) the issuer is able to ensure the confidentiality of that information”.*
- 2.7. **DTR 2.2.8G:** *“The directors of the issuer should carefully and continuously monitor whether changes in the circumstances of the issuer are such that an announcement obligation has arisen under this chapter”.*

ANNEX B
REPRESENTATIONS

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

Listing Principle 1

Cathay did not breach Listing Principle 1 by failing to compare forecasts against market expectations

2. *Cathay had a long-standing and well-established process for preparing full-year projections twice annually. This was reasonable for a company of its size. Its advisers were fully aware of this process and did not advise that Cathay needed to prepare forecasts more frequently; the Authority does not allege that year-end forecasts should have been prepared more frequently. Thus, the first opportunity Cathay had to compare its performance against the August 2015 analyst's note was in November/December 2015, when it did so.*
3. *Each month between August and December Cathay received data from each of its subsidiaries regarding actual monthly financial performance (without projections for future months). It monitored these and compared them to its own budgets and the unquantified statements in its interim results. Operating a system of performing twice-annual forecasts, as it did, it could not have done more in the circumstances.*
4. Listing Principle 1 requires a listed company to take reasonable steps to establish and maintain adequate procedures, systems and controls to comply with its obligations. It is not prescriptive about what the procedures, systems and controls should be, but (regardless of the circumstances and size of the company) they must be sufficient to enable the listed company to comply with its obligations, including the obligation under DTR 2.1.1R to notify a Regulatory Information Service as soon as possible of inside information which concerns it. As noted in the guidance in DTR 2.2.8G, the Authority considers that the directors of a listed company should carefully and continuously monitor whether changes in its circumstances are such that an announcement obligation has arisen. This required Cathay, as a premium listed company, to monitor changes in its financial performance and its expectations of year-end performance, to be aware of market

expectations regarding its financial performance and to check regularly whether its own expectations of financial performance were in line with market expectations.

5. Even if its twice-yearly projection process was long-standing and well-established, it was inadequate to enable Cathay to comply with its obligations under DTR 2.2.1R because Cathay was unable to monitor whether its own expectations for its financial performance were in line with market expectations. Comparing data received monthly from subsidiaries against internal budgets and unquantified statements in its interim results did not achieve this as neither was comparable to market expectations as set by N+1's analyst's notes.
6. The obligation was on Cathay to comply with Listing Principle 1 and it would be no excuse to show that it was never advised that its procedures were deficient. However, it should in fact have been clear to Cathay from the advice it received from N+1 about its disclosure obligations and the risk of breach of the DTRs in August 2015, and then again in November and December of that year, that it needed to amend its procedures, systems and controls to ensure compliance with Listing Principle 1.

Cathay did not breach Listing Principle 1 by failing to produce a contingency plan for circumstances in which Lansen did not produce a forecast

7. *Lansen was unable to produce a quantified forecast in July 2015 because of specific and unusual circumstances. Cathay nevertheless turned its mind to its projected year-end performance and formed a view, based on qualitative information about the key trends driving its overall business, including for Lansen. This was a reasonable response to the circumstances and was adequate to enable Cathay to produce interim results which complied with the DTRs.*
8. *It is incorrect to suggest that Cathay required a contingency procedure to deal with the situation that arose, rather than being ready to deal with the circumstances when they arose on an ad hoc basis. In forming the view that Lansen's performance in the second half of the year would be similar to its performance in the first half, Cathay took a reasoned view, without overreaching by creating unsubstantiated proxy data, which would risk misleading. This is not a matter of systems and controls but a criticism of action taken (or not taken) in response to an event.*
9. This failure is a matter of systems and controls. As noted above, Cathay was obliged under Listing Principle 1 to take reasonable steps to establish and maintain adequate procedures, systems and controls to comply with its obligations. As

Lansen represented 70% to 80% of its business at the time, Cathay was particularly reliant on Lansen to provide accurate and timely information to it. Yet Cathay failed to have in place any procedures, systems and controls to ascertain its expected financial performance when it did not obtain year-end forecasts from Lansen. When Lansen failed to provide a forecast to Cathay in August 2015, Cathay did not take adequate steps to gather the information it required and so it did not have a completed year-end forecast for its own performance for the year ending 31 December 2015 until 6 December of that year. There is no contemporaneous evidence that Cathay had a procedure or system for producing a forecast, whether based on qualitative information or otherwise, or of any objective evaluation by Cathay of such information.

