IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Claim No: HC14A02975

B E T W E E N : -

(1) CHESTERFIELD UNITED INC
(in liquidation)
(2) PARTRIDGE MANAGEMENT GROUP SA
(in liquidation)

Claimants

-and-

(1) HREIDAR MAR SIGURDSSON
(2) SIGURDUR EINARSSON
(3) JAEGER INVESTORS CORP
(4) DEUTSCHE BANK AG

Defendants

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

Claim No: 6583/2010 (Chesterfield)
Claim No: 6576/2010 (Partridge)

IN THE MATTER OF CHESTERFIELD UNITED INC
AND IN THE MATTER OF PARTRIDGE MANAGEMENT GROUP SA
AND IN THE MATTER OF THE CROSS BORDER INSOLVENCY REGULATIONS 2006

B E T W E E N : -

(1) STEPHEN JOHN AKERS
(2) MARK MCDONALD
(as joint liquidators of Chesterfield United Inc
and Partridge Management Group SA)

Applicants

-and-

(1) HREIDAR MAR SIGURDSSON
(2) SIGURDUR EINARSSON
(3) VENKATESH VISHWANATHAN
(4) DEUTSCHE BANK AG

Respondents

CONSOLIDATED PARTICULARS OF CLAIM
OF THE CLAIMANTS AND APPLICANTS

A. Introduction

1. This is a consolidated statement of case which particularises:

   1.1. The claims by Chesterfield United Inc, the First Claimant, and Partridge Management Group SA, the Second Claimant, in Part 7 proceedings HC14A02975 against (1) Hreidar Mar Sigurdsson (2) Sigurdur Einarsson (3) Jaeger Investors Corp (4) Deutsche Bank AG.

   1.2. The claims by Stephen John Akers, the First Applicant, and Mark McDonald, the Second Applicant, as joint liquidators of Chesterfield United Inc and Partridge Management Group SA in proceedings numbers 6583/2010 (Chesterfield) and 6576 (Partridge) against (1) Hreidar Mar Sigurdsson (2) Sigurdur Einarsson (3) Venkatesh Vishwanathan, (4) Deutsche Bank AG for fraudulent trading pursuant to article 21(g) of the Cross Border Insolvency Regulations 2006 and under section 213 of the Insolvency Act 1986.

B. The Claimants / Applicants

2. Chesterfield United Inc ("**Chesterfield**"), the First Claimant, is a company incorporated in the British Virgin Islands ("**BVI**") on 2 January 2008, with its registered office at Akara Building, 24 De Castro Street, Wickhams Cay 1, Road Town, Tortola, British Virgin Islands. At all material times, Chesterfield had one director which was another BVI company called Jaeger Investors Corp, the Third Defendant. Chesterfield was a special purpose vehicle acquired by the shareholders identified in paragraph 3 below, for the sole purpose of purchasing financial products from Deutsche.

3. At all material times, Chesterfield was owned by three BVI companies which in turn were owned by a number of private individuals. The ownership of Chesterfield is summarised below. The shareholders of Chesterfield listed below are collectively referred to as the "**Chesterfield Shareholders**" in this Consolidated Particulars of Claim.

% holding in Chesterfield	Shareholder of Chesterfield	Owner of Shareholder
32%	Charbon Capital Limited ("**Charbon**")	Antonios Yerolemou
32%	Trenvis Limited ("**Trenvis**")	Kevin Stanford (50%) Karen Millen (50%)
36%	Holly Beach SA ("**Holly Beach**")	Skuli Thorvaldsson

4. Partridge Management Group SA ("**Partridge**"), the Second Claimant, is a company incorporated in the BVI on 18 July 2008, with its registered office at Akara Building, 24 De Castro Street, Wickhams Cay 1, Road Town, Tortola, British Virgin Islands. At all material times, Partridge had one director which was another BVI company called Jaeger Investors Corp, the Third Defendant. Partridge was a special purpose vehicle incorporated for the sole purpose of purchasing financial products from Deutsche.

5. Partridge was owned by a BVI company (the "**Partridge Shareholder**") which in turn was owned by a private individual. The ownership of Partridge is summarised below.

% holding in Partridge	Shareholder of Chesterfield	Owner of Shareholder
100%	Harlow Equities SA ("**Harlow**")	Olafur Olafsson

6. On 10 May 2010:

6.1. Partridge was ordered to be wound up by the Eastern Caribbean Supreme Court. Stephen John Akers of Grant Thornton UK LLP and Mark McDonald of Grant Thornton (British Virgin Islands) Limited were appointed as joint liquidators.

6.2. Chesterfield was ordered to be wound up by the Eastern Caribbean Supreme Court. Mr Akers and Mr McDonald were also appointed as joint liquidators.

7. On 4 November 2010, the BVI liquidation of Partridge was recognised by the High Court in England under the Cross Border Insolvency Regulations 2006 (No. 2006/1030) ("**CBIR**") as a foreign main proceeding, with Mr Akers and Mr McDonald as foreign representatives. On 16 November 2010, the BVI liquidation of Chesterfield was recognised by the High Court in England under the CBIR as a foreign main proceeding, with Mr Akers and Mr McDonald as

foreign representatives. Mr Akers and Mr McDonald, in their capacities as joint liquidators of Chesterfield and Partridge, are referred to as the "**Joint Liquidators**" in this Consolidated Particulars of Claim.

C. The Defendants / Respondents

8. At all material times until 9 October 2008, Hreidar Mar Sigurdsson ("**Mr Sigurdsson**"), the First Defendant and the First Respondent, was the Chief Executive Officer of the former Icelandic bank Kaupthing Bank hf. The Claimants / Joint Liquidators believe that Mr Sigurdsson distributed his time evenly between London and Reykjavik. Kaupthing Bank hf has since changed its name to Kaupthing hf ("**Kaupthing**").

9. At all material times until 9 October 2008, Sigurdur Einarsson ("**Mr Einarsson**"), the Second Defendant and the Second Respondent, was the Executive Chairman of the Board of Kaupthing. The Claimants / Joint Liquidators believe that Mr Einarsson was based in London.

10. Jaeger Investors Corp ("**Jaeger**"), the Third Defendant, is a company incorporated in the BVI. At all material times it was the sole director of, respectively, Chesterfield and Partridge. Jaeger acted through its sole director, a company incorporated in the Seychelles called Allan Corporation ("**Allan**"). The sole director of Allan was, at all material times, Mr Karim van den Ende ("**Mr van den Ende**"). The Claimants and the Joint Liquidators presently believe that Mr van den Ende was a properly authorised agent of Allan and had actual and / or ostensible authority to act in Allan's name in relation to its business as a company director of Jaeger, and therefore to act in relation to the business of, respectively, Chesterfield and Partridge

11. Deutsche Bank AG ("**Deutsche**"), the Fourth Defendant and the Fourth Respondent is, and was at all material times, a substantial investment bank incorporated in Germany with operations worldwide and various international branches, including a branch in London. Deutsche's London branch is at Winchester House, 1 Great Winchester Street, London, EC2N 2DB. From 1 December 2001 to 31 March 2013, Deutsche was permitted to carry out financial services in the United Kingdom pursuant to an EEA passport and was regulated in the United Kingdom by the Financial Services Authority under registered number 150018.

12. At all material times:

12.1. Venkatesh Vishwanathan ("Mr Vishwanathan"), the Third Respondent, was a Managing Director and co-head of the European Financial Institutions Group at Deutsche's London branch;

12.2. Shaheen Yusuf ("**Ms Yusuf**") was a Managing Director in the European Financial Institutions Group at Deutsche's London branch;

12.3. Jan Olsson ("**Mr Olsson**") was Head of Nordic Corporate Finance, Credit Structuring at Deutsche;

12.4. Zia Huque ("**Mr Huque**") was a Managing Director of Deutsche;

12.5. Ron Lin ("**Mr Lin**") was Head of Deutsche's Longevity Structuring Group, Credit Structuring Department;

12.6. Sanjeev Dadlani ("**Mr Dadlani**") worked in Deutsche's Credit Exotics and Correlation Trading department;

12.7. Miles Millard ("**Mr Millard**") was head of Debt Capital Markets, Europe.

13. The individuals listed in paragraph 12 above were at all material times based at Deutsche's London branch, and were properly authorised employees and agents of Deutsche and had actual and / or ostensible authority to act in Deutsche's name and on Deutsche's behalf in relation to the business conducted by Deutsche which included, but was not limited to, the design, structuring and sale of financial products from Deutsche to Chesterfield and Partridge. The knowledge and intentions of the above persons at all material times are to be imputed to Deutsche.

14. Where these Particulars of Claim refer to any act or omission by any representative of Deutsche, including any individual listed in paragraph 12 above, this should (unless indicated otherwise) be read as including an allegation that such was an act or omission for and on behalf of Deutsche.

D. Other Relevant Parties

15. Kaupthing was, prior to its financial collapse, a substantial retail bank incorporated in Iceland and headquartered in Reykjavik, Iceland. It was regulated by Fjarmalaeftirlitid, the Icelandic Financial Supervision Authority (the "**FME**").

16. In addition to Mr Sigurdsson, the Chief Executive of Kaupthing and Mr Einarsson, the Executive Chairman of Kaupthing, this claim relates to the conduct of the following employees and/or officers of Kaupthing:

16.1. Henrik Gustafsson ("**Mr Gustafsson**"), Head of Mergers and Acquisitions;

16.2. Gudni Adalsteinsson ("**Mr Adalsteinsson**"), Chief Treasurer;

16.3. Eirikur Magnus Jensson ("**Mr Jensson**"), Head of Funding.

17. Kaupthing Bank Luxembourg SA ("**Kaupthing Lux**") was at all material times a company incorporated in Luxembourg and a wholly-owned subsidiary of Kaupthing. Kaupthing Lux provided, inter alia, private banking and wealth management services.

18. At all material times:

18.1. Magnus Gudmundsson ("**Mr Gudmundsson**") was the Chief Executive Officer of Kaupthing Lux;

18.2. Eggert Hilmarsson ("**Mr Hilmarsson**") was the Head of Legal at Kaupthing Lux;

18.3. Lara Schweiger ("**Ms Schweiger**") was a lawyer in the legal department of Kaupthing Lux.

19. Kaupthing Singer & Friedlander Limited ("**KSF**") was a wholly-owned English incorporated subsidiary of Kaupthing, carrying out business as a commercial lender and deposit taker.

E. Overview

20. These proceedings relate to the purchase by Chesterfield and Partridge of certain credit derivative financial products, called credit linked notes and credit default swaps, from Deutsche, which were linked to the credit worthiness of Kaupthing and which were also funded by Kaupthing.

21. These products were unusual, highly risky and cost Chesterfield and Partridge around €500 million. Within weeks of their purchase, the products sold by Deutsche were worthless and Chesterfield and Partridge had lost all of the money that they had invested and were left solely with debts to Kaupthing.

22. As is explained in further detail below, these transactions were engineered by Mr Sigurdsson and Mr Einarsson of Kaupthing, and Mr Vishwanathan of Deutsche (and thereby Deutsche), to influence improperly the perception of Kaupthing's creditworthiness in the market and the price at which Kaupthing could raise funding in the international debt markets.

F. Structure and Mechanics of Credit Default Swaps and Credit Linked Notes

General Features of Credit Default Swaps and Credit Linked Notes

23. A credit default swap ("**CDS**") is a contract between two parties, known as a protection buyer and a protection seller. The protection buyer makes fixed periodic payments to the protection seller. The protection seller collects the fixed periodic payments made by the protection buyer, in exchange for promising to indemnify the protection buyer in the event that a specified security or class of securities issued by a specified entity (known as the "**Reference Entity**") suffers a credit event (such as a default). The fixed periodic payments represent the price of credit, also known as the CDS spread, of the Reference Entity for a given term. The CDS spread is normally measured in basis points, which are one hundredths of a percent, per annum. The economic effect of a CDS is that the protection seller effectively sells credit protection to the buyer in return for the CDS spread.

