

**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**

**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 one of the duly appointed Joint Liquidators Provisionally, of Kaupthing Singer & Friedlander (Isle of Man) Limited ("the Company") and I also make this Affidavit on behalf of my Joint Liquidator Provisionally, Peter Spratt.
2. Where I 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. Since my last affidavit dated 26 November 2008, I and my team have continued to deal with a broad range of matters.

4. In my previous affidavit I advised that I had initiated a sales process to seek offers for a sale of the business and/or of the Company's loan book and was in the process of entering into discussions with a number of those interested parties. An electronic data room was made available to interested parties and was accessed by over 12 parties. Detailed discussions continued to be held throughout the early part of December with relevant parties and offers for a "whole Bank" solution were invited by mid December. Whilst offers were received from 3 parties, it became apparent that the uncertainty regarding the recoverability of certain assets, linked to other commercial issues, made a solution involving the Bank moving forward as a going concern unlikely to be workable in the near future. In late December final offers were invited separately in respect of the Loan Book and we are continuing to assess the offers received. As indicated previously, I confirm that any decision to sell all or part of the loan book requires the approval of the Court and the Financial Supervision Commission.
  
5. To assist the Court, I produce herewith as Exhibit MS/1 a schedule which uses the draft unaudited balance sheet as at 9 October 2008 as prepared by the Company and seeks to place the assets and liabilities in a format similar to that which might be used in a Liquidation Statement of Affairs. I have indicated therein the amounts recovered as at 16 January 2009 in the Liquidation Provisionally and have provided comments in respect of other matters. I would stress that this has been provided for indicative purposes only and does not in any way constitute an estimation of what may be realised in due course for the benefit of creditors or the quantum of any dividend that may be paid. In particular the book values shown should not be taken as representative of the amounts that may be recovered. This affidavit comments in further detail on the progress made to date in the Liquidation Provisionally to the extent that commercial issues, legal privilege and confidentiality requirements permit.

#### Cash at Bank

- 6) As at 16 January, I have realised amounts totalling £76m and \$58m in respect of cash deposits held by the Company with over 20 different banks. £2.1 m has yet to be recovered due to delays in banks reversing transactions that were processed following my appointment as Joint Liquidator

Provisionally. The funds realised to date are currently spread across four banks to minimise counter party risk and my in-house Treasury team is currently in the process of setting up mandates with a further 8 banks.

### CD's

7. As mentioned in my previous report to the Court, Kaupthing UK previously arranged for Certificates of Deposit ("CDs") to be purchased on behalf of the Company. At the date of my appointment there were CD's totalling £53m yet to mature. Amounts totalling £16m have been received by Kaupthing UK and following discussions with the Administrators of Kaupthing UK these amounts were remitted on to the Company. A further amount of £2m is we understand due to be remitted to the Company shortly.
  
8. The remaining £35m of CD's are subject to set off claims in respect of amounts Kaupthing UK are purported to owe the building societies concerned. Litigation has been commenced in respect of certain of the CD's but it is not anticipated that the first court hearing will take place until March 2009. We continue to engage in discussions with the legal firms representing the building societies concerned. Having taken legal advice, it remains my position that set off should not be applied and that these amounts should be remitted, via Kaupthing UK, to the Company. I shall continue to pursue the Company's rights in this regard.

### Loan Book

- 9) The Loan book represents a material asset of the Company. Throughout the period since my appointment, the Company staff, under my supervision, have continued to manage the loan book, with receipts of £6.6m received to date, being both capital repayments and interest. The principal issue that I am facing relates to the repeated requests from borrowers to apply set off in respect of deposit accounts held by them with the Company. Until such time as the Company formally enters into a process other than Liquidation Provisionally, I am unable to accede to these requests to the frustration of the borrowers concerned.

### Share collateral

- 10) Prior to my appointment the Company entered into arrangements with Kaupthing UK which were backed by collateral arrangements. Following the termination of those agreements, the Company obtained rights to certain shares which had been lodged as collateral.
- 11) On 13 January 2009, in line with regulatory requirements, the Company lodged a form with JJB Sports Plc indicating that it held just over 23 % of its issued share capital. In a press release issued on 14 January 2009 I was quoted as saying; "In respect of the JJB Sports plc shares, I will be taking a careful and considered approach in respect of the collateral shares, particularly given the material size of the shareholding. I have and continue to take advice in this regard. I would stress that there is no requirement for me to dispose of these positions within a set timeframe or in a time pressured manner and that my role is to optimise the recovery for creditors."
- 12) As further collateral positions become clear, the Company may be required to issue additional regulatory notifications. Given the commercially sensitive nature of these holdings I am not in a position to disclose more information at this time.

