

**Smith & Williamson**

Echelon Wealth  
Management Limited  
(in Liquidation)

Report to Creditors

27 January 2009

# Contents

---

1. Introduction	1
2. History and background	1
3. Statement of Affairs ("SoA")	2
4. Significant Aspects on Case	2
4.1. Segregated accounts	2
4.2. Set-off	2
4.3. Debtor recoveries	3
4.4. Actions against third parties	3
4.5. Financial Services Authority	3
4.6. Financial Services Compensation Scheme	3
4.7. Professional Indemnity Insurance (PII) and Directors & Officers ("D&O") policies	4
4.8. Proofs of Claim	4
4.9. Liquidators' investigations	4
5. Dividend Prospects	4
6. Resolutions	5

## 1. Introduction

---

I write further to the appointment of Anthony Cliff Spicer and myself as Joint Interim Liquidators of the Company by the Court of Session on 11 November 2008 and to the formal meeting of creditors on 16 December 2008 convened under Section 138 of the Insolvency Act 1986.

I provide to creditors herewith brief details of the history of the Company, events leading up to the appointment of the Provisional Liquidator and the actions of the liquidators since their appointment.

## 2. History and background

---

The Company was incorporated in Scotland on 19 October 2004 as a private company. It traded from leasehold premises at 272 Bath Street, Glasgow G2 4JR.

The Company's business was the provision of Contracts for Difference ("CFD") and Spread Trading services. The Company used the services of Prime Brokers to provide these services on behalf of clients. The directors of the Company at the date of the appointment of the provisional liquidation were:

- Steven Alexander (Managing Director)
- Barnett Alexander

A third director Colin Mitchell was a director up to 29 August 2008. We understand that he resigned as he did not have the necessary licence to act as a director of an FSA registered company.

The shareholders of the Company at that date were:

- Steven Alexander (2500 shares)
- Barnett Alexander (2500 shares)
- Clairmonts Trustees Limited ("Clairmonts") (5,500 shares)

We understand that Clairmonts held its shares in trust for three individuals, namely:

- Gordon Perry (2500 shares)
- Malcolm McNiven (2500 shares)
- Colin Mitchell (500 shares)

We have been advised that the Company encountered financial difficulty principally as a result of the failure to recover significant margin calls on one particular account, the balance on which reached circa £16 million prior to liquidation. The failure to recover the margin calls on this account left the Company with a responsibility for meeting the deficit. This obviously had a detrimental affect on the Company's cash flow and solvency.

The solvency issue only came to light when a request for the repayment of certain funds held in a client's account was unable to be processed. The investor (Stokors SA) took the decision to file a petition in the Court of Session in Scotland for the appointment of Blair Nimmo of KPMG as Provisional Liquidator. The petition was successful and Mr Nimmo of KPMG was duly appointed Provisional Liquidator on 17 October 2008.

The Provisional Liquidator remained in office until the appointment by the court of myself and Anthony Spicer as Joint Interim Liquidators on 11 November 2008. At the meeting of creditors we were duly appointed Joint Liquidators.

The liquidators have taken possession of the Company's books and records from KPMG which they had duly recovered from the Company's premises on or after the appointment of the Provisional Liquidators. We have also taken delivery of KPMG's own files with regard to their work whilst in office as Provisional Liquidator.

### 3. Statement of Affairs ("SoA")

---

We have written to the directors requesting they submit a Statement of Affairs. Once in receipt of the document we will provide a copy or summary of it to the creditors.

### 4. Significant Aspects on Case

---

#### 4.1. Segregated accounts

Contrary to the apparent representations of the Company to investors prior to liquidation, the funds of individual clients were not segregated by the Company. Investors' funds would be deposited in an account referred to as a 'Client Account' and then usually paid over to the Company's account held with the Prime Broker.

#### 4.2. Set-off

We have reviewed the contractual arrangement with the principal Prime Brokers and have obtained legal advice where necessary. In accordance with the contracts the Prime Broker contracted directly with the Company and not with the underlying Company investors. Consequently the Prime Brokers are claiming that they are under no obligation to treat the Company's clients as their own clients.