24. For a Reference Entity, the CDS spread reflects the additional cost, known as the credit spread, above the market interest rate (e.g. LIBOR) that the Reference Entity incurs in

borrowing funds from the market. Thus, all things being equal, a Reference Entity with a lower credit spread will have a lower cost of funds than a Reference Entity with a higher credit spread. A Reference Entity's credit spread is likely to vary depending on the length of the lending period. The credit spread for a longer lending period will generally be higher than the credit spread for a shorter lending period. The credit spread for a Reference Entity for different lending periods can be represented in a graphical form by preparing a line graph plotting the lending period on the *x* axis and the credit spread in basis points on the *y* axis. This line graph is called the credit curve of the Reference Entity. For any given Reference Entity, all things being equal, if there is an improvement in the market perception of its creditworthiness, its credit curve would move downwards (as the anticipated credit spread / cost of raising funds fell). Conversely a deterioration in the market perception of its creditworthiness would result in its credit curve moving upwards.

25. A credit linked note ("**CLN**") is a credit derivative instrument. A CLN is usually designed, structured and organised by an arranging bank, and then issued by a corporate issuer to a noteholder, who is the investor. A CLN has some similarities with a bond in that the investor purchases the note on issue at face value and receives interest payments (called coupons) over the life of the note and then receives the return of his principal on maturity of the note. However, unlike an ordinary bond, the performance of a credit linked note is contingent on the creditworthiness of an underlying reference asset ("**Underlying Asset**"). Since a CLN is a bespoke financial product, rather than a generic one, there are many possibilities when it comes to choosing the Underlying Asset. The Underlying Asset could be, inter alia a Reference Entity (like in a CDS), or specified debt obligations (bonds) of a Reference Entity, or a basket of debt obligations of different reference entities.

26. Under the note, the investor receives an enhanced coupon because the performance of the note is linked to the creditworthiness of the Underlying Asset. Conversely, and depending on the precise terms of the CLN, on the occurrence of a credit event in relation to the Underlying Asset, the investor will suffer some form of penalty. This penalty may be a reduction in the coupon or the principal payable under the CLN, or it may simply result in the automatic termination of the CLN with little or no funds being returned to the investor. Like a CDS, the CLN has the effect of transferring credit exposure to the Underlying Asset from the issuer to the investor, such that the issuer is in a similar position to a CDS buyer and the investor is in a similar position to a CDS seller. The issuer can hedge is exposure under the CLN by selling CDS.

Specific Features of the Credit Linked Notes sold in this case

27. In this case, Deutsche sold CLNs to both Chesterfield and Partridge, and acted as both the arranging bank and the issuer. The Underlying Asset for the CLNs sold was Kaupthing debt. This meant that in purchasing the CLNs, Chesterfield and Partridge were taking a bet on the creditworthiness of Kaupthing, in return for an enhanced coupon on their CLNs.

28. In economic terms, Chesterfield and Partridge could have achieved the same exposure by selling, as protection sellers, CDS referenced to Kaupthing.

29. The CLNs sold by Deutsche to Chesterfield and Partridge were also leveraged. This meant that the noteholder took a greater exposure to the Underlying Asset than the notional value of the note. The result was that the noteholder enjoyed a higher return than that available under an equivalent unleveraged CLN but could suffer greater losses in the event that Kaupthing's creditworthiness deteriorated. In the event of a deterioration in Kaupthing's creditworthiness, the CLN had an embedded margin requirement which required the payment of additional funds (called "**Additional Amounts**" under the terminology used in the CLNs). In such circumstances, the investor was obliged to contribute Additional Amounts, often at very short notice, in order to prevent the CLN from terminating which could have resulted in the loss of the entire sum invested. This was an unusual feature of a CLN, and was introduced at the instigation of Deutsche.

30. A further feature of the transactions in this case is the mechanism by which they were sold by Deutsche to Chesterfield and Partridge. It appears that Deutsche required a short period to set up each of the CLNs. In the circumstances, each CLN was sold to each of Chesterfield and Partridge by way of a swap transaction. Under the swap transaction, Chesterfield and Partridge paid the purchase price to Deutsche on execution of the swap, and in return Deutsche was obliged to deliver an amount of CLNs up to a specified amount at a specified date, around three weeks later. This gave Deutsche a window to hedge its exposure under the CLN by selling Kaupthing referenced CDS. It appears to have been envisaged by the parties that the coupon on the CLN would be set according to the levels achieved by Deutsche on the CDS hedges, albeit that the swap documentation did not record this. The swap documentation did record that in the event that the amount issued was less than the specified amount, Deutsche was obliged to provide a partial refund of the purchase price to

reflect the part which was not issued. This appears to be have been inserted to cover the possibility that Deutsche may not be able to hedge the entirety of the CLN, and in such circumstances to provide Deutsche with the option of issuing a smaller quantity of CLNs. Notably the swap agreement provided no particulars of the CLNs to be provided so neither Chesterfield nor Partridge knew the coupon that they would be receiving on their CLNs. This was a further unusual feature of the transactions between Chesterfield and Partridge, and Deutsche.

G. The CLNs and CDS sold by Deutsche to Chesterfield and Partridge

31. As is explained in further detail below, in the period between August 2008 and October 2008, Chesterfield and Partridge purchased CLNs from Deutsche, and in addition Partridge entered a CDS transaction with Deutsche. These transactions are particularised in further detail in the following paragraphs.

32. The Chesterfield transactions are summarised as follows:

32.1. On 7 August 2008, Chesterfield entered into a swap transaction with Deutsche (the **"Chesterfield Swap"**) which was confirmed by a swap confirmation issued on the same day. The material terms were as follows:

32.1.1. the trade date was 7 August 2008;

32.1.2. the effective date was 8 August 2008;

32.1.3. the termination date was 26 August 2008;

32.1.4. under the swap, Chesterfield agreed to pay to Deutsche €130 million up front, and on the termination date, Deutsche was to deliver an amount of reference notes with an issue value equal to the amount paid (or in the event that the issue value of the entirety of the reference notes was less than the amount paid, those notes plus a balancing payment);

32.1.5. reference notes were defined as referring to two-times leveraged CLNs, issued by Deutsche at an issue price of 104%, with Kaupthing as the reference entity and a maturity date of 20 September 2013. Notably, aside

from the above information, the swap confirmation gave no details of the CLN to be issued and, in particular, said nothing about the coupon payable on the CLN. As a result, Chesterfield did not know, in entering the swap, what coupon it would receive on its CLN.

32.2. On or around 26 August 2008, a credit linked note (the **"Chesterfield CLN"**) was issued by Deutsche, and delivered to Chesterfield in accordance with the Chesterfield Swap. The terms of the Chesterfield CLN are set out in Final Terms and Conditions dated 26 August 2008. The material terms were as follows:

32.2.1. The notional amount was €125 million;

32.2.2. The scheduled maturity date was 20 September 2013;

32.2.3. The issue price was 104%;

32.2.4. Coupon Amounts would be payable quarterly, at EURIBOR plus 11.224% per annum, albeit that the coupons for the first two years were deferred and only became payable on 20 September 2010.

33. The Chesterfield Swap and the Chesterfield CLN are referred to collectively below as the **"Chesterfield Transactions"**.

34. The Partridge transactions are summarised as follows:

34.1. On 12 September 2008, Partridge entered into a swap transaction with Deutsche (the **"Partridge Swap"**). This swap transaction was confirmed by a swap confirmation dated 15 September 2008. The material terms were as follows:

34.1.1. the trade date was 12 September 2008;

34.1.2. the effective date was 12 September 2008;

34.1.3. the termination date was 2 October 2008;

34.1.4. under the swap, Partridge agreed to pay to Deutsche €128.625 million up front, and on the termination date Deutsche was to provide an amount of

reference notes with an issue value equal to the amount paid (or in the event that the issue value of the entirety of the reference notes was less than the amount paid, those notes plus a balancing payment);

34.1.5. reference notes were defined as referring to two-times leveraged CLNs, issued by Deutsche at an issue price of 102.90%, with Kaupthing as the reference entity and a maturity date of 20 September 2013. As with the Chesterfield swap confirmation, aside from the above information, the Partridge swap confirmation gave no details of the CLN to be issued and, in particular, said nothing about the coupon payable on the CLN. As a result, Partridge did not know, in entering the swap, what coupon it would receive on its CLN.

34.2. On or around 2 October 2008, a Credit Linked Note (the **"Partridge CLN"**) was issued by Deutsche to Partridge. The terms of the Partridge CLN are set out in Final Terms and Conditions dated 2 October 2008. The material terms were as follows:

34.2.1. the notional amount was €125 million;

34.2.2. the scheduled maturity date was 20 September 2013;

34.2.3. the issue price was 102.90%;

34.2.4. as with the Chesterfield CLN, Coupon Amounts would be payable quarterly, albeit that the first coupon was deferred and only became payable on 20 September 2010. The coupon rate was EURIBOR plus 13.02% per annum.

34.3. In addition to the above transactions, on or around 23 September 2008, Deutsche sold Partridge a CDS, referenced to Kaupthing, in the amount of €50 million (the **"Partridge CDS"**). The CDS was fully funded which meant that Partridge had to pay the €50 million up front. The CDS contained an optional early termination provision which allowed the €50 million to be converted into an Additional Amount under the Partridge CLN. This made the Partridge CDS a particularly unusual transaction. The Partridge CDS was documented in a confirmation dated 24 September 2008. The trade date and the effective date were 23 September 2008, and the termination date was 20 September 2013.

35. The Partridge Swap, the Partridge CLN and the Partridge CDS are referred to collectively below as the "**Partridge Transactions**".

36. The Chesterfield Transactions and the Partridge Transactions are referred to collectively below as the "**Transactions**".

H. Funding of the CLNs and CDS by Kaupthing

37. All of the funding for the purchase of the Chesterfield CLN, the Partridge CLN and the Partridge CDS came ultimately from Kaupthing.

38. In respect of the Chesterfield CLN, on or around 7 August 2008, Kaupthing provided a money market loan in the sum of €130 million to Kaupthing Lux. On the same date, Kaupthing Lux advanced sums totalling €130 million (the "**Initial Chesterfield Funds**") to the shareholders in Chesterfield, as follows:

38.1. €41.6 million to Charbon;

38.2. €46.8 million to Holly Beach;

38.3. €41.6 million to Trenvis.

39. Each of Charbon, Holly Beach and Trenvis then forwarded those amounts to Chesterfield. On 29 August 2008, as a result of a net off between Kaupthing and Kaupthing Lux, Kaupthing became the direct lender of the Initial Chesterfield Funds.

40. In respect of the Partridge CLN, the funding also came from Kaupthing. On 11 September 2008, Kaupthing lent €130 million, as a short term money market loan, to Harlow, and Harlow provided €128.625 million to Partridge. On 12 September 2008, Partridge entered into the Partridge Swap, and transferred €128.625 million to Deutsche.

I. The Performance of the Chesterfield CLN, the Partridge CLN and the Partridge CDS sold by Deutsche

41. Within weeks of the purchase of the Chesterfield Swap in August 2008 and the Partridge Swap in September 2008, there was a deterioration in the creditworthiness of Kaupthing such that further Additional Amounts became payable under the CLNs to prevent them from terminating.

42. Chesterfield paid Additional Amounts to Deutsche in the following amounts and on the following dates. These sums were also funded by Kaupthing:

42.1. €50 million on or about 22 September 2008;

42.2. €50 million on or about 29 September 2008;

42.3. €25 million on or about 7 October 2008.

43. Partridge paid further Additional Amounts to Deutsche in the following amounts and on the following dates. These sums were also funded by Kaupthing:

43.1. €50 million on or about 2 October 2008;

43.2. €25 million on or about 3 October 2008;

43.3. on 2 October 2008, Deutsche served a notice of early termination in respect of the Partridge CDS, so that the sum of €50 million paid under the Partridge CDS could be treated as an Additional Amount.

44. In the event, Kaupthing's financial position deteriorated further. On 8 October 2008, administrators were appointed in respect of KSF (Kaupthing's UK arm).

45. On 9 October 2008:

45.1. pursuant to its statutory authority, the FME dismissed Kaupthing's directors and appointed a Resolution Committee in respect of Kaupthing;

45.2. a credit event was declared in respect of the Chesterfield CLN;

45.3. a credit event was declared in respect of the Partridge CLN;

45.4. Deutsche purported to revoke the early termination notice served on Partridge on 2 October 2008 with regard to the Partridge CDS. Later that day a Credit Event Notice was served on Partridge with regard to the Partridge CDS; the effect, according to Deutsche, was that Partridge lost all of the funds invested under the Partridge CDS.

46. The Partridge CLN was redeemed on 27 October 2008 for a Redemption Amount of €0.

47. The Chesterfield CLN was redeemed on 27 October 2008 for a Redemption Amount of €0.

48. In or around May 2009, Kaupthing sent notices of default:

48.1. to Chesterfield and the Chesterfield Shareholders, demanding immediate repayment of a principal amount of €255 million; and

48.2. to Partridge and the Partridge Shareholder, demanding immediate repayment of a principal amount of €253.625 million.

