

THE HIGH COURT

Record No. 2011 No.

IN THE MATTER OF CUSTOM HOUSE CAPITAL LIMITED

**AND IN THE MATTER OF AN APPLICATION PURSUANT TO REGULATION 166 OF
THE EUROPEAN COMMUNITIES (MARKETS IN FINANCIAL INSTRUMENTS)
REGULATIONS 2007**

ON THE APPLICATION OF THE CENTRAL BANK OF IRELAND

AFFIDAVIT OF NOEL THOMPSON

I, **NOEL THOMPSON**, Senior Regulator, of the Central Bank of Ireland, Block D, Iveagh Court, Harcourt Road, Dublin 2 aged 18 years and upwards **MAKE OATH AND SAY** as follows:

1. I am a Senior Regulator of the Central Bank of Ireland (“the Central Bank”), the applicant herein, and I make this affidavit on behalf of the Central Bank and with its authority. I am an officer of the Central Bank in its Investment Service Providers Supervision division, and am engaged in the supervision of investment firms pursuant to the European Communities (Markets in Financial Instruments) Regulations 2007, Statutory Instrument No. 60 of 2007 (as amended) (the “MiFID Regulations”). The MiFID Regulations were made to give effect to Directive 2004/39/EC dated 21 April 2004 of the European Parliament and of the Council as amended by Directive 2006/31/EC of 5 April 2006 and Directive 2006/73/EC of 10 August 2006. I am an authorised officer of the Central Bank under Regulation 164 and a copy of my current appointment is at tab 1 of the Exhibit Folder referred to below. I have direct knowledge of the matters the subject of this application and have reviewed the relevant books and records of the Central Bank and I make this affidavit from facts within my own knowledge, save where otherwise appears, and

where so otherwise appears I believe the same to be true.

Summary of and background to the application

2. I beg to refer to the originating motion herein when produced. As appears therefrom, the Central Bank seeks various orders and directions pursuant to the provisions of the MiFID Regulations including the authorisation of an investigation into the affairs of and the appointment of inspectors to Custom House Capital Limited (the "Firm") pursuant to regulation 166(2) of the MiFID Regulations and other related and ancillary orders. The Central Bank has been advised by its solicitors and by counsel that this is a "relevant application" by a "relevant authority" within the meaning of Order 84B of the Rules of the Superior Courts. I further say and believe having regard to the urgency of the matter and the desire to protect investor funds, no notice of this application has been given to the Firm under regulation 166(3). I say and believe that the Central Bank is of the opinion that it would be prejudicial to the interests of investors if the Central Bank were required to notify the Firm in writing of the application and of the reasons for the application in advance and to provide the Firm with time to explain in writing the relevant activities of the Firm which have given rise to this application.

3. As I have set out in more detail later in this affidavit, this application arises against a background of the Central Bank having given increased attention to the Firm since early 2009 when the Central Bank first received information which gave rise to concerns on its part regarding the Firm's compliance with various regulatory requirements. This engagement and regulatory supervision of the Firm involved authorised officers of the Central Bank carrying out inspections of the Firm's books and records, the issuing of various directions, requirements and instructions to the Firm in relation to the management structure of the Firm, management of client assets, the management of the Firm's assets and returns to be made to the Central Bank relating to such assets. Until a matter of a few days ago the regulatory supervision of the Firm was concerned primarily with what might be described as compliance and organisational issues as outlined below. As appears below the Central Bank had initiated an administrative sanctions procedures against the Firm and Mr Harry Cassidy, its chief executive, in respect of non-compliance with certain regulatory requirements.

4. Since early 2011 the Central Bank found it increasingly difficult to obtain clear and precise information from the Firm in response to requests made of the Firm. During this period, the Central Bank also found that explanations provided by the Firm in relation to certain matters contradicted explanations previously given to the Central Bank. On Monday, 11 July 2011 the Central Bank received information from a senior staff member of the Firm which heightened the concerns of the Central Bank to such a degree that it now has significant concerns about the status of client assets managed by the Firm, further details of which are set out in this affidavit. Since the receipt of further information about the Firm on 11 July 2011, the Central Bank has considered what steps are necessary and appropriate to protect clients and creditors of the Firm and it has formed the view that inspectors should be appointed to investigate the affairs of the Firm on the grounds that it is in the interest of the proper and orderly regulation and supervision of the Firm (which is an investment firm) and the protection of investors that such an investigation be held.
5. I beg to refer to a folder of documents relevant to this application, being true copy documents which I exhibit to this Affidavit upon which marked 'NT 1' I have signed my name prior to the swearing hereof ('the Exhibit Folder'). For ease of reference I will refer to particular documents contained at tab divisions of the Exhibit Folder throughout this affidavit.
6. Where people have come to the Central Bank for the purpose of providing the Central Bank with information about the activities of the Firm, I have not named them in this affidavit but the names of such persons can be provided to the Court, if so required. Where notes of meetings have been exhibited which identify these people by name I have redacted the name from the document exhibited but the unredacted version can be provided to this Honourable Court if so required.
7. I further say that throughout this affidavit I have referred, for consistency, to the Central Bank as the entity which carried out the supervisory role in relation to the Firm however prior to 1 October 2010 (the date of commencement of The Central Bank of Ireland Reform Act 2010) this function of the Central Bank was carried out by the Irish Financial Services Regulatory Authority under the former legislative regime.