Any breach of Listing Principle 1 by Cathay was not committed recklessly

10. *A finding of recklessness would require Cathay to have been specifically aware of a risk that its systems and controls were inadequate, and nevertheless to have failed to put proper systems and controls in place knowing, or turning a blind eye to, the risk of harm or breach resulting.*
11. *Cathay was not aware of any risk that its systems and controls were inadequate. It was never advised that they were inadequate, or potentially so, and nor was there any suggestion from which this could have been inferred.*
12. *N+1's advice in August concerned the specific and narrow issue of whether the interim statement should contain the words set out at paragraph 4.25 of this Notice. It did not concern, reveal or put Cathay on notice of anything to do with its systems and controls. There is nothing else in the communications with N+1 in the 2015 Relevant Period that supports the contention that Cathay must have appreciated that its systems and controls were inadequate.*
13. The Authority accepts that a finding of recklessness requires Cathay to have been aware of a risk that its procedures, systems and controls were inadequate, and nevertheless to have failed to put in place adequate procedures, systems and controls, knowing, or turning a blind eye to, the risk of a breach resulting. It is not however, necessary to show that Cathay was advised of this risk.
14. The Authority considers that it must have been clear to Cathay's senior management, including from the advice it received from N+1 between 25 and 28 August 2015 (summarised at paragraphs 4.24 to 4.27 of this Notice) that Cathay

needed to commence monitoring of its financial performance to enable it to identify any changes in that performance, and particularly whether its expectations of performance were in line with market expectations as set by N+1. That advice was not narrowly focused on the specific wording of the interim statement. Further, as noted at paragraph 4.30 of this Notice, Cathay's senior management assured N+1 that it would monitor its performance so that it could identify whether a trading update was required in the future, demonstrating that they were aware of the need to do so and that Cathay's procedures, systems and controls up until then for doing so were deficient. Cathay's senior management appreciated the risk that their actions or inaction could result in a failure to take reasonable steps to establish and maintain adequate procedures, systems and controls. By then failing to carry out the monitoring, or take other appropriate actions, they failed adequately to mitigate that risk and Cathay thereby acted recklessly.

DTR 2.2.1 and Premium Listing Principle 6

Cathay did not have inside information, either at all or alternatively until 18 December 2015

15. *The difference in net profit line was not price-sensitive to Cathay's shares. A reasonable investor would not have used the difference between the projected net profit figures in the projections consolidated by Cathay on 6 December 2015 and the N+1 research note of August 2015 as a basis for making investment decisions in relation to Cathay's shares. The 56% deviation in projected net profits in this case was material but, given that other significant items – revenue and gross profit – were broadly unchanged from market expectations, that material deviation was unlikely to have a significant effect on Cathay's share price in all the circumstances.*
16. *No weight should be placed on the 18.2% drop in Cathay's share price on the day of the announcement (29 December 2015) because the trading update also contained information about the CFDA penalty and it is not possible safely to conclude that that did not explain all, or a significant part, of the price drop.*
17. *Further, the August 2015 research note did not value Cathay's shares using projected net profit; instead, it valued Cathay's share on the asset values of its holdings. The relevant question, therefore, is whether the information reflected in Cathay's projections would have affected the value of Cathay's holding in Lansen, as an asset of Cathay. Lansen made its own trading update in March 2016 in relation to the downturn in its 2015 expected profits, covering the information*

included by Cathay in its trading update on 29 December 2015, and stating that group profit was expected to show a "relatively substantial decline". Lansen's share price did not move materially on that announcement, strongly supporting the view that the deviation in net profits was not price-sensitive in relation to Lansen's listed shares and thus not price-sensitive in relation to Cathay's shares.

18. *If the Authority does not accept the above analysis, in any event the difference in the net profit line between the 6 December projections and the August research was not price-sensitive until 18 December 2015 because, until then, Cathay had a reasonable expectation of Lansen obtaining a large stocking order for Fillderm before year-end. Cathay took account of the prospect of such a stocking order in assessing whether it had an obligation to disclose information contained in its 6 December 2015 projections.*

19. *The strategy of pursuing stocking orders had commenced in October 2015 and had not been included in the original budget. Cathay had a discussion with Lansen on or around 7 December to understand why Lansen's projection did not include reference to a Fillderm stocking order, and was told that it was still the target to achieve this by the end of the year, and there were ongoing discussions. Lansen gave an oral update at the Cathay Board meeting on 10 December. Lansen has told the Authority that there was a common understanding that Lansen was progressing towards its target of selling 20,000 Fillderm units and that at the Board meeting on 10 December it informed Cathay that Lansen still aimed to conclude such an order by 18 December 2015. A stocking order was in fact concluded in March 2016, generating \$8.5m in revenue which, if factored into the 6 December 2015 net loss for Cathay, would have been considered in line with market expectations. This was soon after the year end (taking into account major Hong Kong holidays in January and February 2016), which is strong evidence in support of Cathay's position that it had a reasonable expectation of a Fillderm stocking order during 2015.*

