Serial No. CP 2008/94

IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN

CHANCERY DIVISION

IN THE MATTER of **THE COMPANIES ACT 1931**

and

IN THE MATTER of **KAUPTHING SINGER & FRIEDLANDER (ISLE OF MAN) LIMITED**

and

IN THE MATTER of **THE JOINT PETITION OF KAUPTHING SINGER & FRIEDLANDER (ISLE OF MAN) LIMITED and THE FINANCIAL SUPERVISION COMMISSION dated the 9th day of October 2008**

and

IN THE MATTER of the Court Orders dated 9th October 2008 and 24th October 2008

and

IN THE MATTER of the **HUMBLE PETITION** of Michael Simpson as Liquidator provisionally of Kaupthing Singer & Friedlander (Isle of Man) Limited dated the 12th day of November 2008

AFFIDAVIT OF MICHAEL SIMPSON

I, MICHAEL SIMPSON, of Sixty Circular Road, Douglas, Isle of Man IM1 1SA being sworn make oath and say as follows:

1. I am the duly appointed Liquidator provisionally of Kaupthing Singer & Friedlander (Isle of Man) Limited ("the Company") and I make this Affidavit in support of my above Petition.

2. Where they refer to factual matters directly within my knowledge the contents of this Affidavit are true. The other matters to which I have deposed in this Affidavit I verily believe to be true to the best of my knowledge, information and belief.

3. I swear this Affidavit in support of my Petition dated 12th November 2008, which seeks:-

(i) the appointment of Peter Norman Spratt ("Mr Spratt") of PricewaterhouseCoopers LLP of Plumtree Court, London EC4A 4HT to act jointly and severally with me as Joint Liquidator provisionally of the Company; and

(ii) directions from this Honourable Court as to how I, as Liquidator provisionally of the Company, should deal with certain email correspondence that I am receiving on a daily basis concerning the Company.

4. There is now produced and shown to me marked "MS 1" a true copy of the Court Order dated 9th October 2008 pursuant to which I was appointed Liquidator provisionally of the Company.

5. There is now produced and shown to me as exhibit "MS 2" a copy of the Court Order dated 24th October 2008 referred to at paragraph 8 of the Petition.

6. There is now produced and shown to me as exhibit "MS 3" a true copy of the KSF Administration Order referred to in paragraph 12 of the Petition.

7. There is now produced and shown to me as exhibit "MS 4" a true copy of the KSF Transfer Order referred to in paragraph 13 of the Petition.

8. There is now produced and shown to me as exhibit "MS 5" a copy of Mr Spratt's curriculum vitae. I know and am acquainted with Mr Spratt. He is a qualified insolvency practitioner in the United Kingdom and is a fit and proper person to act as Liquidator provisionally of the Company. A copy of Mr Spratt's certificate to act as an Insolvency Practitioner is exhibited at "MS 6". Mr Spratt has consented so to act.

9. I confirm the content of the Petition to be true to the best of my knowledge, information and belief.

Taken and sworn at Douglas :
This 13th day of November 2008 :
:
Before me: :
A Commissioner for Oaths :

code: 423644
A4
office
www.5staroffice.com
company no. 425809

Serial No. CP 2008/94

IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN

CHANCERY DIVISION

IN THE MATTER of **THE COMPANIES ACT 1931**

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IN THE MATTER of **KAUPTHING SINGER & FRIEDLANDER (ISLE OF MAN) LIMITED**

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IN THE MATTER of **THE JOINT PETITION OF KAUPTHING SINGER & FRIEDLANDER (ISLE OF MAN) LIMITED and THE FINANCIAL SUPERVISION COMMISSION dated the 9th day of October 2008**

and

IN THE MATTER of the Court Orders dated 9th October 2008 and 24th October 2008

and

IN THE MATTER of the **HUMBLE PETITION** of Michael Simpson as Liquidator provisionally of Kaupthing Singer & Friedlander (Isle of Man) Limited dated the 10th day of November 2008

AFFIDAVIT OF MICHAEL SIMPSON

EXHIBIT

THIS IS THE PAPER WRITING REFERRED TO AS "MS 1" IN THE ANNEXED AFFIDAVIT OF MICHAEL SIMPSON SWORN BEFORE ME

THIS 13TH DAY OF NOVEMBER 2008

Commissioner for Oaths

Serial No. CP2008/94

IN THE HIGH COURT OF JUSTICE IN THE ISLE OF MAN

CHANCERY DIVISION

IN THE MATTER of THE COMPANIES ACT 1931

and

IN THE MATTER of KAUPTHING SINGER & FRIEDLANDER (ISLE OF MAN) LIMITED

and

IN THE MATTER of THE HUMBLE JOINT PETITION of KAUPTHING SINGER & FRIEDLANDER (ISLE OF MAN) LIMITED and the FINANCIAL SUPERVISION COMMISSION dated 9th October 2008

At a Court holden in Douglas on the 9th day of October 2008

His Honour
DEPUTY DEEMSTER CORLETT

UPON hearing the foregoing Petition this day in the presence of respective Counsel for the Joint Petitioners And having perused the affidavit evidence sworn on the 9th day of October 2008 by Aiden Andrew Doherty on behalf of Kaupthing Singer & Friedlander (Isle of Man) Limited (the "Company") and by Michael Patrick Weldon on behalf of the Financial Supervision Commission And having heard Counsel for each of the Joint Petitioners UPON CONSIDERATION had thereof IT IS ORDERED that:

1. Pursuant to s.178 Companies Act 1931 Michael Simpson of PricewaterhouseCoopers, Chartered Accountants of Sixty Circular Road, Douglas, Isle of Man IM1 1SA is hereby appointed as Liquidator Provisionally of the Company;

2. As Liquidator Provisionally of the Company Michael Simpson shall have the following powers:

(1) to bring or defend any action or other legal proceeding in the name and on behalf of the Company;

(2) to take possession of all of the assets of the Company, for the beneficial preservation of those assets;

(3) to appoint an Advocate or other law agent to assist him in the performance of his duties;

(4) with the prior consent in writing of the Financial Supervision Commission to sell the real or personal property, and things in action of the Company, with power to transfer the whole thereof to any person or any company, or to sell the same in parcels;

(5) for the purpose of preservation of the assets of the Company and/or conducive to the discharge of his duties and functions as Liquidator Provisionally of the Company, to do all acts and to execute, in the name and on behalf of the Company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the Company's seal;

(6) to raise on the security of the assets of the Company any money requisite;

(7) to appoint an agent to do any business which the Liquidator Provisionally is unable to do himself;

(8) to do all such other things as may be necessary for preserving the assets of the Company;

(9) to manage the affairs of the Company.

3. A copy of this Order shall be placed upon the company file for the Company at the Companies Registry in the Isle of Man;

4. The further hearing of this Petition is hereby adjourned to Friday the 24th day of October 2008 at 10.00 am at the Courthouse in Douglas.

