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Private & Confidential: for the attention of the addressees only

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15 March 2012

By email and by post

Dear Sirs

Re Kaupthing Bank Hf

Introduction

1. We act for Vincos Limited (trading as Consensus Business Group) ("CBG") ("our clients"). We are copying this letter to Rawlinson & Hunter Trustees SA (in its capacity as trustee of the Tchenguiz Family Trust "TFT"), Euro Investments Overseas Inc, Cleobury Limited and a number of other related companies (listed at Annex A). We understand that Wilmer Hale, who have seen the contents of this letter, will be writing to you separately on behalf of Vincent Tchenguiz.

2. For the avoidance of doubt this letter is not written, directly or indirectly, on behalf of Robert Tchenguiz, R20 or any entity associated with the Tchenguiz Discretionary Trust ("TDT"). Nor has Robert Tchenguiz or any representative of R20 seen or approved the contents of this letter.

3. The purpose of this letter is to draw to your attention certain serious concerns regarding the reliability of the information that was supplied by Grant Thornton ("GT") to the Serious Fraud Office ("SFO") between 2009 and 2012 in connection with transactions between Kaupthing Hf, our clients, Vincent Tchenguiz and the Oscatello group of companies (transactions known respectively as "the Pennyrock loan" and "the Oscatello facility"). In light of the concerns identified in this letter, we would invite you to begin an urgent investigation, and to provide us with the information requested in this letter by close of business on Thursday 5 April 2012.

Judicial Review Proceedings

4. As you may be aware, our clients have brought judicial review proceedings against the SFO arising out of misrepresentations and non-disclosure in the sworn Information relied upon by the SFO in applying to the Central Criminal Court on 7

March 2011 for search and seizure warrants. Vincent Tchenguiz is an interested party in those proceedings. Similarly misleading information was relied upon by the City of London Police ("COLP") in its decision to arrest Vincent Tchenguiz.

5. Robert Tchenguiz and the R20 group have also issued judicial review proceedings against the SFO and the COLP. That application includes charges of misrepresentation and non-disclosure by the SFO.

6. Further to a permission hearing on 22 February 2012, both cases have now been conjoined and listed for a full hearing before the Divisional Court on 22 May 2012 (Sir John Thomas, President of the Queen's Bench Division, and Silber J).

7. As regards Vincent Tchenguiz, the SFO has formally conceded that the search and seizure warrant should be quashed for misrepresentation. We enclose a letter from the Treasury Solicitor to our clients dated 22 December 2011 in which the concession was first made (Annex B), as well as a further letter from the Treasury Solicitor dated 21 February 2012 providing a partial explanation for certain of the misrepresentations made to the Court and including a chronology of contact between the SFO and GT (UK) (Annex C). The implications of the concession which the SFO has made, including questions concerning the procedure for determining damages flowing from the misrepresentation, are to be argued at the substantive hearing. As regards Robert Tchenguiz, the SFO has conceded that he also has an arguable case that the warrants were unlawful on grounds of factual misrepresentation.

The Role of Grant Thornton

8. The Divisional Court has fixed 28 March 2012 as the deadline for service by the SFO of a sworn witness statement explaining *inter alia* the circumstances in which it came to mislead the Central Criminal Court on the key allegations against Vincent Tchenguiz. In advance of the hearing on 22 February 2012, the SFO sought to explain some of the misleading information that was placed before the Court in the letter from the Treasury Solicitor appended at Annex C. As you will see from that letter, the Treasury Solicitor (on behalf of the SFO) has now accepted that the SFO itself was responsible for certain of the factual mis-statements.

9. However, at the same time, the SFO identifies GT (UK) as the source of the central and most serious allegation that was made against Vincent Tchenguiz in connection with the Pennyrock loan (an allegation of fraudulent accounting which was unparticularised, untrue and unsubstantiated (see further below)). To the extent therefore that the SFO seeks to blame GT (UK) for providing it with information upon which the SFO relied (as it does, for example, in relation to that important allegation) this is likely to be ventilated at the hearing and may have a direct impact on a number of questions, including the appropriate procedure for assessing liability and damages. That is one of the matters to be determined at the hearing on 22 May.

10. As you are aware, GT (Iceland) has acted throughout as adviser to the Resolution Committee of Kaupthing Hf ("the ResCom") and a senior representative of GT (Iceland) (Theodor Sigurbergsson) was at all relevant times a member of the

ResCom. GT (UK) was appointed by a Court in the British Virgin Islands as liquidator of the Oscatello Group of companies. GT (UK) was appointed in the UK as receiver of certain companies connected with our clients, and was actively seeking its own appointment as receiver in relation to other companies within the group. It is thus clear that GT had a close and continuing involvement in all aspects of this matter and knew, or was in a position to know, the true facts.

11. It is also apparent that GT was the principal informant relied upon by the SFO and the COLP in connection with the allegations made against Vincent Tchenguiz. The sworn Information put before the Central Criminal Court by the SFO identified GT as a source of the information and belief upon the basis of which the warrants were applied for. More particularly, the sworn Information expressly relied upon a report prepared by GT (UK) on the instructions of the ResCom, to analyse the Kaupthing lending to Tchenguiz connected companies. According to the Information, the object of this report was "*to consider potential offences and potential defendants*". We have not yet been provided with a copy of this report and we request you to disclose it to us immediately.

12. In its letter of 21 February 2012, the Treasury Solicitor, on behalf of the SFO, provides a partial chronology of its contacts with GT which includes reference to a number of meetings in which draft reports were shown by GT representatives to the SFO. We request you to provide us with copies of all reports (or draft reports) that were disclosed (or shown) to the SFO on the occasions referred to in the letter at Annex C. For completeness, we should inform you that we are already in possession of a report prepared by GT (UK) on the instructions of Weil Gotshal & Manges, acting for Kaupthing Hf, which is dated 14 January 2009. We refer to the contents of that report in more detail below, and it is appended to this letter as Annex D.

13. Even without sight of all the relevant reports, however, it is plain that many of the factually inaccurate criminal allegations made against Vincent Tchenguiz by the SFO in the Information and by the COLP in related documents must have emanated from GT. We set out below a non-exhaustive summary of the principal factual misrepresentations which appear to have emanated from GT either in the form of written reports disclosed (or shown, in draft or final form) to the SFO, or arising out of consultations between representatives of the SFO and representatives of GT. It is now essential that the supply chain of information be clarified, so that the true source of the false allegations made against Vincent Tchenguiz can be properly identified.

14. It is thus inevitable that the role of GT (as the principal informant of the SFO in this matter, with a clear vested interest in the outcome) will feature prominently in the judicial review, and in the claim for damages which has been backed onto the judicial review application. As presently advised, we believe that it was the incomplete and/or misleading information that GT provided to the SFO that caused the SFO to take action against Vincent Tchenguiz in the first place, thereby setting in train a sequence of events that has had a very significant adverse impact on our clients' and the related companies' financial position (and, at the same time, has failed to promote the interests of the creditors of Kaupthing Hf). That action included the decision to arrest Vincent Tchenguiz on the basis of what has now been shown to have been a false factual basis, as well as the obtaining and execution of search warrants

STEPHENSON HARWOOD

authorising the entry and search of business and private premises, and the seizure of a significant amount of material belonging to our clients, in reliance on information and allegations which are now admitted to be false.

15. We trust this is sufficient to explain why GT's role in this matter is relevant to the upcoming judicial review hearing. The respective responsibility of the SFO and GT (and the extent to which the former relied upon the latter) will be one of the central issues falling for consideration at the hearing. The criticisms identified in this letter will inevitably be ventilated at the hearing in public. Not only is there the prospect of criticism of GT in the submissions of all parties, but GT may also be criticised in the judgment. We wish to ensure that you have had a proper opportunity to acknowledge and correct your mistakes and misrepresentations as quickly as possible.

16. It would, of course, be most unfortunate if GT were wrongly to be blamed for misleading the SFO on certain aspects of the case as the result of a failure to put the full picture before the Divisional Court. It would be equally unfortunate if information damaging to GT's position were to be suppressed at this stage, only to emerge subsequently. We trust therefore that you will agree with us that it is not only in the interests of justice, but also in GT's own interests, for you now to co-operate fully and promptly with the requests for information set out in this letter. For the avoidance of doubt, we reserve the right to draw this letter to the attention of the Court for any relevant purpose, including the determination of questions of liability and quantum.

