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STATUTORY INSTRUMENTS

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**2008 No. 2674**

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

**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.

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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(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.