

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

COMMERCIAL COURT

B E T W E E N :

**(1) SWISS GARANTIE ISSUANCE AG
(2) SWISS GARANTIE (ISSUANCE) LIMITED**

Claimants

-and-

**(1) CREDIT SUISSE (UK) LIMITED
(2) HANS-OLAV ELDRING
(3) RYAN CORPORATION (UK) LIMITED
(4) THOMAS GERRARD RYAN**

Defendants

PARTICULARS OF CLAIM

1. INTRODUCTION

1.1. In these Particulars of Claim, the following definitions and abbreviations will be used.

Party/Entity	Abbreviation
The First Claimant, Swiss Garantie Issuance AG	“SG”
The Second Claimant, Swiss Garantie (Issuance) Limited	“SG-HK”
Sanjeev Joshi	“Mr Joshi”
Daryn Soards	“Mr Soards”
The First Defendant, Credit Suisse (UK) Limited	“Credit Suisse”
The Second Defendant, Hans-Olaf Eldring	“Mr Eldring”
Credit Suisse AG	“Credit Suisse AG”
The Third Defendant, Ryan Corporation (UK) Limited	“Ryan Corporation”
The Fourth Defendant, Thomas Gerrard Ryan	“Mr Ryan”
Brova Consultatoria de Gestao Unipessaol LDA	“Brova”
Investment Trust RICOM ZAO	“RICOM”
Allianz SpA	“Allianz”
Atradius Insurance Holding NV	“Atradius”

Party/Entity	Abbreviation
Banco Espirito Santo SA	“BES”

1.2. Further, where appropriate (1) SG and SG-HK will be referred to together as “the Claimants” and (2) Credit Suisse, Mr Eldring, Mr Ryan and Ryan Corporation will be referred to together as “the Defendants”.

1.3. The property and site known as Hertsmere House, 2 Hertsmere Road, London E14 4AB will for convenience be referred to as “Hertsmere House” which, as more particularly set out below, is a substantial office building close to Canary Wharf with planning permission for redevelopment. The alleged development of Hertsmere House as a residential tower block by Ryan Corporation and/or Mr Ryan together with (and on the advice/through the representation of) Credit Suisse will be referred to as the “Hertsmere House development”.

2. **PARTIES**

2.1. **SG and SG-HK**

2.1.1. SG is a company incorporated in Switzerland with its registered office at Haldenstrasse 5, CH-6342, Baar, Switzerland. SG-HK, is a company incorporated in Hong Kong with its registered office at Mirimar Tower 1232, Nathan Road, TST, Kowloon, Hong Kong.

2.1.2. At all relevant times, the respective businesses of SG and SG-HK have included asset underwriting, surety bonds, guarantees and indemnities either directly or through each other as affiliates.

2.1.3. In relation to the relevant events and transactions, SG and SG-HK have both been represented by Mr Joshi and Mr Soards, each of whom was acting in relation to the matters set out below for and on behalf of either SG or SG-HK or both.

2.2. **Credit Suisse**

2.2.1. The First Defendant, Credit Suisse is an English company which carries on business as a substantial bank based in London and is part of the Credit Suisse Banking Group based in Switzerland. Its registered office and principal business premises in London are at Five Cabot Square, London E14 4QR (“Credit Suisse London offices”). Credit Suisse has also, at all

relevant times, maintained an office at 45 Pall Mall, London SW1Y 5JG (“Credit Suisse Pall Mall offices”). As the Claimants understand it, at all relevant times, Credit Suisse has been, directly or indirectly, a wholly owned subsidiary of Credit Suisse AG. As more particularly set out below, SG and/or SG-HK, through Mr Joshi and Mr Soards, attended relevant meetings with Credit Suisse (represented in particular, through Mr Eldring) at Credit Suisse’s Pall Mall office.

2.2.2. At all relevant times, Credit Suisse has been regulated by the FCA (formerly the FSA) in London and has maintained as part of its operations in London a “*Private Banking*” or “*wealth management*” function which *inter alia* advises and introduces or handles transactions (and otherwise acts) for wealthy clients (frequently referred to as “Ultra High Net Worth” or “UHNW” clients). As far as the Claimants are aware, these aspects of Credit Suisse’s business in the UK were managed and operated from the Credit Suisse London offices.

2.2.3. As the Claimants understand it, the UHNW aspects of Credit Suisse’s activities in London were expanded between about 2011 and 2013 and a number of individuals were hired laterally including Mr Eldring (see further paragraph 2.3 below). At the relevant time, the head of the UHNW function at Credit Suisse based in the Credit Suisse London office appears to have been Matthew Haimès who appears to have joined Credit Suisse in 2012 from JP Morgan.

2.3. **Mr Eldring**

2.3.1. In circumstances not presently known to the Claimants, Mr Eldring joined Credit Suisse in 2012 or 2013 as part of its Private Banking, wealth management or UHNW function. As the Claimants understand it, Mr Eldring’s family background (including his parents) are Norwegian but he is Swiss and, prior to joining Credit Suisse, had operated as an investment banker, specialising in private wealth and wealth management, in Switzerland and elsewhere.

2.3.2. To the best of the Claimants’ knowledge, at the times relevant to these proceedings, in particular between October 2013 and early 2014:

(1) Mr Eldring was based at Credit Suisse’s London office as part of the UHNW function.

