FINAL NOTICE

To: **Mr Cheick Tidjane Thiam**

IRN: **CTT01007**

Dated: **27 March 2013**

TAKE NOTICE: The FSA of 25 The North Colonnade, Canary Wharf, London E14 5HS gives you final notice that it has taken the following action:

1. ACTION

1.1. For the reasons set out in this notice and pursuant to section 66 of the Act, the FSA has decided to publish a statement that Mr Thiam was knowingly concerned in a contravention by Prudential Assurance Company Limited of Principle 11 of the FSA's Principles for Businesses (Relations with regulators).

1.2. Following written and oral representations, the FSA issued a decision notice to Mr Thiam which notified him that it had decided to take the above action. Mr Thiam referred the matter to the Tribunal but has withdrawn his reference.

2. REASONS FOR THE ACTION

2.1. On Monday 1 March 2010, Prudential announced its intention to acquire AIA, a wholly owned subsidiary company of AIG. The original consideration proposed

was $35.5 billion, including $20 billion cash, to be funded via a rights issue. Given AIA's size, the transaction would have been transformative for Prudential. The proposed rights issue was planned to raise £14.5 billion, would have been the biggest ever in the UK. Subsequently, facing significant doubts about the extent to which it had secured the requisite shareholder support, Prudential sought to renegotiate the terms of the transaction. AIG refused to take a lower price, and on 3 June 2010, Prudential withdrew from the deal, shortly before its shareholders were due to vote on the proposed rights issue.

2.2. Supervision has supervisory responsibilities for Prudential's UK regulated subsidiaries. In addition, Prudential, though not itself authorised by the FSA, is a controller of FSA-authorised entities and is an Insurance Holding Company for the purposes of supplementary supervision under the IGD. Supervision is responsible under the IGD for undertaking supplementary supervision of PAC, and is also lead global supervisor for the Prudential Group, responsible for coordinating supervisory college activities and information sharing amongst international regulators. Therefore Supervision's role included responsibility for understanding the Group's solvency, risk profile, intra-Group exposures and transactional issues, and liaising with overseas regulators. Where it is necessary to require the Prudential Group to take action, the FSA imposes requirements on PAC.

2.3. PAC failed to inform the FSA that Prudential was seeking to acquire AIA from AIG in early 2010, until after the proposed transaction had been leaked to the media on 27 February 2010. Accordingly, PAC breached Principle 11 by failing to deal with the FSA in an open and co-operative way and by failing to disclose appropriately information of which the FSA would reasonably expect notice. In particular, PAC failed to:

(1) discuss with the FSA, at the earliest opportunity (and by 11 February 2010 at the latest) the proposed transaction which could have led to the change in corporate controller of PAC; and

(2) disclose the proposed transaction at the meeting with Supervision on 12 February 2010. The express purpose of that meeting was to discuss the Prudential Group's strategy. At the meeting, the FSA asked detailed questions about Prudential's strategy for growth in the Asian market and its plans for raising equity and debt capital. Mr Thiam, the Chief Executive of Prudential, discussed the strategy for expansion in Asia at length, but neither he nor the other Prudential representatives present mentioned the proposed acquisition. At all material times, Mr Thiam was also the Chairman of PAC and an approved person holding Controlled Function 1 at PAC.

2.4. Mr Thiam was knowingly concerned in PAC's failure to deal with the FSA in an open and co-operative manner and for failing to disclose appropriately information of which the FSA would reasonably expect notice when Prudential

was seeking to acquire AIA from AIG in early 2010. Mr Thiam was at all material times Chairman of PAC and an approved person, holding Controlled Function 1 at PAC.

2.5. PAC should have informed the FSA about Prudential's proposed acquisition of AIA well before 27 February 2010. Mr Thiam played a significant role in the decision not to contact the FSA about the proposed acquisition until after it had been leaked to the media on 27 February 2010.

2.6. The FSA expects to have an open and frank relationship with the firms it supervises. It is essential that firms give due consideration to their regulatory obligations at all times. In particular, timely and proactive communication with the FSA is of fundamental importance to the functioning of the regulatory system.

2.7. The failure to inform the FSA was significant because it resulted in the FSA having to consider highly complex issues within a compressed timescale. The failure to inform the FSA narrowed the FSA's options in scrutinising the transaction and hampered the FSA's ability to assist overseas regulators with their enquiries in relation to the transaction.

3. DEFINITIONS

3.1. The following definitions are used in this notice:

"the Act"	means the Financial Services and Markets Act 2000.
"AIA"	means AIA Group Limited.
"AIG"	means American International Group Incorporated.
"Credit Suisse"	means Credit Suisse Securities (Europe) Limited, who were appointed by Prudential to act as lead Sponsor. This required Credit Suisse to advise Prudential in relation to compliance with the FSA's Listing Rules, including interaction with the UKLA. Credit Suisse was authorised by the FSA to act in that capacity. Credit Suisse had no mandate or duty to advise PAC in relation to its obligations as an FSA authorised firm.
"DEPP"	means the FSA's Decision Procedure and Penalties Manual.
"EG"	means the FSA's Enforcement Guide.
"the FSA"	means the Financial Services Authority.
"IPO"	means Initial Public Offering.