The Firm, its officers, shareholders, objects

8. The Firm was incorporated in the State under the Companies Acts, 1963 - 1990 on 28 July 1997 as a private company limited by shares, with registration number 269794 in the Companies Registration Office ("CRO").
9. The registered office and principal place of business of the Firm is at 9 Merrion Square, Dublin 2.
10. According to the copy amended articles of association of the Firm (the "Articles") as filed in the CRO, as adopted by special resolution passed on 18 January 2010, the authorised share capital of the firm is €165,065.94 divided into 19,500 A ordinary shares of €1.269738 each and 110,500 B ordinary shares of €1.269738 each, which classes of shares rank pari passu in all respects save as expressly provided in the Articles. A copy of the Articles can be found at tab 2 of the Exhibit Folder. The audited financial statements of the Firm for the year ended 31 March 2010 and its annual return to the CRO as made up to 26 October 2010 each refer to the Firm as also having authorised share capital of 120,000 ordinary shares of €1.269738 each, making a total authorised capital of €317,434.50, but this appears to be erroneous. No such ordinary shares are stated to have been issued. Copies of the audited financial statements of the Firm for the year ended 31 March 2010 and its annual return to the CRO as made up to 26 October 2010 can be found at tabs 3 and 4 respectively of the Exhibit Folder.
11. Based upon (a) information received by the Central Bank in a letter dated 19 January 2010 from the Firm a copy of which can be found at tab 5 of the Exhibit Folder and (b) a copy special resolution of the Firm passed on 18 January 2010 and (c) a return of allotments made by the Firm to the CRO on 18 May 2010 (copies of which special resolution and return of allotments can be found at tabs 6 and 7 of the Exhibit Folder). I believe that the issued capital of the firm is 142,310 divided into 10,725 A ordinary shares and 131,585 B ordinary shares, and ownership of the share capital of the Firm as from 18 May 2010 appears to be as follows:

Harry Cassidy - 61,730 B shares

John Mulholland - 61,730 B shares

John Whyte - 8,125 B shares

Finn O'Connell - 1,625 A shares

Ruth Woods - 1,625 A shares

Neil Bowes - 1,625 A shares

Clodagh Benson - 1,625 A shares

Sean Kensie - 1,625 A shares

Suzanna Cummins - 1,300 A shares

Paul Lavery - 1,300 A shares

For completeness I might say that the annual return of the Firm made up to 26 October 2010 as filed in the CRO (a copy of which can be found at Tab 4 of the Exhibit Book) appears to be incorrect, and to record the shareholdings in the Firm (a) without regard to the changes in shareholdings set out in the letter dated 18 January 2010 above referred to and (b) without reference to the allotment of new shares made on 18 May 2010 also above referred to.

12. It is understood by the Central Bank that the current directors of the Firm are John Mulholland of 1 Foxes Covert, Mount Juliet Estate, Thomastown, Co. Kilkenny, John Whyte of 306 Beech Park, Lucan, Co. Dublin and John Anthony O'Dwyer of 27 Raglan Road, Ballsbridge, Dublin 4. Harry Cassidy of 22 Ballintyre Walk, Ballinteer, Dublin 16 has been a Director of the Firm but tendered his resignation as CEO and Director of the Firm very recently and this was accepted by the board on 13 July 2011, as referred to further below. I believe that Mr O'Dwyer was appointed a non-executive director of the Firm on 2 July 2009 with the approval of the Central Bank following a request from the Central Bank in June 2009 (by way of a post inspection letter dated 17 June 2009) that the Firm strengthen its Board, that the other directors are or have been executive directors of the Firm, that in recent days Mr Cassidy has tendered his resignation as a director and Chief Executive and that this has been accepted by the Board. A copy of the said post inspection letter and letter of approval can be found at tabs 8 and 9 of the Exhibit Folder.

13. The returns filed in the CRO state the secretary of the Firm to be Paul Lavery of 3 Charnwood Grove, Clonsilla, Dublin 15. I understand that Mr Lavery is also the chief financial officer of the Firm.
14. The principal objects for which the Firm was established, according to its Memorandum of Association, were:
- “(a) *To carry on all or any of the businesses of providing services of an establishment, management, administrative or financial nature including but not limited to the establishment and administration of limited and unlimited liability companies, unit trusts, undertakings for collective investment in transferable securities, investment companies with fixed or variable capital, and other collective investment undertakings or any private investment undertakings, the provision of corporate, secretarial or registration services, valuation of securities and other assets, the provision of accounting services and the maintenance of books and records relating to limited and unlimited liability companies and other investment undertakings and the completion and furnishing of statutory and other returns to relevant governmental and supervisory authorities and generally to provide financial advisory services, management services, administration services, marketing services, placement services, brokerage services, agency services and all other services of a financial, management or administrative nature whether they are in connection with stock, shares, bonds, gilts, notes, real property, mortgages, commodities, precious metals, futures, options, currencies and other financial and investment instruments and assets or any of them.*
- (b) *To act as managers, consultants, supervisors and agents of other companies or undertakings, and to provide for such companies or undertakings managerial, advisory, technical, brokerage, purchasing, selling administrative, accounting, secretarial and other services and to enter into such agreements as are necessary in connection with the foregoing.”*

The MiFID Regulations, status of the Firm

15. The Firm is authorised under regulation 11 of the MiFID Regulations as an investment firm as defined in regulation 3 of the MiFID Regulations, having been authorised by the Central Bank on 1 November 2007, and having previously been

authorised by the Central Bank pursuant to section 10 of the Investment Intermediaries Act 1995. It provides investment services and ancillary services within the meaning of the MiFID Regulations, as further described below. A copy of the firm's authorisation can be found at tab 10 of the Exhibit Folder.