(2) As more particularly set out below, Mr Eldring was described by Credit Suisse to its counterparties such as SG/SG-HK as a “Director - Private Banking” at Credit Suisse,

for example, in correspondence from Credit Suisse and was similarly described on his Credit Suisse business card.

- (3) Mr Eldring was described in emails sent from his Credit Suisse email account as “*IP-UHNW ...*” which, as the Claimants understand it, meant “*investment partner - ultra high net worth ...*”.

2.3.3. At all relevant times, Mr Eldring also had access to and used the Credit Suisse Pall Mall offices for meetings with clients and third parties including, as set out below, SG and SG-HK in relation to the events and transactions relevant to these proceedings.

2.3.4. Mr Eldring was at all relevant times registered with and regulated by the FCA in London and was shown on the Financial Services Register as having registration number *HXE01081* – *Hans-Olaf Eldring* and having the following controlled functions

Controlled Function	Firm Name	Start Date	End Date
CF30 customer	Credit Suisse (UK) Ltd	31 January 2011	3 January 2014
CF30 Customer	Credit Suisse Securities (Europe) Ltd	31 January 2011	28 May 2012

2.4. **Mr Ryan and Ryan Corporation**

2.4.1. To the best of the Claimants’ knowledge and belief, Ryan Corporation is an English company which has, at all relevant times, been owned and/or controlled by Mr Ryan who is directly or indirectly the legal and/or beneficial owner of its shares and has acted or purported to act on its behalf, including as a Director.

2.4.2. At all relevant times (and as more particularly set out below in relation to the relevant transactions), Mr Ryan and/or Ryan Corporation have claimed or purported to carry on business in property development and to be customers of and represented by Credit Suisse and/or Mr Eldring.

2.4.3. As more particularly set out below,

- (1) Mr Ryan and Ryan Corporation represented (as did Credit Suisse) that they were both clients of Credit Suisse including in particular its UHNW function as set out above.

(2) In their dealings with SG and SG-HK, Mr Ryan and Ryan Corporation were based (and/or appeared to be based and/or represented themselves and were represented by Credit Suisse as being based) at the Hyatt Regency Churchill Hotel in London at 30, Portman Square, London W1H 7BH (“the Churchill Hotel”).

3. **SUMMARY OF CLAIMS BY SG AND SG-HK**

- 3.1. Between October and December 2013, as more particularly set out below, SG and/or SG-HK was contacted by Credit Suisse, through Mr Eldring (on behalf of their clients, Mr. Ryan and Ryan Corporation), and invited to provide an underwriting structure for the financing of the Hertsmere House development including through a guarantee or sub-guarantee on the basis that this was a substantial property transaction which Credit Suisse claimed to be handling and advising upon for its clients, Mr Ryan and his company, Ryan Corporation. The finance was to be arranged by Mr Eldring on behalf of Credit Suisse through his contacts and clients within the UHNW function of Credit Suisse.
- 3.2. Credit Suisse, through Mr Eldring, put SG and SG-HK in touch with Mr Ryan and Ryan Corporation and discussions then took place in relation to the proposed financing and the alleged Hertsmere House development between (1) SG and SG-HK, through Mr Joshi and Mr Soards, (2) Credit Suisse, through Mr Eldring and (3) Mr Ryan/Ryan Corporation.
- 3.3. During these discussions, Credit Suisse, through Mr Eldring, and Mr Ryan/Ryan Corporation made express and implied representations to SG and SG-HK, as more particularly set out below, in relation inter alia to (1) Mr Ryan and Ryan Corporation, including as to their alleged substantial (past and existing) connections with Credit Suisse and their financial circumstances, (2) the proposed transaction which involved the alleged purchase and development of Hertsmere House, a substantial commercial office site/development in London Docklands and (3) Credit Suisse’s own involvement with the proposed transaction including the relevant parts of the financial transaction structure and underwriting the transaction by way of guarantees and/or other security.
- 3.4. In specific and intended reliance upon these representations and as a result, in particular, of confirmation from Credit Suisse of blocked funds or irrevocable payment instructions, SG and/or SG-HK concluded agreements with Ryan Corporation and with third parties (including RICOM/Allianz and others) as more particularly set out below and made substantial financial commitments and payments as a result of which they committed themselves to the alleged

transaction and, as Credit Suisse, through Mr Eldring, and Mr Ryan/Ryan Corporation knew were thereby unable to participate and complete other valuable business.

- 3.5. As part of the agreed arrangements for the financing between SG/SG-HK, Credit Suisse and Mr Ryan/Ryan Corporation (and at the insistence of SG and SG-HK prior to entering into any arrangements with third parties), SG and SG-HK (1) required confirmation from Credit Suisse that funding was in place to pay the premium for the guarantee and (2) made clear that reliance was being placed on such confirmation from Credit Suisse (and that without this being provided, there would be no transaction with Mr Ryan/Ryan Corporation).
- 3.6. As more particularly set out below, by letter dated 15 November 2013, Credit Suisse, through Mr Eldring, provided a confirmation of irrevocable payment instructions which were critical (1) to the financing, (2) to the conclusion of the necessary agreements and arrangements with Mr Ryan and (3) to the finalisation by SG and SG-HK of arrangements with third parties such as RICOM.
- 3.7. In December 2013, Mr Ryan and/or Ryan Corporation concluded a written agreement with SG and SG-HK by formally signing (on the advice and with the knowledge/approval of Credit Suisse, through Mr Eldring) a written proposal for financing prepared by SG and SG-HK. The Credit Suisse confirmation was updated by agreement to reflect the latest revised terms.
- 3.8. Credit Suisse reneged entirely upon its “irrevocable payment instruction” and Mr Ryan/Ryan Corporation reneged on its agreement with SG/SG-HK. The representations made by Credit Suisse and Mr Ryan/Ryan Corporation were false and were made intentionally, recklessly or negligently with the intention and knowledge that SG and SG-HK, in reliance upon them, would act to their detriment. The purported underlying transaction, the Hertsmere House development, involving Mr Ryan/Ryan Corporation and Credit Suisse was a fraud and did not proceed. Mr Eldring was apparently immediately dismissed by or resigned from Credit Suisse as a result of the serious wrongdoing involved by himself and Credit Suisse in relation to this (and apparently other) matters.
- 3.9. As a direct consequence, SG (and in consequence SG-HK) has suffered substantial losses as more particularly set out below.