"Newco"	means a newly incorporated holding company.
"PAC"	means The Prudential Assurance Company Limited.
"Principle 11"	means Principle 11 of the FSA's Principles for Businesses (Relations with regulators).
"Prudential"	means Prudential plc, a FTSE 100 UK listed company and one of the UK's largest insurance companies. At the end of February 2010 it had a market capitalisation of £15.2 billion.
"Prudential Group"	means Prudential and the group of companies of which Prudential was the parent company.
"the SPA"	means the Share Purchase Agreement relating to the sale and purchase of all of the issued share capital of AIA Group Limited between AIA Aurora LLC, American International Group Inc, Petrohue (UK) Investments Limited and Prudential agreed on 1 March 2010 including previous drafts.
"Supervision"	means the Insurance Division of the FSA who supervised the Prudential Group through PAC.
"the Tribunal"	means the Upper Tribunal (Tax and Chancery Chamber).
"the UKLA"	means the United Kingdom Listing Authority. The FSA when acting as the competent authority under Part VI of the Act, is referred to as the UKLA. The UKLA has responsibility for monitoring and enforcing compliance with the UKLA Listing Rules.
"the US Treasury"	means the United States Department of the Treasury.

4. FACTS AND MATTERS

Mr Thiam

4.1. Mr Thiam joined Prudential in March 2008 as Chief Financial Officer. In September 2009, he became Prudential Group Chief Executive. Mr Thiam was at all material times Chairman of PAC. He is an approved person, holding Controlled Function 1 at PAC.

The transaction

4.2. Prudential announced its intention to acquire AIA, a wholly owned subsidiary company of AIG, on Monday 1 March 2010. The original consideration was $35.5 billion, including $20 billion cash, to be funded via a rights issue. Given AIA's size, the transaction would have been transformative for Prudential. The proposed rights issue (planned to raise £14.5 billion) would have been the biggest ever in the UK.

4.3. Subsequently, facing significant doubts about the extent to which they had secured the requisite shareholder support, Prudential sought to renegotiate the terms of the transaction. AIG refused to take a lower price, and on 3 June 2010, Prudential withdrew from the deal, shortly before its shareholders were due to vote on the proposed rights issue.

Early stages of the transaction

4.4. During 2009, AIG began preparations to dispose of AIA by way of an IPO or third party sale. The disposal was to take place as part of a restructuring programme, intended to enable AIG to repay the governmental financial assistance it had received during the liquidity crisis of 2008.

4.5. In October 2009, Prudential set up an insider list regarding a possible purchase of AIA, to which Prudential's non-executive directors were added on 5 November 2009. In December 2009 the CEO of AIG asked the Chief Executive of Prudential, Mr Thiam, whether it would be interested in putting forward an offer for AIA. This led to formal discussions between the two parties, and the commencement of due diligence in early January 2010. The parties signed a confidentiality agreement on 12 January 2010.

4.6. The directors of Prudential, including Mr Thiam, met on 31 January 2010 to be briefed on the proposed transaction by Credit Suisse. There was a consensus between the directors of Prudential at this meeting that:

(1) a leak was the key risk to the transaction;

(2) the FSA was one of a number of parties which might be the cause of a leak; and

(3) Prudential wished to fulfil their obligations to inform the FSA in such a way that leak risk was kept to a minimum.

4.7. Prudential and Mr Thiam remained highly sensitive to the possibility of a leak of the proposed transaction during February 2010. This materially influenced their judgment about when to inform the FSA.

4.8. On 1 February 2010, Prudential was advised by Credit Suisse of the need to inform the FSA of the proposed transaction well in advance of its execution. At that stage, with an announcement timetabled for 15 February 2010, Credit Suisse's advice was to approach the FSA by 3 February 2010. Credit Suisse's advice around early contact with the FSA was reflected in timetables repeatedly prepared and provided to Prudential in the weeks leading up to the announcement of the transaction.

4.9. As of 1 February 2010, Prudential considered that the transaction's prospects at this stage lacked sufficient certainty, such that an approach to the FSA would be premature.

Leak strategy and the decision to approach FSA

4.10. In early February 2010, Mr Thiam decided that if there were to be a leak Prudential would, in order to protect the share price and avoid any chance of a protracted suspension, abandon the deal and issue a 'no discussions' announcement. Mr Thiam understood that as and when it adopted a 'discussions happening' announcement strategy that would necessitate informing the FSA.

4.11. In this case, the reason why a change in leak strategy from 'no discussions' to 'discussions happening' would necessitate an approach to the FSA was that a willingness to admit and continue discussions in the face of a leak would serve as a strong indicator that Prudential was in serious, advanced discussions which it regarded as likely to come to fruition.

4.12. At a Prudential Board meeting on 3 February 2010, the Prudential Board considered a timetable which identified 17 February 2010 as the date on which the FSA was to be informed of the proposed transaction. Additionally, the minutes of the meeting state the Prudential Board's intention that, *"[w]ith an announcement date of 26 February [2010] currently being targeted, a further Board meeting would be scheduled for 17 February [2010]. The intention was that the Board should have sufficient information at that stage to be able to confirm, should a talks announcement be required, its interest in proceeding."*

4.13. The minutes of Prudential's Board meeting of 3 February 2010 suggest that the prospects of a deal between Prudential and AIG had improved markedly by this stage, owing to the fact that, among other reasons, *"[i]t was becoming increasingly clear that the AIA IPO was running into difficulties, which gave Prudential a strong negotiating hand"*.

Development of the transaction

4.14. On 5 February 2010, Mr Thiam and the then Chairman of Prudential held a meeting in London with the CEO of AIG and gave him a letter signed by Mr Thiam that had been approved by the Prudential Board which set out a detailed indicative non-binding proposal. The letter set out, among other things: a preliminary price range of $30-34 billion in the absence of up to date financial information; a proposed debt and equity financing structure; a proposed transaction structure in which Prudential and AIA would be acquired by a Newco; and a proposed timetable according to which the transaction would be announced on 26 February 2010.

4.15. By 8 February 2010, timetables prepared by Credit Suisse and provided to Prudential reflected that the announcement date was now scheduled for 26 February 2010. The approach to the FSA was nevertheless scheduled to take place on 15 February 2010, thereby permitting 11 days' advance notice.