The timetable for GT's response to the requests contained in this letter

17. The information we are requesting is essential to ensure that the Court can be fully informed of the relative responsibility of those involved in this process. Given the timetable laid down by the Court, we request that you provide us with the information sought by close of business on Thursday 5 April 2012 at the very latest. This is to afford us sufficient time to analyse the answers and material you supply to us, to cross-reference it for consistency or inconsistency with the evidence filed by the SFO, and to compile, include and comment upon your explanations in the evidence which must be filed on behalf of the Claimants by 11 April 2012. The material which we have requested ought to be readily available to you, without the need for a lengthy investigation. We need not, we feel sure, underline the potential adverse consequences to GT of a failure to provide us voluntarily and in good time with important information which may have a direct bearing on the matters that are in issue in these judicial review proceedings.

Ongoing financial consequences

18. There are two further and related reasons we require this information from you as a matter of the utmost urgency. First, our clients reserve the right to pursue any available civil, criminal and/or regulatory complaints and remedies against GT (and against any individual partner, officer, employee or agent of GT) arising out of the provision of misleading information to the SFO. As we have pointed out, we have reason to believe that it was misleading information supplied by GT that drew our

clients and Vincent Tchenguiz into the SFO investigation in the first place. Since that time, so far as we are aware, GT has failed to correct the misleading information it initially supplied, thereby causing or contributing to the continuation of the SFO investigation.

19. The actions of GT have caused significant and continuing financial loss to our clients and the connected businesses. By the time of the "*dawn raid*" on 9 March 2011, GT (UK) had already put in receivership the Euro Investments Overseas Inc group of companies ("EuroGroup") owning the GEN 1 and GEN 2 and certain GEN 5 ground rent portfolios that had been advanced as additional collateral for the Oscatello facility. These actions were undertaken in two phases. In December 2008, GT put in receiverships over shares in companies owning GEN 1 and GEN 2. This caused cross-defaults within the group by causing the terms of the senior lending to be breached. In February 2009, GT was appointed receiver over shares in certain immediate holding companies holding the GEN 5 assets pledged in respect of Oscatello thereby causing direct defaults. In July 2009, Kaupthing Hf replaced the directors of certain of these companies with their own appointees.

20. Our clients consider that none of these actions were in the best interests of Kaupthing Hf and its creditors, and that GT (UK) was pursuing an aggressive liquidation strategy. At the very least, it is clear that the actions of GT (UK) generated significant work streams for the liquidators and receivers, and our clients have reason to believe that the interests of the creditors have not been properly served by GT (UK). We set out our concerns in more detail below. The Divisional Court may in due course wish to explore whether any inaccuracies in the information supplied by GT to the SFO were a part of the aggressive strategy by which GT sought control of Pennyrock and, as a consequence, the entire EuroGroup. We return to this issue below.

21. In November 2009, as a result of the receiverships put in place by GT (which had caused the cross-defaults and direct defaults outlined above), the senior lender on GEN5 (HBOS) put the facility into default. No further lending was authorised. On 31 December 2009, as a further consequence of this chain of events, Merrill Lynch Bank of America ("BOA") the senior lender for Peverel Opco (a company within the group that had been provided as collateral solely for the Pennyrock facility), put the senior lending facility into default. In March 2010, BOA closed a fixed interest swap arrangement with the Peverel Opco, resulting in a significant financial loss which was added to the senior loan which had already been defaulted. Immediately after the arrest and "*dawn raid*" on our clients' premises, and following a direct approach by GT, BOA put various holding companies of the Peverel Opco group into administration on 14 March 2011.

22. The continuation of the SFO investigation now also threatens the restructuring of the EuroGroup (known as "Project MacDonald") which has become necessary as a result of the actions taken by GT and the SFO. The investigation is having an inevitable and entirely predictable impact on the price of the ground rent portfolios that have been offered to market by Lazards. Not only is this highly damaging to our clients, it is also contrary to the interests of Kaupthing Hf and its creditors (since one of the purposes of Project MacDonald is to facilitate the repayment of the Pennyrock loan

facility). Moreover, by forcing a sale of the ground rent portfolios at a distressed level, it threatens repayment of up to £2.2bn of debt owing to UK banks, as well as threatening our clients' equity which is valued in excess of £1bn.

23. Generally, the actions taken by GT, Kaupthing Hf, and the SFO, have severely restricted our clients' credit facilities, and thereby hampered their ability to acquire new ground rent assets, preventing growth, and has slowed our clients' origination arm, thereby resulting not only in opportunity losses, but in a reduction in our clients' workforce (causing a loss of expertise and necessitating redundancy payments).

24. Given that the losses are mounting daily, we require production of the information sought in this letter as quickly as possible so that we can correct the errors in the information provided by GT to the SFO. In this way we hope that the SFO can make a prompt decision to bring its investigation to a speedy close, and make the appropriate public announcements to the market, thereby mitigating the already considerable financial losses our clients and the associated businesses are sustaining. We are unable to make fully informed representations to the SFO until we have a full picture of the information supplied by GT. We therefore require the information sought in this letter as a matter of urgency, in order to further our clients' efforts to mitigate their losses. Accordingly, our clients reserve the right to rely, in aggravation of damages, or any penalty, on any unnecessary delay in the provision by GT of information in response to the requests set out in this letter.

Auditing requirements

25. The third reason we require this information as a matter of urgency is because the SFO has now publicly aired the fact that GT has made an allegation that fraudulent UK accounts had been produced by companies within the group. The Treasury Solicitor's letter of 21 February 2012 goes on to allege that the relevant accounts contained incorrect information and failed to comply with relevant accounting standards. This was made public at the hearing on 22 February 2012. These unparticularised and false allegations of course make it extremely difficult for any potential purchaser of the ground rent portfolios to carry out the necessary due diligence inquiries before proceeding with a purchase, as well as frustrating any restructuring of debt facilities. Moreover, our clients' auditors (BDO Stoy Hayward and Baker Tilly) have made it clear that they will not be able to give an unqualified opinion on the annual financial statements until these particular allegations have been resolved to their satisfaction. The auditors are especially concerned about the allegation of fraud.

Allegation of fraudulent accounting

26. In the sworn Information that was laid before the Central Criminal Court in support of the search warrants the SFO made the following allegation at paragraph 117 in connection with the Pennyrock loan:

> *"Actuarial values have been included within the Financial Statements of the underlying ground rent owning companies... Whilst actuarial values are a valid way of valuing the portfolio, the basis for this particular valuation was a*

STEPHENSON HARWOOD

projection of rental income for 150 years as opposed to the accepted accounting practise of 50 years. Consequently it is believed that the Financial Statements were materially overstated."

27. In a letter to our clients dated 21 February 2012, the Treasury Solicitor (on behalf of the SFO) has stated that GT was the source of this central allegation of fraudulent accounting. The letter states that:

> "*On 9 September 2010 Grant Thornton ("GT") informed the SFO in a conference call that they had uncovered material suggesting that VT's companies had produced fraudulent UK accounts. GT had been appointed by Kaupthing bank's Resolution Committee to investigate and recover value on behalf of the bank. The basis of this allegation was the valuation of a portfolio of ground rent properties on an actuarial basis using a 150 year income stream. The SFO were informed that VT had obtained loans on the basis of this Oliver Wyman valuation from Merrill Lynch/Bank of America, HBOS and RBS as well as Khf. The Khf loan was referred to as the Pennyrock loan.*
>
> *GT reported at a meeting on 20 September that it was believed that Kaupthing bank had accepted the methodology of the valuation. At this meeting the SFO were allowed to view the GT draft report on the Pennyrock loan. The significance of this information for the SFO representatives at the meeting was that accounts containing incorrect information and which failed to comply with relevant accounting standards were provided to Kaupthing bank in support of the application for lending.*
>
> *The SFO view of GT was that it was a professional firm with detailed knowledge of the circumstances surrounding this lending and this information was reliable.*"

28. The letter indicates that representatives of GT allowed representatives of the SFO to read a draft report on the Pennyrock loan on GT premises on two further occasions, namely 22 November 2010 and 10 February 2011. It also states unequivocally that:

> *"The assertion in the sworn Information that VT provided misleading information to the bank arose from the GT statement that accounts containing incorrect information, and which failed to comply with relevant accounting standards, were provided to the bank in support of the application for lending.*"

29. Thus, according to the SFO, GT (UK) made a direct allegation that "*VT's companies had produced fraudulent UK accounts*" (in that the accounts "*contained incorrect information*" and "*failed to comply with relevant accounting standards*" because they included a valuation based upon an income stream of 150 years).