5. Liberty to Apply.

SEAL OF THE HIGH COURT

Serial No. CP 2008/94

IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN

CHANCERY DIVISION

IN THE MATTER of **THE COMPANIES ACT 1931**

and

IN THE MATTER of **KAUPTHING SINGER & FRIEDLANDER (ISLE OF MAN) LIMITED**

and

IN THE MATTER of **THE JOINT PETITION OF KAUPTHING SINGER & FRIEDLANDER (ISLE OF MAN) LIMITED and THE FINANCIAL SUPERVISION COMMISSION** dated the 9th day of October 2008

and

IN THE MATTER of the Court Orders dated 9th October 2008 and 24th October 2008

and

IN THE MATTER of the **HUMBLE PETITION** of Michael Simpson as Liquidator provisionally of Kaupthing Singer & Friedlander (Isle of Man) Limited dated the 10th day of November 2008

AFFIDAVIT OF MICHAEL SIMPSON

EXHIBIT

THIS IS THE PAPER WRITING REFERRED TO AS "MS 2" IN THE ANNEXED AFFIDAVIT OF MICHAEL SIMPSON SWORN BEFORE ME

THIS 13TH DAY OF NOVEMBER 2008

Commissioner for Oaths

CP 2008/94

IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN

CHANCERY DIVISION

IN THE MATTER of THE COMPANIES ACT 1931

and

IN THE MATTER of KAUPTHING SINGER & FRIEDLANDER (ISLE OF MAN) LIMITED

and

IN THE MATTER of THE HUMBLE JOINT PETITION of KAUPTHING SINGER & FRIEDLANDER (ISLE OF MAN) LIMITED and the FINANCIAL SUPERVISION COMMISSION dated 9th October 2008

At a Court held at Douglas
on the 24th day of October 2008

HIS HONOUR
THE DEPUTY DEEMSTER CORLETT

UPON the further hearing of the foregoing Petition this day in the presence of Counsel for:-

i) each of the Joint Petitioners
ii) the Treasury of the Isle of Man Government
iii) CMI Insurance Company Limited
iv) Norwich Union International Limited
v) AXA Isle of Man Limited
vi) Royal Skandia Life Assurance Limited
vii) Leo Keith Hughes
viii) Kaupthing Bank Hf
ix) Gavin Brake and Katie Jarman

AND with the following persons appearing in person:-

i) Norman Roper and Mary Roper
ii) Martin Moule personally and on behalf of PRC Mortgages Limited

iii) Martyn Dawes

iv) R Redmayne on behalf of Medallion Capital Corporation

AND having perused the affidavit evidence sworn on the 24th day of October 2008 by Aidan Andrew Doherty on behalf of Kaupthing Singer & Friedlander (Isle of Man) Limited (the "Company") AND having heard Counsel and the above listed persons Upon consideration had thereof **IT IS ORDERED** that:-

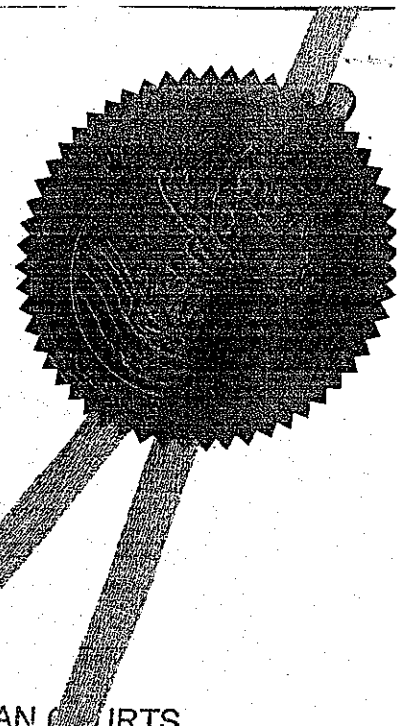
1. Paragraph 2(4) of the Order made in this matter on 9th October 2008 is hereby amended to read:-

   "2(4) with the consent of the Court and the prior consent in writing of the Financial Supervision Commission, to sell the real or personal property, and things in action of the Company, with power to transfer the whole thereof to any person or any company, or to sell the same in parcels".

2. The further hearing of this Petition is hereby adjourned to Thursday the 27th day of November 2008 at 10.00 a.m. at the Courthouse in Douglas

3. Liberty to apply

SEAL OF THE HIGH COURT



ISLE OF MAN COURTS
OF JUSTICE
24 October 2008

EXAMINED AND CERTIFIED A TRUE COPY

Deputy Assistant Chief Registrar

Serial No. CP 2008/94

IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN

CHANCERY DIVISION

IN THE MATTER of **THE COMPANIES ACT 1931**

and

IN THE MATTER of **KAUPTHING SINGER & FRIEDLANDER (ISLE OF MAN) LIMITED**

and

IN THE MATTER of **THE JOINT PETITION OF KAUPTHING SINGER & FRIEDLANDER (ISLE OF MAN) LIMITED** and **THE FINANCIAL SUPERVISION COMMISSION** dated the 9th day of October 2008

and

IN THE MATTER of the Court Orders dated 9th October 2008 and 24th October 2008

and

IN THE MATTER of the **HUMBLE PETITION** of Michael Simpson as Liquidator provisionally of Kaupthing Singer & Friedlander (Isle of Man) Limited dated the 10th day of November 2008

AFFIDAVIT OF MICHAEL SIMPSON

EXHIBIT

THIS IS THE PAPER WRITING REFERRED TO AS "MS 3" IN THE ANNEXED AFFIDAVIT OF MICHAEL SIMPSON SWORN BEFORE ME

THIS 13TH DAY OF NOVEMBER 2008

Commissioner for Oaths

T. P. McDONALD

Commissioner for Oaths

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

COMPANIES COURT

No. 8805 of 2008

The Honourable Mr Justice Floyd

Wednesday 8th October 2008

IN THE MATTER OF KAUPTHING SINGER & FRIEDLANDER LIMITED

AND

IN THE MATTER OF THE INSOLVENCY ACT 1986

ORDER

UPON THE APPLICATION of the Financial Services Authority presented to the Court on 8 October 2008 in respect of Kaupthing Singer & Friedlander Limited (company number 00875947) of One Hanover Street, London W1S 1AX, (the ***Company***)

AND UPON hearing Counsel for the Applicant, for HM Treasury and for the proposed Joint Administrators

AND UPON reading the evidence relating to this application

AND UPON the Applicant undertaking by its Counsel to issue an application in the form of the draft shown to the Court forthwith following the hearing

IT IS ORDERED that:

1. Margaret Elizabeth Mills, Alan Bloom and Patrick Joseph Brazzill of Ernst & Young LLP, 1 More London Place, London SE1 2AF, and Thomas Merchant Burton of Ernst

& Young LLP, George House, 50 George Square, Glasgow, Strathclyde, G2 1RR be appointed as joint administrators of the Company (the ***Joint Administrators***);

2. during the period for which this order is in force the affairs, business and property of the Company be managed by the Joint Administrators;

AND the Court being satisfied on the evidence before it that the EC Regulation on Insolvency Proceedings (the ***EC Regulation***) does not apply and that the Company is a UK Credit Institution within the meaning of the Credit Institutions (Reorganisation and Winding Up) Regulations 2004

AND IT IS ORDERED THAT during the period for which the administration order is in force any act required or authorised under any enactment to be done by either or all of the Joint Administrators may be done by any one or more of the persons for the time being holding that office

AND IT IS ORDERED THAT

3. service of the application on the Company and the Joint Administrators be dispensed with;

4. pursuant to rule 7.31(5) of the Insolvency Rules 1986 the court file shall not be available for public inspection without the Court's leave (except Form 2.15 of this Order)

5. the costs of and incidental to this application be paid as an expense of the administration.