20. The Authority considers that Cathay had inside information from 6 December 2015. This is because the 56% difference in Cathay's projected net loss figures (a projected loss after tax of over USD 9.8 million against market expectations of a loss after tax of approximately USD 6.3 million) was information that would, if generally available, be likely to have a significant effect on the price of Cathay's shares, because it was information of a kind which a reasonable investor would be likely to have used as part of the basis of an investment decision. This is so even taking into account that other aspects of Cathay's figures, such as revenue and

gross profit, were likely to be in line with market expectations. The information thus satisfied the test in s118C (2)(c) of the Act.

21. It is not necessary to examine contemporaneous evidence relating to what happened when the information was actually released to the market. Nevertheless, the 18.2% drop in price that did occur at that point is supportive evidence that the information was likely to have a significant effect on price. The Authority accepts that it is not possible to demonstrate that the price drop was solely attributable to the announcement of an expected material loss before tax, markedly below market expectations, rather than the announcement of the CFDA financial penalty, but nor is it possible to say that it was solely attributable to the penalty. It is a reasonable inference that it was attributable in part to the announced marked increase in the expected loss before tax. This inference is supported by an analysis of the sequence of Bloomberg announcements on the morning of 29 December 2015: after releasing Cathay's trading announcement at 08:45, Bloomberg released two notes referring only to Cathay's full year losses, at 08:46 and 08:47 respectively, and a further note referring to the CFDA penalty, at 08:48. The fall in share price began after the trading update and continued until 08:49.
22. The Authority does not accept that the fact that the N+1 analyst's valuation in August 2015 was made by reference to asset values indicates either that a reasonable investor would not have regard to profits after tax, or that the analyst himself regarded profit after tax as unimportant. The N+1 note was released to the market in the light of weak profits in the first half of the year which indicated that market expectations for Cathay's year-end performance would not be met. It provided revised downgraded forecasts for Cathay's year-end performance which focused on projected profit after tax.
23. The fact that Lansen's share price did not move significantly when it made its own announcement in March 2016 is not an indication that the information about Cathay's projected net profits was not market-sensitive. This was an announcement about a different company, made to a different market; furthermore, Cathay's announcement in December 2015, while not expressly referring to a fall in profits at Lansen, would have given an indirect indication that Lansen – which was 70 to 80% of Cathay's business at the time – was in difficulty.
24. As set out in paragraphs 4.44 and 5.18 of this Notice, the Authority accepts Cathay's assertion that a discussion about the prospects of Fillderm stocking orders occurred at the Board meeting on 10 December 2015. The Authority also accepts

that those orders were potentially of a size that could have rendered an update unnecessary. However, the Authority considers that there is insufficient evidence that from either 6 or 10 December 2015 it was considered by Cathay to be sufficiently certain that Lansen would make sufficient sales by year-end that it would have been appropriate for Cathay to conclude that it was unnecessary to issue a profits warning. There is no contemporaneous record of this conclusion having been reached, or even discussed; for example, in the lengthy telephone discussion which took place with N+1 the day after the 10 December 2015 Board meeting. Lansen's later statement to the Authority, referred to at paragraph 19 above, suggests only an aim, rather than an expectation, that substantial orders could occur before year-end. Nor is there any contemporaneous evidence that the prospect of Fillderm stocking orders played any part in Cathay's substantive analysis of whether it was necessary to issue an update.

Any breach of DTR2.2.1R or Premium Listing Principle 6 by Cathay was not committed recklessly

25. *Cathay had a genuine and reasonable belief in the prospect of a Fillderm stocking order until 18 December 2015. Even if its assessment of whether it had inside information before that date was wrong, it had no subjective belief that it had inside information and therefore no subjective appreciation that it would risk breaching the STRs if it did not make a disclosure.*
26. *The advice of Cathay's appointed advisers was general advice on Cathay's regulatory obligations, which did not take account of the prospect of further Fillderm sales, and was given without having reviewed Cathay's financial data, at a time when it is not alleged Cathay held any inside information. Indeed, N+1's advice (in a telephone conversation on 2 December 2015) mentioned that if Cathay had grounds to think that it could still make the full year's expectations or, say, 10% below, and there were certain things on which it was awaiting confirmation, there would be no requirement for an announcement. Cathay was indeed waiting on such confirmation. If Cathay had behaved recklessly in relation to a potential announcement, N+1 would inevitably have identified this and given strong advice, but it did not.*
27. *During the period from 6 December 2015 to the release of the trading update, Cathay took reasonable steps to consider its forecasts, draft a trading update in case one was to be necessary and discuss the advice it received.*