30. The allegation attributed by the SFO to GT was entirely without foundation, and had the foreseeable consequence of misleading the SFO, the COLP and the Court. There is no requirement that the accounting valuation of a ground rents business should be

carried out on a "*red book*" basis. That would provide a wholly misleading undervalue of the asset and it does not appear to be the basis of the allegation made by the SFO in the sworn Information (which concedes that actuarial valuation is an appropriate method for assessing the value of a grounds rents portfolio). Actuarial valuation methods of this kind are routinely used for the securitisation and valuation of the long term liabilities of pension funds and life schemes. This method of valuation has long been accepted by our clients' auditors Baker Tilly and BDO Stoy Hayward as an appropriate and justifiable proxy for the open market value of ground rent portfolios of the kind owned and operated by our clients and thus satisfies the requirements of FRSSE and SSAP19.

31. As to the number of years used, this is a matter of practice. The valuations contained in the accounts were prepared by Oliver Wyman ("OW"), a leading firm of management consultants with over 50 offices worldwide in 25 countries. OW has specialist expertise in actuarial consulting, focussing *inter alia* on long term investments such as pension funds and property portfolios. There is no "accepted accounting practice" requiring that only a 50 year income stream should be used in the actuarial valuation of ground rent portfolios. Assessing the securitisation value of a ground rents portfolio requires a complex calculation which takes account of the capital value of the reversionary freehold interest (a capital asset liable to mature on the expiry of a lease) and the typical length of the leasehold interest comprised within the portfolio (which represents a guaranteed income stream for a fixed period of time). The multiple of annual income used affords the clearest guidance for senior lenders to assess the long term cash flow of ground rents portfolios, to facilitate hedging, and to assess the value of the equity.

32. With any securitisation valuation of a ground rent portfolio there is of course a geared ratio between the typical length of lease and the value of the freehold. A short lease on a valuable property yields less in income but represents a substantial capital asset which is due to mature in a shorter time frame. The converse is also true. These variables must be factored into the valuation process in a manner that properly reflects the market value of the asset as a whole. In addition, there are further income-generating variables that must be factored into the valuation, such as the payment of freeholder consent fees, and the realisation of additional development potentials. This is the standard method of securitisation valuation in the industry.

33. The suggestion that there is (or ever could be) a fixed accounting requirement that ground rent portfolios must be actuarially valued using a 50 year multiplier on the annual ground rent value is thus misconceived. Periods of cash flow of between 50 and 80 years have typically been used in the past to assess hedging values and debt quantum by senior lenders. However, since the true value of the asset includes the value of the equity, it follows that a calculation based on a 50 year income stream would result in a very significant undervaluation of the asset. Accordingly a longer term is used by OW and others to represent the full value of the income stream plus the equity – that is to say, the true asset quality over time. Putting it very simply, the securitisation value must take account of the typical length of the lease, the value of the reversionary freehold, and a range of other factors which may provide income-generating opportunities, such as re-development potential. The OW valuation

method has previously been accepted after due diligence by the credit committees of a number of major international financial institutions.

34. We now require you to state whether or not GT representatives made the allegation attributed to them by the SFO. If the allegation is correctly attributed to GT, we require you to state whether it is maintained or withdrawn. If it is maintained:

    (a) We require you to justify the allegation, and to explain in clear terms (including by reference to the assessments made by your staff at the time) precisely how (i.e. in what respects) and why it is alleged that Vincent Tchenguiz's companies produced fraudulent UK accounts.

    (b) We require you to justify the suggestion (if it is made) that there was in force any mandatory accounting standard requiring either (i) a red book valuation or (ii) an actuarial valuation of ground rent portfolios using a term shorter than the 150 year income stream basis employed by OW and others, and to refer us to the relevant sources of this alleged standard.

    (c) If it is alleged that the accounts otherwise contained incorrect information we require you to specify the information, and the respects in which it is alleged to have been incorrect.

    (d) If it is alleged that the accounts otherwise failed to comply with relevant accounting standards, we require you to specify the accounting standards in question, and the respects in which it is alleged that the accounts failed to comply with these standards.

    (e) As you are no doubt aware the relevant accounts were prepared and certified by Baker Tilly and BDO Stoy Hayward. Please clarify whether you are alleging fraud on their part, and if so provide all relevant particulars so that they can be put on notice of what it is that you are alleging.

35. If the allegation is withdrawn, please indicate clearly the basis upon which it is withdrawn and state what steps (if any) you have previously taken to correct the erroneous allegation you made to the SFO.

36. In addition, and irrespective of your response to the questions raised above, we require you to provide us immediately with any emails, letters, notes or records of any kind made or kept by GT representatives in relation to the conference call with representatives of the SFO on 9 September 2010 and the meeting with representatives of the SFO on 20 September 2010 referred to in the letter at Annex C. We also require you to provide us with a copy of the GT draft report on the Pennyrock loan that was shown to representatives of the SFO at the meeting on 20 September 2010 and (if different in any respect) copies of the draft reports that were shown to representatives of the SFO on 22 November 2010 and 10 February 2011, together with all relevant correspondence and emails.

37. In its sworn Information, the SFO went on to make the further unwarranted allegation that Kaupthing Hf had been misled by Vincent Tchenguiz as to the true value of the collateral pledged, including by concealing from the bank the existence of senior debt. The SFO now accepts that this further allegation was false, and that Kaupthing Hf was fully aware of the nature of the valuation, understood that it was a calculation of cash flow to an investor over a period of 150 years, and accordingly lent only a small proportion of the net asset value. They also concede that the bank was fully aware of the senior debt (an inevitable concession since the existence and identity of the senior lenders was fully spelt out in the terms of the Pennyrock loan agreement).

38. In its letter of 21 February 2012, the SFO accepts that this aspect of the misrepresentation was the responsibility of the SFO. It accepts that Grant Thornton did not suggest that Vincent Tchenguiz had failed to disclose the basis of the valuation (or the existence and identity of the senior lenders) to Kaupthing Hf. However, the SFO asserts that this additional unfounded allegation "*arose from the GT statement*". The SFO thus accepts that the allegation made by GT was "*inadvertently miscast*" by the SFO to make the further unwarranted allegation that Kaupthing Hf was misled. Nonetheless, the SFO attributes its error in part to the representation that was originally made by Grant Thornton.

The allegation of non-disclosure of the senior debt

39. In its letter of 21 February 2012, the Treasury Solicitor makes the express concession that GT never suggested to the SFO that Vincent Tchenguiz had failed to disclose the senior debt to Kaupthing Hf. The letter also accepts that a copy of the Pennyrock loan agreement was included among the documents supplied by GT. To that extent the SFO appears to have had available to it the means necessary to discover that the allegation made in the sworn Information was false.

40. That explanation, however, goes only so far. The letter also makes it clear that there was close and continuing liaison between GT and the SFO in the months leading up to the drafting of the sworn information. The letter of 21 February makes it clear that the SFO relied heavily on GT because of its reputation as a professional firm, and because it had a detailed knowledge of the circumstances surrounding the lending. For that reason, the SFO assumed that the information provided by GT was reliable. It thus appears that, according to the Treasury Solicitor, the SFO took the analysis conducted by GT, and the allegations made by GT, on trust and at face value. That element of reliance obviously carries a heavy responsibility on GT to ensure that the SFO is fairly and properly briefed, and made aware of all relevant facts. If GT chooses to make an allegation of criminal conduct to the SFO then it must of course do so in a transparent manner, ensuring that the SFO is made aware of the true facts and circumstances.

41. We are concerned therefore to note the suggestion by the SFO that GT was selective in the information it chose to reveal to the SFO. The Treasury Solicitor's letter of 21 February 2012 also reveals that whilst GT employees were prepared to allow the SFO to read drafts of a report into the Pennyrock loan, the draft report itself was not included in the material supplied by GT (UK) to the SFO in response to the notice

STEPHENSON HARWOOD

issued under section 2 of the Criminal Justice Act 1987. When its absence was queried, according to the SFO, GT staff claimed that the report could not be provided "*for confidentiality reasons*".

42. Please inform us whether or not, during these consultations, GT staff made it clear to the SFO (a) that there was senior debt on the collateral and (b) that the existence and extent of the senior debt, and the identity of the lenders, was fully disclosed to Kaupthing Hf. Please also indicate whether and in what terms these two issues were addressed in each of the drafts of the report shown to the SFO on the dates set out in the letter at Annex C.

43. Please indicate whether GT (UK) accepts that its staff claimed a privilege against disclosure of the (draft or final) report into the Pennyrock loan on "*confidentiality*" grounds, as asserted by the SFO. If so, please explain the basis for the assertion that GT was entitled to claim a privilege against disclosure of this report on grounds of confidentiality in response to a statutory notice to produce, to which a penal notice was attached. In particular, please indicate the identity of the person or entity whose rights to confidentiality were being asserted, and inform us whether or not the assertion of privilege was made on direct instructions from a client. If the privilege was claimed on instructions from a client, please indicate the terms of those instructions (if necessary seeking the client's consent to make this disclosure). If the client was the ResCom of Kaupthing Hf, please indicate whether there was a representative of GT (Iceland) on the ResCom at the time privilege was claimed, and indicate whether or not that person participated in the decision to instruct GT (UK) to assert privilege against disclosure on grounds of confidentiality.