16. The Central Bank brings the application herein for the appointment of inspectors to the Firm pursuant to regulation 166(2) on the grounds that it is of the opinion that it is in the interests of the proper and orderly regulation and supervision of investment firms in general and the Firm, in particular, and necessary for the protection of investors in the Firm that an investigation should be held into the affairs of the Firm by inspectors appointed by this Honourable Court for the reasons described below.
17. At this point in time the Central Bank considers that the general scope of such investigation should include examining:
 - (a) customer holdings, including but not limited to confirmation of customer holdings and client assets (for the avoidance of doubt, references to clients of the Firm include persons who currently are or who have in the past six months been clients of the Firm);
 - (b) Firm assets, including but not limited to an examination of the Firm's capital adequacy, solvency and debtors; and
 - (c) The financial position of the Firm, including the financial position of any related companies.

The Firm's activities

18. The principal activity of the Firm is the provision of financial services including investment fund management, setting up and managing approved retirement funds (ARFs/AMRFs), pension funds and personal retirement savings accounts (PRSAs). Investment vehicles established and managed by the Firm for collective investment by clients include exempt unit trusts, qualifying investor funds established under the laws of Ireland and investment companies (not being subsidiaries of the Firm) that were established under the laws of various European states, principally Luxembourg and Denmark, for the purpose of holding property investments. The Firm provides

property asset management services to such companies.

19. As at 31 March 2011, the Firm reported to the Central Bank that it had €1,155,515,965.00 in assets under management on behalf of its clients. As at 8 July 2011, the Firm reported to the Central Bank that it held in excess of €24 million in designated client asset accounts. By way of explanation of the divergence in these figures I should say that “designated client asset accounts” will only hold cash while “assets under management” refers to any assets managed, whether held in the name of the Firm or of clients. A copy of these monthly returns relating to the Firm’s client assets under management for each of 31 March 2011 and 8 July 2011 can be found at tabs 11 and 12 respectively of the Exhibit Folder.
20. As at 31 March 2010, the balance sheet of the Firm showed shareholders’ funds of €3,877,347. A copy of this balance sheet of the Firm can be found as part of the Firm’s audited financial statements at tab 3 of the Exhibit Folder. The profit of the Firm on ordinary activities before taxation for the year ended on 31 March 2010 was €508,799. Notes 1.9 and 20 to the above referenced financial statements are as follows:

“1.9 Going concern

Normally the company meets its day to day working capital requirements by way of the client fees from both private client and property related activities. During the past 12 months the company negotiated an overdraft facility of €250,000 with their bankers (payable on demand) and this facility is utilised to augment the fees to cover working capital needs.

The nature of the Company’s business is such that there can be considerable unpredictable variation in the timing of cash inflows. The Directors have prepared projected cash flow information for the period ending 12 months from the date of approval of these financial statements. On the basis of this cash flow information, the Directors consider that the Company will continue to operate within the facility currently agreed. The Company’s cash inflows are significantly reliant on the recoverability of debtor balances from property related entities. The Directors do not consider any further provisions are required in the financial statements in this regard, other than those recognised and reflected in the balance sheet of the Company.

The Company has a contingent liability to a guarantee provided by it under the Custom House Capital Limited Mezzanine Bond Fund (the "Bond") (note 20). The Directors believe it is not probable that a transfer of economic benefit will be required to settle their obligation under this guarantee.

The Directors consider it appropriate to prepare the financial statements on the going concern basis. The financial statements do not include any adjustments that would result from a withdrawal of the overdraft facility by the Company's bankers, the non-recoverability of significant debtor balances or the crystallisation of a liability under the guarantee provided by it under the Bond."

"20 Contingent Liabilities

Mezzanine Bond

The Company created and promoted the Custom House Capital Mezzanine Bond Fund ("the Bond"). A term of the Bond states that the Company guarantees up to 100% of the investors' funds, plus a fixed return of 5% - 7% per annum (net of management fees of 0.5% per annum).

At the year end, it has been estimated by the Directors, that the exercise of the guarantee by the investors could give rise to a maximum liability to the Company of €15,800,709 (2009: €16,558,349). This liability could arise in a situation where the Property Investment Funds ("the Funds"), in which the proceeds of the Bond were advanced, defaulted in the repayment of those advances. The Funds to which the proceeds of the Bond were advanced are supported by properties valued at €115,625,000 as at 31 December 2009. The Directors estimate €11,932,876 of this value is available to Bond holders, after taking account of senior bank debt. Consequently, in the event of default the Directors estimate that this could result in a contingent liability of €3,867,833 for the Company, under the guarantee. The directors believe it is not probable that a transfer of economic benefit will be required when the bonds mature at a future point in time.

The Funds could default, at maturity of the Bond, if the value of the Properties, in which funds were invested, fall below the combined liabilities owed through senior bank debt to Financial Institutions and the Bond proceeds invested.