4. **FRAUD AND DISCLOSURE OF DOCUMENTS**

- 4.1. As more particularly set out below, the unlawful conduct of the Defendants as set out in these proceedings involved fraud and deceit by at least (1) Mr Eldring, (2) Credit Suisse (at least through Mr Eldring), (3) Ryan Corporation and (4) Mr Ryan.
- 4.2. In the premises, the particulars and information set out in these Particulars of Claim are the best which the Claimants are presently able to provide. The Claimants reserve the right to apply to amend the claim and, in any event, to provide further particulars and information as its investigations continue and in the light of disclosure of documents.

5. **RELEVANT ACCOUNTS AT CREDIT SUISSE**

- 5.1. At all relevant times, SG has maintained a current account with Credit Suisse AG at Bahnhofstrasse 17, 6300 Zug, Switzerland Account No. CH-170.3.030.200-9 in the name of *Suisse Garantie Issuance AG*.
- 5.2. To the best of the Claimant's knowledge and belief, at all relevant times Mr Ryan and/or Ryan Corporation have maintained an account at Credit Suisse in London with IBAN GB84CSUK40624810130671.
- 5.3. In this context, in relation to the relevant events and transactions referred to below,
 - (1) At or about the beginning of November 2013, Mr Ryan or Ryan Corporation transferred the sum of £250,000 from their account at Credit Suisse to the account of SG at Credit Suisse AG.
 - (2) On or about 18 December 2013, Mr Ryan or Ryan Corporation transferred the sum of £70,000 also from their account at Credit Suisse to the account of SG at Credit Suisse AG.
- 5.4. In the premises, at all relevant times, (1) a banker/customer relationship existed between inter alia Credit Suisse AG and SG and (2) (apparently) a banker/customer relationship existed between Credit Suisse and Mr Ryan and/or Ryan Corporation. The Claimant will if necessary and relevant provide further particulars following disclosure herein.

6. **RELEVANT DEALINGS WITH SG/SG-HK BY CREDIT SUISSE AND MR RYAN/RYAN CORPORATION**

6.1. **Introduction of SG/SG-HK to Credit Suisse**

In or about late October 2013, Mr Eldring, on behalf of Credit Suisse, was introduced by a third party to Mr Joshi and Mr Soards, on behalf of SG and/or SG-HK. Mr Eldring explained his position as part of the UHNW function at Credit Suisse (as more particularly set out in paragraph 2 above) and expressed an interest in Credit Suisse involving SG/SG-HK in financing arrangements for Credit Suisse's clients. To the best of the Claimant's recollection, this initial meeting took place at Credit Suisse's Pall Mall offices.

6.2. **Introduction of Mr Ryan/Ryan Corporation to SG/SG-HK by Credit Suisse**

In any event, following this introduction, in or about early November 2013, Mr Eldring, on behalf of Credit Suisse, approached SG and/or SG-HK, through Mr Joshi and Mr Soards, regarding the financing for a transaction involving Mr Ryan and/or Ryan Corporation as clients of Credit Suisse. Mr Eldring arranged a meeting at the Churchill Hotel between Mr Ryan (for himself and Ryan Corporation) and Mr Joshi/Mr Soards and introduced them.

6.3. **Meetings and Discussions in Early November 2013**

6.3.1. A number of meetings and telephone conversations then took place during the first two weeks of November 2013:

- (1) Between Mr Joshi and Mr Soards, on behalf of SG and SG-HK, and Mr Eldring, on behalf of Credit Suisse.
- (2) Between Mr Joshi and Mr Soards, on behalf of SG and SG-HK, and Mr Ryan, on behalf of himself and Ryan Corporation.
- (3) Between Mr Joshi and Mr Soards, on behalf of SG and SG-HK, and both Mr Eldring, on behalf of Credit Suisse, and Mr Ryan, on behalf of himself and Ryan Corporation.

6.3.2. Some of these meetings took place at Credit Suisse's Pall Mall offices and others took place at the Churchill Hotel. As more particularly set out below, the nature, locations of and parties to the relevant discussions continued throughout the parties' dealings until early 2014.

6.3.3. As far as the Claimants are aware, so far as Credit Suisse was concerned, all relevant email communications from Mr Eldring were conducted using his email account at Credit Suisse

and telephone conversations with Mr Eldring were conducted by him using his Credit Suisse Blackberry.