44. Please also explain how GT reconciles its decision to withhold the draft report from the SFO on the ground that its contents were confidential, whilst at the same time allowing representatives of the SFO to attend the premises of GT to read portions of the draft report both before the claim to confidentiality was asserted and afterwards. Again, please explain whether this was done on the instructions of a client and, if so, please explain the nature of those instructions.

45. You will appreciate the significance of these questions. One way or another, according to the SFO, its officials formed the impression that the senior debt was concealed. We wish to know whether the draft GT report may have been the genesis of that misunderstanding. We also wish to know why, if the draft report was fair and accurate, GT went to the lengths of asserting privilege against its production on grounds of confidentiality. We are sure you will agree that on the face of the letter at Annex C it appears that GT (UK) was claiming privilege against providing a copy of the report in response to a statutory demand backed by a penal notice, whilst at the same time electing on its own initiative to breach the claimed confidentiality during meetings with representatives of the SFO. If the privilege was being claimed on behalf of a client, then GT was not free to waive it at will in the absence of express instructions from the client to do so. Above all, GT was not entitled to make allegations of criminal conduct, and then make selective disclosure to the SFO in a manner which may have misled them. Please address this question fully in your response.

STEPHENSON HARWOOD

The allegation that Pennyrock loan collateral was double-pledged

46. In the sworn Information that was laid before the Central Criminal Court the SFO alleged that the same collateral was double-pledged in support of the Pennyrock loan and as additional collateral for lending to the Oscatello structure. Paragraph 115 of the sworn Information states in terms that the only ground rent portfolio that was pledged as collateral to Kaupthing Hf was the Peverel Propco portfolio, which it claims was double-pledged in respect of both the Oscatello facility and the Pennyrock loan agreement. The Information, at paragraph 116, makes the following unequivocal allegation:

> "*Evidence shows that this property portfolio, valued at almost £948 million, was collateralised not only in respect of an increase to the Oscatello loan facility at Kaupthing (i.e. Robert Tchenguiz) on or about 18 March 2008 for £80 million, but also in support of a £100 million loan advanced to Vincent Tchenguiz from Kaupthing on or about 31 March 2008.*"

47. The same allegation was made in the pre-interview disclosure prepared by the SFO for use by the COLP, where (at page 8) it is alleged in terms that "*Vincent subsequently obtained an advance of a further £100 million on the basis of the same collateralisation*".

48. This allegation bears no relation to the true facts. Multiple securities were provided in respect of the two separate facilities, comprising five different asset pools. The security provided in respect of the lending to the Oscatello structure was separate from that provided in respect of the Pennyrock loan, and the total collateral pledged was very substantially in excess of £948 million. In summary:

    (a) The securities pledged in respect of the Oscatello borrowing were (i) shares of companies owning the GEN 1 ground rents portfolio, of which the senior lender was Deutsche Bank (ii) shares of companies owning the GEN 2 ground rents portfolio of which the senior lender was Bayerische Landesbank; and (iii) shares of companies owning some of the GEN 5 ground rents portfolio of which the senior lenders were HBoS and AiB UK.

    (b) The securities pledged in respect of the Pennyrock loan were (i) shares of companies owning some of the GEN 5 ground rents portfolio of which the senior lender was HBoS (different to those companies whose shares were pledged in relation to Oscatello); (ii) shares of companies owning the Peverel Propco ground rents portfolio of which the senior lender was BOA, RBS and Prudential; and (iii) shares of companies owning the Peverel Opco property management company of which the senior lender was also BOA.

49. We are currently at a loss to understand how the false allegation that the same collateral was pledged twice could have come to be made. We are also at a loss to understand how the SFO could have claimed in the sworn Information it placed before the Court that the only ground rent portfolio put up as collateral was Peverel Propco. It would be quite extraordinary, given the close and continuing liaison between the SFO and GT, if the SFO had been left in ignorance of the fact that the

collateral pledged also included the companies owning the GEN 1, GEN 2, and GEN 5 portfolios, as well as the Peverel Opco (and that there was no overlap between the collateral pledged on the two facilities). All of this information was of course very well known to GT. We require GT to account for its role in this very obvious distortion of the true position.

50. The SFO letter of 21 February 2012 does not expressly accept responsibility for this misrepresentation. Nor does it expressly attribute responsibility to GT. The source of the misrepresentation is, therefore, a matter that it is still to be determined. It will no doubt be addressed in the evidence to be filed by the SFO in the judicial review proceedings, and will certainly be explored at the hearing in May. The role of GT (UK) in this connection will be the subject of evidence and argument.

51. It is already clear that GT was in close and regular communication with the SFO concerning these transactions and (as noted above) the SFO has informed us that representatives of GT shared the contents of draft reports about the lending. This makes it all the more surprising that the SFO could have so fundamentally misunderstood the transactions unless the collateral arrangements were mis-described in the draft reports.

52. It is certain that GT knew, or ought to have known, the true position (namely that separate collateral was provided in respect of the two facilities, substantially in excess of £948 million) long before its representatives had any contact with the SFO. This knowledge was available to GT by reason of their direct involvement as advisers to the Kaupthing Resolution Committee, and their role as receivers and liquidators of the companies in the Oscatello structure, as well as by virtue of their direct involvement in negotiations with CBG and Vincent Tchenguiz immediately after the collapse of Kaupthing Hf. In this context, representatives of CBG and Ernst & Young met with representatives of Kaupthing Hf and GT on numerous occasions during 2009 and 2010. In particular, on 9 October 2009, Vincent Tchenguiz and representatives of Ernst & Young met with Steven Akers and other representatives of GT (UK) to consider a detailed written analysis of the separate collateral pools pledged in respect of Oscatello and Pennyrock (known as Project Panther). At this meeting, the implications of liquidation, and the risk of cross-defaults within the EuroGroup was fully explained to Mr. Akers. At a further meeting in February 2009 between CBG, Kaupthing Hf and GT (UK), concerning negotiations for a fee to be payable to lift the receiverships on the shares in the companies owning GEN 1 and GEN 2, our clients provided all of the relevant lending facility documentation and managements accounts.

53. We therefore invite you to review all of your communications with the SFO in order to determine what information GT provided to the SFO concerning the categories of collateral pledged in respect of the two separate facilities, with a view to assisting the court to determine how this particular misrepresentation came to be made. Given that representatives of GT permitted the SFO to read draft reports relating to these transactions on three separate occasions, it is obviously essential for us now to see those drafts so that we are in a position to assist the Court in determining whether GT or the SFO was the source of the misleading allegation that a single asset pool was pledged twice over as collateral for both facilities.

STEPHENSON HARWOOD

The purchase price of Peverel Group and the actuarial valuation of Peverel Propco

54. In its sworn Information in support of the warrant application the SFO alleged (at paragraph 70) that:

> *"Peverel Group Limited, formerly known as Holiday Retirement UK Limited, is ultimately owned by the Tchenguiz Family Trust of which Vincent Tchenguiz is the main beneficiary. The acquisition came about on 31 May 2007 when the entire share capital of Holiday Retirement UK Limited was purchased for £247 million by Aztec Acquisitions Limited, a BVI registered Special Purpose Vehicle, ultimately owned by the Tchenguiz Family Trust. The company's name was changed from Holiday Retirement UK Limited to Peverel Group Limited on 30 July 2007."*

55. At paragraph 115 of the Information it was then alleged that *"[o]n or about 28th March 2008 Oliver Wyman carried out an actuary based financial assessment in relation to the restructured Peverel Group and assessed it to be £947,600,000*". The allegation put to Vincent Tchenguiz by the COLP and the SFO during his interview was that the company was purchased for £247 million, that it was renamed and revalued by Oliver Wyman at £947 million, and that it was then subject to an inter-company internal sale between Aztec Acquisitions and another TFT company, yielding a profit of £600 million, so that it could be presented to Kaupthing as collateral as if it were a company with a value significantly higher than its actual worth. Later in the interview the SFO made the allegation that there was leveraged funding *"which took it up to perhaps somewhere in the region of about £500 million*".

56. This allegation is replete with errors. As GT was fully aware, Holiday Retirement UK Limited was purchased for £514.5 million (and not £247 million as alleged). CBG provided equity of £25.73 million with the remainder of the purchase price being financed by BOA. At the time of the acquisition BOA did not require any form of valuation of the asset, relying solely on the equity provided by CBG and the bank's own financing model, that is to say a model based on its own debt and hedging calculations.