This appointment shall take effect from 2.24 ~~a.m.~~/p.m. on 8 October 2008

Dated this eighth day of October 2008.

IN THE HIGH COURT OF JUSTICE
No. 8805 of 2008

CHANCERY DIVISION

COMPANIES COURT

The Honourable Mr Justice Floyd

Wednesday 8th October 2008

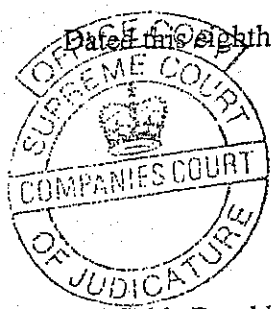
IN THE MATTER OF KAUPTHING SINGER & FRIEDLANDER LIMITED

AND

IN THE MATTER OF THE INSOLVENCY ACT 1986

ORDER

Dated this eighth day of October 2008



Freshfields Bruckhaus Deringer LLP
65 Fleet Street
London EC4Y 1HS

Tel: +(44) 207 936 4000
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Ref: NAG/LD

Serial No. CP 2008/94

IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN

CHANCERY DIVISION

IN THE MATTER of **THE COMPANIES ACT 1931**

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AFFIDAVIT OF MICHAEL SIMPSON

EXHIBIT

THIS IS THE PAPER WRITING REFERRED TO AS "MS 4" IN THE ANNEXED AFFIDAVIT OF MICHAEL SIMPSON SWORN BEFORE ME

THIS 13TH DAY OF NOVEMBER 2008

Commissioner for Oaths

STATUTORY INSTRUMENTS

2008 No. 2674

BANKS AND BANKING

The Kaupthing Singer & Friedlander Limited Transfer of Certain Rights and Liabilities Order 2008

Made - - - - at 12.05 p.m. on 8th October 2008

Laid before Parliament at 4.00 p.m. on 8th October 2008

Coming into force - - at 12.15 p.m. on 8th October 2008

It appears to the Treasury to be desirable to make this Order for the following purpose:

maintaining the stability of the UK financial system in circumstances where the Treasury consider that there would be a serious threat to its stability if the Order were not made.

The Treasury, in exercise of the powers conferred by sections 6, 8, 12, 13(2) of and Schedule 2 to the Banking (Special Provisions) Act 2008(a), make the following Order:

PART 1

GENERAL

Citation and commencement

1.—(1) This Order may be cited as the Kaupthing Singer & Friedlander Limited Transfer of Certain Rights and Liabilities Order 2008.

(2) This Order comes into force at 12.15 p.m. on 8th October 2008.

Interpretation

2. In this Order—

"the 1986 Act" means the Insolvency Act 1986(b);

"the 2000 Act" means the Financial Services and Markets Act 2000(c);

"the Act" means the Banking (Special Provisions) Act 2008;

"administrator" means an administrator appointed under paragraph 13, 14 or 22 of Schedule B1 (Administration) to the 1986 Act(d) or on an administration application made to the court

---

(a) 2008 c.2.
(b) 1986 c.45.
(c) 2000 c.8.
(d) Schedule B1 was inserted by section 248(2) of, and Schedule 16 to, the Enterprise Act 2002 (c.40).

(and if more than one administrator is appointed, the reference to "the administrator" is to any administrator so appointed);

"the Authority" means the Financial Services Authority;

"the Bank" means the Governor and Company of the Bank of England;

"Community law" means—

(a) all the rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Community Treaties; and

(b) all the remedies and procedures from time to time provided for by or under the Community Treaties;

"the COMP Sourcebook" means the Compensation Sourcebook made by the Authority under the 2000 Act;

"Deposits Management (Edge)" means Frontpedal Limited (in the process of changing its name to Deposits Management (Edge) Limited), company registered number 6690432, a company which is for the purposes of the Act wholly owned by the Bank;

"Edge account" has the meaning given in article 3(4);

"the effective time" means the time this Order comes into force;

"eligible claimant" has the meaning given in rule 4.2.1 of the COMP Sourcebook;

"the FEES 6 Chapter" means Chapter 6 (Financial Services Compensation Scheme Funding) of the Fees Manual made by the Authority under the 2000 Act;

"the Financial Services Compensation Scheme" means the scheme established by the Authority under Part 15 of the 2000 Act (The Financial Services Compensation Scheme);

"the first transfer" means the transfer effected by article 3;

"FSCS" means the body corporate established by the Authority under section 212 of the 2000 Act (the Scheme Manager);

"ING" means ING Direct N.V., a limited liability company incorporated in the Netherlands acting through its branch in the United Kingdom with branch reference number BR7357;

"the Insolvency Rules" means the Insolvency Rules 1986(a);

"Kaupthing" means Kaupthing Singer & Friedlander Limited, company registered number 875947;

"protected deposit" has the meaning given in rule 5.3.1 of the COMP Sourcebook;

"relevant protected deposit" means a protected deposit which relates to a transferred right or liability;

"the second transfer" means the transfer effected by article 8;

"the second transfer time" has the meaning given in article 8(2);

"transferred accounts" means the accounts to which the transferred rights and liabilities relate;

"transferred liabilities" means the liabilities transferred by article 3(1);

"transferred rights" means the rights transferred by article 3(2);

"the transitional period" means the period of 6 months following the effective time.

(a) S.I. 1986/1925; amended by S.I. 2003/1730 and S.I. 2005/527, the reference in two articles is to the Insolvency Rules generally in relation to which there are numerous amending instruments.

PART 2

THE FIRST TRANSFER

The first transfer

3.—(1) Subject to paragraph (2), by virtue of this Order the liabilities of Kaupthing to holders of Edge accounts in respect of principal and accrued interest are transferred to Deposits Management (Edge).

(2) From the effective time, Deposits Management (Edge) shall have the same rights in relation to each holder of an Edge account as it would have if Kaupthing's relevant terms of business applied.

(3) Paragraph (1) does not apply to any liability in respect of any breach of contract or other duty which arose before the effective time.

(4) In this article, "Edge account" means any of the following accounts held with Kaupthing –

(a) the accounts known as Kaupthing Edge Savings Accounts; and

(b) the accounts known as Kaupthing Edge fixed term deposit accounts.

(5) The transfer under paragraph (1) takes place at the time this Order comes into force.

No consent or concurrence required

4. The first transfer is effective despite the absence of any required consent or concurrence to, or in connection with, the transfer.

Associated liability and interference

5.—(1) The first transfer takes effect as if—

(a) no associated liability existed in respect of any failure to comply with any requirement in respect of the transfer; and

(b) there were no associated interference with the transferred rights and liabilities.

(2) In this article "associated liability" and "associated interference" have the meanings given in paragraph 2(2) of Schedule 2 to the Act.

Interests, rights and liabilities of third parties relating to transferred rights and liabilities

6.—(1) No interest or right of any third party relating to any of the transferred rights and liabilities shall arise or become exercisable by virtue of or in connection with this Order.

