

THE HIGH COURT

2011 No. 219 MCA

IN THE MATTER OF

CUSTOM HOUSE CAPITAL LIMITED (IN LIQUIDATION)

AND IN THE MATTER OF

THE COMPANIES ACTS 1963-2012

ON THE APPLICATION OF

THE INVESTOR COMPENSATION COMPANY DAC

**NOTICE TO CLIENTS OF
CUSTOM HOUSE CAPITAL LIMITED (IN LIQUIDATION)**

The Investor Compensation Company DAC (the "ICCL") will, on a date to be fixed by the High Court, apply in the above-mentioned proceedings for reliefs to the following effect:-

1. A declaration, pursuant to section 231 of the Companies Acts 1963 to 2012 and/or the inherent jurisdiction of this Honourable Court, that the calculation of net loss under section 30(1) of the Investor Compensation Act 1998 (the "**1998 Act**") is to take into account, *inter alia*, actual recoveries and/or estimated future recoveries of money owed to or belonging to the clients of Custom House Capital Limited (In Liquidation) ("**CHC**") which are or ought to be held on their behalf by CHC in connection with the provision of investment business services by CHC and of investment instruments belonging to the clients of CHC which are or ought to be held, administered or managed by CHC for them in connection with the provision of investment business services by CHC, between the commencement of the liquidation of CHC and the delivery of a statement (or, if an interim statement has been delivered, a final statement) to the ICCL specifying the net loss and compensatable loss of an eligible investor.
2. A declaration, pursuant to section 231 of the Companies Acts 1963 to 2012 and/or the inherent jurisdiction of this Honourable Court, that the right of subrogation of the ICCL pursuant to section 35 of the 1998 Act extends to:
 - a. money owed to or belonging to the clients of CHC and held on their behalf by CHC in connection with the provision of investment business services; and
 - b. investment instruments belonging to the clients of CHC and held, administered or managed by CHC for them in connection with the provision of investment business services;

that formed or ought to have formed part of the calculation of net loss under section 30(1) of the 1998 Act ("**Net Loss Client Assets**").

3. Directions regarding the application of the right of subrogation of the ICCL to Net Loss Client Assets, including:
 - a. in circumstances where an eligible investor who has received (or will receive) compensation from the ICCL is due distributions in respect of more than one Net Loss Client Asset, directions as to whether the ICCL's right of subrogation applies equally to each such asset or whether it is allocated between each such asset by reference to the level of loss in respect of each such asset or on any other basis;
 - b. directions as to whether the ICCL's right of subrogation arises in respect of the amount of any overpayment of compensation to an eligible investor arising as a result of the calculation of that eligible investor's net loss; and

- c. directions as to whether the ICCL's right of subrogation in respect of the amount of any overpayment of compensation ought to rank in priority to any other claim against distributions of Net Loss Client Assets in the liquidation of CHC by eligible investors and/or the ICCL pursuant to section 35(5A) of the 1998 Act.
4. An Order, pursuant to section 231 of the Companies Acts 1963 to 2012 and/or the inherent jurisdiction of this Honourable Court, that, in respect of eligible investors who have applied for compensation under the 1998 Act but whose claims (or part thereof) have not yet been certified, any distribution of:
 - a. money owed to or belonging to the clients of CHC and held on their behalf by CHC in connection with the provision of investment business services by CHC; and
 - b. investment instruments belonging to the clients of CHC and held, administered or managed by CHC for them in connection with the provision of investment business services by CHC;

that have formed, will form or may form part of the calculation of net loss under section 30(1) of 1998 Act shall take account of the right of subrogation of the ICCL.

Pursuant to an Order dated 1 July 2020, the High Court appointed Mr Michael Nugent as one *legitimus contradictor* and Mr Roger Day as another *legitimus contradictor* to represent the interests of eligible investors in the above-mentioned application (the "**Directions Application**").

Pursuant to the Order dated 1 July 2020, any client of CHC who is an eligible investor under the 1998 Act (an "**Eligible Investor**") may apply to the High Court on a date to be fixed by the High Court for liberty to appear and be heard at the Directions Application (a "**Joinder Application**"). Any such Eligible Investor must notify William Fry, solicitors for the ICCL, at chcdirections@williamfry.com (quoting reference 014418.0025.RJR/ROC) by 5:00pm on 31 July 2020 of their intention to make a Joinder Application.

The ICCL shall notify the High Court, Peter Nugent & Co., solicitors for Mr Michael Nugent, Ivor Fitzpatrick & Co., solicitors for Mr Roger Day, and McCann FitzGerald, solicitors for the Official Liquidator, of all such notifications received from Eligible Investors and request the High Court to fix a date for the hearing of any such Joinder Applications which date, once fixed, the ICCL shall notify to any such Eligible Investors.

A Joinder Application shall be made by way of motion grounded on an affidavit setting out full particulars of the Eligible Investor's claim in the liquidation of CHC, full particulars of his/her application for payment under section 34 of the 1998 Act, the reasons why it is necessary and/or appropriate that he/she appear and be heard in addition to the aforementioned *legitimi contradictores* who have been appointed by the High Court, and any other matters he/she considers appropriate, to be filed in the Central Office of the High Court and served on William Fry, solicitors for the ICCL, McCann FitzGerald, solicitors for the Official Liquidator, Peter Nugent & Co., solicitors for Mr Michael Nugent, and Ivor Fitzpatrick & Co., solicitors for Mr Roger Day, no later than 5 working days before the date to be fixed by the High Court for the hearing of any Joinder Applications.

Pursuant to the Order dated 1 July 2020, Eligible Investors may contact William Fry, 2 Grand Canal Square, Dublin 2 at chcdirections@williamfry.com (quoting reference 014418.0025.RJR/ROC) to obtain a copy of the said Order and a redacted copy of the notice of motion and grounding affidavit herein.

Dated this 3 July 2020

William Fry
Solicitors for the Investor Compensation Company DAC

2 Grand Canal Square
Dublin 2