

Friday the 21<sup>st</sup> day of October 2011

BEFORE MR JUSTICE HOGAN

**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**

This matter coming on for hearing this day having been  
adjourned on the 6<sup>th</sup> day of September 2011 in the presence of Counsel for the  
Applicant

And on hearing said Counsel and upon reading the Affidavit of  
Noel Thompson sworn herein on the 19th October 2011 and exhibits thereto

And upon reading the Final Report of the Inspectors Noel Thompson  
and George Treacy, having been produced to the Court on and dated 19<sup>th</sup> October  
2011 pursuant to the directions given and Order made by the Court on the 6<sup>th</sup> day of  
September 2011 (as varied by the Order made on the 16th day of September 2011)

And the Court noting that on the 19<sup>th</sup> of October 2011 it received a  
communication from the Inspectors pursuant to Regulation 171 (1) of the European  
Communities (Markets in Financial Instruments) Regulations 2007 in relation to  
matters coming to the Inspectors' knowledge as a result of the investigation tending  
to show that offences have been committed ("the Regulation 171(1) Communication  
to the Court")

And upon hearing said Counsel and Counsel for Custom House Capital Limited and Counsel for Non-parties a number of investors (120) in Custom House Capital Limited Counsel for Mr Harry Cassidy Solicitor for John Mulholland and Solicitor for the Investor Compensation Company Limited

IT IS ORDERED that

1. Pursuant to Regulation 171 (2) (b) of the European Communities (Markets in Financial Instruments) Regulations 2007 the Final Report of the Inspectors including all exhibits thereto be forwarded to

(a) Custom House Capital Limited by sending forthwith a copy to John Anthony O'Dwyer Chairman of Custom House Capital Limited and to

(b) the auditors of Custom House Capital Limited

on condition that the persons listed above are not permitted to disseminate copy or otherwise publish or disclose the contents of the unredacted Final Report and any of its exhibits subject to the proviso that they may furnish a copy of the unredacted Final Report including all exhibits thereto to their legal advisors and other appropriate professional advisors who are in turn subject to the same stipulations and restrictions as Custom House Capital Limited Mr O'Dwyer and such auditors

2. Pursuant to Regulation 171 (2) (c) (ii) of Part 12 of the European Communities (Markets in Financial Instruments) Regulations 2007 the Final Report of the Inspectors be

published forthwith in the manner provided for at paragraph 4 below on the website of the Central Bank of Ireland without its appendices or exhibits.

3. Pursuant to Regulation 171 (3) of the European Communities (Markets in Financial Instruments) Regulations 2007 the names of clients of Custom House Capital Limited and of related entities and bank account numbers be redacted from the copy of the Final Report of the Inspectors to be published on the website of the Central Bank of Ireland.
4. The Inspectors be at liberty to forward the unredacted Final Report including all exhibits thereto together with the Regulation 171(1) Communication to the Court, to the Minister for Justice and Equality, to the Director of Public Prosecutions, to the Director of Corporate Enforcement, to the Revenue Commissioners and to the Garda Commissioner and that such bodies maintain the contents of the unredacted Final Report and its exhibits and the Regulation 171(1) Communication to the Court confidential subject to any disclosure which may be necessary or appropriate for the performance by those persons or bodies of their statutory functions.
5. Pursuant to the power of this Honourable Court under Regulation 172(1) of the European Communities (Markets in Financial Instruments) Regulations 2007 to make such order as it sees fit, that all of the Inspectors' documents and records relating to or coming into their possession or arising in

connection with the investigation including without limitation all files, notes, books, records, transcripts of interviews, correspondence, be forwarded to and thereafter be maintained by the Central Bank of Ireland and that such documents and records be available for use by the Central Bank of Ireland in the performance of its statutory functions including in the performance of the Central Bank of Ireland's functions and the holding of an inquiry under Part IIIC of the Central Bank Act 1942.

6. The Inspectors having made their Final Report to the Court are discharged of their appointment once service of the documents provided for in this Order is complete and that any matters or applications arising out of or in connection with their appointment and investigation be dealt with hereafter by the Central Bank of Ireland as the original applicant in these proceedings.
7. That non party John Mulholland be at liberty to apply by a motion on notice to the Central Bank grounded upon affidavit returnable to the Court on Friday 11<sup>th</sup> November 2011 for liberty to obtain an unredacted copy of the Final Report.