6.4. **Credit Suisse/Eldring Business Card**

During one of the meetings at Credit Suisse's London offices, referred to above, Mr Eldring provided to Mr Joshi and Mr Soards on behalf of SG (and SG-HK) with a Credit Suisse business card showing Mr Eldring as Director - Private Banking.

6.5. **Credit Suisse Reference for its Clients Mr Ryan and Ryan Corporation**

During the same discussions, Mr Eldring on behalf of Credit Suisse provided to SG and/or SG-HK a formal written reference in respect of Mr Ryan and "Ryan Trust Company" on Credit Suisse headed notepaper and dated 25 October 2013 which stated in its relevant part as follows:

"We have been requested by Mr Ryan to provide this reference. Mr Ryan and his family are long-term clients of [Credit Suisse].

We can confirm that Mr Ryan has been dealing with real estate projects in excess of £100 million size.

From our dealings with Mr Ryan, we have no reason to consider that the client is or has been unable to meet his normal obligations to ourselves or any third party.

The information herein is given in strict confidence for your private use only, without any guarantee or responsibility on the part of [Credit Suisse] or its officials."

6.6. **Role of Credit Suisse**

At all relevant times, during these discussions (both at this time and subsequently – see below) Mr Ryan deferred to the advice and decisions of Mr Eldring, on behalf of Credit Suisse, and appeared to seek (and where appropriate obtain) the final approval of Credit Suisse. In this context, Mr Eldring and Mr Ryan both represented that Mr Eldring and Credit Suisse were organising the financing for Mr Ryan and Ryan Corporation.

6.7. **Representations by the Defendants in Relation to the Hertsmere House Development**

6.7.1. During these meetings and communications, Mr Eldring and Mr Ryan represented to the Claimants *inter alia*:

- (1) That the proposed development project was at Hertsmere House in Canary Wharf and involved the demolition of the existing structure and the erection of a substantial residential property which would amongst other things become one of the tallest residential developments in Europe.
- (2) That final planning consents for Hertsmere House were due in mid-2014, and an extra 10 floors had been informally agreed and series of meetings had been had with the Mayor of London to establish as part of the increase a 3 storey indoor garden with public access.
- (3) That Ryan Corporation had paid a deposit of £10m and a security amount payment of £10.5m, as well as interest and fees, to purchase Hertsmere House.
- (4) That the development project was due to break ground in around November 2014 following completion of the enhanced planning.
- (5) That an equity take-out was planned in the short term to repay the bridge facility.
- (6) That the current plans showed a gross development value of £871 million and an EBITDA of £430 million.
- (7) That some form of bridge finance facility was urgently required to complete the acquisition.
- (8) That as part of the financing a lender (to be identified by Mr Eldring on behalf of Credit Suisse) would require a guarantee.

6.8. **Provision to SG/SG-HK of Supporting Documents**

6.8.1. In this context, SG and SG-HK were provided by Credit Suisse and Mr Ryan/Ryan Corporation with background papers concerning Hertsmere House including a sale and purchase agreement for the sale of the property to Ryan Corporation.

6.8.2. In addition, SG and SG-HK were directed and referred *inter alia* to:

- (1) Newspaper articles in the Financial Times and other papers referring to the project and Ryan's leadership of that project.
- (2) Meetings directly with the Mayor of London and the planning team at City Hall, London where he was able to obtain an extension to the planning by the addition of a number of extra floors in exchange for a larger public access atrium described as a "green space for London".
- (3) Other supporting documents and materials.

6.9. **Representations by Credit Suisse in Relation to Mr Ryan/Ryan Corporation**

Mr Eldring on behalf of Credit Suisse represented to SG and SG-HK during the discussions referred to above *inter alia* as follows:

- (1) That Mr Ryan and Ryan Corporation held substantial assets with or financed by Credit Suisse. Specifically, that he held a bank account with Credit Suisse with sufficient funds to pay, on an irrevocable basis, if the transaction should progress.
- (2) That Mr Ryan and Ryan Corporation were known to Mr Eldring and were very substantial and wealthy property developers.
- (3) That Mr Ryan and his family were long-term clients of Credit Suisse and that Mr Ryan had been dealing with substantial real estate projects in excess of £100m.
- (4) That Credit Suisse (and, in particular, Mr Eldring) were advising and acting for and on behalf of Mr Ryan and Ryan Corporation in relation to the Hertsmere House transaction and development which Credit Suisse was, in whole or in part, financing and in relation to which it would be arranging or providing necessary guarantees and security.

6.10. **Representations by Defendants in Relation to Financing**

During the same discussions, Mr Eldring, on behalf of Credit Suisse, and Mr Ryan/Ryan Corporation represented to SG and/or SG-HK that they were fully committed to developing a financing structure involving SG and SG-HK including (1) a loan to Ryan Corporation, (2) a guarantee of Ryan Corp's obligation to repay the principal amount under the Loan to the

lender provided by SG and/or SG-HK which would be backed up by an investment grade credit and (3) security over all the shareholding and assets of Ryan Corporation to be given to SG and/or SG-HK.

6.11. **Repetition and Continuation of Representations**

During subsequent meetings and telephone calls (as to which see further below) Mr Eldring, on behalf of Credit Suisse (and Mr Ryan on behalf of himself and Ryan Corporation), repeated the representations set out above. Throughout their discussions with SG and/or SG-HK, Credit Suisse through Mr Eldring and Mr Ryan went to great lengths to convince SG and/or SG-HK that the Hertsmere House project was genuine and to otherwise confirm and support the representations made by each of them as set out above.