### Amount owed by Kaupthing UK

- 13) As reported previously the Company held various positions with Kaupthing UK, including interest rate swaps, foreign exchange transactions, a repo transaction, a sub participation agreement and a sizeable deposit account maintained with Kaupthing UK. We are continuing to work on finalising the amounts due in respect of these various transactions to enable us to lodge a formal claim against Kaupthing UK. The Administrators of Kaupthing UK have not yet formally called for claims to be lodged and have not yet given an indication of the timing and quantum of any possible dividend. For prudence, the attached analysis allows for the position after setting off balances due from and from the Company.
- 14) As reported on the Company website, members of my team attended the creditors meeting for Kaupthing UK held in London on 1 December 2008. The

Company was put forward for membership of the Creditors Committee formed by the Administrators of Kaupthing UK but did not unfortunately obtain the necessary votes to obtain a place on the Committee. We continue to have ongoing regular contact with the Administrators of Kaupthing UK outside of the Committee arrangements.

#### Amount owed by Kaupthing Bank h.f.

- 15) In respect of amounts owed by the Company's parent company Kaupthing Bank h.f., there remain balances outstanding both to and from Kaupthing Bank h.f. and I am awaiting confirmation that the balances on the Company's systems have been agreed. I have remained in contact with members of the Resolution Committee appointed in respect of Kaupthing Bank h.f. but have nothing further to report in respect of likely recoveries from the parental guarantee issued by Kaupthing Bank h.f. As mentioned previously this guarantee was intended to operate to cover the shortfall in the Company's assets.

#### Tax status

- 16) As is normal in respect of insolvency appointments which include jurisdictional and tax residency issues, we have put in place an internal protocol which governs the operational management of the Liquidation Provisionally, for example as to where meetings are held and decisions made. The Joint Liquidators Provisionally and members of our team have abided by the terms of this protocol since 9<sup>th</sup> October 2008.
- 17) We have also been liaising directly with HM Revenue & Customs in the UK regarding tax issues, including the tax residency status of the Company and issues relating to the treatment of withholding tax on loan interest receipts. Those discussions have been positive in nature. A formal application has been lodged with HM Revenue & Customs as a matter of prudence to obtain their confirmation that following the appointment of the Liquidators Provisionally the Company remains, and will remain in any subsequent liquidation, tax resident in the Isle of Man.

## Depositors

- 18) The deposit customers of the Company continue to be a key focus. A dedicated team at the Company remains in place to respond to customer queries and concerns on a daily basis.
- 19) Statements as at 30 September 2008 were mailed to over 7,200 customers in November 2008. Subsequently the Company staff concentrated on updating the records to obtain a position for customers as at 9 October 2008. This included putting through a large number of correcting entries to reflect the position where requests had been made to transfer funds before 9<sup>th</sup> October but where the funds had not reached their intended destination. Just before Christmas over 17,800 statements were sent to customers indicating the balances on their accounts as at 9<sup>th</sup> October 2008, including accrued interest to that date. These were accompanied by information request forms, to enable us to ensure the Company's records are as up to date as possible to facilitate a payment to creditors in due course.
- 20) I continue to keep creditors apprised of events as they happen and have been updating the Company website on approximately a weekly basis. I will be putting a copy of this affidavit on the Company's website. I have also commenced holding regular conference calls to which customers are invited via the website to register to attend and to submit questions. The recordings of these calls are being made available via the website.
- 21) Since my previous report, the Treasury has proposed an Early Payment Scheme to allow the Company's customers access to up to £1,000 each, to be set against a distributions customers receive in due course. I am currently in discussions with the Treasury with regard to providing the specific assistance they require in respect of the Scheme.
- 22) The Company's employees remain a key part of the Company and they continue to assist me and my team in a professional and diligent manner. Their knowledge of the business and the Company's customers and their continued assistance is greatly appreciated by me and my team. In the period since my last report, there have been no redundancies, although 3

employees handed in their resignation and left the Company, leaving 35 employees.

- 23) Finally I and my team have been involved in discussions with The Treasury and its advisors Alix Partners, regarding the alternatives to a formal liquidation. This has included my team providing to Alix Partners detailed information under confidentiality undertakings and regular updates in respect of the progress of the Liquidation Provisionally. Whilst I have been provided with an outline of the proposed Scheme of Arrangement, I have not currently been provided with sufficient information to be able form a view at this stage that the proposal clearly represents a better outcome for creditors than they would obtain if the Company entered into Liquidation. I would stress that my focus is obtaining the best outcome for creditors, whether this is by a Liquidation or other process. I have requested further details of the proposed Scheme.