57. In November 2007 the company was split into two entities, one acting as owner of the freeholds and recipient of the ground rent income (Peverel Propco) and one acting as the service business (Peverel Opco). Peverel Opco had £125 million of debt and was subsequently given a provisional valuation by DTZ at £333 million. Since this was an operating company it was valued on a straightforward red book basis. It will immediately be apparent that Peverel Opco was, in itself, sufficient collateral for the Pennyrock loan. Indeed, any one of the collateral pools advanced in support of the Pennyrock loan would have been sufficient, on its own, to guarantee the £100 million facility.

58. Meanwhile since Peverel Propco was a ground rent portfolio it was valued for securitisation using the recognised form of actuarial valuation which assessed the income stream from ground rents over a period of 150 years, together with the value

of the reversionary freehold interest (in accordance with the principles outlined above). OW provided two such valuations. In November 2007 they valued the portfolio at £923.4 million for BOA (the senior lender), and in March 2008 they valued it at £936.8 million for Kaupthing Hf (the change being due to fluctuations in the market over the intervening few months). These figures were accepted by the credit committees of both banks, who fully understood their significance. These were actuarial valuations and not red book valuations. Moreover, as we have pointed out above, Peverel Propco and Peverel Opco were pledged as part of the security for the Pennyrock loan, but formed no part of the security pledged as security in respect of Oscatello. The SFO had plainly gained a wholly false understanding of the nature of this transaction and valuation process.

59. Once again, we must ask you to assist us in identifying the role (if any) that GT played in fostering this fundamental misunderstanding (both as regards the purchase price of the company, and as regards the nature of an actuarial valuation). By reason of GT (UK)'s involvement as (a) adviser to the ResCom (in which capacity GT (UK) prepared a detailed report on the Pennyrock loan), (b) liquidator of Oscatello and (c) receiver of the companies owning the GEN 1 and GEN 2 holding companies, the true position must have been known to GT. Please review all records of your communications and meetings with the SFO and inform us whether or not you consider that you conveyed the true position to the SFO in a complete and accurate form. Please provide us with particulars of the information you provided.

60. In addition, please provide us with details of your communications with BOA the senior lender on Peverel Opco and Peverel Propco. We consider that this information is relevant to the errors in the SFO information. The SFO was under the mistaken impression that Holiday Retirement UK Limited (the entire business that subsequently became the Opco and the Propco) was purchased for £247 million. That figure bears no relation whatever to the overall purchase price, the equity provided by the TFT or the finance advanced by BOA. It does, however, closely resemble a much later red book valuation of Peverel Propco alone carried out on the instructions of BOA. Our clients have reason to believe that Grant Thornton had a role in prompting that valuation.

61. During October and November 2010, BOA approached EuroGroup to seek consent for a valuation of Peverel Propco on a red book basis. Having obtained consent, they appointed a valuer who gave a red book valuation of around £250 million. We consider that this may have been the genesis of the SFO's erroneous statement of the purchase price paid for Holiday Retirement UK Limited (the SFO having misunderstood or misrepresented the significance of this figure). If so, we are sure you would agree that that would have been a serious error. Our clients intend to discover how this error came about.

62. Our clients have reason to believe that GT made representations to BOA which, at least in part, prompted the red book valuation of the Propco at £250 million. We understand that in the latter part of 2010 GT (UK) approached Leonard Norman, Managing Director of the Special Assets Group at BOA. This would have been around the time that GT (UK) made the allegation of fraudulent accounting to the SFO. From the information supplied by the SFO it appears that GT (UK) based the

allegation of fraudulent accounting (addressed above) on the unfounded and unjustified suggestion that the market value of the Propco could only be calculated by reference to its red book value, rather than on the basis of an actuarial valuation which takes account of income streams over time, together with the equity value of reversionary interest.

63. Taken together this information raises the question whether GT (UK) prompted a red book valuation of the Propco by BOA, and then provided that valuation to the SFO in a manner which led the SFO into believing that the companies were worth significantly less than their true value.

64. The figure suggested by the SFO as a purchase price must have come from somewhere. GT was the primary source on which the SFO was relying. Not only does the figure used by the SFO bear no relation to the purchase price of Holiday Retirement UK Ltd, it also bears no relation to the value of the two companies into which that entity was divided. The value of the Propco was far greater than any red book valuation (for the reasons outlined above), and the red book valuation of the Propco, in any event, took no account of the value of the Opco.

65. We must now ask you to clarify GT's role in this process. Accordingly, we would ask you to provide us with details of all GT (UK)'s communications with BOA concerning Peverel Propco, Peverel Opco and their respective values; and also ask you to disclose to us whether (and, if so, in what terms) GT at any time communicated the pending red book valuation of Peverel Propco to the SFO (or communicated to the SFO the content of any discussions or draft documents which preceded that valuation).

66. We would also ask you, for the same reasons, to disclose all contacts between GT (UK) and the other senior lenders on the collateral pledged in support of both the Pennyrock loan and the Oscatello facility. Our clients have reason to believe that GT (UK)'s contacts with senior lenders compromised the view which those senior lenders took of this asset class as a whole. We also consider that GT deliberately communicated its analysis to the senior lenders for its own commercial purposes. Clearly, if the senior lenders were given to understand that Vincent Tchenguiz had engaged in fraudulent valuations they would be more likely to lose confidence in the EuroGroup (and its adviser CBG), and recall their lending, thereby enabling GT (UK) to secure control over the group.

Pennyrock loan: allegation of personal benefit

67. In its sworn Information in support of the warrant application the SFO alleged (at paragraph 116) that the Pennyrock loan constituted an advance of £100 million to Vincent Tchenguiz on or about 31 March 2008. The same allegation is made expressly in the pre-interview disclosure prepared by the SFO for the City of London police which states that Vincent Tchenguiz accessed "the £100 million loan facility *for his own benefit*".

68. The true position, as Grant Thornton was well aware, was that the loan was made to Pennyrock Ltd, a special purpose vehicle within the EuroGroup structure, which is

owned and controlled by the trustees of the TFT. The principal purposes of the loan were: to discharge an existing loan of £32 million made by Wachovia; a deposit of £20 million into an account held in Kaupthing London ("KSF") by Elsina Limited, a TFT company, for the purpose of meeting margin calls; a payment of £40 million to Elsina Limited which went to repay a loan to Vincent Tchenguiz, which was used for group financing and other operating costs for the remainder of 2008. £5 million was placed into a blocked account which was set aside for group fees and costs. This information was largely spelled out in the Pennyrock loan agreement itself, and was known to GT by virtue of its role as adviser to the ResCom of Kaupthing Hf, and as liquidator of the Oscatello group. In addition Steven Akers, and other representatives of GT (UK) had numerous discussions on the topic with Vincent Tchenguiz during 2009 and 2010 and it was clear that GT (UK) fully understood the nature and purpose of the Pennyrock loan.

69. Please provide us with an account of the information that was provided to the SFO relevant to this misrepresentation. In particular, please state whether, when and in what terms GT informed the SFO of the manner in which the proceeds were (or were to be) distributed under the terms of the Pennyrock loan agreement.

Relevance of the civil proceedings

70. A further issue which is to be ventilated in the judicial review proceedings is the failure of the SFO to give full disclosure to the judge of the existence of the civil proceedings brought by our clients against Kaupthing Hf and the critical stage those proceedings had reached.

71. As noted above, GT (Iceland) was adviser to, and had a representative on, the ResCom (Theodor Sihurbergsson). GT (UK) was also directly implicated in the civil claim brought by our clients against the bank. In those proceedings our clients claimed damages in excess of £1.5bn due to losses caused to the EuroGroup through the actions of Kaupthing Hf and GT in the handling of the administration of the bank. This included a claim that actions of the ResCom, on the advice of GT, amounted to maladministration, and had caused avoidable defaults and cross-defaults within the EuroGroup. GT thus had a vested interest in protecting and promoting its own, and the bank's position in its civil dispute with our clients. That of course places GT (UK) in a position analogous to that of an opposing litigant in the proceedings (which they might have been directly, or on a Part 20 basis, had the proceedings not settled).

72. These circumstances would have alerted an objective observer to the need to examine the allegations made by GT (UK) against Vincent Tchenguiz with a critical eye (and not to take them on trust, as the SFO appears to have done). GT (UK) and GT (Iceland) had a direct pecuniary interest in the proceedings on its own behalf and an indirect pecuniary interest on behalf of its client, Kaupthing Hf. In those circumstances the SFO should have been astute to ensure that it was not being used by one party to civil proceedings in order to protect and advance its case. In such a situation a prudent prosecutor would exercise particular caution to ensure that there is no risk that an informant with a private agenda has painted a misleading picture (whether by making a false or misleading allegation, by providing false or

misleading information, or by providing selective information in a manner that is liable to mislead).

