

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



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DECISION NOTICE

To: **Jin-Yi Lee**
Date of birth: August 1957
24 May 2019

1. ACTION

1.1. For the reasons given in this notice, the Authority has decided to impose on Jin-Yi Lee a financial penalty of £214,300 pursuant to section 91 of the Financial Services and Markets Act 2000 (the "Act") because Mr Lee was knowingly concerned in a number of breaches by Cathay International Holdings Limited ("Cathay") of the Listing Principles and 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. At all material times, Mr Lee was Cathay's Chief Executive Officer ("CEO"), and Vice-Chairman of Lansen.

- 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 Cathay’s expected financial performance for the year ending 31 December 2015.

Cathay’s 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, including Mr Lee as its CEO, were aware of the risk that Cathay's 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 and Mr Lee thereby acted recklessly.

Cathay's 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 would be a 56% deviation from market expectations of the loss after tax¹. Cathay therefore breached DTR 2.2.1R. Cathay, and Mr Lee as its CEO, were aware, including from advice given to Cathay by its appointed advisers, of the risk of a breach if it did not make an appropriate disclosure but recklessly failed to do so.
- 2.9. Further, Cathay breached Premium Listing Principle 6 when Cathay, and Mr Lee as its CEO, recklessly 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.

Cathay's 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. Mr Lee reviewed and approved the relevant correspondence with the Authority.
- 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.

Mr Lee being knowingly concerned in Cathay's breaches

- 2.13. Mr Lee was a director and CEO of Cathay at all material times and, by virtue of that role and his knowledge of, and involvement in, the matters which gave rise to Cathay's breaches, he was knowingly concerned in each of its breaches of Listing Principle 1, DTR 2.2.1R and Premium Listing Principle 6 and Listing Principle 2.
- 2.14. The Authority considers the breaches by Cathay, in which Mr Lee was knowingly concerned, to be particularly serious. Mr Lee, as CEO, failed to ensure that Cathay was able to comply with its obligations as a listed company. Cathay's 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.
- 2.15. Further, the Authority relies on listed companies and their directors to provide clear, accurate and complete information to it in order effectively to monitor and regulate the integrity of the financial markets in the UK. The provision of inaccurate information to the Authority impacts its ability to do this.

2.16. The Authority has therefore decided to impose a financial penalty on Mr Lee in the amount of £214,300 pursuant to section 91 of the Act. This financial penalty consists of:

(a) a penalty of £128,800 for breaches during the 2015 Relevant Period; and

(b) a penalty of £85,500 for breaches during the 2016 Relevant Period.

2.17. The Authority does not make any criticism of any other person or entity in this Notice.

3. DEFINITIONS

3.1. The definitions below are used in this Notice:

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

the "Authority" means the Financial Conduct Authority;

the "Board" means the Cathay board of directors;

"Cathay" means Cathay International Holdings Limited;

"CEO" means Chief Executive Officer;

"CFDA" means the China Food and Drug Administration;

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

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

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

"GBP" means Pounds Sterling;

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

"Lansen" means Lansen Pharmaceutical Holdings Limited;

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

"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. Mr Lee, as a representative of Cathay, sat on Lansen's Board of Directors as Vice-Chairman. Lansen and its subsidiaries primarily engage in the manufacturing and trading of pharmaceutical products in the People's Republic of China. Lansen's 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 year-end.
- 4.5. There was no similar formal meeting structure for Cathay's executive committee; but the executive directors, including Mr Lee, worked within the same office in close proximity to each other, and so regularly met informally. However, in practice, decisions that were not business as usual in nature would not be taken by the executive directors or the executive committee, and would be escalated to the Board.

Mr Lee

- 4.6. Mr Lee has been a director of Cathay, and its CEO, since 21 January 2010. During the 2015 and 2016 Relevant Periods, he was responsible for managing the day to day business activities of Cathay. Amongst other things, Mr Lee was responsible for ensuring that effective internal controls and management information systems were in place, and supporting the operation of the Board by informing Board members and acting as a liaison between Cathay's management and the Board. As part of this role, Mr Lee was responsible for reviewing and approving all Board papers prior to submission to the Board. As a result, it was Mr Lee who ultimately decided what matters were put to the Board, including in relation to matters escalated to him through his reporting lines at Cathay.

Cathay's business in 2015

- 4.7. 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.
- 4.8. 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.
- 4.9. Over the course of 2015, Cathay's business was impacted by a number of issues. As a result, during 2015 Cathay saw its financial performance for the year ending 31 December 2015 being negatively impacted.
- 4.10. At the relevant time Cathay was affected by the fact that Lansen, which specialises in pharmaceutical products, had a number of significant issues occur, which impacted on its trading and profitability. During 2015 the CFDA carried out a nationwide inspection of the Gingko production industry. As a result of that investigation, Ningbo Liwah incurred a number of expenses, including product recall costs, inventory write off and, in December 2015, a substantial penalty imposed by the CFDA. Mr Lee, in his role as Vice-Chairman of Lansen, was directly involved in the negotiation of the penalty with the CFDA.
- 4.11. During 2015 Cathay, through its subsidiaries, also had a number of initiatives which would seek to improve its financial performance. One of those initiatives was the diversification of Lansen's product portfolio. In May 2015, Lansen added two new products to its portfolio: Bio-Rad, a diagnostic kit for autoimmune diagnosis, and

Fillderm, a collagen injectable filler produced by Botai, a subsidiary of Lansen. Lansen created a new budget for these products (i.e. comprising matters such as launch costs and aims for future performance), which it sent to Cathay in May 2015 and which provided for expected revenue from the new products of USD 11,392,000 for the year ending 31 December 2015. Mr Lee, as a Board member for Lansen, approved the new product budget in June 2015.

Cathay's financial reporting process

- 4.12. Cathay did not have any written process for how it collated and considered results from its subsidiaries. However, Cathay normally received monthly results from each of its subsidiaries; generally between two and four weeks after the month end. Management of Cathay, including Mr Lee, would also meet with Cathay's subsidiaries each month to understand the key issues in the business, although these meetings were not always formally documented or recorded.
- 4.13. Individuals within Cathay were directly involved in the preparation of the financial results from all subsidiaries except Lansen. Lansen, as a separately listed company, had its own process for compiling its monthly results. Once it had gone through that process, it sent its results to Cathay (occasionally outside the two to four-week window). Cathay, on occasion, 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. However Mr Lee, as CEO of Cathay, did not receive Cathay's consolidated results each month, and as such was reliant on issues within the figures being escalated to him at the monthly meetings with each subsidiary.
- 4.14. Cathay also consolidated the monthly results in advance of the regular Board meetings for the purposes of reviewing Cathay's financial performance. As noted in paragraph 4.6, Mr Lee reviewed and approved all Board submissions (which then formed the Board pack) prior to circulation to the Board. As with the monthly consolidations by Cathay's finance department, the figures prepared for the Board were compared to the figures in Cathay's internal budget, set by the Board in March 2015, as well as the published results for the previous financial year. However, Cathay did not compare its actual financial performance to market expectations for the year ending 31 December 2015.