Taken and sworn at Douglas :  
This 21st day of January 2009 :  
Before me:- :

  
A Commissioner for Oaths :



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**EXHIBIT**

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

THIS 20th DAY OF JANUARY 2009

*K. Sumidge*

.....  
Commissioner for Oaths



Kaupthing Singer and Friedlander (Isle of Man) Limited (in liquidation provisionally)

Summary of the balance sheet as at 9 October 2008 and recoveries to date  
FOR INDICATIVE PURPOSES ONLY

	Book Values on draft unaudited balance sheet as at 9/10/08	Amounts Realised as at 16/1/09	Comments on further realisations
	£m	£m	
Fixed Assets and sundry debtors/assets	1.3	0.0	Unlikely to realise material value
<b>Current assets</b>			
Opening cash balance	109.8	107.7	Relating to cash deposits held with other banks. "Funds received" are those moved to accounts controlled by the Liquidators Provisionally. We are seeking recovery of the remaining £2.1m
Certificates of deposits	53.0	16.2	In respect of the balance of £37m, we are anticipating £2m will be received shortly but that with regard to the balance we have been advised that the building societies concerned are exercising set off claims in respect of amounts owed to them by Kaupthing UK. We are disputing these claims.
<b>Advances to customers</b>	<b>416.0</b>		Capital value of loans only as at 9 October 2008 i.e. not including future interest income or any provision for future defaults under any of the loans or any set off claims that might trigger on a winding up order being made
Loan redemption cash receipts	0.0	3.2	Loan redemptions in the period to date
Interest payments received	0.0	3.2	Interest receipts in the period to date
Share collateral in respect of repo agreement	0.0	0.0	As repo collateral these were not shown on balance sheet - as at 9 October 2008 the shares had a market valuation of £154m. They include a 23% holding in JJB Sports Plc and shares in other UK and Icelandic listed companies. In respect of one of the shareholdings KSFIOM does not currently hold those shares and they are subject to a claim we have lodged against Kaupthing UK for the return of those shares.
<b>Inter-group balances</b>			
Balances with KSF UK	565.7		The inter-company balance is still subject to reconciliation and confirmation with KSF UK. We have received no indication to date from the Administrators of KSF UK as to the timing or amounts of any dividends that KSF UK may pay.
Potential off-set claims against Kaupthing UK	(163.9)		
Estimated net position with KSF UK	401.8	0.0	
Due from Kaupthing Holdings IOM Ltd	0.2	0.0	Assumes no recovery will be made
Parental guarantee from Kaupthing h.f.	Unknown	0.0	The guarantee covers any shortfall in the balance sheet after all other assets have been recovered
<b>Total assets</b>	<b>982.1</b>	<b>130.3</b>	
Costs of realisation		(0.9)	In relation to wages, rent and other ongoing expenses
Plus interest earned		0.4	
Cash in hand		129.8	
<b>Liabilities</b>			
Preferential Creditors	0.5		This is an estimation only.
Unsecured Creditors			
Customer deposits - non group companies	872.8		This represents the current position of customer deposits following the reconciliation of funds in transit. It includes accrued interest up to 9 October 2008 and amounts which may be set off against loan book advances if a winding up order is made.
<b>Customer deposits - group companies</b>			
Due to Kaupthing hf	185.4		The balance assumes set-off rights exists and will be applied. The position remains subject to reconciliation.
Less deposits with Kaupthing hf	(184.8)		
Net position with Kaupthing hf	0.6		
Due to other group companies	29.0		
Other non-depositor creditors	3.3		This is an estimate only as no formal call can be made at this time for creditors to lodge claims
Contingent liabilities	unknown		No formal call for claims has been made given the status of the Company
<b>Liabilities</b>	<b>906.2</b>		
<b>Net assets/(liabilities)</b>	<b>75.9</b>		

Notes

Please note that the figures above represent book values and amounts realised to date - they do not represent an estimate of what may recovered in due course.

We have converted all relevant amounts into £ as at 9 October 2008. In respect of realisations to date, if converted at 16 January 2009, these amount to a sterling equivalent of £137m

We have not included any assumptions in respect of the costs of realisation. Preferential creditors will be paid prior to unsecured creditors and as such we anticipate will be paid in full.

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**CAINS Advocates Limited  
Old Bank Chambers  
15/19 Athol Street  
DOUGLAS  
Isle of Man (pbc/meb)**