6.12. **Implied Representations by Credit Suisse and/or Mr Ryan/Ryan Corporation**

6.12.1. Further, Credit Suisse, through Mr Eldring, made the following further implied representations:

- (1) That consistent with its status as a major bank and its regulatory responsibilities, Credit Suisse have properly conducted KYC procedures in relation to Mr Ryan and Ryan Corporation.
- (2) That Credit Suisse had taken sufficient steps to check the accuracy of what it had been told by Ryan and Ryan Corporation and/or properly investigated the proposed project.

6.12.2. Both Credit Suisse and Mr Ryan/Ryan Corporation impliedly represented that they had proper grounds for making and reasonably believed the truth of the express representations referred to above.

6.13. **Continuing Nature of Representations**

For the avoidance of doubt, the express and implied representations referred to above were continuing in nature and were repeated and confirmed on many occasions by both Credit Suisse through Mr Eldring and by Mr Ryan/Ryan Corporation during the discussions referred to above and below.

6.14. **Reliance of SG/SG-HK Upon Representations**

In intended reliance upon the representations made by Credit Suisse, and Mr Ryan and Ryan Corporation, SG and/or SG-HK agreed in principle to provide underwriting in relation to the Hertsmere House development and, in particular, on the basis that the transaction was being handled by Credit Suisse who were responsible for the relevant aspects of the financing and would be supervising or running the transaction for Mr Ryan as their client. Reliance is dealt with further in paragraph 12 below.

7. **THE CREDIT SUISSE TRANSACTION STRUCTURE AND SG PROPOSAL**

7.1. **Introduction to SG and SG-HK of BES/Brova**

7.1.1. In or about the second week of November 2013, during the discussions referred to above, Credit Suisse, through Mr Eldring, informed SG and SG-HK that Credit Suisse had found a private lender, namely Brova, which could lend to support the guarantee structure which Credit Suisse was proposing and which formed the subject matter of the discussions between Credit Suisse and SG/SG-HK. The Claimants later learned that Brova's funds were held at BES.

7.1.2. In this context, Credit Suisse sent what Mr Eldring represented were the relevant documents (or some of them) to constitute or support the transaction structure proposed by Credit Suisse apparently on the instructions of Mr Ryan and Ryan Corporation and including (1) a loan, (2) a SWIFT 799, (3) a SWIFT 760, (4) a Guarantee/Bond and (5) a Financial Guarantee.

7.1.3. Consequently, it was understood by SG and SG-HK, on the basis of what they had been told by Credit Suisse, through Mr Eldring, and Mr Ryan, on behalf of himself and Ryan Corporation, that the parties to the documents for the Financing and the general structure would include the following:

- (1) A Loan with Ryan Corporation as borrower and Brova/BES as lender.
- (2) A SWIFT 799 with RICOM as sender of the letter of guarantee to SG and BES as receiver.
- (3) A SWIFT 760 with RICOM as sender and SG-HK as recipient of the letter of guarantee to be lodged with the Lender's account at BES.

(4) A Guarantee Bond with Ryan Corporation as borrower, SG-HK as guarantor and Brova as beneficiary.

(5) A Financial Guarantee with Atradius as financial guarantor and SG-HK as beneficiary.

7.2. **Proposal as to the Involvement of SG and SG-HK**

7.2.1. On 13 November 2013 Mr Joshi emailed Mr Eldring a Proposal which set out the proposed terms for the participation of SG and SG-HK in the financing for the Hertsmere House development. The Claimant will rely as necessary upon the proposal document for its full meaning, terms and effect. It will be referred to hereinafter as “the November Proposal”.

7.2.2. In summary the proposal included the following terms:

(1) An 8.00% upfront single premium being €16 million.

(2) An option to purchase three triplex penthouses at build cost.

(3) A staggered profit participation.

(4) A 40% interest in the freehold (giving rise to an interest in the ground rent charged on leasehold interests).

(5) The first and exclusive option to underwrite and structure all further financing for Hertsmere House.

7.2.3. The November Proposal reflected and confirmed the position as it was then understood by SG and SG-HK as represented by Mr Eldring and Mr Ryan and provided inter alia that it did not at that stage create any legal obligation on behalf of SG or SG-HK and was subject to the preparation of the final relevant documentation. It was nevertheless agreed by Credit Suisse through Mr Eldring and Mr. Ryan on behalf of himself and Ryan Corporation that at the appropriate point, Mr Ryan and Ryan Corporation would sign the November Proposal with a view to concluding a binding contractual terms with SG and/or SG-HK.

7.2.4. At the time and for the purposes of the November Proposal, it was intended that the financial guarantee would be provided by Atradius who are and were a substantial Dutch insurance provider.

7.3. **The Credit Suisse Irrevocable Instructions**

7.3.1. SG and SG-HK stated by email to Mr Eldring on behalf of Credit Suisse on 13 November 2014:

“Our next steps once the client [Brova] and Tom [of Ryan Corp.] are in agreement is to have a confirmation letter from you [Credit Suisse] that the premium (EUR 15,030,000) is available for escrow and we will then proceed to formalise with the insurer for the issuance.”

7.3.2. Mr Eldring informed the Claimant that the letter would be sent to the Claimant the following day, in response to the Claimant’s email to Mr Eldring as follows:

“any progress on the CS letter so we can sign up the issuance”.