The Bond has varying maturity lengths, the earliest of which is not due to mature until 19 December 2012. The Funds' accounts are prepared on a going concern basis. The Directors consider the possibility of these Funds being in default, at maturity of the Bond, to be remote.

At the balance sheet date, the Directors are of the opinion that no event has arisen that has crystallised a liability against the Company in relation to the Bond and no provision has been made in the financial statements."

21. The auditors report on those financial statements of the Firm contained the following paragraph:

"Emphasis of matter – going concern

In forming our opinion which is not qualified, we have considered the adequacy of the disclosures made in note 1 of the financial statements concerning the Company's ability to continue as a going concern. The Directors have prepared projected cash flows for the period ending 12 months from the date of signing these financial statements. There can be considerable unpredictable variation in the timing of the Company's cash inflow. The Company's cash flow is also significantly reliant on the recoverability of debtor balances from property related entities. These conditions, along with other matters explained in note 1 to the financial statements, indicate the existence of a material uncertainty which may cast significant doubt about the Company's ability to continue as a going concern. The financial statements do not include the adjustments that would result if the Company was unable to continue as a going concern."

The Central Bank's supervision of and engagement with the Firm since 2009

22. In February 2009, information was received by the Central Bank from an individual to the effect that some clients' monies were being invested in an investment framework described as the Mezzanine Bond Fund (as referred to in the extracts from the audited financial statements of the Firm as at 31 March 2010 referred to in the immediately preceding paragraphs of this affidavit) and that this was being done without the clients' knowledge or consent. While the firm may have had investment discretion to make such loans on behalf of clients in some instances, the information

received by the Central Bank was that not all of the clients involved were discretionary clients. A note of a meeting between the Central Bank and the individual who provided this information can be found at tab 13 of the Exhibit Folder.

23. The information received by the Central Bank was that the Mezzanine Bond Fund was being used by the Firm to provide loans to geared (or leveraged) property structures in order to fund financing shortfalls on various European commercial property transactions entered into by the Firm on behalf of its clients, with a view to clients being repaid with interest over a five year period as new investors were obtained for those structures or from surplus income derived from the underlying properties or as such properties were sold. A promotional and information document in respect of the CHC Mezzanine Bond Fund can be found at Tab 14 of the Exhibit Folder and page 1 of that document describes the key features of the Bond. Specifically it states that the fund had been created to enable the Firm to assist in the short term financing of properties in the European Market.
24. On receipt of this information the Central Bank initiated authorised officer inspections of the Firm in March 2009. I was an authorised officer of the Central Bank at that time. These were conducted by the Investment Services Providers Supervision and Consumer Protection Codes Departments of the Central Bank. Members of staff of KPMG were also engaged as authorised officers to review a sample of property transactions that included mezzanine financing (a copy of the letter of engagement of KPMG can be found at tab 15 of the Exhibit Folder). As a result of the information gleaned from those authorised officer inspections, a number of requirements were imposed by letter dated 17 June 2009 (tab 8 of the Exhibit Folder and in addition certain directions ((c) and (d) below) were imposed on the Firm under the MiFID Regulations on 26 March 2009 including:
 - (a) The Firm was instructed to recruit an Independent Non-Executive Director and two new senior staff members including a new Compliance Officer;
 - (b) The Firm was required to clarify the financial position of each syndicated SPV (special purpose vehicle used for holding an individual property) with particular reference to identifying current valuations compared with

valuations at the time of purchase along with any shortfalls in equity being raised;

- (c) Directions were imposed to ensure that no further monies were put into the Mezzanine Bond Fund and that when bridging finance was no longer required in property transactions these monies would be returned to clients;
- (d) A direction that the Firm must seek the prior written approval of the Central Bank in respect of any proposed new investment product;
- (e) An increase in the regulatory capital requirement (for capital adequacy purposes) to €5,000,000 in order to cover potential liabilities arising for the Firm on the Mezzanine Bond; and

Copies of these and all the directions referred to in this affidavit are to be found at tab 16 of the Exhibit Folder together with a table summarising all current directions imposed on the Firm.

- 25. In addition, the Firm was requested at a meeting on 7 April 2010 to appoint a new external auditor for its financial statements. The Central Bank was later informed that this happened.
- 26. At this meeting with the Central Bank on 7 April 2010, the Firm was also requested to consider strategic options for the business. A copy of the minutes of this meeting is at tab 17 of the Exhibit Folder. The initial response by the Firm stated they had considered strategic issues on the basis of the impact on current stakeholders in order of priority (i.e. clients, staff and shareholders) but indicated it was not their immediate objective to dispose of any part of the business. However, following the meeting and further discussions with the Central Bank, the Firm engaged a corporate finance adviser, Cap Nua, to assist in seeking buyers for the Firm's business
- 27. The Central Bank also requested at that meeting that the Firm obtain an independent third party guarantee in relation to the Mezzanine Bond, however the Firm could only obtain a proposal for insurance relating to the operation of the Mezzanine Bond. The purpose of the insurance policy was to afford a better level of protection to investors in the event that not all monies can be returned. The insurance policy was

put in place on 28 May 2010. Clients of the Firm were advised in June that this insurance policy was now in place and a draft copy of the notification to clients is at tab 18 of the Exhibit Folder.