Cathay's forecasting process

- 4.15. 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.
- 4.16. Individuals at Cathay were directly involved in the preparation of forecasts from its subsidiaries except Lansen. As with its monthly results, Lansen followed its own forecasting process and submitted the forecasts to Cathay following approval. As with the monthly results, Cathay could make enquiries as to the reasoning or assumptions behind the figures for Lansen, but generally accepted the forecasts as submitted. Mr Lee, as Vice-Chairman of Lansen, would make those enquiries on behalf of Cathay rather than being involved in the preparation. Once the forecasts were consolidated, they were reviewed by Mr Lee in advance of circulating to the Board.
- 4.17. 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 set out by analysts at N+1, and therefore in the absence of this, neither Mr Lee nor the Board considered the forecast against market expectations for the year ending 31 December 2015 in their review of the forecasts.

The 2015 interim results

The August 2015 Board meeting

- 4.18. In advance of a Board meeting on 26 August 2015, Cathay received results from all of its subsidiaries for the first six months of the year, up to 30 June 2015. Individuals within Cathay consolidated the results and prepared draft interim results announcements. The consolidated results, alongside year-end forecasts for the subsidiaries (except year-end forecasts for Lansen), were then included in the Board pack which was reviewed by Mr Lee (as he was responsible for reviewing all

documents put to the Board), and sent to the Board shortly in advance of the meeting.

- 4.19. Cathay also submitted its interim results, and associated draft commentary, to N+1 on 21 August 2015 for N+1's advice and comments on the drafting of the interim results announcement and associated documents. Mr Lee had been involved in the preparation of the draft interim results, as in his role as CEO, he had reviewed the draft results and corresponding draft market announcement to confirm the announcement reflected the results accurately, prior to them being sent to N+1.
- 4.20. 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, neither Cathay nor Mr Lee considered revising Cathay's expectations for the year-end, or whether the deteriorating performance of Cathay constituted inside information. The interim results were also not considered by Mr Lee and Cathay against the market expectations set by analysts at N+1.
- 4.21. 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.
- 4.22. Mr Lee stated to the Authority that he 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.
- 4.23. However, Cathay did not have any procedure in place to generate forecasts for its own year-end expectations where it was not provided with information from a subsidiary. Mr Lee knew that Cathay did not have such a procedure. Mr Lee has since stated that he considered that Cathay could not have created 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, and Lansen had considered that it would be inappropriate to create such a forecast.

- 4.24. In the absence of forecasts from Lansen, Cathay's Board only considered year-end forecasts for the remaining subsidiaries and neither Mr Lee nor the Board had sufficient information carefully to monitor by assessing Cathay's overall year-end financial performance. Mr Lee, when reviewing the Board papers, did not take any steps to ensure that Cathay completed year-end forecasts for the whole of its business, or use his position at Lansen to ensure that forecasts were produced. 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.
- 4.25. 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, Mr Lee did not turn his mind to whether the performance of Cathay might constitute inside information.

Concerns raised by N+1

- 4.26. 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 expectations set out in N+1's note of 11 May 2015. This was because the interim results showed poor performance in the first six months of the reporting period. Cathay was not aware that it would miss expectations as this was the first occasion on which relevant people at Cathay, including Mr Lee, had considered the impact of Cathay's interim results on its full year financial performance and whether Cathay held inside information.
- 4.27. On 27 August 2015, N+1 advised Cathay again by speaking to Mr Siu (Cathay's Finance Director) 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*'. Although Mr Lee was not a direct recipient of N+1's emailed advice, as the sentence proposed by N+1 was discussed and rejected at the Board meeting at which Mr Lee was present, Mr Lee was aware that N+1 had given this advice.

- 4.28. Mr Lee and 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. Mr Lee, and other individuals at 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), such that they could come to their own conclusions as to how this might impact year-end, and so the announcement would not benefit from the additional clarification proposed by N+1.
- 4.29. On 28 August 2015, N+1 repeated its advice and further advised Cathay (through speaking to Mr Siu) 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. Mr Siu conveyed on behalf of Cathay that it 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.
- 4.30. Mr Lee was sent a copy of N+1's advice. Despite N+1 having expressly advised that a rule breach might occur, Mr Lee did not reconsider Cathay's position, as the sentence proposed by N+1 had already been rejected by the Board. As a result, although all material matters would normally be escalated to the Board, Cathay did not take any steps to reconsider its position in light of the further advice from N+1 or to consider whether it did hold inside information, and the Board as a whole was not informed that N+1 had advised of a potential rule breach. 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.
- 4.31. On 28 August 2015, as a result of Cathay's poor performance in the first half of the year, N+1 downgraded its expectations for Cathay's performance in a published analyst note. N+1's revised expectations for Cathay were that it would make a loss after tax of USD 6.3 million at year-end. This downgrade did not include

consideration of any revenue (or profits) from the new products referred to in paragraph 4.11.

Period following the interim results

- 4.32. During conversations with N+1 at the time of finalising Cathay's interim results, Mr Siu assured N+1 that it 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.
- 4.33. Between Cathay's interim results and it consolidating 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. Mr Lee did not directly consider these matters because he did not receive the monthly figures by way of any implemented procedure and would have to have had these escalated to him at Cathay's monthly meetings with its subsidiaries.
- 4.34. During the same period, N+1 attempted to obtain from individuals at Cathay (not including Mr Lee) year-end forecasts on multiple occasions, but was not provided with them. Those individuals failed to inform N+1 that the year-end forecasts did not, at this point, exist. Until year-end forecasts were produced in early December 2015 (see below), Mr Lee was aware that no other forecasts existed.

The December Announcement

Earlier advice received by Cathay

- 4.35. 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 with individuals at Cathay (not including Mr Lee). 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).

- 4.36. On 27 November 2015, Mr Lee received notification of a penalty intended to be imposed by the CFDA on Ningbo Liwah of RMB 18,290,177.32, equivalent to approximately USD 2,860,000 at the relevant time. Mr Lee provided the details of that penalty to individuals at Cathay who would be on the call with N+1. Therefore, at the time of the call with N+1 on 27 November 2015, Cathay and Mr Lee were aware of a significant cost to Lansen and which Mr Lee subsequently accepted would need to be announced to the market once the settlement process had been finalised with the CFDA.
- 4.37. During the call with N+1 on 27 November 2015, the individuals at Cathay (but without Mr Lee) described in general how each subsidiary, and therefore Cathay, was performing. On behalf of Cathay they stated that as trends that had occurred during the first six months of the year had continued during the second half of the year, they considered that Cathay's 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, individuals at Cathay informed N+1 that they could not make a decision on whether to publish an update, and that they would have to speak with Mr Lee and obtain Board approval (due to the fact that, as noted in paragraph 4.5, decisions that were not business as usual would in practice be approved by the Board).
- 4.38. 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 its financial performance. Mr Lee, who was not on the call, was sent a copy of N+1's written advice shortly after receipt by another individual at Cathay.
- 4.39. A second call with N+1 was arranged for 2 December 2015 so that Mr Lee could speak with N+1. At this point, Cathay still did not have a forecast from Lansen for the year-end, but as with the 27 November 2015 call, had two months' forecasts and ten months' financial performance for all of its subsidiaries except Lansen, and nine months' results for Lansen. In the call, Mr Lee provided further information about the performance of Lansen, which he stated was underperforming. Mr Lee covered a number of factors impacting Lansen's performance, such as the CFDA

penalty on Ningbo Liwah, and stated that there was no argument that a trading update to the market needed to be made.