7.3.3. Mr Eldring replied by email on 14 November 2013, stating

“It will be sent out early tomorrow morning”.

7.3.4. Pursuant to this correspondence and the earlier discussions, Credit Suisse then provided confirmation of irrevocable payment instructions by a letter dated 15 November 2013 addressed to Mr Joshi, on behalf of SG and/or SG-HK, from Mr Eldring which stated inter alia:

“We hereby confirm that we have received irrevocable payment instructions from Thomas Gerrard Ryan to transfer from his account with Credit Suisse (UK) the amount of E16’000’000 (Euro Sixteen Million Seven Hundred Thousand) as an insurance premium in favour of Swiss Garantie Issuance AG once the Capital Insurance of €200’000’000 (Euro Two Hundred) by Swiss Garantie Issuance AG, with financial guarantee of Altradius [sic.] Insurance Holding N.V. is issued”

8. **THE DECEMBER PROPOSAL**

- 8.1. As set out above, at the time of the November Proposal, it was claimed by Mr Ryan, Ryan Corporation and Credit Suisse that for the purposes of the financing, a guarantee with a value of €200 million was required. At or about the beginning of December 2013, Credit Suisse, through Mr Eldring, apparently acting on the instructions of Mr Ryan for Ryan Corporation requested that the value of the Guarantee be increased to €250 million.
- 8.2. During the latter part of November and during December 2013, discussions continued between (1) SG and SG-HK, (2) Mr Ryan/Ryan Corporation and (3) Credit Suisse through Mr Eldring. The relevant meetings and telephone conversations were conducted on the basis set out in paragraph 6.3 above.
- 8.3. During these discussions, Credit Suisse through Mr Eldring and Mr Ryan on behalf of himself and Ryan Corporation confirmed and repeated the continuing express and implied representations referred to in paragraph 6 above and on this basis certain changes were agreed to the existing transaction structured proposed by Credit Suisse and agreed as above, summarised in the November Proposal including:
- (1) Splitting the Financial Guarantee into two tranches namely €150 million and €100 million to a total amount of €250 million.
 - (2) The Financial Guarantee being provided by Allianz instead of Atradius (referred to as Credit Suisse's irrevocable payment instruction – see above).
 - (3) Adjusting the premium (in part reflecting the better credit rating for Allianz) to €21,720,000 for tranche 1 and €14,480,000 for tranche 2.
- 8.4. As a result, SG and SG-HK prepared a further written proposal dated December 2013 which reflected these agreed changes to the transaction and to the involvement of SG and SG-HK. The Claimant will rely upon this further proposal as necessary for its full meaning, terms and effect. It will be referred to hereinafter as “the December Proposal”.
- 8.5. The December Proposal also reflected some of the facts and continuing representations made by Mr Ryan, Ryan Corporation and Credit Suisse as set out above during December 2013. Without prejudice to the generality of this, the December Proposal provided that it was not of itself a commitment on the part of SG and SG-HK.

8.6. It was agreed between (1) SG and SG-HK, (2) Mr Ryan/Ryan Corporation and (3) Credit Suisse through Mr Eldring that Ryan Corporation would sign the December Proposal in acceptance at which point the terms would be treated as effective by all parties.

8.7. It was further agreed that the Credit Suisse confirmation of irrevocable payment instructions dated 15 November 2013 was to be treated as amended, updated and repeated to reflect the agreed and revised terms so that in particular the amount of the guarantee was increased to €250 million, the identity of the underlying guarantor was changed from Atradius to Allianz and the amount of the premium was now in the two tranches referred to above of €21,720,000 and €14,480,000.

9. **THE AGREEMENT OF SG/SG-HK TO COMPLETE THE TRANSACTION**

9.1. In reliance upon (1) the representations set out above made by Credit Suisse through Mr Eldring and by Mr Ryan/Ryan Corporation, (2) the assurance of the irrevocable payment instruction from Credit Suisse (as amended) referred to above and (3) the agreement of Mr Ryan/Ryan Corporation (approved and advised by Credit Suisse) in the form of the signed December Proposal, SG and SG-HK, through Mr Soards and Mr Joshi, discussed the matter further with RICOM and they agreed to substitute Allianz as the insurer and to proceed with the revised structure as set out in the December Proposal.

9.2. Further, during the discussions referred to above, Credit Suisse, through Mr Eldring and Mr Ryan/Ryan Corporation were made aware that the involvement of SG and SG-HK in the transaction was an important and substantial matter which, if it did not proceed, would cause SG and SG-HK significant losses in relation to other business and transactions.

10. **THE RICOM AGREEMENT**

10.1. By an Agreement dated 14 December 2013, RICOM, a substantial Russian Asset Manager and Insurance broker, agreed to provide underwriting and collateral to SG and/or SG-HK for trade finance. This was, in particular, to allow for Allianz to issue a back-up guarantee to SG-HK such that on the instructions of (and hedging provided by SG to SG-HK) SG, SG-HK would guarantee to make payment on default of a loan to be drawn by Brova under its loan agreement with BES and on lent to Mr Ryan/Ryan Corporation (all as more particularly described below).

10.2. This Agreement was written and, will be relied upon if necessary by SG for its full meaning and effect. It will be referred to hereinafter as “the RICOM Agreement” and enabled SG through SG-HK, with the authority of RICOM, to provide a relevant default guarantee. In terms of the relevant events and transactions referred to below, this effectively meant that Brova could through its credit line with BES, monetise SG/RICOM/Allianz arrangement for Ryan. As set out below, in December 2013 SG-HK became liable to pay the agreed amounts to RICOM under the RICOM Agreement.