28. In September 2010, the Central Bank requested the Firm to appoint a new executive chairman to its Board. The purpose of this appointment was to ensure the transparency and independence of decision making within the Firm and assist in resolving any potential conflicts of interest (i.e. where the Firm could be perceived to be in a position to act in its own interest regarding property transactions as opposed to the best interests of its clients). The Firm was not able to obtain a suitable candidate for this role (primarily due to the circumstances of the Firm) and the Firm was then requested to establish a property committee with an independent person as chairman. Mr Maurice Harte was subsequently appointed to this role with the consent of the Central Bank. Harry Cassidy resigned before Christmas 2010 as Chairman of the Firm (but remained as a director, CEO and shareholder) and the role of Chairman was taken over by John Anthony O'Dwyer, although a period of illness which he suffered earlier this year restricted his ability to perform this function during this time.
29. The Firm's cashflow was reliant on a bank overdraft facility, I believe from Bank of Ireland, during 2010 and a bank overdraft facility for €200,000 existed until 30 June 2011. I believe based on a projected cashflow figure for Q3 of 2011 received by the Central Bank from the Firm on 8 July 2011 that the overdraft facility currently stands at €175,000. A copy of this projected cashflow of the Firm can be found at tab 19 of the Exhibit Folder. The Central Bank monitors the Firm's cashflow closely with the Firm submitting weekly cashflow figures and detailed projected cashflow figures on foot of a request from the Central Bank.
30. In 2010, the Firm dedicated extra resources to debt recovery however it still holds a significant amount of debtors on its Balance Sheet - €5.6million as at 31 March 2011, i.e. 74% of total assets of €7.6million. It should be noted that of the €5.6million debtors figure an amount of €4.8million relates to fees due to the Firm from the property structures. Bad debts arising for the financial year ending 31 March 2011, based on the firm's estimates, amount to €149,000. These figures referred to as of 31

March 2011 were provided to the Central Bank by the Firm on 5 May 2011 as part of the Firm's unaudited financial return including management accounts previously referred to at tab 11 of the Exhibit Folder.

31. In the course of the above exchanges with the Firm in 2010 further directions were imposed on the Firm with the following objectives:
 - (a) Segregate any returns to the Mezzanine Bond in a separate client account and not to make any payment out of this account (direction dated 7 April 2010 and amended on 18 February 2011);
 - (b) Prevent any further investments in property SPVs without the prior consent of the Central Bank (direction dated 7 April 2010, and subsequently amended on 18 June 2010 to the prior consent of two nominated persons within the Firm) and renewed on 17 June 2011.
 - (c) Segregate the money raised by the Firm through subordinated debt (direction dated 7 April 2010)
 - (d) Not to pay any dividends to shareholders or provide any loan to a director; (direction dated 12 April 2010 and renewed on 11 April 2011)
 - (e) Cease to take on new clients or to engage in new investments on behalf of existing clients unless the firm is obliged, under its agreements with such clients, to process such transactions (direction dated 19 April 2010 and renewed on 19 April 2011) and
 - (f) Not to advertise or to solicit to new or existing clients in respect of the supply of investment or ancillary services (direction dated 19 April 2010 and renewed on 19 April 2011).
32. Each of the directions referred to above (except that referred to at (c) has been continuously renewed as and when required so that each direction remains in force in respect of the Firm.
33. On 9 February 2011, the Central Bank issued letters to the Firm and Mr Harry Cassidy (CEO) outlining alleged contraventions of regulatory requirements relating

to the sale of the Mezzanine Bond to clients and an administrative sanctions procedure under Part III C of the Central Bank Act 1942 (as amended) was initiated. Responses were submitted by the Firm on 6 April 2011 supported with 2 folders of documentation. These responses are being considered by the Central Bank in the context of that procedure, on foot of which significant sanctions including monetary penalties and/or directions disqualifying persons from being concerned in the management of a regulated service provider may be imposed. A copy of the letters of 9 February 2011 to the Firm and to Harry Cassidy can be found at tab 20 of the Exhibit Folder. The fact that an administrative sanctions procedure has been initiated is entirely independent of and does not impact on the ability of the Central Bank to carry out an investigation into the affairs of the Firm and to seek the appointment of inspectors pursuant to regulation 166 of the MiFID Regulations.

Registration of clients' interests

34. Following concerns raised by the Central Bank at a meeting on 22 October 2010 regarding the proper registration of clients' interests in SPVs, the Firm arranged for Declarations of Trust to be put in place on 2 November 2010 in relation to shares in SPVs that were acquired on behalf of clients but are still registered in the name of the Firm. This was notified to the Central Bank at a meeting on 8 November 2010. A copy of the Declarations of Trust can be found at tab 21 of the Exhibit Folder. A copy of the minutes of the meetings of 22 October 2010 and 8 November 2010 can be found at tabs 22 and 23 respectively. Share certificates should have been issued to the underlying investors however the Firm had failed to make these arrangements in a timely manner.