49. Neither Chesterfield nor Partridge had any assets with which to satisfy the demands made against them, and these demands went unpaid. On 11 March 2010, Kaupthing presented winding-up petitions before the Supreme Court of the Eastern Caribbean for the winding-up of Chesterfield and Partridge.

J. The Attempt to Move Kaupthing's CDS Spreads

50. The Chesterfield CLN, the Partridge CLN and the Partridge CDS formed part of a scheme devised by Mr Vishwanathan of Deutsche, Mr Einarsson and Mr Sigurdsson to influence Kaupthing's credit spreads. Under that scheme, Mr Einarsson and Mr Sigurdsson wished to influence Kaupthing's credit spreads in order to improve Kaupthing's perception in the market and to improve its cost of funding. The development of that scheme is particularised below. The Claimants / Joint Liquidators reserve the right to provide further particulars, or to identify additional conspirators, on disclosure.

51. Historically, Deutsche acted as adviser to Kaupthing in respect of Kaupthing's efforts to raise funds in the international capital markets.

52. In early February 2008, Mr Einarsson of Kaupthing met Mr Vishwanathan, Mr Millard and Marius Bengtson ("**Mr Bengtson**") of Deutsche (the "**February 2008 Meeting**"). Mr Millard was head of Debt Capital Markets, Europe. Mr Vishwanathan was a Managing Director and co-head of the Financial Institutions Group, Debt Capital Markets, and Mr Bengtson was a Director in the Fixed Income Group. The meeting was also attended by Ingemar Sjogren ("**Mr Sjogren**") of KSF. The Claimants and Joint Liquidators presently believe that the meeting took place in London. Whilst Mr Sigurdsson did not attend the meeting, it is inferred that at all material times, Mr Einarsson and Mr Sigurdsson were in frequent communication and that each kept the other appraised of all material developments with Deutsche in relation to the proposed transactions.

53. A memorandum, prepared by Mr Sjogren, recorded the discussions (the "**February 2008 Memo**").

54. The purpose of the meeting was to discuss Kaupthing's CDS spread curve and what could be done to move the curve downwards; in effect what could be done to lower the cost of Kaupthing raising funds in the market. The aim, it was said at the meeting, was to take the CDS spread curve back to "*normal levels*".

55. Following the discussion, Deutsche proposed a short term action plan which involved, in essence, a bond buy-back programme by Kaupthing of its short term debt. The anticipated programme was very substantial in that it was expected to involve two to three rounds of purchases with a value of £500 million to £1 billion. The action plan was recorded in the February 2008 Memo as follows:

55.1.1. *"If cash comes in, buy back short term debt and 'disinvert' / 'make normal' the CDS curve"*;

55.1.2. *"£500-£1,000m would flatten the curve and it would likely be enough to also bring down the CDS curve"*;

55.1.3. *"Once you have done this, do it again; 2-3 rounds of this, the CDS curve should hopefully be down to normal levels again"* (emphasis in the original);

55.2. *"Kaupthing is well-positioned to pay [Deutsche] for helping us with this situation"*;

55.3. Deutsche would *"have come to a conclusion about which solution to pursue"* by the end of the following week;

55.4. Deutsche had *"management buy-in for the initiative"*;

55.5. the next step was to *"decide which bond should be repurchased (maximising the effect on the CDS)"*; and

55.6. it was *"important that [Kaupthing] senior management is available for any conference calls and meetings in the near future"*.

56. It is clear from the February 2008 Memo:

56.1. that Kaupthing wished to bring down its CDS spreads;

56.2. that Kaupthing was willing and able to pay for assistance in achieving this aim;

56.3. that Deutsche agreed (with authority from Deutsche's management) to assist Kaupthing with deciding how best to bring down Kaupthing's CDS spreads, and with putting such steps in place; and

56.4. that senior individuals in both Deutsche and Kaupthing were involved.

57. Following the February 2008 Meeting, Deutsche set out about taking steps to implement the short term action plan that had been put together at that meeting.

58. On 26 February 2008, Mr Vishwanathan sent an email to Mr Jensson relating to a proposal for Kaupthing to raise further funds in the market. In this email, Mr Vishwanathan:

58.1. referred to Kaupthing being a key relationship: *"[f]or [Deutsche], Kaupthing is a key relationship – that is precisely why we are willing to commit capital on an unsecured basis in what is an extremely choppy, highly uncertain market environment"*;

58.2. noted that Kaupthing had a very strong commercial incentive for the market perception of its creditworthiness to improve; *"we are betting on a massive improvement in your credit perception in the market for the monetisation [of the value of a proposed fund raising deal] to be possible"*;

58.3. recognised that Kaupthing was under significant pressure, by saying that Deutsche's *"aim is to work together with Kaupthing in what is likely to be the most challenging year in living memory"*.

59. On 12 June 2008, Mr Vishwanathan emailed Mr Einarsson seeking to set up a meeting on 13 June 2008 for a *"strategic, but informal chat"*.

60. On 13 June 2008, a meeting took place between Kaupthing and Deutsche. The attendees included Mr Einarsson, Mr Gustafsson of Kaupthing, and Mr Vishwanathan. It appears, from an email sent subsequently on 18 June 2008 particularised in paragraph 62 below, that at the meeting Mr Vishwanathan put forward a proposal that Kaupthing fund the purchase of a CLN referenced to itself, rather than a bond buyback programme.

61. In the circumstances, it appears that by June 2008, the short term action plan had evolved, and Deutsche had come up with an idea of entering a CLN as an alternative to a bond buyback by Kaupthing. Deutsche would then use funds paid under the proposed CLN to sell CDS on Kaupthing which would reduce Kaupthing's credit spreads. This was a dishonest strategy because, absent a disclosure to the market that Kaupthing was the ultimate funder of the transaction, it would appear to the market that there were genuine sellers of Kaupthing CDS in the market (i.e. that there were independent counterparties who took a positive view of Kaupthing's future creditworthiness) when in fact the truth was that the counterparty ultimately behind the transaction was Kaupthing itself.

62. On 18 June 2008, Mr Vishwanathan sent an email to Mr Gustafsson of Kaupthing, copied to Mr Einarsson and Mr Adalsteinsson of Kaupthing and Mr Olsson of Deutsche. The email was entitled *"Kaupthing Credit Linked Note idea"* and set out Mr Vishwanathan's proposal that, rather than conduct a bond buyback as suggested at the February 2008 Meeting, Kaupthing should fund the purchase of a CLN referenced to itself. Deutsche, as the vendor of the CLN, would then hedge its exposure under the CLN, by selling Kaupthing CDS in the market, and this would have the desired effect of lowering Kaupthing's CDS spread. The email:

62.1. was expressed to be further to the meeting on 13 June 2008;

62.2. attached a document *"explaining how a potential Credit Linked Note investment (linked to Kaupthing CDS) would work"*. The attachment was entitled *"Trade Summary"* and set out the summary terms for a €100m CLN referenced to Kaupthing;

62.3. recommended a maturity of five years *"as that is the best part of the CDS curve to aim for"*;

62.4. explained that the *"[f]unded amount can be anything from 25m-500m depending on market conditions and ability of the market to absorb liquidity at that point in time"*;

62.5. stated that *"[i]mpact on the CDS market will be direct, unlike a cash bond buyback"*;

62.6. noted that the counterparty could be any investment institution; and

62.7. explained that *"[t]he best way to proceed would be to identify a counterparty, set up the documentation and then hit the right moment in the market to get the most "bang for the buck""*.

63. Mr Adalsteinsson responded on the same day saying: *"Thank you Venky. This sound interesting [sic]. I guess the tricky part is to find the right counterparty, I'm happy to discuss"*.

64. Thereafter, inter alia, Mr Vishwanathan and Mr Einarsson set about identifying a counterparty for the proposed CLN trade. Mr Einarsson continued to keep Mr Sigurdsson informed of any developments and Mr Sigurdsson was involved in the search for a counterparty.

65. On 19 June 2008:

65.1. Mr Einarsson forwarded Mr Vishwanathan's email, referred to at paragraph 62 above, to Mr Sigurdsson saying in Icelandic: *"what I mentioned on the telephone earlier"*.

65.2. There was then the following email exchange between Mr Sigurdsson and Mr Einarsson. This exchange took place in Icelandic but the gist of the emails is set out in English below:

Sigurdsson to Einarsson	*"We do not need pension funds in this, but great if [Deutsche are] prepared to do it. We should do this, not a question"*.
Einnarsson to Sigurdsson	*"We cannot do this ourselves there has to be other*

	counterparties don't there"
Sigurdsson to Einarsson	*"Sure, we need to get a client in on this"*

66. On 23 June 2008, Mr Adalsteinsson of Kaupthing sent an email to Mr Vishwanathan of Deutsche to say that they "*should speak again about the cds [sic] idea*" as Kaupthing "*might have couple of buyers..*" [sic].

67. On or around 24 June 2008, Mr Adalsteinsson, acting on the instructions of Mr Sigurdsson, asked Mr Vishwanathan whether Kaupthing Lux, acting on behalf of clients, could be Deutsche's counterparty for the proposed trade. Mr Vishwanathan said that Deutsche would prefer it if the investor transacted directly with them but he agreed to take the matter up with Deutsche's compliance department.

68. On 25 June 2008, Mr Vishwanathan emailed Mr Adalsteinsson of Kaupthing saying that:

68.1. he had received a green signal from "*Legal*" to "*face you for a CLN trade in your capacity as underwriter/distributor*";

68.2. he was still awaiting a decision from "*Compliance*";

68.3. the consent from Deutsche's legal department was subject to three conditions:

68.3.1. a letter from Kaupthing confirming that the trade was not for Kaupthing's balance sheet but for Kaupthing's end clients;

68.3.2. details of end client names; and

68.3.3. a favourable Icelandic legal opinion confirming that there was no violation of accounting or regulatory norms.

69. It is to be inferred from the requirements at paragraphs 68.3.1 and 68.3.3 above that Mr Vishwanathan (and thereby Deutsche) knew that Kaupthing was to be behind the transaction and was sensitive to that fact. To the best of the Claimants and the Joint Liquidators' knowledge, neither condition was ever satisfied.

70. Mr Adalsteinsson forwarded Mr Vishwanathan's email referred to at paragraph 68 above, to Mr Sigurdsson, Mr Gudmundsson and others at Kaupthing with an accompanying comment in Icelandic, the gist of which was "*I continue to follow up on this*".

71. On 25 June 2008, Mr Gudmundsson emailed Mr Sigurdsson asking whether he was interested in a particular deal. Mr Sigurdsson responded in Icelandic. The gist of Mr Sigurdsson's response was that he was not interested "*if Deutsche is going to write us immediate CDS in 1100*".

72. On 26 June 2008, Mr Vishwanathan reported back to Mr Adalsteinsson saying that the "*feedback from Compliance was not what I was hoping for*". He said that whilst "*they have not said no*" they had said that "*it will need to be referred to the Bank's Global Reputational Risk Committee*". Mr Vishwanathan said that this would "*add a lot of time*" and the outcome was "*uncertain*".

73. It must have been clear to Mr Vishwanathan, given that he had been told by Deutsche's compliance department that they wanted to refer the matter to Deutsche's Global Reputational Risk Committee, that there was a serious concern about the proposed transactions and in particular Kaupthing's involvement. Mr Vishwanathan said that the outcome was uncertain because he must have been aware that the fact that Kaupthing was behind the transactions meant that Deutsche's Global Reputational Risk Committee might reject the proposed deal. Mr Vishwanathan therefore concluded his email by asking whether there was "*any chance [Deutsche could] just directly face [Kaupthing's] end-investors in order to get the trade done*".

74. On the same day, Mr Adalsteinsson forwarded this email to others at Kaupthing including Mr Sigurdsson and Mr Gudmundsson. Mr Adalsteinsson's email was in Icelandic. The gist of that email was that Mr Adalsteinsson understood the conclusion was that Kaupthing could not be an intermediary and that Deutsche was a "*bit stressed about this from a 'reputation' point of view*", and asked whether it could be arranged so that Deutsche would conclude the CLN "*directly with those parties we can find*".