- 4.40. However, on the 2 December 2015 call, Mr Lee said that his view was that there was a choice about when that announcement could be made. Mr Lee considered that the role of N+1 was to assist Cathay in how it delayed disclosure. Specifically, he wished 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 Mr Lee was incorrect in his view, and that a trading update needed to be made irrespective of the fact that a later announcement would need to be made about Lansen. N+1 further stated that it appeared there was no argument that a trading update was needed, and urged Cathay and Mr Lee to take its advice. Again, N+1 requested information showing the financial performance of Cathay.
- 4.41. 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 financial performance to coincide with the announcement of the penalty on Lansen. On 3 December 2015 the legal advice was received and Mr Lee received a copy on the same day. However, the legal advice agreed with N+1, and noted that it appeared an announcement would need to be made. The legal advice specifically advised Cathay that it could not choreograph its announcements and delay disclosure to coincide with the announcement of Lansen's penalty. The legal adviser attached the Authority's technical note on assessing and handling inside information which had been published in December 2012. The technical note stated that it was not acceptable for issuers to attempt to choreograph the assessment and possible disclosure of various and offsetting information that might individually meet the tests for inside information. The technical note also stated that issuers should have a consistent procedure for determining what information is sufficiently significant for it to be deemed inside information and for the release of that information to the market.
- 4.42. Following this, Mr Siu 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

- 4.43. Lansen provided its results and forecasts for the full financial year to Cathay on 4 December 2015. Lansen's ten months' results showed that it had realised a profit after tax of USD 7,149,000, which was 44% below its own expectations. Mr Lee received those results and forecasts. Between 4 and 6 December 2015, Mr Lee called Lansen to query the basis of Lansen's forecasts. These enquiries established that Lansen had incorporated the costs of its new products, but did not forecast any revenue from the new products as Lansen had adopted a conservative approach to its forecasts. Mr Lee did not ask Lansen to make any revisions to its forecast. This was because Lansen had its own process to follow, and Mr Lee as CEO on behalf of Cathay accepted the figures that had been provided by Lansen.
- 4.44. Individuals at Cathay consolidated these results and forecasts by 6 December 2015 and, following review by Mr Lee, 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 was a loss after tax of USD 6,300,000. This year-end net loss was not analysed or discussed in the Board papers and Cathay's calculations were reviewed by Mr Lee and approved by him to form the Board pack. Therefore, Cathay's forecast figure represented an approximate 56% deviation from N+1's analyst note which set the market expectations, and confirmed the position set out by N+1 to Mr Lee in the call on 2 December 2015.
- 4.45. Mr Lee, as Cathay's CEO and the person who had final sign-off of Board papers, was the person responsible for including such analysis and/or discussion points in the Board pack and he was responsible for making the Board aware of the potential impact on Cathay's financial performance, in particular given the advice he had received from N+1 and Cathay's legal advisers about Cathay's disclosure obligations and his obligations as Cathay's CEO (as set out in paragraph 4.6). Despite the Board pack confirming the position put to Mr Lee by N+1, Mr Lee did not take any steps to ensure that Cathay made an announcement to the market as soon as possible.
- 4.46. Prior to the Board meeting, Mr Lee was involved in discussions with the CFDA about the penalty to be imposed on Ningbo Liwah, and whether the penalty could be either reduced or paid by instalments. However, Mr Lee knew prior to the Board meeting that the CFDA would not change the amount of the penalty. Mr Lee accordingly knew the final figure and that the penalty might be paid by instalments,

the first of which, totalling RMB 3,658,177,32 (equivalent to approximately USD 566,688), might be payable before year-end. The 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 discussed for the meeting on 10 December 2015, and Mr Lee was aware that Cathay's financial performance would be further adversely impacted by the penalty. Despite Mr Lee's personal knowledge of the penalty, and the fact that Mr Lee acknowledged that the penalty was a significant event which would need to be announced to the market, Mr Lee still did not ensure that Cathay issued a trading update.

- 4.47. On 10 December 2015, the Board, including Mr Lee, convened and considered the results and expected financial performance of Cathay, and heard oral updates from each of its subsidiaries on factors that had impacted performance. The Board was not provided with a draft trading update at this meeting, as set out in paragraph 4.42; nor was there any document in the Board pack relating to Mr Lee's call with N+1 on 2 December 2015. 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. 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.
- 4.48. 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

- 4.49. 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. Individuals at Cathay (not including Mr Lee) 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 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.
- 4.50. Between 11 and 17 December 2015, individuals at Cathay (not including Mr Lee) 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 individuals at Cathay with detailed comments on the drafting of the December Announcement, which it did on 17 December 2015. During this period, Mr Lee took no steps to ensure that Cathay made progress with the publication of the December Announcement, and Mr Lee did not personally contact N+1.
- 4.51. However, on 18 December 2015, it was confirmed by Mr Lee to Cathay that Lansen would shortly be announcing the CFDA penalty to the market. An individual at Cathay redrafted the trading update so that it could incorporate the penalty, which Mr Lee then reviewed prior to circulation to the Board. Cathay has stated to the Authority that it had to liaise with Lansen on the wording of the announcement, to ensure consistency of messaging. As a consequence of re-drafting the trading update, and multiple sign-off procedures, it was not until 24 December 2015 that the Board approved the December Announcement by email.
- 4.52. The December Announcement was released to the market on 29 December 2015, the first working day after approval had been granted by the Board. The

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

Communications with the Authority

Statements in communications

- 4.53. 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 the directors of Cathay requesting 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).
- 4.54. 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.
- 4.55. 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'*.
- 4.56. 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.

4.57. 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.

4.58. Mr Lee reviewed and approved the communications prior to submission to the Authority although he did not draft them.

Cathay's 2015 interim forecasts

4.59. Despite the forecast figures provided to the Authority taking into account forecasts from Lansen, as noted in paragraph 4.21 Cathay did not actually receive any interim year-end forecasts from Lansen, which at the time represented between 70% and 80% of its business. The Board therefore only considered forecasts for the remaining subsidiaries. The absence of any forecasts from Lansen is reflected in the Board pack for 26 August 2015, where Lansen's forecasts are blank. Therefore, had 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.