(2) Save as otherwise provided in this Order, no third party shall incur any liability, or be subject to any obligation, relating to any of the transferred rights and liabilities, by virtue of or in connection with this Order.

(3) Without prejudice to the generality of paragraphs (1) and (2)—

(a) the consequences specified in paragraph (4) shall not arise in respect of any relevant instrument as a result of the first transfer or any other thing done, or matter arising, by virtue of or in connection with the transfer;

(b) any circumstances which, but for sub-paragraph (a), would give rise to the consequences specified in paragraph (4) shall not be taken to have arisen for the purposes of any relevant instrument.

(4) The consequences are—

(a) the termination of a relevant instrument or any rights or obligations under it;

(b) any right to terminate a relevant instrument or any right or obligation under it becoming exercisable;

(c) any amount becoming due and payable or capable of being declared due and payable;

(d) any other change in the amount or timing of any payment falling to be made or due to be received by any person;

(e) any right to withhold, net or set off any payment becoming exercisable;

(f) any event of default or breach of any right arising;

(g) any right not to advance any amount becoming exercisable;

(h) any obligation to provide or transfer any deposit or collateral;

(i) any right to give or withhold any consent or approval; or

(j) any other right or remedy (whether or not similar in kind to those referred to in paragraphs (a) to (i)) arising or becoming exercisable.

(5) Without prejudice to paragraph (4), any provision in a relevant instrument that, as a result of the first transfer or any other thing done, or matter arising, by virtue of or in connection with the transfer or this Order, provides for an obligation not to be created, suspends or extinguishes (in whole or in part) such an obligation or renders such an obligation subject to conditions, shall be of no effect.

(6) In this article—

"relevant instrument" means an instrument which provides for interests or rights of third parties and in relation to which Kaupthing is a party or is bound;

"third party" shall be construed in accordance with paragraph 2(3) of Schedule 2 to the Act.

Exemption of Deposits Management (Edge)

7. Deposits Management (Edge) is an exempt person for the purposes of the 2000 Act in respect of any regulated activity of the kind specified by article 5 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(a)(accepting deposits).

PART 3

THE SECOND TRANSFER

The second transfer

8.—(1) By virtue of this Order the transferred rights and liabilities are transferred to ING.

(2) The second transfer takes place immediately after the first transfer ("the second transfer time").

(3) From the second transfer time, ING shall—

(a) be liable to pay depositors any accrued interest on the transferred accounts and any interest accruing at or after that time on those accounts;

(b) have the same rights in relation to each holder of an Edge account as it would have if Kaupthing's relevant terms of business applied.

(4) Paragraph (1) does not apply to any liability in respect of any breach of contract or other duty which arose before the second transfer time.

Provision of information and assistance

9.—(1) Kaupthing shall provide Deposits Management (Edge) and ING with such information and assistance as is reasonably requested by each of them, respectively—

(a) in relation to the transferred rights and liabilities;

(b) for any purpose relating to this Order; or

(a) SI 2001/544; amended by SI 2002/682.

(c) for any purpose relating to any other function of Deposits Management (Edge) or ING, as the case may be, which relates to its functions under this Order.

(2) Kaupthing shall provide the Treasury with such information and assistance as is requested by the Treasury for any purposes relating to this Order.

No consent or concurrence required

10. The second transfer is effective despite the absence of any required consent or concurrence to, or in connection with, the transfer.

Associated liability and interference

11.—(1) The second transfer takes effect as if—

(a) no associated liability existed in respect of any failure to comply with any requirement in respect of the transfer; and

(b) there were no associated interference with the rights and liabilities transferred under the transfer.

(2) In this article "associated liability" and "associated interference" have the meanings given in paragraph 2(2) of Schedule 2 to the Act.

Interests, rights and liabilities of third parties relating to transferred rights and liabilities

12.—(1) No interest or right of any third party relating to any of the rights and liabilities transferred under the second transfer shall arise or become exercisable by virtue of or in connection with this Order.

(2) Save as otherwise provided in this Order, no third party shall incur any liability, or be subject to any obligation, relating to any of the rights and liabilities transferred under the second transfer, by virtue of or in connection with this Order.

(3) Without prejudice to the generality of paragraphs (1) and (2)—

(a) the consequences specified in paragraph (4) shall not arise in respect of any relevant instrument as a result of the second transfer or any other thing done, or matter arising, by virtue of or in connection with the second transfer;

(b) any circumstances which, but for sub-paragraph (a), would give rise to the consequences specified in paragraph (4) shall not be taken to have arisen for the purposes of any relevant instrument.

(4) The consequences are—

(a) the termination of a relevant instrument or any rights or obligations under it;

(b) any right to terminate a relevant instrument or any right or obligation under it becoming exercisable;

(c) any amount becoming due and payable or capable of being declared due and payable;

(d) any other change in the amount or timing of any payment falling to be made or due to be received by any person;

(e) any right to withhold, net or set off any payment becoming exercisable;

(f) any event of default or breach of any right arising;

(g) any right not to advance any amount becoming exercisable;

(h) any obligation to provide or transfer any deposit or collateral;

(i) any right to give or withhold any consent or approval; or

(j) any other right or remedy (whether or not similar in kind to those referred to in paragraphs (a) to (i)) arising or becoming exercisable.

(5) Without prejudice to paragraph (4), any provision in a relevant instrument that, as a result of the second transfer or any other thing done, or matter arising, by virtue of or in connection with

the second transfer or this Order, provides for an obligation not to be created, suspends or extinguishes (in whole or in part) such an obligation or renders such an obligation subject to conditions, shall be of no effect.

(6) In this article—

"relevant instrument" means an instrument which provides for interests or rights of third parties and in relation to which Kaupthing is a party or is bound;

"third party" shall be construed in accordance with paragraph 2(3) of Schedule 2 to the Act.

PART 4

FINANCIAL SERVICES COMPENSATION SCHEME

Application of Part 3

13. This Part applies where, before the effective time, Kaupthing is in default for the purposes of rule 6.3.1 of the COMP Sourcebook.

Sums to be paid to ING following the second transfer

14.—(1) The following liabilities arise at the second transfer time—

(a) the FSCS is liable to pay (as soon as practicable) to ING an amount equal to the amount that eligible claimants would, immediately before the effective time, have been entitled to claim from the FSCS in respect of claims against Kaupthing in relation to relevant protected deposits; and

(b) the Treasury are liable to pay (as soon as practicable) to ING an amount equal to the aggregate amount of the liabilities transferred to ING under the second transfer less the amount specified in sub-paragraph (a) and less £5,000,000,

and the Treasury shall subsequently make the necessary adjustment such that Kaupthing obtains the benefit (net of all costs and liabilities incurred by Deposits Management (Edge)) in connection with the first or second transfer or its obligations under this Order of the reduction of £5,000,000 referred to in sub-paragraph (b).

(2) For the purposes of paragraph (1)(a), if the quantification date for a claim would have been a date other than the date on which Kaupthing was determined to be in default for the purposes of section 6.3 of the COMP Sourcebook, the amount that an eligible claimant would have been entitled to claim from the FSCS is the lesser of—

(a) the amount which the FSCS quantifies as being the value of that claim as at immediately before the effective time; and

(b) the amount which would have been payable at the quantification date, if different, for that claim.