75. Between 9 and 11 July 2008, Mr Sigurdsson of Kaupthing attended Deutsche's Global Markets Conference in Barcelona. Deutsche paid for Mr Sigurdsson and his family to travel and stay in Barcelona. At the conference, Mr Sigurdsson met with Mr Vishwanathan and Michele Faissola ("**Mr Faissola**") of Deutsche to discuss the proposed CLN transaction. The discussion focussed around the possibility of some of Kaupthing's high net worth clients

investing in Kaupthing CDS. Mr Faissola suggested that the investment vehicle could be an exchange traded fund. As the Claimants presently understand the position, the possibility of investing through a Luxembourg open-ended collective investment scheme called a "*SICAV*" was also discussed.

76. On 9 July 2008, Mr Vishwanathan sent an internal email to Ms Shaheen Yusuf of Deutsche, following Mr Vishwanathan's discussion with Mr Sigurdsson, in which he said: "*There's a Lux SICAV that wants to do a CDS on Kaupthing _ 5y 250m size - 50 percent cash collateral - let's discuss*". In fact, Mr Vishwanathan's email incorrectly described the position as there was no SICAV which wished to trade in Kaupthing's CDS. This was simply another manifestation of Mr Vishwanathan's CLN idea which had been articulated on 18 June 2008 and then had been discussed with Mr Sigurdsson at the meeting earlier that day.

77. From this point onwards, Ms Yusuf was involved on a day to day basis in the discussions with Mr Gudmundsson and Mr Hilmarsson about the proposed CLNs. It is inferred that Mr Vishwanathan and Ms Yusuf were also in frequent contact with each other about the proposed transactions such that Mr Vishwanathan was aware of Ms Yusuf's discussions and communications with those at Kaupthing and Kaupthing Lux, and Ms Yusuf was aware of Mr Vishwanathan's discussions and communications with those at Kaupthing and Kaupthing Lux.

78. On 10 July 2008, Mr Hilmarsson emailed Mr Gudmundsson of Kaupthing Lux to set out his understanding of the transaction. He noted that the transaction would be funded by a loan from Kaupthing.

79. On the same day, Mr Sigurdsson sent an email to Mr Vishwanathan, copied to Mr Hilmarsson, which introduced Mr Hilmarsson as "*our*" lawyer in Luxembourg who would be responsible for "*setting up the lux company for our trade*" [sic]. Mr Sigurdsson explained that Mr Hilmarsson would like to discuss with someone from Deutsche "*our potential trade and what would be the right structure that you [i.e. Deutsche] would be comfortable with*".

80. Also on 10 July 2008, Mr Vishwanathan sent an email to Bhupinder Singh, of Deutsche, to say he was looking at "*putting together a bespoke ETF for some of [Kaupthing's] close high net worth clients to take a view on [Kaupthing] CDS.....*".

81. On 14 July 2008, Mr Vishwanathan emailed Ms Yusuf of Deutsche suggesting that she contact Mr Hilmarsson to discuss the exchange traded fund idea with him and also to get information about the proposed SICAV.

82. On 15 July 2008, Ms Yusuf sent an email to Mr Hilmarsson (copied to inter alios Mr Vishwanathan). The email explained that your *"investors"* could sell Kaupthing CDS via either a debt or an equity investment. Given the reference to *"investors"*, it must have been clear to Ms Yusuf by this point that the transaction was not being driven by a SICAV. Ms Yusuf said it was Deutsche's understanding that Kaupthing's investors would like to sell €250 million of Kaupthing CDS with an initial investment amount of €125 million. Ms Yusuf put forward two alternative structures: a note paying *"EURIBOR + spread based on the cds [sic] level"*, or shares in a Deutsche fund with performance linked to a leveraged Kaupthing CDS position. She explained that the fund would take approximately four weeks to set up, whereas the note was *"quickest in terms of execution and would take only a day to set up"*, although *"[t]he CDS hedge for this size would take longer to execute and would be done on an order basis"*. Ms Yusuf concluded the email by saying *"once you decide which route is preferable, you would also need to determine what vehicle from your side will be purchasing the note/equity"*.

83. Mr Hilmarsson replied on 15 July 2008 to say that the Investors would *"opt for the debt solution, as it is more time efficient and straight forward"*.

84. On 17 July 2008, Ms Yusuf emailed Mr O'Leary to ask whether he had thought about certain terms to be offered to Deutsche's *"Icelandic investors"*. Deutsche still did not know the identity of the investors at this stage but it is to be inferred Ms Yusuf believed that they were associated with Iceland.

85. On 22 July 2008, Ms Yusuf sent a summary of the proposed structure to Mr Hilmarsson. In her email, Ms Yusuf asked for *"details of the SPV buying the note including its beneficiaries so we can start the client adoption process"*. This summary was replaced with an updated version in an email sent later that morning by Mr Lin.

86. By this stage, Deutsche was already heavily exposed to Kaupthing's possible default and was, for its own account, looking to reduce its exposure to Kaupthing by purchasing CDS referenced to Kaupthing. On 22 July 2008, Mr Huque of Deutsche sent an email to Priscilla Macpherson, a Vice President and Senior Credit Officer at Deutsche, saying that he was long Kaupthing exposure in the amount of approximately €200 million. He explained that

the *"market has no liquidity in cds [sic] and has not since [...] about 3 weeks ago"*, but he said *"we are working aggressively to get a cln [sic] done on [Kaupthing] which will allow me to source another [€75 million] cds [sic] in next 2 weeks. [W]ill keep working on it... trust me, it is something we put all our attention into daily"*.

87. In the afternoon of 22 July 2008, Mr Hilmarsson said (in an email to Mr Lin and Ms Yusuf, which was copied to Mr Vishwanathan and Mr Gudmundsson) that he had spoken to the *"stakeholders"*. It was apparent from the email that the *"stakeholders"* referred to were not the proposed owners of the CLNs. Mr Vishwanthan and Ms Yusuf must have appreciated that this was a reference to Kaupthing. In the email Mr Hilmarsson said that the main concern was that the trade was *"not anymore 2 times leverage"*, while at the same time Deutsche would be taking a margin on the whole €250 million. He proposed certain amendments to the structure put forward by Deutsche.

88. On 24 July 2008, Ms Yusuf of Deutsche chased for *"details of the investor vehicle so we can start our KYC and account set up process"*.

89. Mr Hilmarsson responded by email to Ms Yusuf on the same day at 12.28, copied to Mr Gudmundsson. His email explained that attached to the email was *"a summary of the ownership structure of the vehicle acquiring the note and bringing the cash collateral"* (the **"Original Presentation"**) and that *"all the corporate document [sic] for the acquiring company"* and *"passport copies of the beneficiaries"* would follow. It was clear from the Original Presentation:

89.1. that the counterparty to the transaction would be Chesterfield;

89.2. that the Chesterfield Shareholders were three BVI companies: Holly Beach, Charbon and a third entity (the name and holding company of which were to be confirmed), which would be the investment vehicle for Kevin Stanford and Karen Millen and was referred to as K.S. Co (**"KS"**);

89.3. that those three BVI companies were owned by private individuals, namely Mr Thorvaldsson, Mr Yerolemou, Mr Stanford and Ms Millen;

89.4. that Chesterfield would receive funding of €125 million from Kaupthing; and

89.5. that the CLN was part of a wider scheme pursuant to which Deutsche was to offer for sale CDS with a total nominal value of €250 million.

90. Ms Yusuf replied to this email shortly after it was sent at 12:34, saying *"thanks"*. Since the email contained information that Ms Yusuf had been chasing for, it is inferred that she read the contents of the email and opened the attachments. Ms Yusuf therefore knew at the latest at this stage that Kaupthing was to be funding the transactions. The Original Presentation was the first occasion on which Deutsche had been informed about the identity of its counterparty and given information about the identity of the ultimate beneficial owners of its counterparty.

91. Later that day at 15.38, Ms Yusuf emailed Mr Hilmarsson to say *"[c]ould you give me a quick call pls [sic] [.] Had a few points to clarify with you about the investor vehicle"*.

92. Ms Yusuf contacted either Mr Sigurdsson or Mr Gudmundsson by telephone and asked that the email and Original Presentation be withdrawn and replaced with a presentation which did not make reference to Kaupthing as the funder of the transaction. This was a dishonest request by Deutsche, designed to avoid references in the paperwork showing Kaupthing as the funder of the transactions.

93. Following the above request, Mr Gudmundsson asked Mr Hilmarsson to recall the Original Presentation and to provide Deutsche with a version from which the reference to funds coming from Kaupthing was deleted. Mr Hilmarsson was working at home that day, so he asked a colleague to log onto his account and recall his email with the Original Presentation.

94. Mr Hilmarsson then prepared an amended presentation (the **"Amended Presentation"**), from which the reference to Kaupthing providing funds was deleted, and replaced so that it read *"Chesterfield will be provided with cash of a total amount of EUR 125 mio [sic] for the subscription of the note. Each time there will be margin call on Chesterfield the company will arrange for additional funding to service the margin call"*. Whilst this document did not make express reference to the fact that Kaupthing was the ultimate source of funds, it was clear from this document that Chesterfield did not have cash reserves from which it could meet any margin calls and that *"additional funding"* would have to be arranged for any further payments to be made. Deutsche did not raise a query about this, and it is inferred that this is because Mr Vishwanathan and Ms Yusuf were aware of the source of funds.

95. At around this time, Mr Hilmarsson's colleague, using Mr Hilmarsson's email account, recalled Mr Hilmarsson's Original Email with the Original Presentation.

96. At 16.23, Mr Hilmarsson sent the Amended Presentation to Ms Yusuf attached to an email that was substantially identical to the Original Email. It is to be inferred from the lack of explanation that Ms Yusuf was expecting a replacement presentation.

97. At 16.45, Ms Yusuf forwarded Mr Hilmarsson's email of 16.23 onto Mr Vishwanathan and Mr Dadlani.

98. At some point on 24 July 2008, Ms Yusuf of Deutsche and Mr Hilmarsson had a discussion about Deutsche's know your customer requirements.

99. On 25 July 2008, Mr Hilmarsson sent an email to Ms Yusuf, following the discussion on Deutsche's know your customer requirements. In that email:

99.1. he attached a summary of the investment activities and professional experience of the beneficial owners of Chesterfield and explained: *"As further described in the [presentation] I send [sic] you yesterday you will find the overview of the investment structure and who are the shareholders of Chesterfield (SPV) and the ultimate beneficiaries on top of that"*;

99.2. he said that *"We do not have any investment memorandum or prospectus"*. It must have been clear to Deutsche that the absence of an investment memorandum or prospectus , or even a proper term sheet, was a further indication that this was not a bona fide transaction where investors had chosen to purchase an investment, but rather a transaction engineered by Kaupthing in which the investors had no financial exposure;

99.3. he said that *"As you may notice from [the] overview and the resume I provided you with yesterday of Mr Karim Van den End [sic], the person who is in charge of Chesterfield, you can see that they are all experienced people in terms of investment and financial activities. All the investors are clients of Kaupthing Bank and have been for a long time"*. Ms Yusuf therefore knew that there were strong links between the individuals and Kaupthing;

99.4. Mr Hilmarsson noted Deutsche's know your customer requirements including the requirement for a sponsor or originator but said that it would be difficult to find another bank or financial institution to act as a *"Sponsor"* or an *"Investment Manager"*. The difficulty was that Kaupthing's clients had *"all their major banking activities with us and no specific relation to other banks that would be involved in this type of transaction"*; further, *"[i]t would be [...] highly sensitive from a professional secrecy point of view and the nature of this transaction. To involve another bank or financial institution at this stage, where we would need to disclose the name of our investors and to describe the nature of the transaction would challenge it"* [sic];

99.5. Mr Hilmarsson concluded: *"If [Deutsche] cannot consider that both the investors and Karim as being the Director of the SPV are not qualified to enter into this transaction [sic], without involving another financial institution we can consider that this transaction will not go any further"*.

100. On 25 July 2008, Mr Vishwanathan met with Mr Gudmundsson and others from Kaupthing in Reykjavik. The proposed transactions were discussed at this meeting.