4.60. 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.

- 4.61. 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.
- 4.62. Further, the figures included by Cathay in its letters to the Authority attributable to interim forecasts for Lansen's existing business (that is, those reviewed by the Board at its meeting of 26 August 2015) were sourced from scenario based analysis figures created by Lansen in September 2015. The figures were not intended by Lansen to be a forecast, and were not treated by Cathay as a forecast during the 2015 Relevant Period. These figures did not exist at the time of the Board meeting in August 2015 and were therefore never set out in any paper provided to the Board or otherwise brought to the Board's attention for that meeting.
- 4.63. Mr Lee was aware prior to submission to the Authority that the figures provided to the Authority were created for the benefit of the Authority, and were not available to Cathay including its Board at the relevant times in 2015, yet Mr Lee still approved the communications and that these be sent to the Authority. Mr Lee was aware of these matters because he had reviewed and approved the Board papers from which the majority of the figures were extracted, and so was aware that Cathay had not created year-end forecasts for the whole of its business in August 2015. As Vice-Chairman of Lansen, Mr Lee also knew that in August 2015 Lansen had not produced a meaningful forecast.

Cathay's 2015 year-end forecasts

- 4.64. Despite the forecast figures provided to the Authority taking into account substantial profit from new product sales at Lansen, as noted at paragraph 4.60 Lansen's own forecasts sent to Cathay on 4 December 2015 did not actually include any, or any material, profits from new product sales.
- 4.65. 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.

- 4.66. Cathay's letter of 15 April 2016 to the Authority described the year-end new products forecast which it included as having been based on ten months' results and two months' projections. In fact the figures included by Cathay in the letter attributable to Lansen's new product forecasts were based on the budget for the new products, which was set by Lansen in May 2015. Cathay did not inform the Authority during the 2016 Relevant Period that this was the case.
- 4.67. Mr Lee, in his review of the letters prior to submission to the Authority, was aware that the original forecast in December 2015 did not include any, or any material, profits from new products, yet he still approved the communications and that these be sent to the Authority. Mr Lee was aware at the time he gave this approval that the forecast in December 2015 did not include any, or any material, profits from new product sales as, between 4 and 6 December 2015, he had personally enquired with individuals at Lansen as to the basis of Lansen's forecasts.

General statements made by Cathay

- 4.68. As noted at paragraph 4.54 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 4.22 to 4.25, there was no monitoring of interim projections by Cathay due to the absence of information from Lansen. Mr Lee was aware that these statements were incorrect, as he knew that Cathay only created forecasts twice a year, which he approved for inclusion in the Board pack. Even though Mr Lee had this knowledge, he still approved the communications to the Authority.

5. FAILINGS

- 5.1. The facts and matters referred to above resulted in Mr Lee being knowingly concerned in Cathay's breaches of 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 4.41, 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 (including Mr Lee) 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, including Mr Lee as its CEO, 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 and Mr Lee 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 its 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, Cathay also did not compare its actual financial performance to market expectations for the year ending 31 December 2015.

Mr Lee's knowing concern in Cathay's breaches

5.10. The Act permits the Authority to impose a penalty, of such amount as it considers appropriate, on a director who was knowingly concerned in the contravention of the Authority's rules. A person is knowingly concerned when he or she has actual knowledge of the facts and is aware of his or her involvement in the contravention.

5.11. Throughout the 2015 Relevant Period Mr Lee was a director of Cathay, its CEO and ultimately responsible for ensuring effective procedures, systems and controls existed at Cathay.

5.12. Despite being presented with clear evidence in his review of the Board papers for the August Board meeting that procedures that were in place were ineffective, for example because Cathay was unable to generate a forecast for the entirety of its business, Mr Lee recklessly failed to take any steps to ensure that:

- (a) Cathay from that time put in place procedures, systems and controls to comply with its obligations; and
- (b) the absence of forecasting information for Lansen was either addressed (by obtaining a forecast from Lansen), or mitigated (by ensuring that Cathay came to its own view as to its financial performance).

- 5.13. Further, Mr Lee recklessly failed to ensure that Cathay and its Board considered its financial performance against market expectations. In Mr Lee's review of the financial information presented to the Board in August 2015, he did not consider whether the performance of Cathay amounted to inside information when it significantly deviated from internal expectations.
- 5.14. 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 and Mr Lee that Cathay might miss market expectations. While N+1's own forecasts were not comparable to Cathay's own understanding of its financial performance, if Mr Lee had taken the steps set out in paragraph 5.12 Cathay should, when it discussed the advice with N+1, have been able to form its own view as to whether it would have missed expectations. However, due to Mr Lee not taking those steps, Cathay was unable to take that approach.
- 5.15. Despite being presented with this clear advice from Cathay's advisers about the need to provide information to the market, Mr Lee still did not reconsider Cathay's position, or ensure that the Board was alerted to the fact that it might be in breach of the DTRs. As a result of Mr Lee's decision, Cathay resisted attempts to persuade it to clarify its position to the market, and did not use the advice either to assist Cathay in forecasting what its year-end position would be, or to change its procedures to enable Cathay and the Board to continuously and carefully monitor whether changes in Cathay's circumstances were such that inside information was held which had to be disclosed. The Authority considers that Cathay and Mr Lee 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.
- 5.16. Mr Lee should, after August 2015, have ensured that, following N+1's advice, Cathay regularly considered, by the implementation of a consistent procedure, whether it held inside information such that a clarification to the market should be made. However, Mr Lee did not act on his responsibilities to put such a procedure in place. Mr Lee should have realised this was necessary because he was aware following the interim results, through his monthly meetings with Cathay's subsidiaries, and through his role as Vice Chairman of Lansen, that Cathay's financial performance was further deteriorating.
- 5.17. Therefore, Mr Lee was knowingly concerned in Cathay not having adequate procedures, systems and controls in the 2015 Relevant Period to enable it carefully

and continuously to monitor changes in its circumstances so that it could (as a premium listed company) identify whether or not it held inside information. If there had been adequate procedures, systems and controls, these should have ensured that Cathay then acted in accordance with its regulatory obligations to provide the market as soon as possible with inside information of a material change in its expected financial performance.

DTR 2.2.1R and Premium Listing Principle 6

Cathay's obligations

5.18. 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".

5.19. 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".

5.20. 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

5.21. Cathay breached DTR 2.2.1R and Premium Listing Principle 6 by failing to inform the market as soon as possible of its deteriorating financial performance earlier

than 29 December 2015 and in circumstances where it had no grounds for delaying disclosure. Cathay had received and consolidated all of its year-end forecasts by 6 December 2015, and that information was sufficiently clear and precise such 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. It had also been advised by its brokers and legal advisers that an announcement should be made. Cathay therefore committed these breaches recklessly.

5.22. 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 4.48) 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 Mr Lee and other 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.