(3) In paragraph (2), "quantification date" has the meaning given in rule 12.3.1 of the COMP Sourcebook.

(4) As soon as practicable after the second transfer time—

(a) Kaupthing shall estimate the aggregate amount of the transferred liabilities;

(b) the FSCS shall pay to ING the amount it is liable to pay under paragraph (1)(a) as estimated by the Authority; and

(c) the Treasury shall pay to ING an amount equal to the amount estimated by Kaupthing in accordance with sub-paragraph (a) less the amount estimated by the Authority in accordance with sub-paragraph (b) and less £5,000,000.

(5) From time to time—

(a) the FSCS may revise the estimate of its liability under paragraph (1)(a); and

(b) Kaupthing may revise the estimate of the aggregate amount of the transferred liabilities.

(6) In consequence of paragraph (5), the FSCS, the Treasury and ING shall make such corresponding payments to each other as are necessary to ensure that the FSCS and the Treasury have each paid to ING the amount required (and no more than the required amount) to meet their liability under paragraph (1).

(7) If at any time after the effective time Kaupthing is placed into administration, the references to Kaupthing in paragraphs (4) and (5) are to be treated as references to the administrator.

(8) The liability referred to in paragraph (1)(a) shall be assessed by the FSCS and, in doing so, the FSCS may calculate, by any methodology or approach it considers appropriate, the total amounts of compensation that would have been paid to all eligible claimants if (and to the extent that) it considers that the costs of ascertaining the entitlement to and the amount of compensation by reference to each eligible claimant would exceed or be disproportionate to the benefit of doing so.

Payment to ING to constitute payment of compensation for the purposes of the Financial Services Compensation Scheme

15. For the purposes of Part 15 of the 2000 Act (the financial services compensation scheme), the COMP Sourcebook and the FEES 6 Chapter (including, without limitation, the power of the FSCS to impose levies)—

(a) all payments by the FSCS to ING under article 14 shall constitute the payment of compensation to each eligible claimant under the Financial Services Compensation Scheme in accordance with their respective entitlements in respect of claims against Kaupthing for relevant protected deposits;

(b) in relation to a relevant protected deposit, each eligible claimant—

(i) is deemed to have made an application for compensation for the purposes of rule 3.2.1(1) of the COMP Sourcebook; and

(ii) is deemed to have accepted an offer of compensation made by the FSCS and to have received payment of such compensation for the purposes of rule 11.2.1 of the COMP Sourcebook,

and, accordingly, an eligible claimant has no right to claim, and the FSCS has no obligation to pay, for a relevant protected deposit any further compensation under the Financial Services Compensation Scheme in respect of the default of Kaupthing determined by the Authority under section 6.3 of the COMP Sourcebook.

Liability of Kaupthing to the FSCS and the Treasury

16.—(1) Kaupthing is liable to the FSCS in respect of an amount equal to the amount which would have been provable in the administration of Kaupthing in respect of the transferred liabilities had this Order not been made and had Kaupthing been placed in administration immediately before the effective time.

(2) The FSCS shall pursue recoveries from Kaupthing in respect of the liability under paragraph (1) to the extent reasonably practicable.

(3) Subject to paragraph (4), if an eligible claimant had, in relation to a relevant protected deposit, a liability to Kaupthing which would have been capable of being set-off against a liability of Kaupthing to that claimant in an administration or liquidation of Kaupthing (if that liability had not been transferred), the amount which the FSCS is entitled to recover in the administration or liquidation shall be taken to be the sum of—

(a) the amount of the reduction in the depositor's liability to Kaupthing as a result of the application of the set-off; and

(b) the amount which would have been recovered in respect of the balance of the claim (if any) provable in the administration or liquidation of Kaupthing.

(4) Paragraph (3) applies only to the extent that its application does not have the effect that the other creditors of Kaupthing are in a worse position than they would have been had the set-off been applied.

(5) The FSCS shall determine the proportion of any amount which it receives or recovers from Kaupthing which is properly attributable to each type of liability described below and shall promptly, on receipt, account for that receipt or recovery as follows—

(a) in full to the Treasury, to the extent that—

(i) the receipt is attributable to a transferred liability; and

(ii) the person to whom such a transferred liability is owed would not have been entitled to make a claim for compensation from the FSCS immediately before the effective time;

(b) by reference to the relevant proportion, to the extent that—

(i) the receipt is attributable to a transferred liability;

(ii) the person to whom such a transferred liability is an eligible claimant; and

(iii) the amount of such liability exceeds the maximum compensation that the eligible claimant would have been entitled to claim from the FSCS immediately before the effective time;

and where the receipt is attributable to a transferred liability owed to an eligible claimant in relation to a relevant qualifying deposit and the amount of such liability is equal to or less than the maximum compensation that the eligible claimant would have been entitled to claim from the FSCS immediately before the effective time that amount shall be for the account of the FSCS.

(6) In paragraph (5), the "relevant proportion" is the proportion of the total liabilities which arise under article 14(1) for which the Treasury are liable.

(7) If Kaupthing is in administration, the liability incurred under paragraph (1) shall not be treated as an expense of the administration under paragraph 99(3) of Schedule B1 of the 1986 Act or rule 2.67 of the Insolvency Rules.

(8) Nothing in this Part shall have the effect that the FSCS recovers less than it would have recovered if this Order had not been made.

FSCS's power to require information

17.—(1) The FSCS may, by notice in writing given to ING, require it—

(a) to provide specified information or information of a specified description; or

(b) to produce specified documents or documents of a specified description.

(2) Paragraph (1) only applies to information and documents the provision or production of which the FSCS considers to be necessary (or likely to be necessary) for the exercise of its functions under or by virtue of this Order.

(3) Subsections (2), (4), (5) and (7) of section 219 of the 2000 Act (scheme manager's power to require information) apply to a requirement imposed under paragraph (1) as if it were a requirement imposed under that section.

Statutory immunity

18. For the purposes of section 222 of the 2000 Act (statutory immunity) the scheme manager's functions shall include any acts or omissions carried out by the FSCS pursuant to or in connection with this Order.

PART 5

THE ADMINISTRATOR AND TRANSITIONAL PROVISIONS

Application of this Part

19. This Part applies if Kaupthing is placed into administration after the effective time.

The administration

20. The relevant provisions of the 1986 Act and the Insolvency Rules shall apply to the administration of Kaupthing subject to the modifications set out in this Part.

Objectives etc. of the administrator

21.—(1) This article only applies during the transitional period.

(2) The administrator must perform his or her functions with the objectives ("the overriding objectives") of—

(a) ensuring that Kaupthing provides, and managing the affairs, business and property of Kaupthing to enable it to provide, the services and facilities reasonably required by ING to discharge its obligations in respect of the rights and liabilities under the second transfer; and

(b) ensuring that Kaupthing performs the other obligations imposed on it by or under this Order.

(3) The administrator shall only perform his or her functions with the objective determined in accordance with paragraph 3 of Schedule B1 to the 1986 Act to the extent that to do so is not inconsistent with and does not interfere with the achievement of the overriding objectives.