101. On 27 July 2008, Mr Vishwanathan emailed Ms Yusuf as follows: *"To get this through, I think we may need to be upfront with the [know your customer] team and say that all of these sophisticated investors are long-standing clients of Kaupthing Bank (and all successful entrepreneurs) and that as Kaupthing are obviously unable to trade their own CDS, they referred these clients to us. It may also be useful to think about whether we want these investors to sign indemnities etc to protect our reputational position. I had a long discussion with Magnus (CEO of Kaup Lux) and two of Kaup Group's Board members on Friday in Reykjavik and they are confident they can get an additional 250m in interest from other investors in the weeks ahead if we set up a workable structure in this case next week."*

102. It is to be inferred from Mr Vishwananthan's email that:

102.1. Mr Vishwanathan and Ms Yusuf were prepared, if necessary, to withhold information from Deutsche's know your customer team, hence the statement *"we <u>may</u> need to be upfront with the [know your customer] team"* (emphasis added);

102.2. Mr Vishwanathan and Ms Yusuf knew that there remained serious reputational risks with the proposed transactions, given Kaupthing was behind the transaction, hence the possibility of investors providing indemnities;

102.3. given that Mr Vishwanathan and Ms Yusuf were aware that the proposed investors were long standing clients of Kaupthing, Mr Vishwanathan and Ms Yusuf knew that there was a strong Kaupthing connection;

102.4. in light of the matters set out in paragraphs 102.1 to 102.3 above, and Mr Vishwanathan's and Ms Yusuf's previous dealings with Kaupthing as set out in paragraphs 51 to 101 above together, Mr Vishwanathan and Ms Yusuf must have realised that Kaupthing would be providing the funding for the proposed transactions.

103. On 28 July 2008, there was an internal email exchange at Deutsche about the progress of the transaction. Mr Vishwanathan emailed Mr Millard of Deutsche who had attended the February 2008 Meeting with Mr Vishwanathan, saying "*the other main project is the Kaupthing CLN trade which is currently in [know your customer] documentation hell [and the next stage will be even more complicated with [Market Risk Management] entering the picture]... and [Credit Risk Management] are also being a pain ...*". It is inferred from this email exchange that Mr Vishwanathan considered that the identity of the purchaser of the CLNs was anything but straightforward.

104. In response, Mr Millard asked "*On kaupt who is now the cln buyer...?*" [sic] and Mr Vishwanathan responded: "*Karen Millen and her husband among others! Bunch of high net worth individuals taking a punt on 250m 5y CDS [CLN format but with some leverage]*". Mr Vishwanathan referred to the transaction as a "*punt*" because he was aware that it was high risk.

105. On 29 July 2008, Mr Vishwanathan updated Mr Sigurdsson that he "*continue[d] to make good progress on getting the leveraged CLN in place with Magnus...*".

106. On 30 July 2008, Mr Hilmarsson sent an email to Mr Vishwanathan and Ms Yusuf, in which he explained that the third shareholder in Chesterfield (representing Mr Stanford and Ms Millen) would be Trenvis.

107. On 4 August 2008, in response to queries raised by Mr Gudmundsson, Ms Yusuf explained (in an email to Mr Gudmundsson and Mr Hilmarsson, copied to Mr Vishwanathan and others) that:

107.1. Deutsche's risk management were not willing to provide a window of two business days for Additional Amounts to be paid under the CLNs. Instead Ms Yusuf proposed a compromise whereby Additional Amounts would have to be paid immediately but would only be retained if spreads continued above the level which caused the margin call to be made. It must have been clear to Ms Yusuf that, given the tight timing in which the Additional Amounts had to be paid, the funds would come from Kaupthing and not the ultimate investor;

107.2. she understood Mr Gudmundsson's concern that the proposed CLN was already close to the trigger levels for the payment of Additional Amounts which meant that on issue of the CLN, Additional Amounts might be payable in short order. She said that they should keep in mind that *"selling 250m of 5yr protection is a significant size and is likely to have the impact of compressing spreads which should alleviate these concerns"*.

108. On 6 August 2008, Ms Yusuf emailed Mr Hilmarsson and Mr Gudmundsson to explain that, because Deutsche did not have settlement lines with Chesterfield, funds would need to be sent to Deutsche in London as a deposit on the Chesterfield Swap. She explained that Deutsche was working on a deposit termsheet, and that the funds would be held on deposit until the settlement date of the swap. She confirmed that *"[u]pon receipt of the funds, [Deutsche] will start hedging on an order basis"* and that *"[d]ue to the liquidity of the underlying we will have to trade this in clips and agree economics as we go along"*.

109. Also on 6 August 2008, Chesterfield became a client of Deutsche and was categorised as a professional client.

110. On 7 August 2008, Deutsche produced a letter addressed to Chesterfield which was apparently designed by Deutsche to form the basis of an agreement. It appears that a version of the letter was subsequently signed by a person purportedly on behalf of Jaeger although the identity of the person signing is unclear from the document. Insofar as Deutsche contends that Chesterfield is bound by that document, Deutsche is put to proof that it was properly entered by an authorised officer of Chesterfield. The letter was an attempt by Deutsche to limit its liability for its role in the transactions. The letter contained a number of purported representations by Chesterfield which Mr Vishwanathan must have appreciated were untrue. In particular, Chesterfield purportedly represented that:

110.1. Clause 2: *"the purchase of the Notes does not violate or conflict with any law applicable to it..."*;

110.2. Clause 4: *"it has sufficient knowledge and experience in financial and business matters to evaluate the merits and risks of investing in the Notes as well as access to, and knowledge of, appropriate analytical tools to evaluate such merits and risks in the context of its financial situation"*;

110.3. Clause 5: *"it has sufficient financial resources to bear the risks of an investment in the Notes"*;

110.4. Clause 6: *"it has consulted with its legal, regulatory, tax, business, investment, financial and / or accounting advisers to the extent it deems necessary, and has made its own investment, hedging and trading decisions (including decisions regarding the suitability of an investment in the Notes) based upon its own judgement and upon advice from such advisers as it deems necessary and not upon any view expressed by Deutsche Bank AG London or any of its affiliates"*;

110.5. Clause 7: *"it is acting for its own account, and has made its own independent decisions to invest in the Notes and as to whether the investment in the Notes is appropriate or proper for it based upon its own judgement and upon advice from such advisers as it has deemed necessary"*;

110.6. Clause 8: *"it is not relying on any communication (written or oral) from Deutsche Bank AG London as investment advice or as a recommendation to invest in the Notes, it being understood that information and explanations related to the terms and conditions of the Notes shall not be considered to be investment advice or a recommendation to invest in the Notes"*;

110.7. Clause 9: *"it is capable of assuming, and assumes, the risks of the investment in the Notes"*.

111. The letter contained the following purported acknowledgments on the part of Chesterfield:

111.1. Clause (viii): *"the Notes are not an appropriate investment for investors who are unsophisticated"*;

111.2. Clause (x): *"neither the Issuer nor the Dealer is acting as a fiduciary for or adviser to it in respect of the investment in the Notes"*.

112. On 8 August 2008, Chesterfield entered the Chesterfield Swap with Deutsche. This transaction was confirmed in a swap confirmation letter dated 8 August 2008. It is believed

that the swap confirmation letter was signed by Mr van den Ende on behalf of Jaeger on 8 August 2008, and Deutsche signed this document on 12 August 2008.

113. Thereafter Deutsche set about putting in place the CDS hedges for the CLN (as envisaged in Mr Vishwanathan's email of 18 June 2008, see paragraph 62 above). The price achieved on the hedges would then set the level of the coupon payable on the CLN. Deutsche conducted the hedging carefully, with the intention of trading with (and thereby eliminating from the market) those counterparties who were willing to pay the highest price for Kaupthing CDS. The participants in the scheme kept a firm eye on the impact that the hedging was having on Kaupthing's credit spreads.

113.1. In the morning of 8 August 2008, Mr Gudmundsson sent an email to, inter alia, Ms Yusuf, to ask *"[h]ave we started trading?"*.

113.2. Early that afternoon, he emailed Mr Vishwanathan and Ms Yusuf to ask *"[a]ny news for my clients?"*.

113.3. On 11 August 2008, Mr Gudmundsson emailed Ms Yusuf and Mr Vishwanathan and asked *"[d]o you have any news for me"* [sic].

113.4. Later the same day, Mr Gudmundsson emailed Mr Dadlani, copied to Mr Lin and Ms Yusuf, and asked *"pleaser [sic] inform me of the progress by end of day and at what level the market closes"*.

114. As Mr Vishwanathan had promised in his email of 18 June 2008, set out in paragraph 62 above, the impact on the market was immediate and direct. As Deutsche executed the hedges, credit spreads in Kaupthing started falling as the market noticed the arrival of sellers. In addition, market commentators, apparently unconnected with the transactions, noted the sudden reversal in Kaupthing's credit spreads. By way of example, on 12 August 2008, an individual called Ms Raszkiewicz circulated an email, copied to Mr Vishwanathan, which noted: *"The situation in the Icelandic CDS seems to have reversed the other way from what we saw for the last 2 months. Beforehand there were no accounts willing to write protection, we only saw buyers, virtually no flows and hence a widening of 350bps + on 5-30bps a day. Currently what we are seeing is all accounts willing to sell protection, virtually no trading as well and shift the other way"*.

115. On 15 August 2008, Mr Vishwanathan emailed Mr Millard of Deutsche, copied to Ms Yusuf, confirming that €250 million of Kaupthing CDS had been sold. Mr Vishwanathan's email referred to *"Lots of hard work on developing the appropriate structure and great coordination and execution by Shaheen over the last month on this strategic project"*. It is to be inferred:

115.1. that the reference to the transaction being a *"strategic project"* is a reference to the February 2008 Meeting attended by Mr Vishwanathan and Mr Millard and the strategy devised to move Kaupthing's CDS spreads;

115.2. that Mr Vishwanathan's reference to *"Lots of hard work on developing the appropriate structure"* was a reference to Deutsche's work from February 2008 in developing the structure for Kaupthing;

115.3. that Mr Vishwanathan's reference to Ms Yusuf reflects her close involvement and understanding of the transaction, including the involvement of Kaupthing.

116. On the same day, Mr Vishwanathan emailed Mr Gudmundsson, copying in Mr Sigurdsson and Ms Yusuf, to thank Mr Gudmundsson for his patience and cooperation in closing the Chesterfield CLN for his clients and noting that the transaction had *"also had a great positive impact on your CDS spreads"*. Mr Sigurdsson replied to this email to say it *"seems our Barcelona trip paid off"*.

117. Between 8 and 15 August 2008, Kaupthing's spreads decreased from approximately 1000bps (i.e 10%) to 650 bps (i.e. 6.5%), a fall of 350 bps (or 3.5%) in the space of a week. This was an unprecedented downward move in Kaupthing's credit spreads.

118. Given the success of the Chesterfield CLN and the positive impact that it had had on Kaupthing's credit spreads, on 18 August 2008, Mr Gudmundsson emailed Mr Vishwanathan (at Mr Sigurdsson's request) to ask whether Deutsche would be interested in another similar transaction, and negotiations about the Partridge transaction commenced. In an email of 18 August 2008 from Mr Gudmundsson to Mr Vishwanathan and copied to Ms Yusuf, Mr Gudmundsson identified the proposed beneficial owner behind the new transaction as Olafur Olafsson who he said was a *"9-10% share holder of Kaupthing hf"*. Mr Vishwanathan forwarded this email to Mr Yusuf asking *"What do you think from a risk standpoint"*.

119. On 1 September 2008, Ms Schweiger of Kaupthing Lux emailed Mr Vishwanathan and Ms Yusuf introducing Partridge as the SPV that would be entering into the second transaction. Her email attached a presentation which made it clear that the shareholder in Partridge was Harlow, and that the shareholder in Harlow was a private individual. On 3 September 2008, Ms Schweiger sent Ms Yusuf a letter from Partridge purportedly signed by Jaeger, which said that Partridge had been established solely for the purpose of entering into the second transaction.

120. By this stage, Kaupthing's credit spread had gone back up to around 775bps from a low of 650bp on 15 August 2008. Further there was considerable weakness in the global financial markets which was continuing to put upward pressure on Kaupthing's credit spreads.

121. In late August and early September 2008, there was a raft of bad financial news from around the world which had a negative impact on the financial markets.

122. On 5 September 2008, the FTSE suffered its steepest weekly decline since July 2002. On 7 September 2008, the US Federal National Mortgage Association (FNMA), commonly known as Fannie Mae and the Federal Home Loan Mortgage Corporation (FHLMC), known as Freddie Mac were both placed into public ownership.

123. On or about 9 September 2008, a representative of Deutsche informed Mr Gudmundsson that if funds were received by Friday 12 September 2008, Deutsche could begin to sell CDS on Kaupthing on Monday 15 September 2008.