Mr Lee's knowing concern in Cathay's breaches

- 5.23. The Authority considers that Cathay's decision, taken by Mr Lee, not to make a trading update on or shortly after 6 December 2015 was influenced by the fact that Mr Lee was aware that a substantial penalty was due to be announced by Lansen, which would have required Cathay to make a further announcement. Mr Lee was more concerned with ensuring that Cathay's own announcement did not trigger one for Lansen, and the prospect of multiple bad news announcements, than he was with complying with Cathay's own obligations, as set out at paragraph 5.3. This caused Mr Lee to disregard professional advice when he should have accepted it as correctly reflecting Cathay's obligations. Following this, as set out in paragraph 4.46, despite Mr Lee then knowing prior to the December Board meeting that the penalty had been confirmed and his acknowledgement that this would have a significant impact on the business, he recklessly failed to take steps to ensure Cathay made an announcement to the market.
- 5.24. 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 its deteriorating financial performance, was likely to mislead the public.

- 5.25. The Authority therefore considers that the December Announcement was delayed by Mr Lee without proper justification in order to allow Cathay to announce the financial penalty on Ningbo Liwah at the same time, despite Mr Lee repeatedly being advised by N+1 that Cathay should not do this. Mr Lee should have ensured that Cathay made an announcement to the market on, or shortly after, 6 December 2015. Mr Lee clearly had detailed knowledge of the inside information by 6 December 2015 due to the contents of the draft Board pack which showed a forecast loss after tax of USD 9,866,000, which confirmed N+1's view that Cathay was performing significantly below market expectations. Mr Lee's decision to delay was reckless, and meant that Cathay did not take adequate steps to make an announcement as soon as possible after forecasting this material loss. Mr Lee was therefore knowingly concerned in Cathay's breach of DTR 2.2.1R.
- 5.26. 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. Mr Lee was therefore knowingly concerned in Cathay's breach of Premium Listing Principle 6.

The 2016 Relevant Period

Listing Principle 2

Cathay's obligations

- 5.27. 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

- 5.28. 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.

- 5.29. 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 be better than it was and chosen to conduct no further investigations.
- 5.30. 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.
- 5.31. The Authority is dependent on companies and their directors providing clear and accurate information to it, in order to ensure that it can effectively monitor and regulate the integrity of the financial markets in the UK. It is a company's

responsibility to deal with the Authority in an open and co-operative manner including providing complete and accurate information to the Authority.

- 5.32. 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.
- 5.33. The Authority therefore considers that Cathay did not deal with the Authority in an open and co-operative manner, in breach of Listing Principle 2.

Mr Lee's knowing concern in Cathay's breaches

- 5.34. The Authority's requests were clear as to what information should be provided to it and that this concerned giving explanations of events surrounding the December Announcement. Mr Lee was aware of what was being requested. However, Cathay, without any explanation, provided inaccurate and incomplete information to the Authority regarding the forecasts it produced in 2015, and how it had calculated those forecasts. Mr Lee knew when he was reviewing the relevant communications, including by virtue of being a Board member, that the information provided was not a contemporaneous record of the financial information available to Cathay during the 2015 Relevant Period. Although Mr Lee had this knowledge, he approved the communications anyway.
- 5.35. The Authority has had regard to, and accepts, Mr Lee's explanation that the intention behind providing materially different financial information was not to mislead the Authority but to reflect Cathay's mind-set at that time. However, Mr Lee gave approval to the provision of different information to that which was requested and was involved in Cathay acting unreasonably in the way that it dealt with the Authority's information requests.
- 5.36. The Authority therefore considers that Mr Lee was knowingly concerned in Cathay's breaches of Listing Principle 2.

6. SANCTION

Financial penalty

- 6.1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In determining the appropriate financial penalty, the Authority has had regard to Chapter 6 of DEPP.
- 6.2. The Authority considers that the breaches within the 2015 Relevant Period and 2016 Relevant Period in which Mr Lee was knowingly concerned 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 Mr Lee is £214,300. 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 6.5B.1G, at Step 1, the Authority seeks to deprive an individual of the financial benefit derived directly from the breach. Mr Lee did not derive any financial benefit from being knowingly concerned in the breach and so there is no amount subject to disgorgement.

Step 2 – Seriousness of the breach

- 6.5. Pursuant to DEPP 6.5B.2G(1), at Step 2, the Authority determines a figure that reflects the seriousness of the breach based on a percentage of an individual's relevant income. DEPP 6.5B.2G(2) provides that where the breach lasted less than 12 months, or was a one-off event, the relevant income will be that earned by the individual in the 12 months preceding the end of the breach. Relevant income is calculated based on the gross amount of all benefits received (including salary, bonus and share options) by the individual from the employment in connection with the occurrence of the breach and for the 12 months preceding the end of the breach. Mr Lee's relevant income for the year ending 31 December 2015 was USD

633,000, comprising fees/salary of USD 544,000 and a bonus of USD 89,000. This equated to £429,560².

Scale

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

Level of seriousness

- 6.7. 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

- 6.8. DEPP 6.5B.2G(8) sets out factors relating to the impact of a breach. Of these, the Authority considers that a factor relevant to Mr Lee's knowing concern in the breach was the loss or risk of loss, as a whole, caused to consumers, investors or other market users in general who were making investment decisions without the benefit of current and accurate information. The Authority, however, notes that the vast majority of the shares were held by the directors of Cathay, including Mr Lee.
- 6.9. 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.

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

Nature of the breach

- 6.10. DEPP 6.5B.2G(9) sets out the factors relating to the nature of a breach. Of these, the Authority considers the following factors to be relevant to Mr Lee's knowing concern in Cathay's breach:
- (a) the frequency of the breach. Mr Lee directly received advice or was informed of advice from N+1 and Cathay's legal advisers about Cathay's disclosure obligations on multiple occasions during the 2015 Relevant Period;
 - (b) whether the individual held a senior position. Mr Lee held a senior position within Cathay as its CEO; and
 - (c) the extent of the responsibility of the individual for the business areas affected by the breach. The breach reveals serious and systemic weaknesses in Cathay's procedures and/or in the management systems or internal controls relating to Cathay's business for which Mr Lee was responsible in his role as Cathay's CEO to implement and/or maintain.
- 6.11. DEPP 6.5B.2G(12) sets out the factors which are likely to be considered 'level 4 factors' or 'level 5 factors'. Of these, the Authority considers that a factor relevant to Mr Lee's knowing concern in Cathay's breach was that he acted recklessly.
- 6.12. DEPP 6.5B.2G(13) sets out the factors which are likely to be considered 'level 1 factors', 'level 2 factors' or 'level 3 factors'. Of these, the Authority considers that a factor relevant to Mr Lee's knowing concern in the breach is that no profits were made or losses avoided by either Cathay or Mr Lee as a result of the breach, either directly or indirectly.
- 6.13. The Authority considers the seriousness of Mr Lee's knowing concern in the breach to be level 4. The calculation is therefore 30% of £429,560, which is £128,868.