28. For the reasons set out above, the Authority does not accept that Cathay did have a sufficiently certain belief that a Fillderm stocking order would be made such that Cathay could have appropriately decided that a market update was unnecessary. It considers that Cathay was well aware, including from the advice it had received from its financial and legal advisers, that if there were a material deviation from market expectations, it must make an announcement to the market. This was not general advice given in a vacuum but was on the basis of advice sought by, and discussions with, Cathay about its likely financial performance for the second half of the year and its obligations arising from that performance. On 6 December 2015, when Cathay received and consolidated its ten-month results and year-end forecast, it was in possession of all the information it needed to conclude that it held inside information and was under an obligation to disclose it. N+1 continued to advise thereafter on the basis that Cathay would need to make an announcement as soon as possible. Cathay acted recklessly in not making a disclosure to the market on or as soon as possible after 6 December 2015, knowing of the risk that it was in breach of the DTRs.

29. The Authority does not consider that Cathay was relying on the statement by N+1 referred to in paragraph 26 above in not making an announcement to the market. This was a brief comment in the context of a very long call, and there is no evidence of Cathay having taken particular note of it at the time, or discussed with its advisers at any point after 10 December 2015 that it might not need to issue an update because of its expectations in relation to Fillderm; as set out above, the Authority considers that any consideration of possible Fillderm sales would have been so uncertain that Cathay could not appropriately have decided that it displaced the circumstances that existed or might reasonably be expected to come into existence such that Cathay held information subject to section 118C of the Act.

30. The Authority considers that, during the period from 6 December 2015 until the release of the trading update, Cathay did not work quickly towards disclosure of the inside information. Rather, it acted with unnecessary and inappropriate delay. In particular:

- (a) After receiving the consolidated forecast figure on 6 December 2015, it only circulated these to the Cathay Board two days later, and the Board did not meet for another two days thereafter; this was notwithstanding that it had been in possession of the Technical Note since 3 December 2015; this stated that the Authority would not be likely to regard the inability to convene a Board meeting as a justifiable reason for delaying disclosure, and that it

understood that responsibility might be delegated to a small number of directors.

- (b) A first draft of the trading update was not prepared until 11 December 2015, the day after Cathay's Board meeting, five days after receipt of the inside information, and seven days after Cathay had informed N+1 that it would draft a trading update.
- (c) The trading update was not circulated to, and signed off by, the Board until 24 December 2015. It was issued on 29 December 2015.

The timing of the trading update was not influenced by the timing of the CFDA penalty announcement

- 31. *Cathay did not delay disclosure in order to co-ordinate announcements with the CFDA penalty and was not influenced by such considerations. If there was a delay in disclosing inside information from 6 December 2015, it was due to other factors. From 6 to 18 December 2015, Cathay had a genuine and reasonable belief that it did not hold inside information, because of the expectation of Fillderm orders. From 18 December 2015 onwards, it was working as quickly as possible to prepare and release an announcement, with the timing impacted by difficulties in obtaining sign-off from all Board members and advisers over the Christmas period.*
- 32. *Although Cathay did strongly suggest it would prefer to issue a single announcement to coincide with the announcement of the CFDA penalty, this was at an early stage. Cathay undertook to obtain advice from its lawyers; that advice stated that the disclosure of inside information could not be delayed to coincide with an interim report or other announcement, and at no point after this did Cathay suggest the two announcements could be deliberately coordinated. From that point onwards, it sought to work to draft a trading update to be issued if required.*
- 33. *After 18 December 2015, Cathay was waiting for comments and sign-off on the draft trading update. From 18 December 2015, as noted in an email from Cathay sent on that date, Cathay did intend to co-ordinate the trading update with the penalty announcement, as at that stage there was no reason not to. There were only four working days between 18 and 24 December, and none between 24 and 29 December, on which date the announcement was made.*
- 34. Cathay expressed itself in strong terms when, in the call with N+1 on 2 December 2015, it expressed the view that it could choose when to issue a trading update

and that it wished to co-ordinate it with Lansen's announcement of the CFDA penalty, and received clear advice from N+1 that it could not delay an announcement for that purpose. Having thereafter received clear advice from its lawyers that it could not choreograph or co-ordinate announcements, it is unsurprising that it did not repeat its suggestion that the two announcements could be co-ordinated.