4.16. On 9 February 2010, Mr Thiam and the then Chairman of Prudential travelled to Washington to meet with the US Treasury and AIG. Mr Thiam reported to the Prudential Board on 11 February 2010 that:

(1) the US Treasury, which controlled 80% of AIG's shares, and which the Prudential Board thought would be 'very influential' in the final decision were 'much more supportive' than previously; and

(2) the AIG special committee, which was managing the process and which had previously been hostile to the Prudential bid and favoured the IPO, had voted to keep negotiations ongoing. The AIG special committee recognised that a sale to the Prudential would be 'an attractive option' (although it was still supportive of the IPO); and

(3) the Prudential Board meeting initially scheduled for 17 February 2010 was cancelled as progress had been "at a slower pace than initially expected". (The meeting was however reinstated shortly afterwards and did take place.)

4.17. By 12 February 2010, negotiations had progressed sufficiently for Prudential to send a revised indicative non-binding proposal to AIG. A key revision to the proposal was the inclusion of a specific price of $35.5 billion, albeit that the proposal remained subject to a number of caveats, including some relating to the provision of financial information.

4.18. Also on 12 February 2010, Mr Thiam and another director of Prudential and PAC met with Supervision. The meeting was one of a series of regular meetings in the supervisory process, and was the annual meeting focused on allowing Supervision to gain an understanding of the Prudential Group's strategy. The FSA asked detailed questions about Prudential's strategy for growth in the Asian market and

its intentions to raise equity and debt capital, but Prudential did not disclose the proposed acquisition of AIA, the potential change in control that was in prospect, or the rights issue and debt issuance that were proposed to fund the acquisition.

4.19. On 15 February 2010 AIG provided a draft of the SPA to Prudential.

4.20. The progress of the transaction was reported to the Prudential Board at a meeting of 17 February 2010 as follows:

(1) the US Treasury had recognised Prudential as a "credible buyer";

(2) AIG's Special Committee had agreed to take Prudential's proposal to the AIG Board;

(3) the AIG Board had asked for the CEO of AIA to be informed of the proposal;

(4) a draft SPA was being negotiated between the parties; and

(5) Prudential's largest shareholder had agreed to be made an insider to the transaction (meaning that it could not trade in Prudential's shares until the transaction had been announced or abandoned). The shareholder had been informed of the details of the transaction and had indicated its support.

Change in leak strategy

4.21. At the same meeting, Mr Thiam reported to the Prudential Board that the CEO of AIG had agreed with Mr Thiam that in the event of a leak, a 'discussions happening' announcement would be issued confirming that the parties were in talks around the transaction. The Prudential Board agreed that the transaction was sufficiently advanced whereby, if necessary, Prudential would confirm that discussions with AIG were ongoing.

Events leading up to the approach to the FSA

4.22. Work around the transaction continued to progress, and Mr Thiam, with the knowledge and approval of the Prudential Board, met with the CEO of AIA on 19 and 21 February 2010. During that period, the CEO of AIG confirmed to Mr Thiam that he favoured Prudential's bid over the IPO. Additionally, AIG imposed on Prudential a deadline of 25 February 2010 for agreement of the SPA.

4.23. On 23 February 2010, Prudential considered a timetable which scheduled an approach to the FSA to take place on 24 February 2010. During the meeting, it was agreed that that approach should be postponed to 26 February 2010, to coincide with the timing of the AIG Board's decision whether to accept Prudential's offer in place of an IPO.

4.24. The Prudential Board met on 24 February 2010. The minutes of the meeting record that, *"…the due diligence work continued with good progress being made and no 'showstoppers' have been identified. Further progress had been made on the SPA"*.

4.25. The timetable which the Prudential Board considered at the meeting on 24 February 2010 scheduled the approach to the FSA to take place on 26 February 2010.

4.26. On 25 February 2010, Mr Thiam sent a letter that had been approved by the Prudential Board to his counterpart at AIG, reconfirming the previous price proposal of $35.5 billion. Mr Thiam also set out the progress that had been made in respect of the transaction, including:

(1) "*Substantial progress towards agreeing an SPA … we are confident that this brings us meaningfully closer to an announceable transaction*";

(2) "*The draft SPA contains only necessary conditions … we believe that these … will be seen as representing a low risk to consummation of the transaction*";

(3) "*We have now been able to consult with our two top shareholders, representing together in excess of 16% of our share register, who have both expressed support for the proposed transaction. Our willingness to approach them should be an indication to you of the seriousness and determination with which we approach this transaction*";

(4) "*With respect to financing … we expect to be able tomorrow to provide you with agreed drafts of the definitive underwriting commitments that will be signed at the time we sign the sale and purchase agreement*."

4.27. A timetable accompanying the correspondence to AIG proposed the execution of the SPA on 1 March 2010, with an announcement of the transaction on 2 March 2010.

4.28. The same timetable was included in a document prepared by Credit Suisse on the morning of 26 February 2010. That document scheduled the approach to the FSA to take place on 1 March 2010. The SPA was timetabled to be signed on the same day, with announcement of the transaction to take place on 2 March 2010.

4.29. During the evening of 26 February 2010, it became apparent to Prudential that a leak of the deal was likely. Notwithstanding this, no approach was made to the FSA.

4.30. On the morning of 27 February 2010, a report of a rumour about the transaction was published in the media. Prudential informed the FSA in the afternoon.

4.31. In the morning of Sunday 28 February 2010 Prudential was informed that the AIG Board had agreed to enter into a transaction with Prudential for the sale of AIA.

The announcement of the transaction

4.32. The SPA had not been signed by the start of trading on 1 March 2010, and a holding announcement was issued at 7:52am. Prudential's shares were temporarily suspended until the SPA was signed and the full transaction announcement was issued.