(4) Paragraph 3(2) of Schedule B1 to the 1986 Act only applies to the performance of the functions of the administrator to the extent that it is not inconsistent with and does not interfere with the achievement of the overriding objectives.

(5) The Treasury may, by notice in writing, give a direction to the administrator specifying that an act (or omission) is required for the overriding objectives.

(6) The Treasury may also, by notice in writing, give a direction to the administrator requiring him or her to act (or not act) if the Treasury consider that it is necessary to give such a direction for the purposes of—

(a) protecting or enhancing the stability of the financial systems of the United Kingdom;

(b) protecting or enhancing public confidence in the stability of the banking system of the United Kingdom; or

(c) protecting depositors.

(7) The Treasury may also, by notice in writing, give a direction to the administrator that he or she need not perform his or her functions in accordance with the overriding objectives, either in relation to a particular matter or generally.

(8) The administrator must comply with any directions given under paragraph (5), (6) or (7).

(9) The services and facilities to which paragraph (2)(a) applies include (but are not limited to) the services and facilities specified in the Schedule.

(10) The administrator shall not be required to include any proposals for achieving the overriding objectives in any statement he or she makes under paragraph 49 (administrator's proposals) or paragraph 54 (revision of administrator's proposals) of Schedule B1 to the 1986 Act or to obtain approval of such proposals at any creditors' meeting or from the court.

(11) The administrator shall not enter into a transaction or a series of transactions (whether related or not) to sell, lease, transfer or otherwise dispose of any property or right of Kaupthing having in aggregate a value of more than £50 million at any time unless—

(a) the court orders otherwise;

(b) the Treasury gives its consent to the transaction; or

(c) the sale, lease, transfer or disposal has been specifically approved at a meeting of creditors summoned under paragraph 51(1), 54(2) or 62 of Schedule B1 to the 1986 Act or by a creditors' committee constituted in accordance with rule 2.50 of the Insolvency Rules and the Treasury has consented to the sale, lease, transfer or disposal.

(12) In this article, "court" means—

(a) in England and Wales, the High Court;

(b) in Scotland, the Court of Session;

(c) in Northern Ireland, the High Court.

Insolvency Act and Insolvency Rules etc.

22. Nothing in the 1986 Act, the Insolvency Rules or any other enactment or rule of law shall operate to invalidate or prejudice any act or omission done under or pursuant to this Order or give rise to a claim against or impose any liability on Kaupthing or the administrator for any act or omission so done.

Services and facilities

23. The agreement dated 8th October 2008 between the Treasury and ING relating to the provision of transitional services by Kaupthing to ING shall bind Kaupthing as if it were a party.

Use of the Kaupthing brand

24. Kaupthing shall grant to ING a non-exclusive royalty-free licence to use the Kaupthing brand and the Edge brand and any relevant brands and sub-brands of Kaupthing during the transitional period for the purposes of ING carrying on its activities in relation to the rights and liabilities transferred under the second transfer.

Compensation payable to Kaupthing

25.—(1) ING shall reimburse Kaupthing for the costs and expenses (including fees) properly incurred by the administrator during the transitional period in fulfilling his or her obligations under article 21.

(2) Paragraph (1) does not apply to any cost or expense which would have been incurred in the administration if this Order had not been made.

Continuity

26.—(1) During the transitional period, any person wishing to terminate or modify (or treat as terminated or modified) any contract or agreement with Kaupthing for services and facilities or any right or obligation under such a contract or agreement must give not less than 14 days' prior written notice to the administrator and to ING.

(2) During the transitional period, any person who provides to Kaupthing, pursuant to any contract or agreement, services or facilities which are reasonably required by Kaupthing to perform its duties under or pursuant to this Order or the agreement dated 8th October 2008 between the Treasury and ING relating to the provision of transitional services by Kaupthing to ING shall, whether or not required pursuant to such contract or agreement, provide such services to Kaupthing for the benefit of ING or, at Kaupthing's request, directly to ING.

(3) Except with the consent of the Treasury or the permission of the court, during the transitional period—

(a) no person is entitled—

(i) to terminate or modify any contract or agreement with Kaupthing for services and facilities, or any right or obligation under such a contract or agreement, where the contract or agreement or right or obligation relates to services or facilities which are reasonably required by—

(aa) Kaupthing to perform its duties under or pursuant to this Order;

(bb) the administrator to perform his or her duties under or pursuant to this Order; or

(cc) ING to carry on its functions in relation to the transferred rights and liabilities, or

(ii) to treat such a contract, agreement, right or obligation as terminated or modified,

by virtue of, or in connection with, the first transfer or the second transfer, the requirement to provide services or facilities to or for the benefit of ING under paragraph (2) or the commencement of the administration in relation to Kaupthing; and

(b) any counterparty to such a contract or agreement must perform his or her obligations in accordance with that contract or agreement.

(4) The services and facilities to which paragraphs (1), (2) and (3) apply include (but are not limited to) the services and facilities specified in the Schedule.

(5) Any purported termination or modification of any contract, agreement, right or obligation in contravention of paragraph (1), (2) or (3), and any action taken in consequence of any such purported termination or modification, shall have no effect.

(6) Paragraph (2) does not apply where—

(a) Kaupthing, ING or the administrator, as the case may be, has failed to perform its payment obligations under the relevant contract or agreement and such non-payment is not remedied within 14 days of that person becoming aware of the non-performance; or

(b) Kaupthing, ING or the administrator, as the case may be, fails to notify the counterparty to the relevant contract or agreement within 14 days of its becoming aware of the request for consent to such termination, modification or non-performance of an obligation, that such consent has been withheld.

(7) Without prejudice to the generality of paragraph (3), the first transfer or the second transfer shall not have the effect of terminating or otherwise changing the terms of Kaupthing's membership (if any) of any payment system, including, in particular, BACS, CHAPS and the LINK payments systems.

(8) "Court" has the meaning given by article 21(12).

(9) This article is subject to any requirement of Community law.

Moratorium on payment to related companies

27.—(1) Kaupthing shall not make any payment, dispose of any property or modify or release any right or liability to or for the benefit of a related party without the prior consent of the Treasury, and any such purported payment, disposal, modification or release shall be void.

(2) No related party shall exercise any right of set-off or combination of accounts in respect of any debt owing by Kaupthing without the consent of the Treasury, and any such purported exercise shall be void.

(3) In this article, "related party" means any member of the same group as Kaupthing that is not a subsidiary undertaking of Kaupthing.

(4) In paragraph (1), if Kaupthing is in administration, the reference to Kaupthing is to be treated as a reference to the administrator.

(5) In paragraph (3), "group" has the meaning given by section 421 of the 2000 Act.

PART 6

MISCELLANEOUS

Construction of documents etc.

28. As from the effective time and save as otherwise provided in this Order—

(a) agreements made or other things done by or in relation to Kaupthing shall be treated, so far as may be necessary for the purposes of or in connection with the first transfer or the second transfer (but not otherwise) as made or done by or in relation to Deposits Management (Edge) or ING or both, as the case may be and as the context requires;

(b) references to Kaupthing or to any officer or employee of Kaupthing in instruments or documents relating to the transferred rights and liabilities and rights and liabilities transferred under the second transfer, shall have effect as if they were references to Deposits Management (Edge) or ING or both, or to any officer or employee of Deposits Management (Edge) or ING, as the case may be and as the context requires.