CHC Prime Property Fund 1

35. The Central Bank sought clarification in late 2010 from the Firm in relation to subscription monies of €2,884,600 that had been raised for investment in a qualifying investor fund being placed on deposit with a large French property developer. Responses were provided by the Firm on 16 August and a copy of these can be found at tab 24 of the Exhibit Folders. The Firm did not proceed with the initial property development identified in France (which was called "Moretti") however the monies have remained with the French developer since 2008 on the basis, according to the

Firm, of a verbal agreement made between the Firm and the French developer of this being available for investment in an alternative development in France. Since further inquiries were made by the Central Bank on this issue at the meeting of 22 October 2010 the Firm has continually represented to the Central Bank that this amount of €2,884,600 related to money being held on deposit for the purchase of a new property. Information which the Central Bank has received more recently, on 17 June 2011, indicates that the original agreement with the French developer allows for it to retain all of the deposit monies. By letter dated 17 June 2011 the Firm has represented to the Central Bank that it had received verbal assurances from the developer that it would not take this course of action meaning that it would not retain the deposit monies. A copy of the said letter of 17 June 2011 may be found at tab 25 of the Book of Exhibits. However in light of the foregoing, there is a serious doubt, in the Central Bank's view, as to the Firm's entitlement and ability to recover this money. These doubts are compounded by the difficulty experienced in obtaining clear information from the Firm in relation to this issue.

Current Position of the Mezzanine Bond

36. The current position on the Mezzanine Bond is that €10.4 million is owing to investors. The original regulatory capital condition imposed on the Firm for capital adequacy purposes which required it to have €5 million capital has been varied to take account of the fact that the Firm now has to deduct any contingent liability arising on the Mezzanine Bond when calculating the regulatory capital of the Firm bearing in mind that the estimated contingent liability would vary as reflecting the most recent valuations on the relevant properties/SPVs in respect of which Mezzanine Bond funds had been loaned. This appears from a letter issued by the Central Bank to the Firm on 17 November 2010, a copy of which may be found at tab 16 of the Exhibit Folder. Issues arose in April 2011 in relation to the method of calculating the contingent liability amount in that the Firm had previously advised in a letter dated 16 August 2010 (tab 24) that "Mezzanine finance ranks equally with equity holders". However at a meeting between the Central Bank and the Firm on 5 April 2011 the Central Bank was informed by Mr Cassidy that the Mezzanine finance ranked ahead of Equity investors and the Firm later by email dated 20 April 2011 maintained this position (that Mezzanine investors rank ahead of the Equity

investors). However On 3 June 2011, the Firm wrote to the Central Bank stating that in a liquidation scenario or a return of capital to investors from property SPV's, if there is a shortfall in capital, the Mezzanine Bond would rank pari passu with the investments made by other investors in the SPV. The Firm also confirmed in that letter of 3 June 2011 that the documentation available to the Firm regarding the Mezzanine Bond's investments in the SPVs is deficient. The letter also stated that the Firm has sought independent legal advice on this matter. It is understood that as at 31 March 2011 the contingent liability amounts to €5,121,834 and this together with the uncertainty created by the contradictory communications which have been received from the Firm regarding this issue raises serious concerns for the Central Bank regarding the resulting impact on the Firm's "own funds" /capital adequacy position. Copies of the minutes of the meeting of 5 April 2011, the email dated 20 April 2011 and letter of 3 June can be found at tabs 26, 27 and 28 of the Exhibit Folder.

Recent developments

37. A senior staff member of the Firm requested to meet with the Central Bank on 11 July 2011 to discuss concerns over issues arising with the Firm. This staff member obtained the services of a legal representative and both people attended the meeting. Together with colleagues of mine from the Investment Service Providers Supervision division of the Central Bank I attended this meeting.
38. The person gave the following information to the Central Bank:
 - (a) Concerns arose regarding the operation of the Firm's Client Asset Accounts and assets contained in certain Exempt Unit Trusts;
 - (b) Monies were taken from Pooled Client Asset Accounts by the Firm without appropriate authority and used for covering shortfalls in property investments on behalf of clients;
 - (c) This activity related to Pooled Client Asset Accounts for the last two years approx and may have related to around 55 clients for amounts in the region of €2.5 million. The statements issued by the Firm to clients over this period still showed cash balances being held by the Firm;

(d) Assets in two Equity Unit Trusts and one Cash Unit Trust were also used for shortfalls in property investments on behalf of clients and the amount of monies involved may run to €13 million.

39. This person, with the assistance of his legal representative, agreed to produce a formal statement for submission to the Central Bank which has not yet come to hand.

Directions given by the Central Bank to the Firm this week

40. After this meeting further directions were issued by the Central Bank to the Firm on Wednesday, 13 July 2011. These included directions requiring the Firm to:

- (i) Suspend the making of payments of any sums to any client of the Firm;
- (ii) Suspend the making of payments to any person where the payment includes sums received from clients or other customers of the Firm;
- (iii) Suspend the making of any transfer or disposal of assets to any person where the transfer or disposal includes assets of or held on behalf of a client of the Firm.
- (iv) Suspend transactions on any account held (a) by the Firm or (b) by any other person on behalf of the Firm or (c) by any other person under the direction or control of the Firm where such account contains assets or money of or held on behalf of a client of the Firm
- (v) Refrain from granting to any person control or security or a power of attorney over any client assets or client money
- (vi) Suspend the issuing of any statement to any client describing clients' investments or holdings; and
- (vii) Take all steps necessary to secure and preserve the records of the Firm.

A copy of the letter giving these directions can be found with all of the other directions imposed on the Firm at tab 16 of the Exhibits Folder.