4.33. The holding statement issued by Prudential included the following:

'The company confirms it is not currently contemplating the implementation of such a combination through a structure that would be classified as a reverse takeover under the Listing Rules of the UK Listing Authority and intends that any combination, if agreed, would be effected through a new holding company.'

4.34. The full transaction announcement was issued at 10:09am, following which the suspension was lifted. The summary at the start of the announcement contained the following statement:

"*The transaction will be effected through the acquisition of both Prudential (by way of a scheme of arrangement, "the scheme") and AIA by a new company (New Prudential).*"

Supervisory issues and the end of the proposed transaction

4.35. Numerous supervisory issues arose out of the transaction announced by Prudential, completion of which was conditional on regulatory approval. Those issues therefore had to be considered over the weeks following the announcement.. In particular, Supervision had to consider the size and complexity of the transaction, its transformative nature for group strategy, the solvency and risk profile of the proposed enlarged group, the proposed internal controls, and the geographic scope of the deal (including the legitimate interests of overseas authorities). It was therefore agreed that Prudential would not publish its rights issue prospectus until it had received confirmation that the FSA would not be minded to object to the transfer on supervisory grounds.

4.36. In the event, by 5 May 2010 (the date scheduled for publication of the prospectus), Prudential was unable to satisfy Supervision that the enlarged group would have a sufficiently resilient financial position, including whether it would have a robust regulatory capital position and whether regulatory capital surpluses held in certain jurisdictions could be applied to meet potential capital demands which might arise in other areas of the group. As a consequence, Prudential was unable to publish its prospectus by the scheduled date. The delay contributed to

the considerable speculation surrounding the deal. The prospectus was ultimately published on 18 May 2010.

4.37. On 1 June 2010, Prudential issued an announcement to the market, noting a prior announcement by AIG to the effect that it would not consider a revision of the terms of the sale of AIA. Prudential's announcement explained that it had proposed revised terms that would have reduced the price of acquiring AIA to $30.375 billion. On 3 June 2010, Prudential announced the termination of its agreement with AIG in respect of the transaction.

5. REGULATORY PROVISIONS AND GUIDANCE

5.1. The regulatory provisions and guidance relevant to this notice are set out in the Appendix.

6. REPRESENTATIONS AND FINDINGS

6.1. Below is a brief summary of the key written and oral representations made by Mr Thiam and how they have been dealt with. In making the decision which gave rise to the obligation to give this notice, the FSA has taken into account all of Mr Thiam's representations, whether or not set out below.

6.2. PAC made separate representations that it had not breached Principle 11. The FSA's summary of PAC's key written and oral representations (and how they have been dealt with) is set out in PAC's notice dated 22 March 2013. Mr Thiam stated that he endorsed and adopted all PAC's representations that it had not breached Principle 11 and if the case against PAC failed, there would be no case for Mr Thiam to answer. Accordingly, Mr Thiam's representations herein relating to the allegation that he was "knowingly concerned" in PAC's breach of Principle 11 (and the FSA's findings in relation to the same) are made on the basis that the FSA has found that PAC contravened Principle 11 for the reasons set out in PAC's notice dated 22 March 2013.

6.3. Mr Thiam denied the allegation that he was knowingly concerned in PAC's breach of Principle 11. He made representations that this action against him is contrary to FSA policy and is not established by reference to his actions and the events which occurred. Mr Thiam asserted that the FSA has misunderstood and mis-stated the events which occurred. Mr Thiam also asserted that the proposed sanction is unprecedented and unwarranted.

The action against Mr Thiam is contrary to FSA policy

6.4. Mr Thiam submitted that he has a legitimate expectation that the FSA will adhere to its policies and public statements as to the circumstances in which its disciplinary powers could or might be exercised against him. The FSA's stated position is that it will not pursue approved persons for being "knowingly

concerned" in an authorised firm's breach unless it identifies behaviour/conduct on the part of that approved person which is "blameworthy" and "unreasonable" and "personal" to the individual in question in all the circumstances in which he found himself at the time. Mr Thiam therefore contended that the action against him (under section 66 of the Act) is contrary to the FSA's published guidance on when disciplinary action will be taken against an individual and is therefore unlawful. In particular, Mr Thiam contended that the FSA's action against him is contrary to policies set out in:

(1) DEPP and EG. Section 6 of DEPP sets out the FSA's policy with respect to the imposition of penalties against approved persons such as Mr Thiam. DEPP 6.2.4 provides (*inter alia*) that "... the FSA may take disciplinary action against an approved person where there is evidence of personal culpability on the part of that approved person. Personal culpability arises where the behaviour was deliberate or where the approved person's standard of behaviour was below that which would be reasonable in all the circumstances at the time of the conduct concerned". Mr Thiam contended that the adverb "personally" connotes that the individual has engaged in conduct differentiating him from others. Chapter 2 of EG provides further guidance as to the FSA's approach to exercising its disciplinary powers and confirms that "[t]he FSA will not pursue senior managers where there is no personal culpability" (EG 2.31); and

(2) the FSA's Board Report on the failure of the Royal Bank of Scotland dated December 2011 (the "RBS Report") and the Tribunal decision of *Pottage v FSA* [Reference FS/201/33] (the "Pottage decision"). Mr Thiam asserted that some of the clearest statements of the FSA's prevailing policies as to the exercise of its disciplinary powers against approved persons can be found in the RBS Report. Mr Thiam contended that the RBS Report provides that the FSA will only pursue individuals when in possession of "very strong evidence" of their "personal culpability". Personal culpability entails dishonesty, recklessness or incompetence and incompetence entails acting "unreasonably". Mr Thiam contended that the test for "unreasonable" conduct is straightforward and has been confirmed by the Tribunal in the Pottage decision. Further, it bears some resemblance to the test in *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582 at 587-588 (the "Bolam test") by which the common law judges professionals generally: a professional who acts in accordance with a practice accepted as proper by a responsible body of professional opinion is not treated as negligent "merely because there is a body of opinion which would take a contrary view". Accordingly, Mr Thiam contended that he could legitimately expect that he would not face disciplinary action if other credible persons in his position might have acted as he did or sanctioned his conduct as consistent with regulatory obligations. To put it another way, Mr Thiam should only find himself at risk of disciplinary action if his conduct

was “so obviously wrong at the time that it was clearly outside the bounds of reasonableness”.