124. On 11 September 2008, Partridge became a client of Deutsche and was categorised as a professional client.

125. On 12 September 2008, Partridge entered the Partridge Swap with Deutsche. This transaction was confirmed in a swap confirmation letter dated 15 September 2008. The swap confirmation letter was signed by Mr van den Ende on behalf of Jaeger, and Deutsche signed this document. At the time of the Partridge Swap, Kaupthing's credit spreads were approximately 775bps.

126. On 14 September 2008, investment bank Merrill Lynch was taken over by Bank of America; on 15 September 2008, Lehman Brothers collapsed, and on 16 September 2008, the US Government stepped in to rescue the US insurer AIG.

127. On 16 September 2008, Mr Gudmundsson requested that he be sent spreads *"everyday, so I can be upto date if you find some hedge"* [sic].

128. On 17 September 2009, Kaupthing's credit spreads had deteriorated further and were approximately 1150bps. Mr Gudmundsson emailed Mr Vishwanathan on the same day at 11:54 saying *"How can the cds spread be were they are compare to our trade[.]Are u not paid to work for us?"* [sic]. The clear inference from this email was Mr Gudmundsson thought that Kaupthing was Deutsche's client in respect of the CLNs, rather than any private investors, and that the intention was to reduce Kaupthing's CDS spreads.

129. On or around 19 September 2008, Deutsche made margin calls of €50 million each under the Chesterfield CLN and the Partridge CLN. These calls were confirmed in an email of 20 September 2008.

130. On Saturday 20 September 2008, Ms Yusuf emailed Mr Gudmundsson suggesting that Partridge invest in a new CLN in place of the €50 million margin call, depositing €50 million of cash that would then be switched into a CLN to be issued on 3 October 2008.

131. On 22 September, it was confirmed that the cash would instead be used for a fully funded CDS (the Partridge CDS), and Deutsche would have the right to treat the funds as an Additional Amount under the Partridge CLN.

132. On or around 22 September 2008, Kaupthing advanced €50 million to Partridge by way of short term loan. This was transferred to Partridge's account at Kaupthing Lux, and from that account to Deutsche, and was used to fund the Partridge CDS.

133. On or around 22 September 2008, Kaupthing advanced €50 million to Chesterfield by way of short term loan. This was transferred to Chesterfield's account at Kaupthing Lux, and from that account to Deutsche.

134. On 26 September 2008, Deutsche called for a further €50 million from Chesterfield. On 29 September 2008, Kaupthing advanced a loan of €50 million to Chesterfield. This was transferred to Chesterfield's account at Kaupthing Lux, and from that account to Deutsche.

135. On or around 2 October 2008:

135.1. Deutsche issued the Partridge CLN;

135.2. Deutsche gave notice that the Partridge CDS would be terminated and the funds treated as an Additional Amount under the Partridge CLN;

135.3. Deutsche made a further demand for a margin payment of €50 million under the Partridge CLN;

135.4. by an email to Ms Yusuf, copied to Mr Vishwanathan, Mr Gudmundsson requested payment instructions *"as the payment this time will come directly from [Iceland]"*. The reference to *"this time"* the payment was coming *"directly"* from Iceland, suggested that previously payments had come indirectly from Iceland. Ms Yusuf did not query this, and it is inferred that this is because she knew that funds were coming from Kaupthing;

135.5. Mr Vishwanathan forwarded the payment instructions, and made no comment on the fact that the payment was to come directly from Iceland. It is inferred that this was because Mr Vishwanathan knew that the funds were coming from Kaupthing;

135.6. €50 million was transferred by Kaupthing to Deutsche, and received on 3 October 2008.

136. Also on 2 October 2008:

136.1. Mr Vishwanathan informed Mr Adalsteinsson that Deutsche's risk management department considered that Kaupthing was *"close to the tipping point"*;

136.2. Mr Olsson of Deutsche contacted Mr Sigurdsson looking to set up a call with Mr Vishwanathan on the following day;

136.3. Mr Vishwanathan emailed Mr Gudmunsson, copied to Mr Sigurdsson, to offer *"an investment opportunity directly for [Kaupthing] (i.e. we would be happy to deal directly with [Kaupthing]; no need for any external investor)"* which included a CLN referenced to Kaupthing. The reference in the email *"directly for [Kaupthing]"* implied that the previous investments (the Chesterfield and Partridge CLNs) had been indirect opportunities for Kaupthing.

137. On 3 October 2008, Deutsche demanded a final €25 million in margin from Chesterfield and a final €25 million in margin from Partridge. Ms Yusuf was aware that funds to meet these

margin calls would be coming directly from Iceland, and on 6 October 2008, at the request of Mr Vishwanathan, she sent a request for funds directly to Mr Jensson of Kaupthing.

138. A side letter for Partridge, which in material terms was in the same form as the Chesterfield side letter referred to in paragraph 110 above, was subsequently signed on or around 7 October 2008 by a person purportedly on behalf of Jaeger although the identity of the person signing is unclear from the document. Insofar as Deutsche contends that Partridge is bound by that document, Deutsche is put to proof that it was properly entered by an authorised officer of Partridge. The letter was an attempt by Deutsche to limit its liability for its role in the transactions. The letter contained a number of purported representations by Partridge which Mr Vishwanathan must have appreciated were untrue.

139. On 7 October 2008, Kaupthing paid a sum of €50 million to Deutsche for the final margin payments under each of the Chesterfield CLN and the Partridge CLN.

140. Accordingly, by 7 October 2008, Kaupthing had advanced sums totalling €255 million to Chesterfield and the Chesterfield Shareholders, and €255 million to Partridge and the Partridge Shareholder, of which €508.625 million had been advanced to Deutsche.

141. On 9 October 2008, Kaupthing's directors were dismissed and a Resolution Committee was appointed.

K. Unlawful Nature of the Chesterfield CLN, the Partridge CLN and the Partridge CDS

142. The Chesterfield CLN, the Partridge CLN and the Partridge CDS were unlawful transactions in that they were intended to, and did, secretly manipulate Kaupthing's CDS spreads and thereby the market for CDS referenced to Kaupthing, and the market for Kaupthing bonds. In particular, the Transactions were unlawful on the basis of the matters set out in paragraphs 143 to 145 below.

143. The Transactions constituted market abuse under section 118 of the Financial Services and Markets Act 2000 ("**FSMA**").

143.1. Kaupthing bonds were admitted for trading on the London Stock Exchange, the Luxembourg Stock Exchange and the OMX Nordic Exchange. As a result, Kaupthing bonds were qualifying investments for the purposes of section 118(1)(a) of FSMA.

143.2. In addition, to the best of the Claimants and Joint Liquidators' belief, Deutsche's US$40 billion Global Structured Note Programme, which included the CLNs, were also admitted for trading on the Luxembourg Stock Exchange and an application to admit had been made by the time that the CLNs were purchased.

143.3. In the circumstances, the CLNs were also qualifying investments for the purposes of section 118(1)(a) of FSMA;

143.4. The Transactions were manipulating transactions, contrary to section 118(5), FSMA and the Market Conduct Sourcebook MAR, r1.6, in that they gave the market a misleading impression as to:

143.4.1. the price of Kaupthing referenced CLNs;

143.4.2. the supply and demand of Kaupthing CDS and the price at which such CDS could be purchased; and

143.4.3. the credit spread applicable to Kaupthing; and

143.4.4. the supply and demand of Kaupthing bonds and the price at which such bonds could be purchased.

143.5. The Transactions were contrary to section 118(6), FSMA and the Market Conduct Sourcebook MAR, r1.7, since the Transactions, and the resulting CDS hedges, involved effecting transactions or orders to trade based on the following deception or contrivance:

143.5.1. the Transactions and the resulting CDS hedges (which in turn impacted on the market for Kaupthing bonds) were funded by Kaupthing but this was intentionally obscured by the ownership structure of Chesterfield and Partridge;

143.5.2. Mr Sigurdsson, Mr Einarsson, Mr Vishwanathan and Ms Yusuf wished to keep the fact that Kaupthing was funding the Transactions and thus the resulting CDS hedges, a secret from the market.

143.6. The Transactions were contrary to section 118(7), FSMA and the Market Conduct Sourcebook MAR, r1.8, since the Transactions and the resulting CDS hedges involved the dissemination of information which gave or was likely to give a false or misleading impression as to a qualifying investment by a person who knew or could reasonably be expected to know that the information was false or misleading. The Claimants / Joint Liquidators provide the following particulars:

143.6.1. the Transactions put Deutsche in a position where it was able to sell CDS in the market at a level which would, absent the Transactions, have been below the market price;

143.6.2. the offers that Deutsche made to sell CDS in the market involved the dissemination of information which gave or was likely to give a false or misleading impression as to Kaupthing referenced CLNs and Kaupthing bonds.

143.7. Alternatively, the Transactions constituted misleading behaviour and market distortion, contrary to section 118(8), FSMA and the Market Conduct Sourcebook MAR, r1.9, in that they there were likely to give a regular user of the bond market a false or misleading impression as to:

143.7.1. the price of Kaupthing referenced CLNs;

143.7.2. the supply and demand of Kaupthing CDS and the price at which such CDS could be purchased; and

143.7.3. the credit spread applicable to Kaupthing; and

143.7.4. the supply and demand of Kaupthing bonds and the price at which such bonds could be purchased.

144. The Transactions were contrary to the prohibition on market manipulation under Luxembourg law, specifically as contained in arts 1.2 and 11 of the Luxembourg Law of 9

May 2006 on Market Abuse (as amended). The Claimants and the Joint Liquidators rely on the following matters.

144.1. Pursuant to art 11, all persons are prohibited from engaging in market manipulation.

144.2. Under art 1.2, "*market manipulation*" includes (a) transactions or orders to trade which give, or are likely to give, false or misleading signals as to the supply of, demand for or price of financial instruments, or which secure, by a person, or persons acting in collaboration, the price of one or several financial instruments at an abnormal or artificial level, unless the person who entered into the transactions or issued the orders to trade establishes that his reasons for so doing are legitimate and that these transactions or orders to trade conform to accepted market practices on the regulated market concerned, (b) transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance, (c) dissemination of information through the media or by any other means, which gives, or is likely to give, false or misleading signals as to financial instruments, including the dissemination of rumours and false or misleading news, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading.

144.3. "*Financial instrument*" includes transferable securities (art 1.3)). Kaupthing bonds were transferable securities within the meaning of articles 1.3 and 1.4. The CLNs were also financial instruments for the purposes of the above Luxembourg law on the basis of the matters set out in the first sentence of paragraph 143.2 above.

144.4. Art 11 applies to actions carried out in Luxembourg or abroad concerning financial instruments (art 5).

144.5. The Transactions constituted market manipulation under Luxembourg law on the basis of the following matters:

144.5.1. The Transactions gave the market a misleading impression as to (a) the price of Kaupthing referenced CLNs and (b) the supply and demand of Kaupthing CDS and the price at which such CDS could be purchased, and the credit spread applicable to Kaupthing, and the supply and demand of Kaupthing bonds and the price at which such bonds could be purchased.

144.5.2. The Transactions and the resulting CDS hedges involved effecting transactions or orders to trade based on the following deception or contrivance in that (a) the Transactions and the resulting CDS hedges (which in turn impacted on the market for Kaupthing bonds) were funded by Kaupthing but this was intentionally obscured by the ownership structure of Chesterfield and Partridge and (b) Mr Sigurdsson, Mr Einarsson, Mr Vishwanathan and Ms Yusuf wished to keep the fact that Kaupthing was funding the Transactions and thus the resulting CDS hedges, a secret from the market.

144.5.3. The Transactions and the resulting CDS hedges involved the dissemination of information which gave or was likely to give a false or misleading impression in that (a) the Transactions put Deutsche in a position where it was able to sell CDS in the market at a level which would, absent the Transactions, have been below the market price and (b) the offers that Deutsche made to sell CDS in the market involved the dissemination of information which gave or was likely to give a false or misleading impression as to Kaupthing referenced CLNs and Kaupthing bonds.