Modification to Authority's rule-making power

29.—(1) Subsections (1) and (1A)(**a**) of section 138 of the 2000 Act (general rule-making power) have effect as if modified by inserting after "protecting the interests of consumers"—

"or for the purposes of, to facilitate or in consequence of, a transfer under section 6 or section 8 of the Banking (Special Provisions) Act 2008".

(2) Section 148(2)(**b**) of the 2000 Act (modification or waiver of rules) shall also apply in relation to Kaupthing—

(a) in the absence of an application by a person subject to rules made by the Authority; and

(b) without any requirement for the consent of such a person.

(3) Section 148(4)(**c**) of the 2000 Act shall not prevent the Authority from modifying or waiving rules in relation to Kaupthing under section 148 of that Act provided that the Authority is satisfied that the modification or waiver is necessary for the purposes of, to facilitate or in consequence of the first transfer or the second transfer.

Modification to Authority's duty to consult on rule changes

30.—(1) Section 155(7) of the 2000 Act (consultation) has effect as if modified by adding at the end—

"or if it is making rules for the purposes of, or to facilitate or in consequence of, a transfer under section 6 or section 8 of the Banking (Special Provisions) Act 2008."

(2) Section 157 of the 2000 Act (guidance) has effect as if modified by adding after subsection (3)—

"(3A) Section 155(7) applies to proposed guidance as it applies to proposed rules with the modification made by article 30 of the Kaupthing Singer & Friedlander Limited Transfer of Certain Rights and Liabilities Order 2008.".

Freedom of information

31. For the purposes of section 3(2)(b) of the Freedom of Information Act 2000 (public authorities)(**d**), Deposits Management (Edge) shall be deemed not to hold information on behalf of the Bank.

(**a**) Subsections (1A) to (1C) were inserted by S.I. 2006/2975.
(**b**) Subsection (2) was substituted by S.I. 2007/1973.
(**c**) Subsection (4)(a) was amended by S.I. 2007/1973.
(**d**) 2000 c.36.

Proceedings against directors

32.—(1) No director of—

(a) Kaupthing; or

(b) Deposits Management (Edge),

shall be liable in connection with the first transfer or the second transfer or any other provisions of this Order and accordingly no proceedings may be brought (or, in Scotland, raised) against any such director in respect of such matters.

(2) The Treasury may in writing—

(a) waive the effect of paragraph (1), and

(b) give consent to bring (or, in Scotland, raise) such proceedings against such directors.

(3) Where paragraph (1) applies, section 232 of the Companies Act 2006(a) (provisions protecting directors from liability) shall not apply to a relevant undertaking.

(4) In this article—

"director" means a person who was a director immediately before the effective time, whether or not he has ceased to be a director at the time when proceedings in respect of that liability commenced;

"proceedings" includes proceedings under Part 11 of the Companies Act 2006 (derivative claims and proceedings by members).

Immunity of Bank

33.—(1) The Bank has immunity in relation to action or inaction in relation to or pursuant to this Order.

(2) In this article—

(a) a reference to the Bank is a reference to the Bank and anyone who acts or purports to act as a director, officer, servant or agent of the Bank;

(b) "immunity" means immunity from liability in damages.

(3) The immunity does not extend to action taken—

(a) in bad faith, or

(b) in contravention of section 6(1) of the Human Rights Act 1998(b).

Transfer of data

34. Any transfer of data under this Order is not to be taken to breach any restriction on disclosure of information, however imposed.

Frank Roy
Dave Watts

8th October 2008 — Two of the Lords Commissioners of Her Majesty's Treasury

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(a) 2006 c.46.
(b) 1998 c.42.

SCHEDULE

Article 21

SERVICES AND FACILITIES

1. Website hosting services or facilities.
2. Information technology services or facilities.
3. Back office processing services or facilities.
4. Call centre services or facilities.
5. Payment and clearing services or facilities.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under the Banking (Special Provisions) Act 2008 (c.2) and provides for certain rights and liabilities to be transferred from Kaupthing Singer & Friedlander Limited ("Kaupthing") to Deposits Management (Edge) Limited ("DMEL").

The Order then provides for the transfer of the liabilities transferred to DMEL to be transferred to ING Direct N.V. and for the operation of the Financial Services Compensation Scheme in relation to that transfer.

The first transfer is given effect by article 3, which transfers the liabilities of Kaupthing to holders of Edge accounts to DMEL, and confers associated rights on DMEL.

The remainder of the articles in Part 2 make provision associated with the transfer, including in relation to interests, rights and liabilities of third parties relating to rights and liabilities transferred (article 6) and exemption of DMEL from the general prohibition in the Financial Services and Markets Act 2000 in respect of accepting deposits (article 7).

Part 3 provides for the second transfer from DMEL to ING Direct N.V. It also includes provision for information obligations in relation to Kaupthing (article 9), that no consent or concurrence is required (article 10), no associated liabilities or interferences arise (article 11) and makes provision in relation to interests, rights and liabilities of third parties relating to rights and liabilities transferred in the second transfer (article 12).

Part 4 concerns the Financial Services Compensation Scheme and applies where before the transfer Kaupthing is in default for the purposes of that Scheme. It provides for certain sums to be paid to ING Direct N.V. by the Financial Services Compensation Scheme and the Treasury (article 14).

Article 15 provides that, for the purposes of the provisions which govern that Scheme, the payments made by the FSCS under article 14 constitute the payment of compensation to each qualifying claimant under that Scheme.

Article 16 provides for certain liabilities of Kaupthing to the FSCS, and requires the FSCS to account to the Treasury for certain amounts recovered by it from Kaupthing.

Part 5 makes provision in relation to the administrator and applies if Kaupthing is placed into administration after the transfer.

Article 21 imposes overriding objectives on the administrator relating to Kaupthing's obligations under the Order and the provision of services by Kaupthing to ING to enable it to operate the transferred accounts.

Article 26 imposes obligations and restrictions in relation to contracts to which Kaupthing is a party.

Article 27 imposes a moratorium on payments by Kaupthing to a related company.

Part 5 contains miscellaneous provisions, including as to construction of references in documents relating to Kaupthing (article 28) and a bar on proceedings against directors of Kaupthing and DMEL in relation to the transfers (article 32).

An Impact Assessment of the effect of this instrument on the costs to business has been prepared. It may be obtained from the Financial Stability Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. It is also available on HM Treasury's website (www.hm-treasury.gov.uk). Copies of the document have been placed in the libraries of both Houses of Parliament.