73. The SFO was under an unequivocal obligation to disclose to the judge any factor militating against the grant of a warrant. One such factor was GT's interest in the civil proceedings. The SFO's failure to disclose this to the judge is an issue that will feature in the judicial review proceedings. The Claimants allege that the SFO failed in its duty of full disclosure by not informing the judge in detail of the involvement of GT (its principal informant) in the civil litigation, so that the judge could assess whether GT's apparent conflict of interest was relevant to the credibility and reliability of the allegations made by GT, the information imparted by GT in consultations with the SFO, and the analyses provided in the various GT reports disclosed or shown to SFO representatives. Without such disclosure the judge was deprived of the opportunity of enquiring whether, in view of GT's apparent conflict of interest, the SFO had examined the allegations with a sufficiently critical eye.

74. As you know, this litigation was the single most important obstacle to administration of Kaupthing Hf since it constituted a priority claim that needed to be resolved before the administration could proceed. It must therefore have been a matter of focal concern for Kaupthing Hf and GT. From this we infer that GT (Iceland) and GT (UK) were fully apprised of all relevant developments in the litigation.

75. At the time the warrants were issued the proceedings had reached a critical stage. The Claimant companies had issued proceedings both in the Commercial Court in London and in Reykjavik. The Kaupthing Resolution Committee (which had conduct of the litigation on behalf of the bank) contended that Iceland was the appropriate forum for determining the dispute, and that the proceedings in the Commercial Court in London should be stayed for want of jurisdiction. Between 9 and 11 February 2011, there was a public hearing in the Commercial Court before Burton J. to determine Kaupthing's application. On 16 March 2011, Burton J. gave judgment for the Claimants. At a subsequent hearing on 25 March 2011, Burton J. also refused Kaupthing's application for permission to appeal and a parasitic application for a stay which would have enabled Kaupthing to defer the filing of its Defence. Kaupthing renewed its application for permission to the Court of Appeal. On 6 May 2011, Longmore LJ granted permission to appeal, together with a conditional order which had the effect of staying the proceedings until the appeal was heard unless a Commercial Court judge ruled to the contrary. The Claimants immediately applied to the Commercial Court to have the stay lifted and on 13 May 2011 Burton J. lifted the stay. Accordingly, despite opposition by Kaupthing, the civil claim proceeded and Kaupthing was required to file a Defence. That Defence confirmed that the information provided by the SFO to the Central Criminal Court was substantially false.

76. Thus, at the time that the SFO applied for and executed the warrants, Kaupthing's application to stay the London proceedings had been heard but not yet determined. As it turns out the SFO applied for the warrant on a false factual basis at a time when Grant Thornton (closely connected with the opposing party in the civil litigation) must have been aware of the true position. If the Kaupthing Resolution Committee had succeeded in its jurisdictional challenge before Burton J., or had succeeded in its

repeated applications for a stay of the proceedings pending appeal, then they would not have been required to file a Defence. It was of course the Defence eventually filed by Kaupthing which exposed beyond doubt the misrepresentations made by the SFO. It was also the Kaupthing Defence which led the SFO to concede that the warrant should be quashed.

77. The applications were therefore made, and the warrants executed, at a time shortly before Kaupthing came under an obligation to file the very Defence which was ultimately to reveal the falsity of the allegations in the SFO Information. If the SFO had made the application three months later the misrepresentations could not have been made, and (in all likelihood) the warrants would not have been issued.

78. From the extensive number of basic errors contained in the SFO sworn Information, and in the written summary supplied by the SFO to the COLP, it is apparent that the SFO application was made prematurely. The application was ill-prepared and clearly followed an insufficiently rigorous or critical examination of the evidence. This begs the question why the SFO moved to seek warrants and make arrests at a time when they had clearly not grasped the basic information necessary to evaluate the allegations that had been made by GT.

79. It is now clear that the civil and criminal processes were proceeding in parallel. During the judicial review proceedings our clients therefore intend to explore whether the timing of the SFO application was, directly or indirectly, influenced by the stage the civil proceedings had reached (and in particular by the fact that the Kaupthing Defence, which would have revealed the extent of the SFO's misunderstanding, had not yet been served). We are concerned to know whether GT may have influenced the timing of the SFO application, knowing that there was a significant likelihood that if the warrant application were delayed, the Kaupthing Defence would have to be served before the warrants could be issued.

80. We would invite you to investigate GT's role in this aspect of the matter. In particular, we would invite you to ascertain for yourselves, and inform us, whether there were any conversations at any time between representatives of GT, and representatives of the SFO, concerning the optimum timing of the warrant applications and arrests and, if so, to inform us of the content of those discussions.

Sainsbury's proceeds

81. Prior to Vincent Tchenguiz' interview by the COLP his solicitors were served with a disclosure statement prepared by the SFO. It is clear that the SFO relied heavily on GT for the details in this document as well. One of the allegations made concerns an Oscatello company called Razino. The allegation reads:

> "*Razino was an Oscatello company which had acquired 152 million Sainsbury's shares at a cost of approximately £803,000,000. This was entirely funded by Kaupthing. There was an agreement between Kaupthing and Razino for the sharing of profits and losses on these shares, however, by 7 October 2008 the shares were trading at significantly less than the purchase price. It is not known how and when these shares were disposed of and what happened to the proceeds.*"

82. The underlined allegation (that there were proceeds of the sale of Sainsbury's shares still unaccounted for) was first made to Vincent Tchenguiz by Steven Akers of GT (UK) during a meeting on 6 March 2009. It was repeated by Mr. Akers at a further meeting on 20 April 2009.

83. The allegation involves a fundamental misportrayal of the relevant transactions. These were not ordinary share transactions. They were contracts for difference, repurchase agreements and/or forms of indebted stock. The suggestion in the SFO documentation that the "*shares were disposed of*" is thus entirely misleading. So too is the suggestion that the outstanding "*proceeds*" were being sought by GT and/or the SFO. There are not, and never were, any "missing proceeds" from these "*transactions*". The value of these derivatives was simply wiped out as the result of market decline. The diminution in their face value was a reflection of the fall in share prices between October 2007 and October 2008. A simple Bloomberg check would have revealed that between 21 October 2007 and 12 October 2008 the Sainsbury's share price fell from 582p to 240p. Inevitably therefore the derivatives were also wiped out.

84. Thus, for the SFO to suggest in March 2011 that there were funds outstanding on the disposal of shares in Sainsbury's betrays either a total misunderstanding of the nature of the transactions, coupled with a failure (on the part of GT (UK) and/or the SFO) to make the most basic of enquiries, or else a very serious misrepresentation of the true position. We consider that GT (UK) must (or ought to) have known the true position. We also consider that the evidence strongly suggests that GT (UK) was the source of the SFO's misunderstanding in this regard. Indeed, all the indications are that the SFO was reliant on GT for its understanding of these transactions. We consider that the SFO's elementary misunderstanding of this aspect of the case skewed its view of the entire investigation, and similarly misled both the COLP and the Central Criminal Court.

85. This is a matter of real concern in light of the contents of the report prepared by GT (UK) dated 14 January 2009 (Annex D). That report contains several passages from which it is clear that the authors of the report were in possession of all the information necessary for them to have understood the true position. In particular, at paragraphs 2.6 and 2.7 the Report states:

> "*With the exception of the Ground rent Portfolio, all of the other entities [in the Oscatello structure, including Razino] have entered contract(s) for difference on listed equities (CFDs) and other equity derivatives with entities outside the Bank including Kaupthing Luxembourg and Kaupthing London. As a result the assets of these entities were charged to banks other than Kaupthing Iceland and were not available as security for the Bank. We also understand that the majority of these CFDs entered into by the entities charged to the Bank have closed at a loss due to significant adverse movements in the equity markets in recent months. This should have resulted in losses in the charged entities concerned and in the absence of other assets a deficit in net assets of those entities. As the position of these entities and the*

STEPHENSON HARWOOD

whereabouts of the CFD contracts as at 24 November 2008 are unclear, we have assumed that the value of those charged entities is zero...

We also understand that in July 2008 Razino Limited ("Razino") and Violet Capital Limited ("Violet Capital") which are companies in the Oscatello structure, had entered into repurchase transactions ("repo transactions") with the Bank as security for further lending by the Bank. These transactions matured in October/November 2008 without the liability to the bank being repaid and with the consequence that the lending by the Bank is now unsecured."