41. In addition a further direction (also to be found as the last item in tab 16) was issued today (15 July).

Agreement between the Firm and Appian Asset Management Limited

42. As described above, following a meeting with the Central Bank in April 2010, the Firm was requested by the Central Bank to consider strategic options for the business.
43. In May 2011, the Firm entered into a services agreement with Appian Asset Management Limited ('Appian'), another investment firm that is authorised under the MiFID Regulations, under which Appian agreed to take on responsibility for delivering certain services (other than property management services) to clients of the Firm, in which capacity Appian would have direct responsibility for the client relationships. In relation to clients to whom the Firm provided services in connection with the management of personal retirement savings accounts (PRSAs) the agreement provided that the Firm would retain Appian on an exclusive basis to provide services to such clients pending the obtaining by Appian of a licence from the Pensions Board for the direct provision of such services. A copy of the services agreement can be found at tab 29 of the Exhibit Folder.
44. The Central Bank issued letters to the Firm and to Appian on 15 June 2011 consenting to the agreement. The agreement took effect on 15 June 2011 and relevant clients of the Firm were advised by a communication from the Firm of the new arrangements for the provision of non-property related services. A copy of the letters from the Central Bank and the communication to clients (dated 14 June 2011 and in draft form) can be found at tabs 30 and 31 of the Exhibit Folder.
45. In the course of familiarising itself with the services to be rendered Appian became aware of certain apparent discrepancies in records of the firm relating to some clients. These related to the nature of assets held for its clients as compared with the description of such holdings (such as a significant volume of bonds being held in an equity fund), incomplete information as to the holding of assets in certain cash funds, and inconsistencies between valuations of assets supplied to certain clients or their agents and the underlying records of the Firm relating to those clients' accounts, and

certain other issues relevant to the security and good order of the holding of client assets for a number of clients.

46. Appian informed the Central Bank of such issues over the weekend of 8-10 July 2011 and I have been informed that a letter was issued by Appian to the directors of the Firm on 8 July 2011 outlining their concerns which became apparent following the recent transfer of clients from the Firm to Appian. A draft copy of that letter can be found at tab 32 of the Exhibit Folder.

Meeting with Appian

47. A meeting took place between Appian and representatives of the Central Bank on Monday, 11 July 2011. A copy of a note of this meeting is at tab 33 of the Exhibit Folder. I did not attend this meeting however I am advised by George Treacy of the Central Bank who attended this meeting that at the meeting Appian informed the Central Bank of certain matters including the following:

- (a) Appian had not received any response to their letter of 8 July 2011 addressed to the directors of Firm outlining their concerns about matters which had become apparent following the recent transfer of clients from the Firm to Appian,
- (b) A former employee of the Firm (who transferred to Appian as part of the services agreement) was aware that the Firm had been backdating invoices for client accounts by 10 days to facilitate the Firm taking the money out of client accounts immediately and the relevant staff member was willing to make a statement to that effect,
- (c) Appian considered that urgent action was needed in order to protect client assets. In this regard Appian indicated that it was taking action to freeze client accounts pending the outcome of a financial review,
- (d) Appian were likely to rescind the transfer deal effected between the Firm and Appian on the basis that there had been insufficient disclosure by the Firm and, in their view, a material breach of contract had resulted;
- (e) that Appian were meeting with the Firm's Board later that day (11 July 2011)

at 3pm but that the Firm were not aware that Appian were meeting with the Central Bank.

48. In the time available for the preparation of this application it was not possible to arrange for Mr Treacy (who provided the above account of the meeting to me) to swear an affidavit. However an affidavit will be sworn by Mr Treacy setting out his account of the meeting and will be provided to this Honourable Court in early course.
49. Just prior to the swearing of this affidavit the Central Bank received from Appian a copy of a letter sent from Appian to the directors of the Firm and dated 15 July 2011 in which Appian make reference to the directions recently issued to the Firm by the Central Bank and allege *inter alia* that there has been serious and significant misrepresentation by the Firm to Appian up to and following execution of the services agreement. The letter states that as a result of these matters the services agreement is void ab initio and that Appian intends to apply to Court for declaratory relief. This leaves the status of the arrangements entered into between Appian and the Firm in some considerable doubt and adds to the concerns of the Central Bank regarding the management of client assets. This letter can be found at Tab 34 of the Exhibits Folder.
50. I say, and am advised that it is appropriate to inform this Honourable Court, that Appian has been very helpful and co-operative with the Central Bank in relation to the matters outlined above.

Other inquiries

51. I received a phone call from Mr John Anthony O'Dwyer, the chairman of the firm, on 11 July 2011 and he referred to the letter he had received from Appian on the evening of Friday, 8 July 2011 (as above referred to).
52. Mr O'Dwyer stated how he could no longer rely on the information he receives from the Firm as being dependable and said that his trust in the Firm is now gone. Mr O'Dwyer stated that Harry Cassidy repeatedly advised him over the weekend of 9 - 10 July 2011 that he had not used any investor monies for his own benefit. However, Mr O'Dwyer confirmed that it appeared investor monies were misused by the Firm.

53. Mr O'Dwyer advised that Harry Cassidy offered his resignation as CEO and Director of the Firm at a Board meeting on the morning of 11 July 2011, however he was unsure at that stage if he would remain as an employee of some sort given his knowledge of the Firm's activities. Mr O'Dwyer advised that both he and Maurice Harte (who is the chairman and advisor to the Firm's property committee) will look to establish an interim management committee to run the business. Mr O'Dwyer has subsequently confirmed by email of 13 July 2011 that Harry Cassidy offered his resignation as CEO and Director and this was accepted by the Board. A copy of this email is at tab 35 of the exhibit Folder.
54. Mr O'Dwyer expressed the view that an independent investigation would need to be undertaken to ascertain the extent of the problems uncovered by Appian. He said that he and Mr Harte would make themselves available for any meetings requested by the Central Bank.