35. However, the Authority does not accept that the delay in disclosing the inside information from 6 December 2015 until 29 December 2015 was not influenced by Cathay's wish to co-ordinate its announcement with Lansen's announcement of the CFDA penalty. For the reasons set out above, the Authority considers that any possible Fillderm stocking order would have been so uncertain at this time that Cathay could not appropriately have decided that it displaced the circumstances that existed or might reasonably be expected to come into existence such that Cathay held information subject to section 118C of the Act. As explained at paragraph 30 above, the Authority does not consider that Cathay worked as quickly as possible towards the drafting and release of an announcement; rather, it delayed unnecessarily and inappropriately during the period 6 to 29 December 2015.

36. The Authority does not agree that there was, by 18 December 2015, no reason why the trading update and the penalty announcement should not have been co-ordinated. Nothing had changed which justified delaying the trading update by reference to the penalty announcement. In any event, the Authority's conclusion is that the trading update should have been made as soon as possible after 6 December 2015.

Listing Principle 2

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

37. *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.

38. *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.*

39. 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.

40. 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.

41. 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 Lansens's anticipated performance, it could and should have explained this in its letter.

42. 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.

Financial penalty

2015 Relevant Period – only level 2 would be appropriate

43. *The Authority considers that Cathay's conduct should be treated as level 4 on its scale of seriousness because it involves serious or systematic weaknesses in Cathay's procedures, and because the breach was committed recklessly. If it is found that Cathay was in breach of the DTRs and/or Listing Principles, but that any breach was not committed recklessly, a level 2 classification would be appropriate. Any breach was inadvertent and caused not by failures in systems and controls, but by judgement calls that can be criticised in hindsight but were reasonably thought to be correct at the time.*

44. As set out above, the Authority considers that Cathay's breaches during the 2015 Relevant Period involved serious weaknesses in Cathay's procedures, systems and controls, and were committed recklessly. In those circumstances a finding of level 4 seriousness is appropriate.

2016 Relevant Period – only level 2 would be appropriate

45. *The Authority accepts that Cathay did not intend to mislead it. Although, with the benefit of hindsight, Cathay would not respond to the Authority in the same way again, it considered that it was providing data that most accurately represented its*

expectations for its performance as they were at the relevant times. It involved advisers in the preparation of the letters, supporting the view that it was trying to respond appropriately, although the advisers were not asked to comment on the projection figures themselves.

46. *Cathay had a genuine expectation of Fillderm stocking orders. The Authority accepts that these were genuinely discussed and considered, (albeit it is in issue whether they were sufficiently likely to be taken into account in the announcement decision). The Authority should reduce the penalty accordingly, as this makes the Board's responses during 2016 less open to criticism because Cathay was seeking in its responses to communicate the true position, namely the assessed impact of the expected Fillderm sales on the projections.*
47. *Account should also be taken of Cathay's broader open and co-operative behaviour. At an early stage during the 2016 Relevant Period, it voluntarily waived privilege over the advice it had received from its lawyers, on which the recklessness case is based. This could be said to have been contrary to its own interests and demonstrates that, during the 2016 Relevant Period, it was seeking to be open and co-operative with the Authority. Later, it volunteered a clarification to the Authority at the earliest opportunity after its lawyers drew attention to the potential for its letter of 15 April 2016 to mislead, and provided full corrected information and an apology. These matters are mitigation. For these reasons, a Level 2 classification would be appropriate if the Authority finds Cathay to have been in breach.*
48. In concluding that the breach of Listing Principle 2 was level 3 in seriousness, the Authority has taken into account that Cathay did not intend to mislead it.
49. The Authority's conclusion that Cathay's breaches (in the 2015 Relevant Period) were committed recklessly is not primarily based on the legal advice received; the Authority has nevertheless taken into account Cathay's co-operation in waiving privilege over that advice, and that, albeit a year later, it provided full corrected information about the potential for the 15 April 2016 letter to mislead, and an apology. However, in the light of the seriousness of the breach (taking into account factors as to its nature and impact) the Authority does not consider these matters sufficient to warrant a reduction in the penalty.
50. As set out above, the Authority does not accept that Cathay had a sufficiently certain expectation of Fillderm stocking orders such as to render a trading update unnecessary. The Authority does not consider that the fact that the prospects for

stocking orders were explained to the Board makes the breach of Listing Principle 2 any less serious because those prospects were not such as to render the information provided to the Authority in the letter of 15 April 2016 less inaccurate.