86. In light of this analysis (prepared as long ago as January 2009) we are at a loss to understand how, during his meetings with Vincent Tchenguiz in March and April of that year, Steven Akers of GT (UK) could have been claiming that GT was looking for the "*missing*" Sainsbury's "*proceeds*". As the report makes clear, GT (UK) was already fully aware by that time that there were no outstanding proceeds. These were straightforward market losses on the value of derivatives and, by January 2009, GT rightly assumed that their value had simply been wiped out by market decline.

87. However, given that Mr. Akers pressed this matter in terms with Vincent Tchenguiz on at least two occasions in the months following the preparation of this report, we must assume that he was the source of the misunderstanding which is reflected in the SFO briefing to the COLP. It thus tainted not only the search warrants but the decision to arrest Vincent Tchenguiz in the first place.

88. Given that GT (UK) knew the true position more than two years before the "*dawn raids*" in March 2011, and given the close liaison between GT (UK) and the SFO, we are driven to ask whether GT (UK) was responsible for misleading the SFO and, if so, whether this was as a result of incompetence, negligence or fraudulent misrepresentation. It undoubtedly served the commercial interests of GT (UK) and Kaupthing Hf to portray Vincent Tchenguiz as having been party to a fraud. The allegations made by GT (UK) certainly caused or contributed the action taken by the SFO. The action taken by the SFO was infected by a perverse misrepresentation of the true commercial position. Whilst the SFO was conducting its investigation and liaising with GT (UK), the latter was aggressively seeking to obtain control of the entire EuroGroup and thereby to penetrate and liquidate the TFT in a manner similar to the action currently being pursued by GT (UK) in Guernsey in connection with the Tchenguiz Discretionary Trust ("TDT").

89. In light of these matters, we would ask you to confirm that by the time of the "*dawn raids*" in March 2011, GT (UK) was fully aware that there were no "*missing proceeds*" from the derivative transactions outlined above, and to explain in detail precisely what information was supplied by GT (Iceland) and GT (UK) to the SFO in connection with this aspect of the matter, and when.

Project Longboat

90. In the sworn Information which the SFO placed before the Court in support of the warrant application (and in the information which the SFO provided to the police to

justify the arrests of Robert and Vincent Tchenguiz) it was alleged that Robert Tchenguiz had dishonestly removed collateral from the jurisdiction. The Information, at paragraphs 92 to 93, alleged as follows:

> *"As a security for the Oscatello loan facility documents in the Framework and Overdraft Agreements dated 19th December 2007, there were charges pledged of share holdings within the Oscatello Structure. "Project Longboat" involved a series of structured transactions initiated by or on behalf of the Tchenguiz Discretionary Trust on or around 13th November 2008. This was after the collapse of the bank and resulted in the substitution of securities of negligible value for collateral previously pledged to Kaupthing against the lending in companies controlled by TDT.*
>
> *These underlying assets, held in the Oscatello companies Safina Limited, Seacourt Limited and Adrienne Properties Limited, were exchanged for an issue of unsecured 30 year "Payment in Kind" notes. These assets were then placed into Dansima Limited, Rio Rivera Limited and Faro Global Limited, all BVI SPV entities described as being indirectly owned by the TDT. The circumstances of these transactions were reviewed by Queens Counsel in England on behalf of the Resolution Committee of Kaupthing hf and it was concluded that these were fraudulent transactions."*

91. It is clear that this false allegation emanated from GT (UK). Indeed it was a repetition of a false allegation made by GT (UK) in an *ex parte* application without notice, made in the British Virgin Islands (seeking the appointment of certain individual GT directors or employees as receivers) in which it had been alleged that Investec (then the trustees of the TDT) had effected the transactions fraudulently. The allegation of dishonest conduct by or on behalf of the TDT was and was (or ought to have been) known by GT (UK) to be wholly false. The reality, as GT knew or ought to have known, was that these transactions were effected by Investec Trustees as a measure of temporary protection of the interests of the TDT and its beneficiaries in the Somerfield proceeds and the Welcome Break assets in the face of Kaupthing Hf's insolvency.

92. On 13 November 2008, Investec Trustees arranged for the following transactions to take place:

    (a) Dasina Limited, a BVI registered company indirectly owned by the TDT purchased from Safina Limited, Safina's entire legal and beneficial interest in the shares of Brigetta Limited (being 100% of the ordinary shares of Brigetta Investments Limited);

    (b) Rio-Riva Limited, a BVI registered company indirectly owned by the TFT, purchased from Seacourt Limited, Seacourt's beneficial interest in Violet Holdings Limited and in the preference shares and loan notes of Violet Equityco Limited (being 20,251,971 of the Ordinary shares of Violet Holdings Limited and 8,979,749 Preference shares and £3,723,056 of loan notes); and

(c) Faro Global Limited, a BVI registered company indirectly owned by the TDT purchased from Adrianne Properties Limited, Adrianne's legal and beneficial ownership of the shares of Moorcroft Overseas Limited (being 100% of the shares of Moorcroft Overseas Limited).

93. The decision to effect these transactions was made by Investec Bank and Investec Trustees on legal advice and it was carried out consistent with the terms of the loan agreements, transparently and on notice to Kaupthing as a prophylactic measure to preserve assets against distribution or loss until the resolution of any dispute concerning the legal ownership of the assets. Moreover, as a result of the transaction, the assets were ring-fenced such that they could not be utilised by the beneficiaries of the TDT, so that there could be no conceivable prejudice to Kaupthing. On the day of the transactions Quinn Emanuel Urquhart Oliver & Hedges LLP, solicitors for the TDT and Oscatello, wrote to Kaupthing Hf informing them of these transactions so as to give "*prompt written notice*" as required by Clause 9.1.2 of each of the share pledges granted by Oscatello over the shares of Safina Limited and Seacourt Limited. The letter made it clear that the transactions had been effected because (a) the companies indirectly held the TDT's interests in Somerfield and Welcome Break (b) Kaupthing Hf was insolvent (c) Kaupthing Hf currently held share pledges over the companies (d) it was believed that the TDT had a proprietary claim over the assets in English law (alternatively that the share pledges were invalid or unenforceable); and (e) there was a risk that Kaupthing Hf might immediately seek, without further recourse to the TDT, to exercise its rights, thereby extinguishing the TDT's rights in those assets and/or defeating the TDT's claim against the share pledges.

The letter continued:

> "*In those circumstances the trustees of TDT, after seeking advice and balancing the various factors, including the potential risk of Kaupthing exercising its purported rights under the share pledges, have decided, acting in the best interests of TDT, to cause the entering into the transactions as a means of preserving TDT's interest in its assets. In the meantime TDT is urgently preparing its application to the Court to initiate proceedings in relation to its claims against Kaupthing.*
>
> *TDT has appropriately ring-fenced the assets transferred pursuant to the transactions such that they may not be utilised by the beneficiaries. In light of this, there can be no conceivable prejudice to the interests of Kaupthing.*"

94. The notion that Investec Trustees could or would have made off with the assets so as to defraud Kaupthing Hf is ridiculous. The transactions were effected without prior notice because (a) there was no need for prior notice under the terms of the loan agreements and (b) there was perceived to be a real risk that Kaupthing Hf would act precipitously. As at 13 November 2008 Kaupthing Hf had already "fire sold" assets belonging to the Oscatello structure without prior notice to the TDT, and to its real prejudice. For GT (UK) to have portrayed these transactions as fraudulent conduct, by or on behalf of the TDT or Robert Tchenguiz was deeply disingenuous. Kindly explain how GT justifies having made this misrepresentation in the BVI proceedings. Please also confirm that GT communicated this allegation to the SFO, and provide us

with details of how, when, by whom and in what terms it was communicated by GT to the SFO.

Inter-company loans

95. In the sworn Information filed by the SFO it was alleged that the Oscatello structure was insolvent immediately following the implementation of the Framework Agreement and Overdraft Agreement (with Kaupthing Hf) on 19 December 2007. The suggestion was that the statement of assets and liabilities dated 30 November 2007 overstated the net asset value of Oscatello. The declared NAV was £264 million. The SFO alleged that this was grossly misleading since companies within the group owed £240 million in inter-company loans, thus rendering the Oscatello structure effectively worthless. This allegation, which again emanated from GT (UK) was wholly false.

96. The inter-company loans were, to the knowledge of GT (UK), created by Investec as a tax-efficient book-keeping device. Investec recorded entries showing loans owed by Oscatello companies to other companies within the TDT, as well as other loans owed by non-Oscatello TDT companies into companies within the Oscatello structure. These entries were obviously made without the knowledge of Robert Tchenguiz or R20 (and contrary to the instructions to Investec which required that the Oscatello facility should be established and operated without recourse to the TDT).