6.5. The FSA has found that it accepts Mr Thiam’s submissions that he has a legitimate expectation that the FSA will adhere to its published policies as to the circumstances in which its disciplinary powers could or might be exercised against him. The FSA considers that the action against Mr Thiam is consistent with the FSA’s policy as to when it will take action against individuals. The FSA accepts that for it to take action against Mr Thiam he needs to have been personally culpable (i.e. his conduct fell below that which would be reasonable in all the circumstances at the relevant time). The FSA considers that the action against Mr Thiam is entirely consistent with its published guidance on when disciplinary action will be taken against an individual and is therefore lawful and appropriate. The FSA does not accept Mr Thiam’s representations that its action against him is contrary to its policies set out in:

(1) DEPP and EG. The FSA considers that the policies in both DEPP and EG provide that the FSA will take action against approved persons where there is evidence of personal culpability on their part, in that the behaviour was deliberate or the standard of behaviour was below that which would be reasonable in all the circumstances at the time of the conduct concerned (DEPP 6.2.4.G and EG 2.31). However, the FSA does not accept that the word “personally” connotes that Mr Thiam’s conduct has to be differentiated from that of others. The FSA considers that it is possible for more than one individual to be personally culpable for the same act or omission.

(2) the RBS Report and the Pottage decision. The RBS Report and the Pottage decision are not public statements of FSA policy. The FSA’s stated policy is found in DEPP and EG (as noted above). In any event, the FSA notes that the statements in the RBS Report are consistent with the guidance in DEPP and EG – namely that the FSA will pursue individuals where there is clear evidence of personal culpability. Further, the FSA considers that Mr Thiam’s submission that he should only find himself at risk of disciplinary action if his conduct was “so obviously wrong at the time that it was clearly outside the bounds of reasonableness” (supported by his reference to the Bolam test) is simply another way to express the need for personal culpability pursuant to DEPP 6.2.4G. The FSA accepts that the Pottage decision also confirms published FSA policy that requires an individual’s personal culpability be established before the FSA will pursue them.

Mr Thiam was not "personally culpable" for the conduct complained of

6.6. Mr Thiam made representations that he was not "personally culpable" for the conduct complained of by the FSA. Such an analysis necessarily involves issues of fact. Accordingly, Mr Thiam also made representations as to what he asserted is the correct factual matrix against which his personal culpability (if any) for the conduct complained of should be considered. The FSA's case to the contrary rests on a number of misconceptions as to the true factual position (including an incorrect understanding of decisions taken by Prudential's Board) and a failure to recognise the significance of other matters, such as:

(1) Mr Thiam's assessment as to the likelihood of the transaction proceeding. Mr Thiam asserted in interview with the FSA that he regarded the transaction as "highly unlikely, completely speculative … " until 28 February 2010. He contended that the FSA has failed to take account of the IPO's primacy (until a very late stage) in Mr Thiam's mind. That is, a high likelihood of the IPO meant a low likelihood of the transaction in Mr Thiam's mind. Mr Thiam submitted that his view as to the prospects of the transaction proceeding is relevant to a proper assessment of his conduct.

(2) the reasonableness of Mr Thiam's conduct in the course of PAC's meeting with Supervision on 12 February 2010. Mr Thiam asserted that the FSA's criticism of him for not disclosing the transaction to the FSA during the meeting with Supervision on 12 February 2010 overlooked the fact that: (1) Prudential and AIG were no longer working towards an announcement of the transaction on 26 February 2010 and were no longer working towards agreeing heads of terms on 17 February 2010; (2) the Prudential Board had collectively agreed an approach to bringing the regulator inside; and (3) Prudential's general interest in acquiring AIA was already well known to the FSA by reason of Prudential's failed bid for AIA in February 2009 which had been leaked to the press. In the circumstances, Mr Thiam contended that it would not be desirable for him to ride roughshod over his Board's decision in the manner required by the FSA. Notwithstanding the foregoing (and for completeness), Mr Thiam also asserted that a pre-scheduled meeting between PAC and the FSA could not and did not create an obligation of disclosure where otherwise none had arisen. Accordingly, Mr Thiam asserted that on no view was his conduct "so obviously wrong at the time that it was clearly outside the bounds of reasonableness".

(3) Mr Thiam's (and the Prudential Board's) consistent intention, that the FSA would be notified at the appropriate time, ahead of execution of the SPA. The assertion that Mr Thiam had a personal pre-occupation with the risk of leaks which blinded him as to his regulatory duty to the FSA has no basis in fact. It was always understood not to be a relevant factor in the decision as to when to approach the regulator. Mr Thiam submitted that it was only relevant to whether an earlier approach than was required should/would be

made. That is, it was only relevant in so far as Mr Thiam considered whether he should be more forthcoming in circumstances where he had no obligation.

(4) the collective decision of Prudential's Board, including Mr Thiam, that the FSA would be notified at the appropriate time, ahead of execution of the SPA. Mr Thiam submitted that the decision as to when to approach Supervision was never one for Mr Thiam alone and was discussed by the Prudential Board with advisers present on 31 January and 3 February and a consensus position was reached. Nothing occurred thereafter to render the decision outdated.