10.3. For the avoidance of doubt, the RICOM Agreement was concluded by SG and SG-HK in specific intended reliance upon the representations set out in paragraphs 6 and 8 above and made by Credit Suisse and Mr Ryan/Ryan Corporation.

11. **PERFORMANCE/COMPLETION OF THE TRANSACTION BY SG AND SG-HK**

11.1. At all material times, Credit Suisse, through Mr Eldring and Mr Ryan/Ryan Corporation, knew that SG/SG-HK would not request that the SWIFT 799 be sent unless the Premium was paid into an escrow account to be released upon the SWIFT 760 being sent and the Financial Guarantee being entered into

11.2. On 17 December 2013, on the basis set out above including the Credit Suisse Confirmation (as amended),

(1) SG and SG-HK sent to Mr Eldring, on behalf of Credit Suisse, the final versions of (a) the SWIFT 799, (b) the SWIFT 760, and (b) the Allianz guarantee, and informed Credit Suisse that and SG and SG-HK were ready to commence the formal issuance process upon Credit Suisse’s confirmation that the documents were in acceptable form.

(2) On the same day, Credit Suisse, through Mr Eldring, confirmed its approval of the documents and instructed SG and SG-HK to proceed with the transaction.

11.3. In this context, Mr Joshi, on behalf of SG and SG-HK, stated to Mr Eldring, on behalf of Credit Suisse in an email timed at 8.03pm on 17 December 2013 (when sending relevant documents):

“I am ready to sign on your say so.”

- 11.4. The request and required confirmation was provided by Credit Suisse, through Mr Eldring, by email as follows when referring to the Termsheet by way of consent and approval:

“Ok, thanks, we will send it signed.”

- 11.5. On 18 December 2013, SG and SG-HK sent by email a letter to Ryan Corporation with instructions for payment into escrow of the Premium to a bank account of RICOM’s lawyers in accordance with the procedures previously provided to Ryan Corporation and Mr Eldring. This letter was also copied to Mr Eldring, on behalf of Credit Suisse and stated *inter alia*:

“Further to signing the guarantee transaction, and in anticipation of approval from Brova/Banco Espirito Santo tomorrow of the SWIFT message, I would like to advise the following instructions for delivery of the escrow premium amount (EUR 21,270,000.00) in line with the procedures previously advised .”

- 11.6. Also on or about 17 December 2013 SG requested the MT799 be sent on 18 December 2013. In fact, the SWIFT MT799 was sent to BES on 24 December 2013 and re-sent as BES did not receive, alternatively was unable to locate, the SWIFT 799 dated 24 December 2013.
- 11.7. In the premises, on 20 December 2013 (being three working days after the issue of the SWIFT MT799), SG-HK was committed and obliged to pay the first tranche of the agreed Premium referred to *inter alia* in the December Proposal.

12. **RELIANCE BY SG/SG-HK**

For the avoidance of doubt and as more particularly set out above, the following occurred or were concluded by SG and/or SG-HK in specific and intended reliance upon the representations (and in accordance with the agreements) set out above namely (1) the involvement SG and SG-HK in the transaction, (2) the agreements reached by SG and/r SG-HK with Mr Ryan/Ryan Corporation, their own brokers and RICOM, the further collateral arrangements with Allianz, (4) the acceptance by SG and/or SG-HK of the Credit Suisse irrevocable payment instruction (as amended), (5) the further performance of the transaction by SG and/or SG-HK, (6) the issue of the MT799 pre-advice and (7) the RICOM Agreement.

13. **FALSITY OF REPRESENTATIONS**

13.1. **Introduction**

The representations made by Credit Suisse and/or Mr Ryan/Ryan Corporation as set out in paragraphs 6 and 8 above were false, including as more particularly set out below. The Claimants will contend that the entire Hertsmere House development by Mr Ryan and/or Ryan Corporation was a fraud and that this was, at all relevant times, known to all of the Defendants.

13.2. **Representations in Relation to Project**

13.2.1. The representations made by Credit Suisse and/or Mr Ryan and/or Ryan Corporation referred to above (which were subsequently repeated by Credit Suisse on a number of occasions) were false in that, inter alia:

- (1) There was no purchase or development of Hertsmere House or the Hertsmere House Project by Mr Ryan or Ryan Corporation.
- (2) Mr Ryan and Ryan Corporation did not hold substantial assets with or financed by Credit Suisse as described by Mr Eldring or at all.
- (3) Mr Ryan and Ryan Corporation were not known to Credit Suisse or Mr Eldring as substantial and wealthy property developers. They were no such thing.
- (4) Mr Ryan and his family were not long-term clients of Credit Suisse and Mr Ryan had not been genuinely and substantively involved in substantial real estate projects in excess of £100 million.

13.2.2. On the contrary, to the best of the Claimants' knowledge and belief, the entire supposed project involving the purchase and redevelopment of Hertsmere House by Mr Ryan and/or Ryan Corporation was a fraud conducted with the assistance and through Credit Suisse and none of the Defendants had any grounds let alone any reasonable grounds to believe that truth of the representations referred to in paragraphs 6 and 8 above.