97. As unsecured inter-company loans they were, in any event, irrelevant to the value of the collateral pledged to Kaupthing Hf since, in the event of liquidation, they would inevitably be subordinated to the Kaupthing liability. That indeed is the legal position which GT (UK) is currently advancing in legal proceedings in Guernsey, where it is now seeking to enforce inter-company loans recorded as owing to Oscatello group companies by other companies within the TDT, but at the same time contests any liability to pay out of the Oscatello group any of the loans which were recorded as owing to other companies within the structure.

98. In January 2008 Investec wrote to solicitors acting for Kaupthing Hf and informed them of the existence of these accounting entries. Investec did not however inform the beneficiaries of the TDT. Neither Kaupthing Hf nor its solicitors raised any objection that the existence of these ostensible loans affected or invalidated the security pledged for the Oscatello facility at the bank. That, no doubt, was because they would inevitably be subordinated in the event of liquidation. During 2008 Investec appointed a book-keeper (Mr Louw Rabie) with instructions to reverse the loans. This was achieved by January 2009, thereby concealing the existence of the original accounting entries from the beneficiaries of the TDT. All of this was, or ought to have been, known to GT (UK) and/or GT Forensic.

99. Moreover, in March 2008, when the Pennyrock loan agreement was entered into and the collateral outlined above was pledged, neither Investec nor Kaupthing Hf informed our clients of the existence of these loans. If, as the SFO alleged in the sworn Information, Oscatello was effectively insolvent due to the existence of these loans then that fact should most certainly have been disclosed by Kaupthing Hf to

our clients before the bank accepted additional collateral in support of the Oscatello loan facility. However, following the collapse of the bank, when GT began advising the ResCom, the position taken by the ResCom was that the non-disclosure of these Oscatello accounting entries did not amount to material misrepresentation.

100. Please provide a full explanation of the information supplied to the SFO in written or oral form concerning these loans and their effect on the net asset value of Oscatello.

The Somerfield proceeds

101. The Somerfield proceeds which had been the subject of Project Longboat were held offshore by Investec Trustees at the time of the appointment of GT (UK) as liquidators of Oscatello. As outlined above, in seeking their appointment as liquidators in the BVI court GT (UK) falsely alleged that the removal of the funds offshore by Investec amounted to the fraudulent disposal of assets.

102. In June 2010, Investec (which held the funds on behalf of the TDT) reached a settlement with GT (UK) (in its capacity as liquidators of the Oscatello Group). As a result of the settlement, the Somerfield proceeds, then amounting to approximately £137 million, were transferred to the control of GT (UK). It is our understanding that the funds were held in a vehicle called Tazamia. Aside from certain very minor claims, the principal creditor to whom these funds should have been transferred was (and remains) Kaupthing Hf and its creditors. We understand that the funds have not been distributed to the creditors of the bank.

103. Looking at the overall position, it appears to us that GT (UK) procured its own appointment as liquidator of Oscatello in the BVI proceedings through misrepresentations of fact and non-disclosure; then repeated the same false allegations to the SFO; and finally, having obtained control of the Somerfield proceeds, has failed to distribute them to creditors despite the fact that the proceedings between GT (UK) (as Oscatello) and Investec were settled in June 2010.

104. We have three groups of questions that we would like you to address in connection with this aspect of the liquidation:

    (a) Please indicate what has happened to the Somerfield proceeds held in Tazamia. Are they still held by GT (UK)? Have they been passed to GT (Iceland) or to Kaupthing Hf? Why have they not been distributed to the creditors of the bank more than 20 months after the date of the settlement? If they are still held by GT (UK) to what extent, if any, have the funds been dissipated by the liquidators? In particular, has GT (UK) been using them as an operating fund from which to pay its own and others' costs of the liquidation?

    (b) Please inform us whether, as part of the settlement or otherwise, GT gave any undertaking or indication, formally or informally, to Investec to the effect that the allegation that Investec had participated in a fraud by removing the proceeds offshore (Project Longboat) would not be pursued. Did GT do or say anything that may have given Investec to understand that if the proceeds

were passed to GT (UK) pursuant to the settlement Investec would be absolved from any allegations that GT (UK) intended to make in connection with Project Longboat?

(c) Please indicate whether GT (UK) alleged to the SFO that the removal of the Somerfield proceeds offshore was fraudulent and, if so, whether GT (UK) included Investec in that accusation. If GT (UK) did allege to the SFO that the transaction was fraudulent, but did not allege fraud on the part of Investec, please explain why.

The Guernsey Litigation

105. As you will appreciate, we are concerned to explore whether GT (UK) and GT (Iceland) may have put their own commercial interests ahead of the best interests of the creditors of Kaupthing Hf. If so, then this would obviously be a factor which, if fully understood by the SFO, the COLP, and the judge who issued the warrant, would significantly have diminished the credibility of GT as an informant. It would thereby have impacted upon the reliance which the SFO could properly place on information and analyses supplied or communicated by GT in connection with the matters that are the subject of this investigation. In that way, it would have been directly material to the decision of the COLP to arrest Mr. Tchenguiz, the decision of the SFO to apply for a search warrant, and the decision of the judge to grant the application. The propriety of the conduct of GT as liquidator and receiver is thus very much in issue in these proceedings.

106. In addition to the issues outlined above, which appear to support the suggestion that GT has acted, and may be continuing to act, contrary to the interests of the creditors of Kaupthing Hf, we are concerned that the TDT-related litigation currently being pursued in Guernsey may amount to an abuse of GT (UK)'s position as liquidator. The costs so far incurred by GT and its lawyers in connection with this litigation are believed to be very substantial indeed. We understand that a figure in excess of £15 million has been set aside by GT (UK) to cover the costs of, and related to, this litigation. The legal and other costs being incurred by Investec and Rawlinson & Hunter are also likely to be substantial. Even if GT succeeds in its claim in full, all of these costs will ultimately have to be met out of the assets remaining inside the TDT. Given the value of those assets, the costs being incurred by GT (UK) appear to be obviously disproportionate. We understand that GT (UK) has declined requests to provide information about its liquidation and litigation strategy in the Guernsey proceedings to the creditors of Kaupthing. This again raises questions about potential conflict of interest on the part of GT (UK).

107. Please explain how GT (UK) justifies the costs being incurred in the Guernsey proceedings and explain how the action being taken can be justified as being in the best interests of the creditors.

STEPHENSON HARWOOD

Conclusion

108. We have outlined above a number of areas in which GT appears to have been operating with a clear conflict of interest. These are matters which (if known to the SFO) ought to have been taken fully into account by the SFO, the COLP and (had they been disclosed) by the judge, as being matters that adversely affected the credibility and reliability of the allegations, information and analyses which had been supplied by GT. For reasons we have explained, many of these matters are likely to be aired in the Divisional Court during the hearing in May.

109. When the picture of GT's actions in this matter is viewed in the round, it appears (a) that GT provided misleading information to the SFO involving unfounded allegations of fraud against Vincent Tchenguiz and others; (b) that it was the false allegations made by GT that caused the SFO to take action against Vincent Tchenguiz and others; (c) that the action taken by the SFO furthered GT's own commercial interests, and those of its client Kaupthing Hf, as well as promoting their position in the civil litigation brought by our clients; (d) that GT has repeatedly taken decisions in this matter that appear not to have been in the best interests of the creditors of Kaupthing Hf; and (e) that those same decisions have provided a continuing stream of significant work for GT and have ensured that the liquidators have a substantial asset pool at their disposal, enabling them to continue to incur very significant costs. This raises a serious question as to whether those responsible within GT have succumbed to a conflict of interest and may have improperly misled the SFO in order to advance their own and their client's commercial objectives.

110. We trust that you will agree that the matters outlined in this letter need to be enquired into urgently. We await the results of your investigation, and disclosure to us of the material and information we have requested by close of business on Thursday 5 April 2012.

111. We wish to ensure that GT has been put on notice of the concerns outlined in this letter, and has had an adequate opportunity to answer them, before we invite the Divisional Court to make any adverse findings against GT. We are copying this letter to the individuals and entities named at Annex E, each of whom is party to the judicial review proceedings. This letter (and any response) will form part of the evidence before the Divisional Court at the hearing. If you choose not to take up the opportunity to provide us with the information sought, then we will of course invite the Divisional Court to draw such inferences as it considers appropriate.

STEPHENSON HARWOOD

112. Finally, you may wish to consider whether, even at this late stage, GT wishes to apply to be joined as an interested party to the proceedings. Whilst that is, of course, entirely a matter for you, we would like to make it clear our clients would not object to that course, providing it did not cause any delay at all to the hearing currently listed for 22 May 2012.

Yours faithfully

Stephenson Harwood

cc Steven Akers, Steve Cornmell, Jan Drage, Peter Green, Edward Nusbaum, Theodor Sigurbergsson, Ian Smart (Grant Thornton)