(5) the fact that Mr Thiam sought, obtained and acted on the advice of reputable experts. Mr Thiam submitted that as he sought, obtained and acted on the advice of reputable experts, on the face of it he should not be exposed to censure. In particular, Mr Thiam asserted that the absence of any advice from Prudential's sponsors that disclosure/notification to the regulator was required for regulatory reasons (as opposed to transactional reasons) must lie at the heart of any evaluation of whether disciplinary action against him is appropriate.

6.7. The FSA rejects Mr Thiam's representations that he was not "personally culpable" for the conduct complained of by the FSA. The contemporaneous evidence indicates that Mr Thiam was the individual most closely involved with the progress of the transaction. The FSA has considered Mr Thiam's assertions that the case against him rests on a number of misconceptions (including an incorrect understanding of decisions taken by Prudential's Board) and a failure to recognise the significance of other matters. The FSA has found that:

(1) it has not misunderstood the likelihood of the transaction or failed to give proper weight to the fact that an IPO was the established and favoured mechanism for disposing of AIA. The FSA considers that the likelihood of the transaction proceeding was only relevant to the extent that, when the transaction was in its very early stages, it may have been so speculative or so uncertain in its terms that no purpose would have been served by informing the FSA. However, the FSA notes that was not the position by 11 February 2010 (at the latest) when it was clear to Prudential that AIG was prepared to consider its offer. Further, although the FSA accepts that Mr Thiam's assessment of the likelihood of the transaction may have played a part in his conduct, the FSA considers that the likelihood of the transaction is simply one consideration that Mr Thiam should have borne in mind when considering his obligations as an approved person. Another equally important consideration is the impact of the transaction on the financial system. Mr Thiam was cognisant that the FSA could reasonably have expected to be informed of a transaction of this size, scale and transformational nature. Irrespective of whether the final outcome of the

then ongoing negotiations with AIG remained uncertain, Mr Thiam should have informed the FSA of the transaction by 11 February 2010 (at the latest). However, because he was highly sensitive to the possibility of a leak of the proposed transaction, his judgment about when to inform the FSA was materially influenced.

(2) Mr Thiam's assertion that the pre-scheduled strategy meeting between PAC and the FSA on 12 February 2010 could not and did not create an obligation of disclosure where otherwise none had arisen is misconceived. It is evident that PAC's obligations under Principle 11 can only properly be understood as part of the factual matrix which includes Mr Thiam's (and PAC's) meeting with Supervision. Such meetings are aimed at assisting the FSA in the discharge of its regulatory functions. Mr Thiam was the senior person representing PAC at the meeting and he acknowledged in interview that as at the date of the meeting with Supervision it was up to him (as opposed to the Prudential Board) to exercise his personal judgment as to whether or not to inform the FSA of the transaction. As already noted, Mr Thiam was cognisant that the FSA could reasonably have expected to be informed of a transaction of this size, scale and transformational nature. In those circumstances, it was unreasonable of him not to notify the FSA of the transaction at the strategy meeting with Supervision on 12 February 2010 (at which Prudential's strategy in Asia was discussed). For the foregoing reasons, the FSA does not accept that Mr Thiam's representations that: (1) the Prudential Board had collectively agreed an approach to bringing the regulator inside; (2) he did not want to ride "roughshod" over his Board's decision; and (3) Prudential's general interest in acquiring AIA was already well known to the FSA (by reason of Prudential's failed bid for AIA in February 2009 which had been leaked to the press) assist him.

(3) it accepts that Mr Thiam's consistent intention was that the FSA would be notified at the appropriate time, ahead of execution of the SPA. However, the FSA has also found that Mr Thiam's concerns about leak risk materially influenced his judgment as to what the appropriate time to inform the FSA was. In support of this finding, the FSA considers that there is significant contemporaneous evidence that leak risk was a significant factor in Mr Thiam's consideration as to when to inform the FSA about the transaction. In the FSA's view, Mr Thiam's high sensitivity regarding leak risk was the reason why the FSA was not approached earlier than it was (as required).

(4) whilst it accepts that Mr Thiam sought to keep Prudential's Board updated as to progress of the transaction, and that the Board was aware of the approach being adopted in relation to notification of the FSA, the FSA considers that the contemporaneous evidence is consistent with its view that the decision regarding timing of contact with the FSA about the transaction was primarily Mr Thiam's responsibility and Prudential's Board expected him to take the lead on this issue (and, as Mr Thiam put it in his interview

with the FSA, exercise his judgment). The contemporaneous evidence also shows that he was the Board member of PAC who was most closely involved with the progress of the transaction. In any event, the FSA notes that the fact that other individuals might also have been culpable does not exonerate Mr Thiam.

(5) it accepts that Mr Thiam sought and obtained the advice of reputable experts. However, whilst the FSA accepts Mr Thiam's assertion that he was not provided with advice from Prudential's sponsors that disclosure/notification to the regulator was "required for regulatory reasons", the FSA does not consider this argument to be persuasive. In any event, the FSA has found that Mr Thiam did not need advice (from experts or otherwise) to know to inform the FSA about the transaction because the contemporaneous evidence indicates that he was aware of the need to do so. However, because Mr Thiam was highly sensitive to the possibility of a leak of the transaction, his judgment about when to inform the FSA was materially influenced. Accordingly, the FSA considers that whether or not Prudential's sponsors advised Mr Thiam that disclosure/notification to the regulator was required for regulatory reasons is largely irrelevant to its evaluation of whether disciplinary action against Mr Thiam is appropriate in the circumstances.