13.3. **Representations in Relation to Credit Suisse Involvement**

The further representations made by Credit Suisse and/or Mr Ryan and/or Ryan Corporation as set out above, were false in that, inter alia:

- (1) No or inadequate funds were held at all relevant times by Credit Suisse on account of Mr Ryan/ Ryan Corporation to allow the premium to be paid either of €16,000,000 or of € 21,720,000 or any other such amount.
- (2) Credit Suisse had no intention of honouring the irrevocable payment instruction or any other similar document.
- (3) All the communications and authorisations by Credit Suisse, Mr Eldring, Mr Ryan and Ryan Corporation purportedly for and on behalf of Mr Ryan and Ryan Corporation, including agreement of the closing procedures, agreement to terms were part of the same fraud.

13.4. **Credit Suisse Reference False and Inaccurate**

The reference provided by Credit Suisse for Mr Ryan and his company (referred to in the letter as “Ryan Trust Company”) on Credit Suisse headed notepaper (as referred to above) was false (and Credit Suisse did not believe or reasonable believes in its truth) for, inter alia, the following reasons:

- (1) Mr Ryan and his family were not long-term clients of Credit Suisse.
- (2) Mr Ryan had not been genuinely or substantively dealing with real estate projects in excess of £100 million.
- (3) There was every reason to consider that Mr Ryan would be unable to meet obligations such as those involving the transactions.

13.5. **Involvement of Credit Suisse in the Assets of Mr Ryan and/or Ryan Corporation**

- 13.5.1. Further, although the Claimants were not provided at the relevant time with “the latest audited accounts” nor with any purported statement of Mr Ryan’s assets, they came to learn that Mr Ryan and/or Ryan Corporation were seeking finance of £12,000,000 as an urgent matter just

prior to New Year 2013/14. SG and SG-HK were provided with a letter and accounts for Ryan Trust and a letter from Andertons Accountants LLP dated 31 December 2012 which was provided to others who had been invited to participate in the Hertsmere House development and which stated, inter alia, as follows:

“We write to confirm that the attached document represents a schedule of assets of Thomas Ryan that are currently managed by Credit Suisse.

Mr Ryan has confirmed that he pledges the assets as declared on the attached schedule as security for secured funding to him.

Mr Ryan has confirmed that the assets pledged are free of liens and encumbrances.”

13.5.2. The document attached was a schedule setting out a significant number of valuable assets all on Credit Suisse headed notepaper. The Claimants believe that this list was prepared by Credit Suisse on the instructions of Mr Ryan and that both the letter from Andertons and the list of assets were wholly or very substantially false.

14. **NATURE OF WRONGDOING**

14.1. In the premises, the Claimants will contend that the false representations made by Credit Suisse, through Mr Eldring, and by Mr Ryan and Ryan Corporation were made:

(1) Intentionally and deliberately.

(2) Recklessly false in the sense that Credit Suisse, Mr Ryan and Ryan Corporation were reckless and/or turned a blind eye as to their truth or falsity.

14.2. Further or alternatively, those representations were made by Credit Suisse, Mr Ryan and Ryan Corporation negligently without any due care or reasonable steps or due diligence as to their accuracy and in circumstances where there was no reasonable basis upon which the Defendants could have believed them to be true.

15. **FAILURE OF CREDIT SUISSE TO HONOUR IRREVOCABLE PAYMENT INSTRUCTION**

Further or alternatively, Credit Suisse was in breach of its obligation to honour its irrevocable payment instruction given to SG and/or SG-HK as more particularly set out above and failed, in breach of such letter (amended as set out above), to comply with the terms.

16. **BREACH BY MR RYAN AND/OR RYAN CORPORATION OF AGREEMENT**

In the premises, further or alternatively, Mr Ryan and/or Ryan Corporation were in breach of their contractual obligations as set out in the December Proposal. As set out above, they each failed entirely to comply with any of its terms.

17. **LOSS, DAMAGE AND REMEDIES**

17.1. As a result of the Defendants' unlawful conduct as set out above, SG and SG-HK have suffered substantial loss and damage.

17.2. In relation to SG-HK, it has incurred a liability to RICOM as at December 2013 in the amount of €17.5 million.

17.3. In relation to SG, it has suffered loss and damage in the amounts which it would have received but for the wrongdoing and the further monies and investments which it has lost as a result. These may conveniently be summarised as follows. Full particulars will be provided in due course:

Claim	Amount (€)
Excess SG	22.60m
Profit excess SG	45.23m
Hertsmere SG Loss	17.57m
Total	85.40m

18. **INTEREST**

The Claimants are each entitled to interest on each of the sums set out above and/or on any sums awarded by the Court for such period and at such rate as the Court shall consider just

and appropriate pursuant to the Court's equitable jurisdiction or Section 35A of the Senior Courts Act 1981.

AND THE CLAIMANTS CLAIM:-

- (1) Damages as set out above.
- (2) Interest on (1) above at such rate and for such period as the Court shall consider just pursuant to Section 35A of the Senior Courts Act 1981.
- (3) Further or other relief.
- (4) Costs.

STEPHEN AULD Q.C.

CANDEY

STATEMENT OF TRUTH

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

I am authorised by each Claimant to sign this Statement of Truth.

Signed

Name **ANDREW RICHARD DUNN**

Position Partner, CANDEY, Solicitors for Swiss Garantie Issuance AG and Swiss Garantie (Issuance) Limited

Date: 6 July 2015