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STATUTORY INSTRUMENTS

2008 No. 2674

BANKS AND BANKING

The Kaupthing Singer & Friedlander Limited Transfer of Certain Rights and Liabilities Order 2008

£5.00

E3106 10/2008 183106T 19585

EXPLANATORY MEMORANDUM TO

THE KAUPTHING SINGER & FRIEDLANDER LTD TRANSFER OF CERTAIN RIGHTS AND LIABILITIES ORDER 2008

2008 No. 2674

1. This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 The Kaupthing Singer & Friedlander Ltd Transfer of Certain Rights and Liabilities Order 2008 ("the Order") transfers the rights and liabilities of Kaupthing in relation to retail deposit accounts known as "Edge" accounts to Frontpedal Limited (in the process of changing its name to Deposits Management (Edge) Limited), a company wholly owned by the Bank of England for the purposes of the Banking (Special Provisions) Act 2008 ("the publicly owned company"). The Order also makes a further transfer of certain rights and liabilities from the publicly owned company ING Direct N.V., a limited liability company incorporated in the Netherlands, and makes various connected provisions.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 It was not possible in the case of this Order to comply with the 21-day rule according to which relevant instruments are laid before Parliament for at least 21 days prior to coming into force. The Order was made at 12.05 pm on 8th October 2008, came into force at 12.15 pm on that day and then was laid before Parliament on that day.

3.2 In accordance with the proviso to section 4(1) of the Statutory Instruments Act 1946 Her Majesty's Treasury have notified the Speaker of the House of Lords and the Speaker of the House of Commons that the Order came into force before it was laid before Parliament. It is important that the transfer of certain rights and liabilities in Kaupthing Singer & Friedlander has effect as soon as possible following the making of the Order. It is in everyone's interest for the transfer of these rights and liabilities to be effected as swiftly as possible to avoid uncertainty. Transferring the Kaupthing deposit book of "Edge" accounts to a publicly owned company followed by an immediate transfer of retail deposits of Kaupthing to ING Direct N.V. will provide protection and continuity of business for depositors.

4. Legislative Background

4.1 The Order is made under the Banking (Special Provisions) Act 2008 ("the Act"), in exercise of the powers in section 6 to transfer rights and liabilities of an authorised UK

deposit-taker to a company wholly owned by the Bank of England and under section 8, to make a further transfer following a transfer to the public sector. By virtue of section 2(8) of the Act, the power is only exercisable for a period of one year from the passing of the Act. The Act received Royal Assent on 21st February 2008.

4.2 Section 2 of the Act requires that, before making an Order under section 6, the Treasury must consider that it is desirable to make the Order for either or both of the purposes set out in section 2(2). The Treasury considers it desirable to make the Order for the purpose set out in section 2(2)(a), that is, to maintain the stability of the UK financial system in circumstances where the Treasury consider that there would be a serious threat to its stability if the Order were not made.

4.3 Part 2 of the order provides for the transfer of rights and liabilities relating to "Edge" accounts to the publicly owned company. In addition, Part 2, among other things, makes provision in relation to the interests, rights and liabilities of third parties relating to the rights and liabilities transferred.

4.4 Part 3 of the Order makes provision for the onward transfer of the transferred rights and liabilities relating to "Edge" accounts from the publicly owned company to ING Direct N.V.. In addition, Part 3, among other things, require Kaupthing to provide information to ING Direct N.V. and makes provision in relation to the interests, rights and liabilities of third parties relating to the rights and liabilities transferred.

4.5 Part 4 of the Order provides for the interaction of the transfer described in paragraph 4.4 above with the Financial Services Compensation Scheme ("FSCS"). Amongst other things it provides for certain payments to be made to ING by the FSCS and the Treasury in connection with that transfer, and for the payments by the FSCS to ING to constitute the payment of compensation to persons eligible to claim from the FSCS (for the purposes of the relevant provisions of the Financial Services and Markets Act 2000 and the relevant sections of the FSA Handbook).

4.6 Part 5 of the Order makes provision which applies if Kaupthing Singer & Friedlander Ltd is placed into administration after the transfer. It imposes particular objectives on the administrator relating to the Order and the operation of transferred accounts by the publicly owned companyIt imposes obligations and restrictions in relation to certain contracts with Kaupthing Singer & Friedlander.

4.7 In accordance with the requirement in section 7(1) of the Act, the Treasury intend to make an Order that will provide for determining the amount of any compensation payable by the Treasury to Kaupthing.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is necessary.

7. Policy background

7.1 The purpose of the Act is to enable the Government to act to secure the continued stability of the UK financial system and to protect the public interest.

7.2 The purpose of the Order is to transfer the Kaupthing deposit book of "Edge" accounts to a publicly owned company followed by an immediate transfer of retail deposits of Kaupthing to ING Direct N.V. will provide protection and continuity of business for depositors.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

9. Contact

9.1 The Treasury Switchboard at HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. Tel: 020 7270 4558 or e-mail: public.enquiries@hm-treasury.gsi.gov.uk. The Switchboard can answer any queries regarding the instrument.

Serial No. CP 2008/94

IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN

CHANCERY DIVISION

IN THE MATTER of THE COMPANIES ACT 1931

and

IN THE MATTER of KAUPTHING SINGER & FRIEDLANDER (ISLE OF MAN) LIMITED

and

IN THE MATTER of THE JOINT PETITION OF KAUPTHING SINGER & FRIEDLANDER (ISLE OF MAN) LIMITED and THE FINANCIAL SUPERVISION COMMISSION dated the 9th day of October 2008

and

IN THE MATTER of the Court Orders dated 9th October 2008 and 24th October 2008

and

IN THE MATTER of the HUMBLE PETITION of Michael Simpson as Liquidator provisionally of Kaupthing Singer & Friedlander (Isle of Man) Limited dated the 10th day of November 2008

AFFIDAVIT OF MICHAEL SIMPSON

EXHIBIT

THIS IS THE PAPER WRITING REFERRED TO AS "MS 5" IN THE ANNEXED AFFIDAVIT OF MICHAEL SIMPSON SWORN BEFORE ME

THIS 13TH DAY OF NOVEMBER 2008

Commissioner for Oaths

T. P. McDONALD

Commissioner for Oaths

Name:	Peter Norman Spratt
Name of Firm:	PricewaterhouseCoopers LLP
Proposed position:	Partner
Profession:	Chartered Accountant and Financial Adviser - 23 years experience
Date of Birth:	25 August 1959
Year with Firm/Entity:	21 years **Nationality:** English
Membership in Professional Societies:	Associate of the Institute of Chartered Accountants in England and Wales Fellow of the Association of Business Recovery Professionals Freeman of the Worshipful Company of Shipwrights Freeman of the City of London Member, American Bankruptcy Institute Member, Association of Insolvency and Restructuring Advisors.

Key Qualifications and Experience:

- Peter has over 20 years experience of working with companies in financial distress. He primarily leads strategic independent business reviews for banks and has worked on a number of major international insolvencies and restructurings.
- He has led a number of high profile strategic and business reviews of companies in varying stages of difficulty, as well as being appointed office holder in corporate insolvencies. Peter has specific expertise in dealing with cross border insolvency.
- Since relocating to New York in 2003, Peter has led the Americas practice of PricewaterhouseCoopers Business Recovery Services.
- Peter is one of the firm's senior managing directors from a client delivery, quality and risk management perspective and has led some of the firm's largest and most high profile assignments in the past few years.

- An outline of some of Peter's recent experience is as follows:

Relevant Project Experience:

2003 – 2007 Location: U.S.A.

As Leader of the Americas Business Recovery Services and Corporate Restructuring practice of PricewaterhouseCoopers, it was Peter's role to be responsible for and coordinate assignments across the Americas region (including Bermuda) ensuring quality and client delivery.