The sanction is unwarranted and without precedent

6.8. Mr Thiam made representations that the action against him under section 66 of the Act is unwarranted and without precedent. It cannot and will not advance any of the FSA's regulatory objectives. By contrast it poses a grave threat to Mr Thiam's reputation and career.

6.9. Mr Thiam submitted that:

(1) without exception, the factors identified in DEPP 6.2.1 which are relevant to the FSA's decision as to whether or not to take disciplinary action against Mr Thiam militate against doing so; and

(2) there is no precedent for the FSA seeking to take action against an individual in circumstances comparable to those of Mr Thiam. Accordingly, the sanction is unwarranted in all the circumstances of the case.

6.10. The FSA has found that:

(1) it does not accept that Mr Thiam's submission that all the factors identified in DEPP 6.2.1 militate against taking action against him (for all the reasons provided herein). In particular the FSA considers that Mr Thiam's submission is inconsistent with the guidance at DEPP 6.2.1G(1)(e) which

states that one relevant factor is "the impact or *potential impact* (emphasis added) of the breach on the orderliness of markets including whether confidence in those markets has been damaged or put at risk". The FSA considers that the risk to market confidence was clear in this case; and

(2) whilst it accepts that there are no cases that are directly comparable on their facts to this one, it has properly considered all analogous cases (being cases against individuals at large firms where there was no finding of a lack of fitness and propriety). In any event the FSA considers that the sanction in this case is both appropriate and proportionate by reference to the factors set out in DEPP 6 (see the analysis below).

7. THIRD PARTY

7.1. Below is a brief summary of the key written representations made by Credit Suisse (as third party) and how they have been dealt with. In making the decision which gave rise to the obligation to give this notice, the FSA has taken into account all of Credit Suisse's representations, whether or not set out below.

7.2. Credit Suisse made representations that:

(1) it was inaccurate for it to be described as "lead sponsor". Although it initially acted as the sole sponsor to the proposed transaction, from 20 February 2010 it was communicating the collective advice of all the sponsors. Further, the concept of "lead sponsor" is not referred to in the Listing Rules; and

(2) references to it in the context of PAC's obligations under Principle 11 risk suggesting that Credit Suisse had a mandate or duty to advise PAC in relation to its obligations as an authorised firm under Principle 11. Credit Suisse stated that it had no mandate or duty to advise PAC.

7.3. The FSA has found that:

(1) whilst it accepts Credit Suisse's submission that the concept of "lead sponsor" is not referred to in the Listing Rules, that is not a reason for this notice not to reflect the factual reality that: (1) between 31 January 2010 and 20 February 2010, Credit Suisse was the sole sponsor; and (2) from 20 February 2010, it was taking the lead among the sponsors in communicating advice to Prudential (i.e. Credit Suisse continued to act as the primary interface with the client);

(2) it does not accept that references to Credit Suisse in the context of PAC's obligations under Principle 11 (in this notice) risk suggesting that Credit Suisse had a mandate or duty to advise PAC in relation to its obligations as an authorised firm under Principle 11 because, in this notice, the FSA has

used an amended definition of Credit Suisse to make an explicit statement that Credit Suisse had no mandate or duty to advise PAC in relation to its obligations as an FSA authorised firm.

8. FAILINGS

Principle 11

8.1. Between 11 February 2010 and 27 February 2010, Mr Thiam was knowingly concerned in PAC's breach of Principle 11 by failing to deal with the FSA in an open and co-operative way and by failing to disclose appropriately information of which the FSA would reasonably expect notice for the following reasons:

(1) PAC should have discussed with the FSA, at the earliest opportunity, the prospective change in control of PAC (SUP 11.4.8G). It is clear that, in the circumstances of the proposed transaction, waiting to inform the FSA until there was a formal agreement in respect of the change of control (i.e. when the SPA was signed) would not fulfil the obligation to be open and cooperative with the FSA.

(2) The FSA expected PAC to disclose the prospective transaction to the FSA by 11 February 2010 at the latest, given the developments contained in Mr Thiam's update to the Prudential Board on that date. As a result of the developments referred to in Mr Thiam's update to the Prudential Board on that date, Mr Thiam and PAC were aware that the transaction was significantly advanced. In particular, the FSA would have expected PAC and Mr Thiam to disclose the prospective transaction at the meeting with the FSA on 12 February 2010. The express purpose of that meeting was to discuss Prudential Group strategy, the FSA asked detailed questions about Prudential's strategy for growth in the Asian market and its plans for raising equity and debt capital, and Mr Thiam discussed growth in Asia at length, but omitted to mention the transaction.

9. SANCTION

9.1. The FSA's policy on the imposition of financial penalties and public censures is set out in DEPP and EG. Mr Thiam's misconduct occurred prior to 6 March 2010, the date on which the FSA's current penalty regime came into force. In determining the proposed sanction, the FSA has had regard to the guidance under the previous penalty regime. The FSA considers the following factors to be particularly important.

Deterrence (DEPP 6.4.2G(1))

9.2. Given the circumstances of this case the FSA considers it necessary to send a clear message to directors of firms as to the fundamental importance of behaving openly and co-operatively towards the FSA.

Seriousness and impact of the breach (DEPP 6.2.1(1))

9.3. The FSA considers Mr Thiam's conduct to be serious for the following reasons:

(1) Mr Thiam is the CEO of a highly prominent, FTSE 100 company. He is approved by the FSA, holds Controlled Function 1, and has extensive industry experience, including experience of mergers and acquisitions, and of interaction with regulators.

(2) Timely and proactive communication with the FSA is of fundamental importance to the functioning of the regulatory system. It is vital that the FSA be appropriately informed about transactions with potentially significant market and regulatory implications. That importance is heightened in the context of transformative transactions with global implications. The transaction in this case was so significant that it had potentially far-reaching consequences for tens of thousands of investors and for the stability and confidence of the financial system in the UK and abroad.