145. The Transactions were contrary to the prohibition on market abuse under Icelandic law, specifically as contained in Article 117 of the Icelandic Act No. 108/2007 on Securities Transactions. The Claimants and the Joint Liquidators rely on the following matters:

145.1. Pursuant to Article 117, market abuse is prohibited.

145.2. Pursuant to Article 117, "*market abuse*" means transactions or orders to trade which (a) give, or are likely to give, false or misleading signals as to the supply of, demand for or price of financial instruments or secure the price of one or more financial instruments at an abnormal or artificial level, unless the party that conducted the transactions or issued the orders to trade can demonstrate that there were legitimate reasons for so doing and that these transactions or orders to trade conform to accepted market practices on the regulated market in question, (b) transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance, (c) dissemination of information, news or rumours which give, or are likely to give, false or misleading information or signals concerning

financial instruments, where the party that disseminated the information knew, or should have known, that the information was false or misleading.

145.3. "*Financial instrument*" includes (Article 2, paragraph 1, point 2 (a-h)) securities, including bonds, swaps and any other derivative contracts relating to securities, and derivative instruments for the transfer of credit risk.

145.4. Pursuant to Article 115, Article 117 applies to:

145.4.1. financial instruments that have been admitted to trading or requested to be admitted to trading on a regulated market in Iceland, the European Economic Area or comparable foreign markets;

145.4.2. financial instruments linked to one or more financial instruments of the kind referred to in paragraph 145.4.1 above.

145.5. Kaupthing bonds were admitted for trading on a regulated market in Iceland or the EEA, and so were financial instruments for the purposes of Article 117 as set out in paragraph 145.4 above. The CLNs were also financial instruments for the purposes of the above Icelandic law on the basis of the matters set out in the first sentence of paragraph 143.2 above.

145.6. Further, CDS referenced to Kaupthing were linked to Kaupthing bonds and so were also financial instruments for the purposes of Article 117 as set out in 145.4.1 above. CDS referenced to Kaupthing were linked to Kaupthing bonds because:

145.6.1. sales of CDS referenced to Kaupthing were likely to affect the market value of Kaupthing's bonds; and/or

145.6.2. certain Kaupthing bonds were deliverable obligations on a credit event under Kaupthing CDS.

145.7. The Transactions constituted market manipulation under Icelandic law on the basis of the same factual matters, particularised in paragraphs 144.5.1 to 144.5.3 above, which found the claim of market abuse under Luxembourg law.

L. Duties owed by Jaeger

146. As the sole director of Chesterfield and Partridge, Jaeger owed each of Chesterfield and Partridge:

146.1. a fiduciary duty under BVI law (as per section 120(1) of the BVI Business Companies Act 2004 or as a matter of common law):

146.1.1. to act honestly and in good faith in what the director believes to be the best interests of each company; and

146.1.2. to form its own independent judgment as to whether the taking of any particular step was in the best interests of each company;

146.2. a fiduciary duty under BVI law (as per section 121 of the BVI Business Companies Act 2004 or as a matter of common law) to act for proper purposes;

146.3. a duty of care in negligence (as per section 122 of the BVI Business Companies Act 2004 or as a matter of common law) to act with care, diligence and skill in supervising and managing each company's affairs.

M. **Claims by Chesterfield and Partridge based on Jaeger's breaches of duty**

147. In relation to Chesterfield, Jaeger acted in breach of its fiduciary duty and its duty of care in negligence as particularised in paragraph 146 above by purchasing the Chesterfield Swap and the Chesterfield CLN from Deutsche in circumstances where:

147.1. the Chesterfield Swap and the Chesterfield CLN were unlawful transactions in that they constituted market abuse under section 118 of the Financial Services and Markets Act 2000 and / or market manipulation under art 11 of the Luxembourg Law of 9 May 2006 on Market Abuse and / or market abuse under Article 117 of the Act on Securities Transactions under Icelandic law as set out in paragraphs 143 to 145 above;

147.2. the Additional Amounts payable under the Chesterfield CLN were funded entirely by loans which originated from Kaupthing and the Chesterfield CLN was a highly risky

transaction where there was a high likelihood of Chesterfield being unable to repay some or all of the loans from Kaupthing.

148. In relation to Partridge, Jaeger acted in breach of its fiduciary duty and its duty of care in negligence as particularised in paragraph 146 above by purchasing the Partridge Swap, the Partridge CLN and the Partridge CDS from Deutsche in circumstances where:

148.1. the Partridge Swap, the Partridge CLN and the Partridge CDS were unlawful transactions in that they constituted market abuse under section 118 of the Financial Services and Markets Act 2000 and / or market manipulation under art 11 of the Luxembourg Law of 9 May 2006 on Market Abuse and / or market abuse under Article 117 of the Act on Securities Transactions under Icelandic law as set out in paragraphs 143 to 145 above;

148.2. the Partridge CDS and the Additional Amounts payable under the Partridge CLN were funded entirely by loans which originated from Kaupthing and the Partridge CLN and the Partridge CDS were highly risky transactions where there was a high likelihood of Partridge being unable to repay some or all of the loans from Kaupthing.

N. The Applicable Law for any Tortious Liability of Deutsche, Mr Sigurdsson and Mr Einarsson

149. The tortious claims against Deutsche, Mr Sigurdsson and Mr Einarsson relate to an unlawful means conspiracy, as further particularised below. The events, or the most significant element of those events, occurred in England. Chesterfield and Partridge rely on the particulars set out below, which they reserve the right to supplement on disclosure:

149.1. the Transactions were designed, structured and arranged by Deutsche Bank's London Branch;

149.2. the key personnel dealing with the transaction at Deutsche were all based in London and worked from Deutsche's London office on the Transactions;

149.3. the Transactions were each governed by English law;

149.4. the CDS market operated primarily from London.

150. In the circumstances, the applicable law under s11 of the Private International Law (Miscellaneous Provisions) Act 1995 ("**PILA**") is English law. Alternatively if (contrary to the Claimants' primary case) the applicable law for claims for unlawful means conspiracy was the law of another country under s11 of PILA, then pursuant to s12 of PILA, it is substantially more appropriate for the applicable law for determining the issues in this case to be English law.

151. If contrary to the Claimants' primary case as articulated in paragraphs 149 to 150 above, the applicable law for conspiracy to injure by unlawful means is not English law, then the Claimants' case is that it is BVI law which is the law of the domicile of the victims. For the purposes of the Claimants' claims, the tort of conspiracy to injure by unlawful means under English law is identical to that tort under BVI law.

O. Claims by Chesterfield and Partridge based on Unlawful Means Conspiracy

152. Chesterfield and Partridge claim damages against Mr Sigurdsson, Mr Einarsson and Deutsche for conspiracy to injure by unlawful means.

The Combination

153. It is to be inferred that Mr Sigurdsson, Mr Einarsson and Deutsche (or any two or more together) conspired and combined together on the basis of:

153.1. the February 2008 Meeting attended by inter alia, Mr Einarsson, Mr Vishwanathan and Mr Millard of Deutsche which focused on Kaupthing's credit spreads and how they could be manipulated downwards using a programme of bond buybacks, as particularised in paragraphs 52 above;

153.2. the meeting of 13 June 2008 and the email of 18 June 2008 from Mr Vishwanathan in which Mr Vishwanathan put forward an idea for a CLN referenced to Kaupthing which would achieve the same end as the previous proposal of bond buybacks, as particularised in paragraphs 60 to 62 above, and Mr Sigurdsson and Mr Einarsson's subsequent discussion of that email;

153.3. the meeting on or around 9 July 2008 between Mr Sigurdsson and Mr Vishwanathan in which it was decided that the CLNs referenced to Kaupthing would be purchased by high net worth individuals closely associated with Kaupthing, as particularised in paragraph 76 above.

The Unlawful Action

154. The action taken was unlawful in that:

154.1. it involved a breach of fiduciary duty and the duty of care in negligence by the director of Chesterfield and Partridge in entering the transactions, as particularised in paragraphs 147 above and 148 above.

154.2. it involved market abuse under section 118 of the Financial Services and Markets Act 2000 and / or market manipulation under art 11 of the Luxembourg Law of 9 May 2006 on Market Abuse and / or market abuse under Article 117 of the Act on Securities Transactions under Icelandic law as set out in paragraphs 143 to 145 above;

154.3 it involved a breach of fiduciary duty by Mr Sigurdsson and Mr Einarsson as directors and officers of Kaupthing in that;

154.3.1. the Transactions were unlawful as set out in paragraphs 143 to 145 above;

154.3.2. the Transactions involved the application of substantial funds by Kaupthing in circumstances where Kaupthing was already in significant financial difficulties and where Kaupthing might need liquid funds in the near future. These funds were lent on an unsecured basis and on uncommercial terms and in breach of Kaupthing's own internal rules on authorising lending;

154.3.3. they did not properly assess the risks of the Transactions and consider whether it was appropriate to take the risk that they would not reach maturity and would terminate early.

155. Mr Sigurdsson and Mr Einarsson knew:

155.1. from their positions as directors and officers of Kaupthing and their involvement in the Transactions that they were being wholly funded by Kaupthing and that there was a very significant risk that neither Chesterfield or Partridge would be able to repay the loans from Kaupthing;

155.2. that the Transactions would be a breach of their own duties as directors and officers of Kaupthing, as particularised in paragraphs 154.3 above, since the loans made to Chesterfield and Partridge involved the deployment of substantial sums by Kaupthing at a time when it was in significant financial difficulties and where the disbursement of funds had not been approved by Kaupthing's credit committee;

155.3. that the Transactions would be a breach of Jaeger's duties as particularised in paragraphs 154.1 above;

155.4. that the Transactions would involve unlawful conduct in the market / market abuse as particularised in paragraphs 154.2 above.

156. Alternatively, Mr Sigurdsson and Mr Einarsson were recklessly indifferent as to the matters set out in paragraph 155 above.

157. Mr Vishwanathan and Ms Yusuf, acting within the scope of their employment at Deutsche, knew:

157.1. that the Transactions were being wholly funded by Kaupthing since:

157.1.1. the Transactions had originated from discussions with Kaupthing about how Kaupthing could influence its credit spreads;

157.1.2. Ms Yusuf had been sent the Original Presentation prepared by Kaupthing Lux which showed Kaupthing as the funder of the Chesterfield Transactions;

157.1.3. the CLNs were structured such that, if credit spreads deteriorated, very substantial Additional Amounts would become payable on a very short timescale. Deutsche always operated on the basis that such funds would be remitted in a very short timeframe and had rejected Kaupthing's request that the funds were provided on two business days' notice, as particularised in paragraph 107.1 above. Deutsche could not have believed that high net

worth individuals would be able to provide such funding at such short notice without at least the assistance of bank lending from Kaupthing. Further Deutsche never questioned the fact that there were four different individuals behind Chesterfield and the Additional Amounts would only be paid if those four individuals all agreed to and were able to provide the Additional Amounts immediately. It is inferred from the fact that the Deutsche never raised this point that it knew that the funding was coming from Kaupthing;

157.2. that the Transactions would constitute unlawful conduct in the market / market abuse as particularised in paragraphs 154.2 above since their purpose was the unlawful manipulation of Kaupthing's credit spreads;

157.3. that the Transactions involved a breach of Jaeger's duties as particularised in paragraphs 154.1 above; and

157.4. that the Transactions involved a breach of the duties of Mr Sigurdsson and Mr Einarsson as directors and officers of Kaupthing, as particularised in paragraphs 154.3 above.

158. Alternatively Mr Vishwanathan and Ms Yusuf, acting within the scope of their employment with Deutsche, were recklessly indifferent to the matters set out in paragraphs 157.1 to 157.4 above.

Intent to Injure

159. Mr Sigurdsson, Mr Einarsson and Mr Vishwanathan (and thus Deutsche) knew the Transactions would be injurious to Chesterfield and Partridge (and each of them).

160. Alternatively, Mr Sigurdsson, Mr Einarsson and Mr Vishwanathan (and thus Deutsche) were recklessly indifferent as to whether the Transactions would be injurious to Chesterfield and Partridge (and each of them).

P. Claims by Chesterfield and Partridge for Deutsche's Dishonest Assistance and Knowing Receipt

161. Deutsche, acting through Mr Vishwanathan and Ms Yusuf, dishonestly assisted, contrary to English law or alternatively BVI law, in breaches by Jaeger of its fiduciary duty to Chesterfield and Partridge as particularised in paragraphs 147 and 148 above.

162. Mr Vishwanathan and Ms Yusuf (and thereby Deutsche) knew that the Transactions were being funded by Kaupthing. Alternatively Mr Vishwanathan and Ms Yusuf (and thereby Deutsche) were reckless as to that question.