Step 3 – mitigating and aggravating factors

- 6.14. Pursuant to DEPP 6.5B.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2 to take into account factors which aggravate or mitigate the breach.
- 6.15. The Authority does not consider there to be any factors which either aggravated or mitigated Mr Lee's knowing concern in the breach and there should be no adjustment to the Step 2 figure.

6.16. The Step 3 figure is therefore £128,868.

Step 4 – adjustment for deterrence

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

6.18. The Authority considers that no adjustment for deterrence is applicable. The Step 4 figure is therefore £128,868.

Step 5 – settlement discount

6.19. No settlement discount is applicable. The Step 5 figure is therefore £128,800 (rounded down to the nearest £100).

2016 Relevant Period penalty

Step 1 – Disgorgement

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

Step 2 – Seriousness of the breach

6.21. Pursuant to DEPP 6.5B.2G(1), at Step 2, the Authority determines a figure that reflects the seriousness of the breach based on a percentage of an individual's relevant income. DEPP 6.5B.2G(2) provides that where the breach lasted less than 12 months, the relevant income will be that earned by the individual in the 12 months preceding the end of the breach. Relevant income is calculated based on the gross amount of all benefits received (including salary, bonus and share options) by the individual from the employment in connection with the occurrence of the breach and for the period of the breach.

6.22. Mr Lee's remuneration for the year ending 31 December 2016 was USD 555,000, which equated to £426,202³. He did not receive a bonus. His relevant income should comprise the income earned in the 12 months up to 16 August 2016 (i.e. the end of the 2016 Relevant Period). This is calculated by taking the proportion of the total 2015 income covering the period from 16 August 2015 to 31 December 2015 and adding the proportion of the total 2016 income covering the period from 1 January 2016 to 15 August 2016. Mr Lee's relevant income is therefore £427,898.

Scale

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

Level of seriousness

6.24. 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

6.25. DEPP 6.5B.2G(8) sets out the factors relating to the impact of a breach. Of these, the Authority considers that a relevant factor is the adverse effect on markets. The information that Cathay provided to the Authority was materially different to the actual processes followed in 2015 and the Authority had to take further investigatory steps to uncover the true position in relation to Cathay's forecasts, and only uncovered the true position when Cathay was asked for contemporaneous evidence of its forecasts in 2015.

6.26. The provision of inaccurate information to the Authority undermines its ability to effectively monitor and regulate the integrity of the financial markets in the UK. Mr Lee, who reviewed the information before submission to the Authority and therefore was in a position to amend it, was aware that the information being provided to the Authority was not an accurate record of matters known either to the Board or the senior management of Cathay at the relevant times during 2015.

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

Nature of the breach

- 6.27. DEPP 6.5B.2G(9) sets out the factors relating to the nature of a breach. Of these, the Authority considers the following factors to be relevant to Mr Lee's knowing concern in the breach:
- (a) the nature of the rules breached by Cathay. The listing regime relies on companies being open and co-operative with the Authority, and Listing Principle 2 is fundamental to the effective functioning of the listing regime;
 - (b) the frequency of the breach. Cathay provided inaccurate information on two occasions during the 2016 Relevant Period; and
 - (c) whether the individual held a senior position. Mr Lee held a senior position within Cathay as its CEO.
- 6.28. DEPP 6.5B.2G(12) sets out the factors which are likely to be considered 'level 4 factors' or 'level 5 factors'. The Authority does not consider any of these factors relevant; in particular the Authority has not seen any evidence showing that the breach was committed either deliberately or recklessly. While Mr Lee knew that the information provided did not correspond to the Authority's requests, he did not foresee the likely or actual consequences of his actions; namely, that by providing no explanation, the information may have appeared to the Authority to have been responsive to its requests.
- 6.29. DEPP 6.5B.2G(13) sets out the factors which are likely to be considered 'level 1 factors', 'level 2 factors' or 'level 3 factors'. Of these, the Authority considers the following factors to be relevant to the breach:
- (a) no profits were made or losses avoided by either Cathay or Mr Lee as a result of the breach, either directly or indirectly; and
 - (b) there was no loss to consumers, investors or other market users.
- 6.30. The Authority considers the seriousness of Mr Lee's knowing concern in the breach to be level 3. The calculation is therefore 20% of £427,898, which is £85,580.
- 6.31. The Step 2 figure is therefore £85,580.

Step 3 – mitigating and aggravating factors

- 6.32. Pursuant to DEPP 6.5B.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2 to take into account factors which aggravate or mitigate the breach.
- 6.33. The Authority has taken into account Cathay's (including Mr Lee's) co-operation in waiving privilege over the legal advice Cathay received on 3 December 2015, and that it later provided corrected information about the 15 April 2016 letter, and an apology. However, the Authority does not consider that those matters provide sufficient mitigation to warrant a reduction in the financial penalty.
- 6.34. The Authority does not consider there to be any factors which aggravated Mr Lee's knowing concern in the breach and there should be no adjustment to the Step 2 figure.
- 6.35. The Step 3 figure is therefore £85,580.

Step 4 – adjustment for deterrence

- 6.36. Pursuant to DEPP 6.5B.4G, if the Authority considers the figure arrived at after Step 3 to be insufficient to deter the individual who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.
- 6.37. The Authority considers that the Step 3 figure of £85,580 represents a sufficient deterrent to Mr Lee, and so has not increased the penalty at Step 4.
- 6.38. The Step 4 figure is therefore £85,580.

Step 5 – settlement discount

- 6.39. No settlement discount is applicable. The Step 5 figure is therefore £85,500 (rounded down to the nearest £100).

7. REPRESENTATIONS

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

8. PROCEDURAL MATTERS

8.1. The following paragraphs are important.

Decision maker

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

8.3. This Notice is given under section 92 of the Act and in accordance with section 388 of the Act.

The Tribunal

8.4. Mr Lee has the right to refer the matter to which this Notice relates to the Tribunal. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Mr Lee has 28 days from the date on which this Notice is given to him to refer the matter to the Tribunal. A reference to the Tribunal is made by way of a signed reference notice (Form FTC3) filed with a copy of this Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL (tel: 020 7612 9730; email fs@hmcts.gsi.gov.uk). Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website:

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

8.5. A copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as filing a reference with the Tribunal. A copy of the reference notice should be sent to Stephen Robinson at the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN.

8.6. Once any referral is determined by the Tribunal and subject to that determination, or if the matter has not been referred to the Tribunal, the Authority will issue a Final Notice about the implementation of that decision.

Access to evidence

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

8.8. The person to whom this Notice is given has the right to access:

- (a) the material upon which the Authority has relied in deciding to give this Notice; and
- (b) the secondary material which, in the opinion of the Authority, might undermine that decision.