(3) At the meeting on 12 February 2010, Mr Thiam failed to mention the proposed transaction when questioned by the FSA about aspects of Prudential Group strategy to which the transaction was clearly highly relevant.

(4) Mr Thiam had numerous opportunities and was repeatedly advised of the need to inform the FSA of the transaction, yet played a significant role in PAC's failure to do so. Mr Thiam and PAC remained highly concerned about leak risk throughout the transaction, and this sensitivity clearly affected their judgment about when to inform the FSA. Because of this, they failed to give due weight to the importance of complying with PAC's regulatory obligations. Mr Thiam should not have allowed his high sensitivity that the FSA would leak the transaction to play a material part in his decision making.

(5) As a consequence of the delay in informing the FSA, Supervision was required to make far-reaching decisions regarding complex issues within compressed timescales. The FSA is satisfied that appropriate decisions were made. However, Mr Thiam's role in PAC's failure to appropriately inform the FSA had the following consequences:

(a) hampering the FSA's ability to meet its obligations by responding adequately to overseas' supervisors' enquiries and requests for assistance when news of the deal broke;

(b) narrowing the FSA's options in scrutinising the transaction generally, which was especially important given the size and significance of the transaction, its implications in the UK and abroad, and heightened regulatory and market concerns around prudential and capital adequacy issues following the financial crisis in 2008; and

(c) risking delay to the publication of the prospectus to the rights issue, thereby contributing to the significant speculation around the deal and the risk of loss to other market users.

The extent to which the breach was deliberate or reckless (DEPP 6.2.1(1)(a))

9.4. Mr Thiam was knowingly concerned in the formation by PAC of an intention to delay approaching the FSA which was based on inappropriate considerations and on an assessment by them of their regulatory obligations which the FSA views as misconceived. However, the FSA accepts that Mr Thiam and PAC did consider its obligations in forming its assessment. Although the FSA considers that the circumstances of Mr Thiam's breach are serious, the FSA does not consider that the breach was reckless or deliberate.

Whether the person has made a profit or avoided a loss (DEPP 6.4.2 (2))

9.5. Mr Thiam did not profit from the breach.

Disciplinary record and compliance history (DEPP 6.4.2(6))

9.6. Mr Thiam has not been the subject of previous FSA disciplinary action.

Other action taken by the FSA (DEPP 6.5.2(10))

9.7. In determining the appropriate sanction, the FSA has taken into account sanctions imposed by the FSA on other approved persons for similar behaviour. However, the FSA has also had regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory conduct.

Conclusions

9.8. The FSA considers in all the circumstances that the seriousness of the breach merits a public censure.

10. PROCEDURAL MATTERS

Decision Maker

10.1. The decision which gave rise to the obligation to give this notice was made by the Settlement Decision Makers.

10.2. This Final Notice is given under and in accordance with section 390 of the Act.

Publicity

10.3. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as it considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish such information if such publication would, in the opinion of the FSA, be unfair to the recipient or prejudicial to the interests of consumers.

10.4. This Final Notice will be published on the FSA's website on 27 March 2013.

FSA contacts

10.5. For more information concerning this matter generally, Mr Thiam should contact Celyn Armstrong (020 7066 2818) or Charles Hastie (020 7066 6836) at the FSA.

Jamie Symington
Head of Department
FSA Enforcement and Financial Crime Division

APPENDIX

RELEVANT LEGISLATION, REGULATORY REQUIREMENTS, GUIDANCE AND COMMENTARY

Legislation

1. The FSA is authorised, pursuant to section 66 of the Act, if it considers that an approved person has been knowingly concerned in a contravention by the relevant authorised person of a requirement imposed on that authorised person by or under the Act, to publish a statement of his misconduct.

Regulatory requirements and guidance

2. Principle 11 of the Principles provides that:

   "A firm must deal with its regulators in an open and co-operative way, and must disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice."

Scope of Principle 11

3. SUP 15.3 contains guidance on firms' requirement to communicate with the FSA in accordance with Principle 11. SUP 15.3.8 G states that compliance with Principle 11 includes, but is not limited to, giving the FSA notice of any proposed restructuring, reorganisation or business expansion which could have a significant impact on the firm's risk profile or resources, and any action which a firm proposes to take which would result in a material change in its capital adequacy or solvency.

4. SUP 15.3.10 G states that:

   "*The period of notice given to the FSA will depend on the event, although the FSA expects a firm to discuss relevant matters with it at an early stage, before making any internal or external commitments*."

Content and timing of notification regarding a change of control

5. SUP 11.4.2R provides as follows:

   "A UK domestic firm, other than a non-directive firm, must notify the FSA of any of the following events concerning the firm:

(i) a person acquiring control;

(ii) an existing controller increasing control;

(iii) an existing controller reducing control;

(iv) an existing controller ceasing to have control.

6. SUP 11.4.8G provides as follows:

"Principle 11 requires firms to be open and cooperative with the FSA. A firm should discuss with the FSA at the earliest opportunity, any prospective changes of which it is aware, in a controllers or proposed controllers shareholdings or voting power (if the change is material). These discussions may take place before the formal notification requirement in SUP 11.4.2R or SUP 11.4.4R arises. (See also SUP 11.3.2G). As a minimum, the FSA considers that such discussions should take place before a person:

(1) enters into any formal agreement in respect of the purchase of shares or a proposed acquisition or merger which would result in a change in control (whether or not the agreement is conditional upon any matter, including the FSA's approval); or

(2) purchases any share options, warrants or other financial instruments, the exercise of which would result in the person acquiring control or any other change in control.