Summary

55. Following from its ongoing enquiries and from the meeting held with the senior staff member referred to, the Central Bank has identified a number of matters of grave concern, referred to in the preceding paragraphs.

The Central Bank is concerned in particular about the following matters:

- (a) that incomplete and misleading information has been supplied to it by the Firm in relation to significant issues;
- (b) that proper books and records have not been kept by the Firm;
- (c) that incomplete and misleading information has been supplied by the Firm to clients about their investments;
- (d) that funds received for investment from clients have not been applied for the purposes represented to and intended by such clients;
- (e) possible breaches of conduct of business requirements;
- (f) possible breaches of capital adequacy requirements;

- (g) possible breaches of the MiFID Regulations and in particular client asset requirements; and
 - (h) absence of effective administration of the Firm.
56. As a consequence of the matters referred to above, the Central Bank, as the relevant supervisory authority in respect of the Firm, is of the opinion that it is in the interest of the proper and orderly regulation and supervision of the investment business firms in general and of the Firm, in particular, and the protection of investors of the Firm that inspectors should be appointed by this Honourable Court pursuant to regulation 166(2) of the MiFID Regulations to investigate the affairs of the Firm and that this Honourable Court should be asked to give directions in this regard.
57. The Central Bank is of the opinion that this investigation should proceed as a matter of urgency and that it may be prejudicial to the interests of investors and creditors to notify the Firm in advance of this application. The purpose of notifying the Firm in advance of an application to appoint inspectors which is permitted but not required under regulation 166(3) of the MiFID Regulations seems to be to give the Firm an opportunity to explain its relevant activities in writing and the Central Bank considers that explanations have already been sought from the Firm in respect of its concerns in the course of the supervisory engagement with the Firm and the responses that have been tendered to date by the Firm have been incomplete and misleading in many respects or the Firm has simply not been in a position to give explanations at this time. In particular the Central Bank has received varying accounts in response to requests of the Firm in relation to the Mezzanine Bond, the French property transaction above referred to and the contingent liability. It has therefore not seemed appropriate that the Central Bank should notify the Firm of its intention to apply for the appointment of inspectors as it might otherwise do in accordance with regulation 166(3).
58. If the Court does authorise an investigation and appoint inspectors to investigate the affairs of the Firm, the Applicant will be seeking a direction under regulation 168 of the MiFID Regulations that, insofar as the inspectors may require legal, accounting, property or other professional advice in the course of carrying out their investigation, they may have recourse to the Central Bank's legal advisers or such

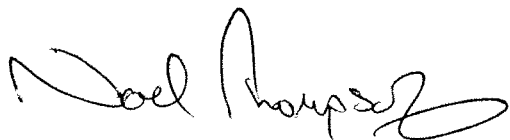
other professional advisers as they may think fit.

59. Given the potential scope of the proposed investigation, the Central Bank seeks the appointment of two individuals as inspectors, namely your deponent and Mr George Treacy. As averred to in paragraph 1 of this affidavit I am a senior regulator within the Investments Service Providers Supervision (ISPS) division of the Central Bank. In this role I have been involved in the various steps the Central Bank has taken in supervising the Firm. Mr Treacy has been head of the ISPS division of the Central Bank since October 2010. In this role Mr Treacy has overseen the supervision of the Firm since October 2010 and in particular has overseen the implementation of the various supervisory steps taken by the Central Bank in respect of the Firm.
60. Having consulted with Mr Treacy I say that if this Honourable Court is minded to grant the reliefs sought herein, your deponent together with Mr Treacy (as the proposed inspectors) would provide a preliminary report on the affairs of the Firm to the Court within two weeks of the date of our appointment.
61. The reliefs sought by the Central Bank in the within application are limited to an order authorising the carrying out of an investigation, an order appointing inspectors to investigate the affairs of the Firm and ancillary orders regarding the appointment of advisors and the service or advertisement of any order of this Honourable Court. I say and am advised that in the event of this Honourable Court authorising an investigation and appointing inspectors it may be necessary to seek further directions from this Honourable Court pursuant to the MiFid Regulations. I say that any inspectors appointed by this Honourable Court will be in a better position to ascertain what directions may be necessary and to make appropriate applications for such directions after they have had an opportunity to carry out a preliminary review of the books and records of the Firm in the context of any investigation authorised by this Honourable Court.

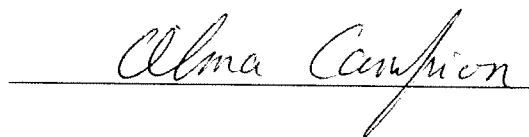
62. Having regard to the above I pray this Honourable Court for the reliefs sought in the originating motion herein.

SWORN by the said Noel Thompson on 15th
July 2011

at Riverside One, Sir John Rogerson's
Quay,
in the City of Dublin



before me a Practising Solicitor and I know the
Deponent



Practising Solicitor

This Affidavit is filed this day of July 2011 by McCann FitzGerald, Solicitors, of Riverside One, Sir John Rogerson's Quay, Dublin 2 (Ref: RCB/FOB)