And upon reading the affidavit of Brendan Cooney sworn on the 20th day of October 2011 as to the fitness to act of the proposed Liquidator and the consent dated the 20th day of October 2011 of Kieran Wallace to act as Provisional Liquidator or Official Liquidator (if appointed)

AND it appearing to the Court that John Whyte, John Mulholland and John Anthony O'Dwyer are the Directors and Paul Lavery is the Secretary of the said Company

IT IS FURTHER ORDERED that

8. Custom House Capital Limited be wound up by the Court pursuant to the provisions of Regulation 172(1) (a) of the European Communities (Markets in Financial Instruments) Regulations 2007 and the provisions of the Companies Acts 1963 to 2009
9. Kieran Wallace, Chartered Accountant, of KPMG, 1 Stokes Place, St. Stephen's Green, Dublin 2 be appointed Official Liquidator of the said Company.
10. The said Kieran Wallace be appointed as Administrator of Custom House Capital Limited for the purposes of and pursuant to section 33A of the Investor Compensation Act 1998 as amended
11. The unredacted Final Report of the Inspectors including all exhibits thereto be forwarded to Kieran Wallace as Official Liquidator and Administrator of Custom House Capital Limited and to the Investor Compensation Company Limited and the Central Bank of Ireland be at liberty to give the Official Liquidator and the Investor Compensation Company Limited access to all books records and other documents of the Inspectors in relation to the investigation of the said Company.

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12. The said Kieran Wallace be at liberty to act immediately as such Official Liquidator pending the determination of the amount to be given by him as security and the giving of same on application to be made by the Official Liquidator forthwith to the Examiner to fix the appropriate level of security
13. All moneys to be received by the Official Liquidator be paid by him into the Bank of Ireland at its branch office at 2 College Green in the City of Dublin to the credit of the account of the Official Liquidator of the said Company and the Examiner within seven days of the receipt thereof
14. A copy of this Order certified by the Inspectors or their solicitor to be a true copy shall be served by the Official Liquidator or his agent on the said Directors and Secretary of the said Company as soon as practicable after the same shall have been perfected
15. Subject to Rule 25 of Order 74 of the Rules of the Superior Courts the said Directors and Secretary of the Company shall within 21 days from the date of this Order make out and file in Court a Statement as to the affairs of the said Company in the prescribed form verified by Affidavit
16. A copy of this Order certified by the Inspectors or their solicitor to be true copy shall be left at the Examiner's Office within 10 days after the same shall have been perfected
17. The Official Liquidator or his agent shall issue forthwith a Notice to Proceed in the Examiner's Office

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18. The Court doth adjourn to Monday the 28<sup>th</sup> day of November 2011 to the Examiner's Court Motion List the further consideration of the matter and in particular the fixing of times for the giving of security and the delivery of accounts by the Official Liquidator
19. The Official Liquidator report back to the Examiner's Court within a period of three months from the date of this Order or such earlier period as he may consider is appropriate and that the Official Liquidator be at liberty to apply to the Court for any additional powers Orders or directions he may require for the beneficial winding up of the Company and for that purpose and for the purpose of proceedings before the Examiner he be at liberty to engage the services of a Solicitor and Counsel.
20. The Investor Compensation Company Limited be made a notice party to all applications in the liquidation.
21. And the Court doth direct that this matter be listed on Friday the 28<sup>th</sup> day of October 2011 at 10.30 am to deliver a written judgment on the orders for the winding up of Custom House Capital Limited and the appointment of an Official Liquidator
22. And the Court doth adjourn the application for (a) the costs of the application for the appointment of Inspectors and of these proceedings (including all reserved costs) and (b) the expenses of and incidental to the investigation and the fees incurred by the Inspectors, being defrayed by the Central Bank of Ireland

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pursuant to Regulation 170 (1) of the MiFID Regulations for  
hearing on Friday the 28<sup>th</sup> day of October 2011 at 10.30 am.

AISLING O'NEILL  
REGISTRAR  
21<sup>ST</sup> OCTOBER 2011

**Note** It is required that a copy of this Order certified by the Inspectors or their  
solicitor to be a true copy be forthwith

1. delivered to the Registrar of Companies
2. served on the said Company
3. lodged with the said branch office of the Bank

In addition

The making of this Order be advertised in the Irish Times and the Irish  
Independent and Iris Oifigiúil as prescribed by the Rules of the Superior  
Courts and the Companies Acts 1963-2009

It will be the duty of the persons who are liable to make out or concur  
in the making out of the said Company's Statement of Affairs to make  
out and file in the Court such Statement of Affairs and to attend  
before the Court at such time and place as the Court may appoint and  
to give to the Court all information which the Court may require.