163. Mr Vishwanathan and Ms Yusuf (and thereby Deutsche) knew that the Transactions were unlawful in that they constituted market abuse under section 118 of the Financial Services and Markets Act 2000 and / or market manipulation under art 11 of the Luxembourg Law of 9 May 2006 on Market Abuse and / or market abuse under Article 117 of the Act on Securities Transactions under Icelandic law as set out in paragraphs 143 to 145 above. Alternatively, Mr Vishwanathan and Ms Yusuf (and thereby Deutsche) were reckless as to that question.

164. Deutsche, acting through Mr Vishwanathan and Ms Yusuf, dishonestly assisted, contrary to English law or alternatively BVI law, Jaeger to enter the Transactions and thereby act in breach of its fiduciary duty and its duty of care in negligence, by structuring and arranging the Transaction. Chesterfield and Partridge have suffered loss and damages as a result of Deutsche's dishonest acts in that they remitted a total of €508,625,000 to Deutsche in respect of the Transactions and received no monies back on termination of the CLNs and the Partridge CDS.

165. Deutsche received funds from Chesterfield and Partridge which it knew, through Mr Vishwanathan and Ms Yusuf, had been paid out as a result of a breach of Jaeger's fiduciary duty to Chesterfield and Partridge as particularised in paragraphs 147 and 148 above. Deutsche is liable to account for such monies as constructive trustee, under English law or alternatively BVI law.

Q. Loss and Damage suffered by Chesterfield

166. As a result of and consequent on the breach of duties owed by Jaeger and / or the unlawful means conspiracy effected by Mr Sigurdsson, Mr Einarsson and Deutsche (or any two of them), or Deutsche's dishonest assistance, Chesterfield suffered loss and damage by

entering the Chesterfield Transactions in the amount of €130 million and paying Additional Amounts in the sum of €125 million, and subsequently losing the entirety of the sums invested.

R. Loss and Damage suffered by Partridge

167. As a result of and consequent on the breach of duties owed by Jaeger and / or the unlawful means conspiracy effected by Mr Sigurdsson, Mr Einarsson and Deutsche (or any two of them), or Deutsche's dishonest assistance, Partridge suffered loss and damage by entering the Partridge Transactions in the amount of €128.625 million and paying Additional Amounts in the sum of €125 million, and subsequently losing the entirety of the sums invested.

S. Interest

168. The Claimants claim interest under section 35A(1) of the Senior Courts Act 1981 at such rate(s) on such amount(s) and for such period(s) as the Court sees just, or interest subject to the equitable jurisdiction of the Court.

T. Claims by the Joint Liquidators for Fraudulent Trading

169. Further and alternatively to the claims articulated in paragraphs 146 to 165 above, the Joint Liquidators seek a declaration that Mr Sigurdsson, Mr Einarsson, Mr Vishwanathan and Deutsche, and each of them, are liable to contribute to the assets of Chesterfield and Partridge for fraudulent trading, pursuant to Article 21(g) of the CBIR and section 213 of the Insolvency Act 1986, because each of them was knowingly party to the carrying on of the business of each of Chesterfield and Partridge with intent to defraud creditors of each company or for a fraudulent purpose. The remedy sought for fraudulent trading is one to which the Joint Liquidators would be entitled pursuant to section 255 of the BVI Insolvency Act 2003.

170. The business of each of Chesterfield and Partridge was carried on for a fraudulent purpose, namely:

170.1. to mislead the market over whether there were genuine counterparties wishing to sell CDS referenced to Kaupthing; and / or

170.2. to mislead the market by obscuring, through the use of Chesterfield and Partridge, that sellers in CDS referenced Kaupthing were actually funded by Kaupthing; and / or

170.3. to carry out market abuse under section 118 of the Financial Services and Markets Act 2000 and / or market manipulation under art 11 of the Luxembourg Law of 9 May 2006 on Market Abuse and / or market abuse under Article 117 of the Act on Securities Transactions under Icelandic law as set out in paragraphs 143 to 145 above.

171. At all material times, Jaeger did not exercise any proper independent discretion in managing the business of Chesterfield and Partridge and instead managed the business of Chesterfield and Partridge at the behest of Mr Einarsson and Mr Sigurdsson, in pursuance of the fraudulent purposes of Mr Einarsson and Mr Sigurdsson. Directions from Mr Einarsson and Mr Sigurdsson were passed to Jaeger through Mr Gudmundsson and Mr Hilmarsson of Kaupthing Lux, and other members of the team at Kaupthing Lux. Jaeger was reckless and / or turned a blind eye to the fraudulent purpose of Chesterfield and Partridge set out in paragraph 170 above and failed to make any, or any adequate, enquiry as to the nature and purpose of the business of the companies.

172. Mr Sigurdsson and Mr Einarsson (and each of them) were knowingly parties to the carrying on of the business of Chesterfield and Partridge (and each of them) for a fraudulent purpose, namely unlawful conduct in the market / market abuse, in that:

172.1. Mr Einarsson engaged in discussions with Deutsche about manipulating Kaupthing's CDS spreads, including identifying a counterparty to take part in such manipulation (as further particularised in paragraphs 52 to 74 above);

172.2. Mr Sigurdsson was aware that Deutsche was not willing to face Kaupthing in the proposed transaction, and required Kaupthing to identify a third party counterparty for the proposed CLN (as further particularised in paragraphs 67 above);

172.3. Mr Sigurdsson discussed the proposed transactions with Mr Vishwanathan (as further particularised at paragraphs 75 to 80 above);

172.4. as pleaded in paragraph 105 above, Mr Vishwanathan kept Mr Sigurdsson abreast of the development of the transactions; and

172.5. given Mr Sigurdsson's and Mr Einarsson's respective involvement in the matters set out in this paragraph, and given their respective roles in Kaupthing, it is to be inferred that each was aware of all the matters set out in this paragraph.

173. Mr Vishwanathan, and thereby Deutsche, was knowingly party to the carrying on of the business of Chesterfield and Partridge (and each of them) for a fraudulent purpose, namely unlawful conduct in the market / market abuse, in that:

173.1. Mr Vishwanathan and Mr Millard agreed to assist Kaupthing to manipulate its CDS spreads (as further particularised in paragraphs 52 to 75 above);

173.2. Mr Vishwanathan proposed that Kaupthing identify a third party counterparty to enter into a CLN transaction with Kaupthing as the reference entity, in order to manipulate Kaupthing's CDS spreads (as further particularised in paragraphs 60 to 62 above);

173.3. Mr Vishwanathan discussed the proposed transactions with Mr Sigurdsson (as further particularised at paragraph 75 to 80 above);

173.4. with knowledge of the intended manipulation of Kaupthing's CDS spreads, Mr Vishwanathan and Ms Yusuf took steps to further the proposed transactions (as further particularised in paragraphs 77, 82, 84, 85, 87, 88, 89, 90, 91, 92, 96, 97, 98, 99, 101, 102, 107, 108 and 115 above).

174. Alternatively, Mr Vishwanathan and Deutsche showed reckless indifference as to whether Chesterfield and Partridge (and each of them) were engaged in the fraudulent purposes (or any of them) identified in 170 above.

175. In the circumstances, the Joint Liquidators seek a declaration:

175.1. that Mr Sigurdsson, Mr Einarsson, Mr Vishwanathan and Deutsche have been knowingly a party to the carrying on of the business of Chesterfield with intent to defraud creditors and for other fraudulent purposes, and that they are liable to make such contributions to the assets of Chesterfield as the Court thinks proper;

175.2. that Mr Sigurdsson, Mr Einarsson, Mr Vishwanathan and Deutsche have been knowingly a party to the carrying on of the business of Partridge with intent to defraud creditors and for other fraudulent purposes, and that they are liable to make such contributions to the assets of Partridge as the Court thinks proper;

176. In particular, the Joint Liquidators seek an order that those contributions should cover:

176.1. Chesterfield's losses on the Chesterfield CLN;

176.2. Partridge's losses on the Partridge CLN and the Partridge CDS.

AND THE FIRST CLAIMANT SEEKS AS AGAINST THE FIRST AND SECOND DEFENDANTS:

(1) Damages for conspiracy to injure by unlawful means

(2) Further or other relief (including all necessary accounts and enquiries to determine the amount of any damages payable by the Defendants to the Claimant)

(3) Costs and interest.

AND THE SECOND CLAIMANT SEEKS AS AGAINST THE FIRST AND SECOND DEFENDANTS:

(1) Damages for conspiracy to injure by unlawful means

(2) Further or other relief (including all necessary accounts and enquiries to determine the amount of any damages payable by the Defendants to the Claimant)

(3) Costs and interest.

AND THE FIRST CLAIMANT SEEKS AS AGAINST THE THIRD DEFENDANT:

(1) Damages for breach of fiduciary duty

(2) Damages for negligence

(3) Equitable compensation

(4) Further or other relief (including all necessary accounts and enquiries to determine the amount of any damages payable by the Defendant to the Claimant)

(5) Costs and interest.

AND THE SECOND CLAIMANT SEEKS AS AGAINST THE THIRD DEFENDANT:

(1) Damages for breach of fiduciary duty

(2) Damages for negligence

(3) Equitable compensation

(4) Further or other relief (including all necessary accounts and enquiries to determine the amount of any damages payable by the Defendant to the Claimant)

(5) Costs and interest.

THE FIRST CLAIMANT SEEKS AGAINST THE FOURTH DEFENDANT

(1) Damages for conspiracy to injure by unlawful means

(2) Damages or Equitable compensation

(3) Further or other relief (including all necessary accounts and enquiries to determine the amount of any damages payable by the Defendant to the Claimant)

(4) Costs and interest.

THE SECOND CLAIMANT SEEKS AGAINST THE FOURTH DEFENDANT

(1) Damages for conspiracy to injure by unlawful means

(2) Damages or Equitable compensation

(3) Further or other relief (including all necessary accounts and enquiries to determine the amount of any damages payable by the Defendant to the Claimant)

(4) Costs and interest.

THE FIRST AND SECOND APPLICANTS (AS JOINT LIQUIDATORS OF THE FIRST CLAIMANT) SEEK AGAINST THE FIRST TO FIFTH DEFENDANTS

(1) A declaration that they have been knowingly a party to the carrying on of the business of the First Claimant with intent to defraud creditors and for other fraudulent purposes, and that they are liable to make such contributions to the assets of the First Claimant as the Court thinks proper ;

(2) Further or other relief (including all necessary accounts and enquiries to determine the amount of any damages payable by the Defendants, or any of them, to the First and Second Applicants)

(3) Costs and interest.

THE FIRST AND SECOND APPLICANTS (AS JOINT LIQUIDATORS OF THE SECOND CLAIMANT) SEEK AGAINST THE FIRST TO FIFTH DEFENDANTS

(1) A declaration that they have been knowingly a party to the carrying on of the business of the Second Claimant with intent to defraud creditors and for other fraudulent purposes, and that they are liable to make such contributions to the assets of the Second Claimant as the Court thinks proper

(2) Further or other relief (including all necessary accounts and enquiries to determine the amount of any damages payable by the Defendants, or any of them, to the First and Second Applicants)

(3) Costs and interest.

MARK PHILLIPS QC

SHARIF A SHIVJI

ELEANOR HOLLAND

Statement of Truth

The Claimants/Applicants believe that the facts stated in these Particulars of Claim are true.

I am duly authorised by the Claimants/Applicants to sign this Statement

Full name: STEPHEN JOHN AKERS

Signed: _____

Position: JOINT LIQUIDATOR

Dated: 28 NOVEMBER 2014

Claim No: HC14A02975

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

B E T W E E N : -

(1) CHESTERFIELD UNITED INC
(2) PARTRIDGE MANAGEMENT GROUP SA

Claimants

-and-

(1) HREIDAR MAR SIGURDSSON
(2) SIGURDUR EINARSSON
(3) JAEGER INVESTORS CORP
(4) DEUTSCHE BANK AG

Defendants

Claim No: 6583/2010 (Chesterfield)
Claim No: 6576/2010 (Partridge)

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

B E T W E E N : -

(1) STEPHEN JOHN AKERS
(2) MARK MCDONALD

Applicants

-and-

(1) HREIDAR MAR SIGURDSSON
(2) SIGURDUR EINARSSON
(3) VENKATESH VISHWANATHAN
(4) DEUTSCHE BANK AG

Defendants

CONSOLIDATED PARTICULARS OF CLAIM OF THE CLAIMANTS AND APPLICANTS

Solicitors for the Claimants

Stewarts Law LLP
5 New Street Square
London
EC4A 3BF