Confidentiality and publicity

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

Authority contacts

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

Graham Collett, Manager, on behalf of

**John A. Hull
Deputy Chair, Regulatory Decisions Committee**

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS

The statutory and regulatory provisions set out below are the versions that were in force in the 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(1) of the Act:

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

(a) an issuer of listed securities, or

(b) an applicant for listing,

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

1.4. Section 91(2) of the Act:

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

2. RELEVANT REGULATORY PROVISIONS

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

Disclosure Rules and Transparency Rules

2.2. **DTR 2.2.1R:** *"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".*

2.3. **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; and

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

- 2.4. **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”.*

Listing Principles

- 2.5. **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”.*
- 2.6. **Listing Principle 2:** *“A listed company must deal with the Authority in an open and co-operative manner”.*
- 2.7. **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”.*

ANNEX B
REPRESENTATIONS

1. Mr Lee'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.

Mr Lee was not knowingly concerned in any breach because he lacked the relevant involvement

10. *Where, as here, the alleged breach of Listing Principle 1 consists of a failure to act, knowing concern can only be established if the individual had specific responsibility for the procedures, systems or controls in question. Mr Lee did not. His ultimate responsibility, as Cathay's CEO, for ensuring effective procedures, systems and controls is insufficient.*
11. *In any event, Mr Lee did not have actual authority independently of the Board to change Cathay's procedure, systems or controls. The Authority says Cathay should have developed a contingency procedure for circumstances in which Lansen did not provide data for the projection process, and prepared forecasts more frequently than twice annually, so as to enable it to compare its performance against market expectations in the period September to November 2015. These matters would not have been "business as usual" (and concerned forecasting which was already a Board matter) and so would have required full Board approval.*
12. While it is necessary to demonstrate some involvement by Mr Lee in Cathay's breach in order to establish knowing concern on his part, it is not necessary to demonstrate that he had specific responsibility for the procedures, systems and controls in question. However, Mr Lee accepted in his pre-interview questionnaire and his interview with the Authority that he was responsible for managing the day-to-day business activities of Cathay, which included ensuring that effective internal controls and management information systems were in place. As a hands-on CEO, the Authority considers there is no reason to believe that Mr Lee would have faced

any, or any material, impediment in implementing the necessary changes independently of the Board. There is also no evidence that he sought the Board's approval for any such changes.

If Mr Lee was knowingly concerned in a breach by Cathay of Listing Principle 1, his knowing concern was not reckless

13. *A finding of recklessness would require Mr Lee to have been specifically aware of a risk that Cathay's 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.*
14. *Mr Lee was not aware of any risk that Cathay's systems and controls were inadequate. Cathay was never advised that they were inadequate, or potentially so, and nor was there any suggestion from which this could have been inferred.*
15. *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 4.27 of this Notice. It did not concern, reveal or put Mr Lee 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 Mr Lee must have appreciated that its systems and controls were inadequate.*
16. The Authority accepts that a finding of recklessness requires Mr Lee to have been aware of a risk that Cathay's procedures, systems and controls were inadequate, and nevertheless to have failed to mitigate that risk by putting in place proper systems and controls in place knowing of, 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 (or that Mr Lee was aware of any such advice).
17. The Authority considers that it must have been clear to Mr Lee, including from the advice received from N+1 between 25 and 28 August 2015 (summarised at paragraphs 4.26 to 4.29 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. Mr Lee appreciated the risk that his 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 ensure that

Cathay carried out the monitoring, or took other appropriate actions, Mr Lee failed adequately to mitigate that risk and he 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

18. *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.*
19. *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.*
20. *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.*
21. *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.

22. *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.*

23. 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.

24. 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.

25. 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.
26. 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.
27. As set out in paragraphs 4.47 and 5.23 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 22 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.

Mr Lee was not knowingly concerned in any breach because he lacked the relevant knowledge and involvement

28. *In order to establish knowing concern on the part of Mr Lee in a contravention by Cathay of the Authority's rules, the Authority must establish that he (a) knew the facts that made the act complained of a contravention, and (b) was involved in the contravention.*
29. *If Cathay did possess inside information between 6 and 18 December 2015, Mr Lee was not aware of this, so cannot have been knowingly concerned in any breach by Cathay of DTR 2.2.1 and Listing Principle 6. Because of the prospect of Fillderm sales, the arguments against there being inside information during this period were reasonable and credible.*
30. *Further, he had no actual involvement in any delayed disclosure of any inside information. Mr Lee was not directly responsible for drafting the trading update or liaising with advisers, but fulfilled his duties in relation to discussion of the projections and advice by Cathay's Board, drafting the update and engagement with N+1 on the detail of the projections and the wording of the update. His authority as CEO of Cathay did not extend to taking decisions which were not "business as usual", which would be escalated to the Board.*
31. Mr Lee had seen N+1's written advice of 27 November 2015 as to Cathay's disclosure obligations and the risk of breach, and this advice was robustly repeated in his telephone conversation with N+1 on 2 December 2015. He also saw Cathay's lawyers' advice of 3 December 2015. He was aware from 6 December 2015 of the forecast 56% deviation in Cathay's loss after tax from market expectations as set in N+1's analyst note. For the reasons set out above the Authority does not accept that Mr Lee had, either from 6 or 10 December 2015, a sufficiently certain expectation of Lanser achieving Fillderm stocking orders before year end in such volumes as appropriately to displace the need for a market update. There is no contemporaneous record of this conclusion having been reached by Mr Lee or even discussed by him. The Authority considers, therefore, that from 6 December 2015 Mr Lee possessed sufficient information to be aware that Cathay held inside information, and was obliged to make an announcement.

32. The Authority considers the evidence demonstrates that Mr Lee was a “hands-on” CEO and that he was in charge of Cathay’s day-to-day management. As such, and being aware of the obligation to disclose inside information as soon as possible, he was at fault in not ensuring that an announcement was issued promptly. The Authority does not accept that Mr Lee did not have individual authority to direct that an announcement should be made and that consent was required from Cathay’s Board (the Authority notes that this would be contrary to the guidance contained in the Authority’s technical note with which he was provided on 3 December 2015). However, even if this were the case, Mr Lee could have convened a Board meeting to approve the issue of an announcement, on 6 December or soon thereafter (and, indeed, the Board met on 10 December 2015 but did not have a draft announcement to consider). As Mr Lee was aware, the Board was quorate with only two directors and therefore he could have authorised the release of an announcement with the agreement of only one other director. The Authority therefore considers that Mr Lee was involved in the delay in issuing the trading update.

