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# FJÁRMÁLAÆFTIRLITIÐ

THE FINANCIAL SUPERVISORY AUTHORITY, ICELAND

Commission de Surveillance du Secteur Financier

Attn: Mendaly RIES

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LUXEMBOURG

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Ref: 2009020054

## Case referral: Dealings involving Kaupþing banki hf., Kaupthing Bank Luxembourg S.A., Marple Holdings S.A., and Lindsor Holdings Corporation

In the course of investigations into suspicious trading activity during the collapse of Kaupþing banki hf. ("Kaupthing Iceland") of Iceland, commonly referred to in English as Kaupthing Bank, Fjármálaeftirlitið ("FME"), the Financial Supervisory Authority of Iceland, has identified several potential violations of Luxembourg law and additional items of interest involving Kaupthing Bank Luxembourg S.A. ("Kaupthing Luxembourg"), Marple Holdings S.A. ("Marple"), and Lindsor Holdings Corporation ("Lindsor"). FME would like to express its appreciation to the Commission de Surveillance du Secteur Financier ("CSSF") for its cooperation to date in unraveling this case, and now refers relevant pieces of the case back to CSSF for further investigation.

FME will refer relevant pieces of this case to the Office of the Special Prosecutor ("the Special Prosecutor") in Iceland for further investigation and potential prosecution under Icelandic law.

This case potentially covers embezzlement, fraud, conspiracy, forgery, coordinated trading, and misrepresentation of facts to CSSF, among other potential violations. The case revolves around trading in debt securities issued by Kaupthing Iceland ("Kaupthing bonds") and traded by Marple, Lindsor, and employees of Kaupthing Luxembourg during 2008.

### *Note on Icelandic language*

The Icelandic language has several characters that are no longer in use in modern English or the modern Scandinavian languages. For precision, Icelandic proper names are spelled here with these characters. These characters are commonly Anglicized per the table that follows.

|      |        |
|------|--------|
| Þ, þ | Th, th |
| Ð, ð | D, d   |
| Ö, ö | O, o   |
| Æ, æ | Ae, ae |

### *Relevant agreements on cooperation*

This case referral is made on the grounds of a Directive of the European Union, where the obligation for competent authorities that have been designated the role of supervision are requested to provide one another with information in relation to the conduct of their supervision. The following article, part of Annex IX to the EEA Agreement, may apply to the situation.

#### *Directive 2003/6/EC*

According to paragraph 1 of Article 16 of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), competent authorities shall cooperate with each other whenever necessary for the purpose of carrying out their duties, making use of their powers whether set out in the Directive or in national law. Competent authorities shall render assistance to competent authorities of other Member States. In particular, they shall exchange information and cooperate in investigation activities.

#### *CESR MoU*

FME also references the Committee of European Securities Regulators ("CESR") Multilateral Memorandum of Understanding on the Exchange of Information and Surveillance of Securities Activities ("CESR MoU"). The CESR MoU was partly put in place with reference to provisions of European Union Directives relating to the financial markets. These state that the closest cooperation should take place between the competent authorities of Member States for the purpose of carrying out their duties. According to Article 3 of the CESR MoU, Authorities shall provide each other with the fullest mutual assistance in any matters, within the competence of the Authorities.

## *Background and key points of the case*

During much of the current decade, Kaupthing Iceland was the largest bank in Iceland and the single largest share issue trading on ICEX, the Iceland Stock Exchange (later renamed NASDAQ OMX Iceland). Kaupthing Iceland has since been delisted from the exchange and is in receivership pending liquidation of its assets and resolution of obligations to its creditors. Kaupthing Iceland held around \$83 billion in assets in mid-2008, making the insolvency of the bank one of the largest corporate failures in world history: Kaupthing Iceland was around 30% larger than the Enron bankruptcy in the United States and nearly the same size as the recent bankruptcy of General Motors, measured by assets.

Following is a description of each of the major pieces of the Kaupthing-Marple-Lindsor case that FME has identified for referral to CSSF.

### **1. Marple May 2008 embezzlement**

According to CSSF, Marple Holdings S.A. was established in Luxembourg on 30 June 2006 and that company was subsequently taken over by Skúli Þorvaldsson (Thorvaldsson) on 20 June 2007. Skúli was the beneficial owner of Marple, and he was also a large shareholder in Kaupthing Iceland and a longstanding client of the bank. Marple received a EUR 100 million credit line from Kaupthing Luxembourg on 4 February 2008.

Starting on 16 April 2008, Marple accumulated Kaupthing bonds denominated in EUR at a discount. This buying continued through 19 May 2008 with the prices rising on each trade.

On 20 May 2008, Marple sold all of the EUR Kaupthing bonds it had acquired at a discount in April and May at par, while the market price of the bonds would have been deeply discounted. This netted a profit to Marple of EUR 11,3 million.

Also on this day, Marple did “up-and-down” trades in EUR and USD Kaupthing bonds, meaning that it bought and sold the bonds on the same day. It bought the bonds at a discount from Kaupthing Luxembourg and sold them right back at par. These trades netted one-day profits of EUR 4,4 million and USD 3,6 million, respectively.

Also on this day Marple sold back to Kaupthing Luxembourg ISK Kaupthing bonds it had acquired earlier in May, also at a large profit, but this trade was reversed at the end of June 2008.

Trades whereby Marple sold back discounted Kaupthing bonds at par, on the same trading day, do not represent normal trading practice, nor normal price movement for fixed income securities. These trades appear to represent embezzlement of funds; Kaupthing Luxembourg appears to have used these trades to funnel large amounts of money to Marple.

Marple also traded equity shares during 2008 and perhaps before that time. FME respectfully recommends that CSSF review all transactions of Marple to identify other potential irregularities. In addition, Skúli Þorvaldsson owned a series of investment companies, such as Holt Investment Group Ltd, Holly Beach S.A., and Murry Holding S.A. These companies were all managed by Kaupthing Luxembourg, were domiciled in Luxembourg or BVI, and are detailed in Appendix 2 of the “Kaupthing Bank Luxembourg S.A. Report on the Credit Activity” of 31 March 2008, prepared by KPMG in Luxembourg.