On the Brokers' accounts with the Company, any deficits on the sub accounts are set against the credit balances to create an overall net position between the Prime Broker and the Company. We continue to liaise with both the Prime Brokers and are obtaining further legal advice in order to assist in the potential recovery of funds for the benefit of creditors as a whole.

#### 4.3. Debtor recoveries

We are reviewing the circumstances behind how a loss of £16 million was able to arise on one account. We are also investigating a number of payments out of the Company totalling in the region of £6 million which do not appear to have been made in the ordinary course of business.

As well as the above we have identified at least a further £3 million of deficit trading balances. We have adopted an aggressive approach with regard to the recovery of these debts.

Our ongoing work into these matters is confidential. To the extent we are able to, we will share our findings with the Liquidation Committee in order to obtain their sanction and where necessary, to take any appropriate legal action.

#### 4.4. Actions against third parties

The liquidators are investigating the actions of certain third parties who contracted with the Company which may result in recoveries for the benefit of creditors as a whole. These investigations are also confidential but we will, again, share our findings with the Liquidation Committee where appropriate.

#### 4.5. Financial Services Authority

The Financial Services Authority (“FSA”) have advised us that the FSA Register has been amended to reflect the fact that the Company is no longer conducting investment business.

We have been in communication with the FSA with regard to this matter and will continue to do so in order to progress our respective enquiries. We are required to keep such communications confidential.

#### 4.6. Financial Services Compensation Scheme

Creditors may be aware of the Financial Services Compensation Scheme (“FSCS”), which is the UK’s statutory fund of last resort for customers of financial services firms. The FSCS is an independent body set up under the Financial Services and Markets Act 2000 and protects deposits, insurance, investments and mortgage business. Its service is free to consumers. FSCS may pay compensation if a financial services firm is unable, or likely to be unable, to pay claims against it which are eligible for compensation. Once these conditions are satisfied the firm must first be declared “in default” before FSCS can start paying compensation to eligible claimants.

Claims are assessed by FSCS in accordance with rules made by the FSA. For eligible claims relating to investment business FSCS can pay up to £48,000 compensation to an individual. This is calculated as 100% of the first £30,000 and 90% of the next £20,000.

The Company has not yet been declared in default by FSCS. We are working with FSCS to provide them with the information they will need to consider claims against the Company in the event that it is declared in default. Should the Company be declared in default, claims received by the Liquidators will be notified to FSCS, who will then send the creditor an FSCS claim form.

We have been advised by the FSCS that there is no need for creditors to notify them of their claims at this point in time. Further information in relation to the FSCS is available on its website at [www.fscs.org.uk](http://www.fscs.org.uk).

#### 4.7. Professional Indemnity Insurance (PII) and Directors & Officers ("D&O") policies

The Company maintained a PII insurance policy for Financial Loss, Civil Liability and Official Investigation Costs. The directors also had a Directors and Officers Liability Insurance (D&O) policy.

The liquidators have liaised with the Company's pre-appointment brokers and obtained legal advice on the policy to seek to ensure that steps are not taken which might later limit or forfeit a party's ability to bring a claim under any relevant insurance policy. Accordingly, we have continued to notify claims to the Company's broker and insurer as and when these have been communicated to us, in accordance with the terms of the policies.

Furthermore, with regard to the PII policy, the liquidators are submitting all proofs of claim received from creditors to the insurers as claims under the PII policy.

#### 4.8. Proofs of Claim

In accordance with Rule 4.15 of The Insolvency (Scotland) Rules 1986, we have asked all creditors to submit statements of claim to the liquidators. Accordingly, **creditors who have not already done so** are required to complete the attached Statement of Claim form and return it to this office without delay. Creditors are asked to include account numbers on their claim forms and supporting documentation (including account set-up contracts) to assist in identification of their accounts from the Company's records and ultimately, the adjudication of their claim.

