

THE HIGH COURT

Record No. 2011 No. 219MCA

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

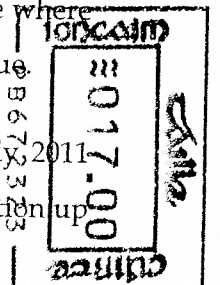
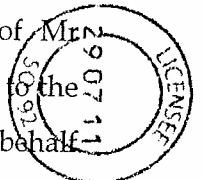
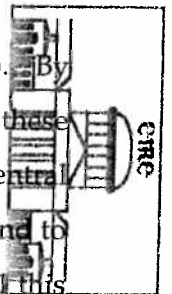
ON THE APPLICATION OF THE CENTRAL BANK OF IRELAND

THIRD 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"). By Order made on 15 July 2011 on the application of the Central Bank in these proceedings, I was appointed as an inspector (with Mr George Treacy of the Central Bank) to investigate the affairs of Custom House Capital Limited ("the Firm") and to report the results of the investigation to this Honourable Court. On 20 July 2011 this Honourable Court made an Order confirming its Order of 15 July 2011 authorising the investigation and continuing my appointment and the appointment of Mr George Treacy as Inspectors to investigate the affairs of the Firm. I beg to refer to the said Orders when produced. I make this affidavit on my own behalf and on behalf of Mr Treacy. 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.

2. On 20 July 2011, Mr Treacy and I produced an interim report dated 20 July 2011 ("First Interim Report") to the Court, setting out the progress of our investigation up



to that date. The First Interim Report was exhibited to my Second Affidavit which was sworn on 20 July 2011 and to which I beg to refer when produced.

3. By Order of this Honourable Court dated 20 July directions were given in relation to the provision of the First Interim Report to other parties. In accordance with those directions and with the undertaking given by the solicitors for the Inspectors, (McCann FitzGerald solicitors) to the Court on the same date, the following steps were taken;
  - (a) A copy of the First Interim Report was delivered by hand to Mr John Anthony O'Dwyer, chairman of the Firm, at the registered office of the Firm on 21 July 2011. The report was delivered under cover of a letter from McCann FitzGerald and with a cover page which set out the terms upon which the Court directed a copy of the Report to be furnished to Mr O'Dwyer. These terms included that Mr O'Dwyer would not disseminate, copy or otherwise publish any aspect of the Report and that he would not discuss its contents with any person or any member of staff, customer or investor of the Firm, subject to the proviso that he may furnish a copy to the present or future legal advisors of the Firm, including counsel, with those advisors then being subject to the restrictions and stipulations in relation to the Report to which Mr O'Dwyer is subject. I beg to refer to a copy of that letter and of the cover page to the report upon which pinned together and marked "NT6" I have signed my name prior to the swearing hereof .
  - (b) A copy of the First Interim Report, addressed to the Secretary of the Central Bank was delivered by hand to the offices of the Central Bank on Dame St, Dublin 2 on 21 July 2011, under cover of a letter from McCann FitzGerald. I beg to refer to a copy of that letter upon which marked "NT7" I have signed my name prior to the swearing hereof .
4. Since this matter was last before this Honourable Court Mr Treacy and I have continued our investigation into the affairs of the Firm with the assistance of advisors, KPMG. This involved examining a number of persons under oath and reviewing and considering further documentation of and relating to the Firm. Details of additional information which has come to light as a result of our on-going

investigation together with details of a development which is potentially significant for clients of the Firm are set out in a further interim report dated today ("Second Interim Report"). I beg to refer to a copy of that report upon which marked with the letters "NT8" I have signed my name prior to the swearing of this affidavit.

5. I make this affidavit for the purpose of verifying the contents of the Second Interim Report. I say that to the best of my knowledge, information and belief at the time of completion of the report the statements contained in the report are true and accurate.
6. I respectfully suggest that, as with the First Interim Report, a copy of the Second Interim Report should formally be forwarded to the Central Bank pursuant to Regulation 171(2)(a) of the MiFID Regulations. I further suggest that a copy of the Second Interim Report should be provided to Mr John Anthony O'Dwyer, chairman of the Firm on the same terms that the Court directed the First Interim Report to be so furnished, namely, that Mr O Dwyer is not permitted to disseminate, copy or otherwise publish any aspect of the report, and specifically may not discuss its contents with any person or any member of the staff of the Firm, or any customer or investor in the Firm subject to the proviso that Mr O'Dwyer may furnish a copy of the report to the Firm's present or any future legal advisors, including counsel but they in turn are subject to the same stipulations and restrictions that Mr O'Dwyer is subject to. I do not believe that a copy of the Second Interim Report should be furnished to any other party as I do not believe that it is necessary or appropriate to do so given the interim nature of the report. Furthermore, I believe that wider dissemination of the Report may prejudice the ongoing investigation.
7. When the inspectors are in a position to conclude their investigation and to make a final report to the court pursuant to Regulation 171(1) of the MiFID Regulations, including having regard to any developments in the meantime, they expect to be in a position to make certain recommendations to the Court as to what (if any) orders the Court might consider making pursuant to Regulation 172.
8. I and my fellow inspector, George Treacy anticipate that we will be in a position to report to this Honourable Court again in early September 2011. Accordingly, I

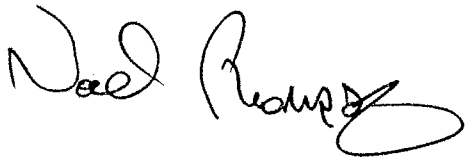
would ask the Court list the matter again for some date in early September 2011 and to make the further directions referred to at paragraph 6 above.

SWORN by the said Noel Thompson on 29<sup>th</sup>  
July 2011

at Sir John Rogersons Quay

in the City of Dublin

before me a Practising Solicitor and I know the  
Deponent



Noel Thompson



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)