If Mr Lee was knowingly concerned in a breach by Cathay of DTR 2.2.1R or Premium Listing Principle 6, his knowing concern was not reckless

33. *Mr Lee had a genuine and reasonable belief in the prospect of a Fillderm stocking order until 18 December 2015. Even if his assessment of whether Cathay had inside information before that date was wrong, he 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.*

34. *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 Mr Lee had behaved recklessly in relation to a potential announcement, N+1 would inevitably have identified this and given strong advice, but it did not.*

35. *During the period from 6 December 2015 to the release of the trading update, Cathay and Mr Lee took reasonable steps to consider its forecasts, draft a trading update in case one was to be necessary and discuss the advice it received.*
36. For the reasons set out above, the Authority does not accept that Mr Lee did have a sufficiently certain belief that a Fillderm stocking order would be made that Cathay could have appropriately decided that a market update was unnecessary. It considers that Mr Lee was well aware, including from the advice Cathay 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, Mr Lee was in possession of all the information he needed to conclude that Cathay 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. Mr Lee acted recklessly in not taking steps to ensure Cathay made 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.
37. The Authority does not consider that Mr Lee was relying on the statement by N+1 referred to in paragraph 34 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 Mr Lee having taken particular note of it at the time, or discussed with Cathay's advisers at any point after 10 December 2015 that Cathay 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 Mr Lee 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.
38. The Authority considers that, during the period from 6 December 2015 until the release of the trading update, Mr Lee did not take steps to ensure Cathay worked quickly towards disclosure of the inside information. Rather, Cathay acted with unnecessary and inappropriate delay. In particular:

- (a) After receiving the consolidated forecast figure on 6 December 2015, it 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

- 39. *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.*
- 40. *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.*
- 41. *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.

42. Mr Lee expressed himself in strong terms when, in the call with N+1 on 2 December 2015, he expressed the view that Cathay could choose when to issue a trading update and that he 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 Cathay's lawyers that Cathay could not choreograph or co-ordinate announcements, it is unsurprising that Mr Lee did not expressly repeat his suggestion that the two announcements could be co-ordinated.
43. 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 Mr Lee's wish to co-ordinate Cathay's announcements 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 38 above, the Authority does not consider that Mr Lee took steps to ensure that Cathay worked as quickly as possible towards the drafting and release of an announcement; rather, Cathay delayed unnecessarily and inappropriately during the period 6 to 29 December 2015.
44. 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

45. *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.

46. *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.*

47. *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.*

48. *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.

49. Further, the request by the Authority in its letter of 2 March 2016 was clear in requesting figures sourced from projections "as they were at the time" along with any updated projections, indicating when those were made. This was a clear request to provide contemporaneous figures from actual projection exercises, and it was clear from the Authority's letter that it needed the information in order to understand how Cathay was able to monitor its financial performance against market expectations. The figures set out in Cathay's letter of 15 April 2016 did not reflect actual projection exercises as they were at the time, but the letter suggested (in several places) that they did. Further, if Cathay considered it would have been misleading to provide the Authority with only the written material (or figures from written material) because it would not have accurately reflected Cathay's view of Lansen's anticipated performance, it could and should have explained this in its letter.

50. In fact, however, the Authority considers that the data in the letter of 15 April 2016 does not accurately represent the information considered by the Board at the time. For example, certain figures that were said by Cathay to have been considered by the Board in August 2015 were from September 2015 and thus did not exist, and could not have been considered by the Board, when they were said to have been so considered.

Procedural unfairness

51. *The Authority did not ask Mr Lee in interview about his state of mind when preparing and approving the letters in 2016. The topic of these communications was covered extremely briefly and it is clear from the interview transcripts that he was answering questions put to him in his capacity as a representative of Cathay rather than as an individual with reference to his own awareness of the facts contained in the letters. It is unfair for the Authority to pursue a case of knowing concern against Mr Lee without having asked basic relevant questions at interview and thereby allowing him the opportunity to put forward evidence on his behalf.*

52. The Authority considers that Mr Lee has had ample opportunity to put forward evidence on his own behalf. He has done so, both before the issue of the Warning Notice to him on 18 December 2018 and afterwards (in his written and oral

representations summarised here). The Authority does not consider Mr Lee has suffered any procedural unfairness.

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

53. *In the context of a potential Listing Principle 2 breach founded on the allegation that the company has provided an inaccurate or incomplete response to an Authority request, for there to be knowing concern there must be actual awareness on the part of the director, at the time of the relevant communication, of the facts that render it inaccurate, incomplete or misleading.*

54. *Mr Lee did not analyse the figures in Cathay's letter of 15 April 2016 to the Authority in detail and did not have in his mind, at the time he approved the correspondence, that the projection data shown included data based on the new product budgets had not been included in the written material put to the Cathay Board in August and December 2015. Without this subjective awareness at the time of approving the letter, Mr Lee cannot have liability for knowing concern in the alleged breach of Listing Principle 2.*

55. *Furthermore, Mr Lee was involved in steps taken to share drafts of the correspondence with advisers, demonstrating an intention to be open and to ensure that the Authority had the information it required.*

56. The Authority notes that Mr Lee's representations only address the question of the figures included in Cathay's letter of 15 April 2016, but (as set out above) the Authority's concerns are wider than that. Cathay's letter of 29 February 2016 incorrectly stated that it prepared twice-yearly projections and additional projections when it was not performing in line with the management's expectations or market expectations, and this was substantially repeated in the letter of 15 April 2016. The letters thereby implied that Cathay's procedures, systems and controls were better than was in fact the case. Mr Lee has not disputed that he understood what was being requested or that the statement in the letters was incorrect, and the Authority considers there to be sufficient evidence that he knew that in the 2015 Relevant Period Cathay only created twice-yearly forecasts.

57. In relation to the figures in the letter of 15 April 2016, the Authority notes that Mr Lee has not disputed that he understood that the Authority wanted projection figures sourced from contemporaneous projection exercises (and that is what the letter purported to provide). Although he states that he did not have in his mind

when approving the letter that the Lansen projection data had not been included in the material provided to the Cathay Board in April and December 2015, in July/August 2015 he was well aware, both as CEO of Cathay and as Vice-Chairman of Lansen, that Lansen had not produced an interim forecast. In December 2015, he had personally enquired of Lansen about the basis of the forecasts and their lack of any substantial revenue from new product sales. The Authority considers it most unlikely that he would have forgotten these significant matters when reviewing the letter of 15 April 2016 only a few months later, especially given the importance of the correspondence with the Authority, and considers that he would have been aware of these matters when considering the letter. Further, in his interview with the Authority, Mr Lee stated that, in the letter, Cathay was "*trying to reflect the mindset of how we felt at that point... we should have explained it*". This explanation is inconsistent with his representations.

Financial penalty

Only level 2 would be appropriate

58. *Mr Lee disputes that he has acted recklessly. To the extent that he has been knowingly concerned in any breach by Cathay, the seriousness of the breach is no more than level 2.*
59. For the reasons set out above, the Authority considers that Mr Lee did act recklessly in his knowing concern in Cathay's breaches during the 2015 Relevant Period and that the seriousness of his knowing concern is level 4. Mr Lee has not provided any separate representations as to why the seriousness of his knowing concern in Cathay's breach of Listing Principle 2 should be no more than level 2, and the Authority refers to its reasoning for the conclusion that it is level 3, which is set out at paragraphs 6.24 to 6.29 of this Notice.