#### 4.9. Liquidators' investigations

The Joint Liquidators are required to conduct investigations into the affairs of the Company and the conduct of the Directors and to report their findings to the Secretary of State for Trade and Industry. In order to file this report, we shall be making enquiries into the formation, trading and demise of the Company. Should creditors have any information which may assist this process I would request that written details be submitted to this office.

### 5. Dividend Prospects

---

It is too early to predict the value or timing of any dividend to creditors.

## 6. Resolutions

---

At the creditors' meeting held on 16 December 2008, the meeting considered and approved the following resolutions:

- 1) THAT Stephen Robert Cork & Anthony Cliff Spicer of Smith & Williamson, 25 Moorgate, London EC2R 6AY, be appointed as the Joint Liquidators of the Company.
- 2) THAT any acts during the administration of the winding up may be undertaken by the Joint Liquidators acting jointly or by either one of them.
- 3) THAT a Liquidation committee be established pursuant to Section 142(1) of the Insolvency Act 1986.

The Liquidation Committee is made up of the following members:-

- \* Thierry Braha, representing Stokors S.A.;
- \* Ray Zimmerman, representing Zimmerman Adams International Limited;
- \* Faye Griffiths, representing Samer Sidawi;
- \* Raj Bedi, representing himself and others; and
- \* Greg Secker, representing himself and others.

The Liquidation Committee will work closely with the Joint Liquidators over the course of the Liquidation and will provide input into key decisions and strategies.

If you have any queries, or any information which would assist me in my duties as regards to the realisation of assets, please contact Colin Hardman, at 25 Moorgate, London, EC2R 6AY, who is dealing with this matter.

**Stephen Robert Cork**  
Joint Liquidator

**Statement of Claim by Creditor**

Pursuant to Rule 4.15(2)(a) of the Insolvency (Scotland) Rules 1986

**WARNING**

It is a criminal offence

- for a creditor to produce a statement of claim, account, voucher or other evidence which is false, unless he shows that he neither knew nor had reason to believe that it was false; or

- for a director or other officer of the company who knows or becomes aware that is false to fail to report it to the liquidator within one month of acquiring such knowledge.

On conviction either the creditor or such director or other officer of the company may be liable to a fine and/or imprisonment.

Notes

(a) Insert name of company (a) Echelon Wealth Management Limited

(b) Insert name and address of creditor (b)

(c) Insert name and address, if applicable, of authorised person acting on behalf of the creditor (c)

(d) Insert total amount as at the due date (see note (e) below) claimed in respect of all the debts, the particulars of which are set out overleaf.

I submit a claim of (d) £ \_\_\_\_\_ in the liquidation of the above company and certify that the particulars of the debt or debts making up that claim, which are set out overleaf, are true, complete and accurate, to the best of my knowledge and belief.

(e) The due date in the case of a company  
 (i) which is subject to a voluntary arrangement is the date of a creditors' meeting in the voluntary arrangement;  
 (ii) which is in administration is the date of the administration order;  
 (iii) which is in receivership is the date of appointment of the receiver; and  
 (iv) which is in liquidation is the commencement of the winding up.

Signed \_\_\_\_\_  
 Creditor/person acting on behalf of creditor

The date of commencement of the winding up is  
 (i) in a voluntary winding up the date of the resolution by the company for winding up (sect. 86 or 98); and  
 (ii) in a winding up by the court, the date of the presentation of the petition for winding up unless it is preceded by a resolution for voluntary winding up (section 129)

Date \_\_\_\_\_

**PARTICULARS OF EACH DEBT**

## Notes

A separate set of particulars should be made out in respect of each debt.

- |   |  |
|---|--|
| <p>1. Describe briefly the debt, giving details of its nature, the date when it was incurred and when payment became due</p> <p>Attach any documentary evidence of the debt, if available.</p>  | <p><b>1. Particulars of Debt</b></p>         |
| <p>2. Insert total amount of the debt, showing separately the amount of principal and any interest which is due on the debt as at the due date (see note (e)). Interest may only be claimed if the creditors is entitled to it. Show separately the VAT on the debt and indicate whether the VAT is being claimed back from HM Customs and Excise.</p>  | <p><b>2. Amount of Debt</b></p>              |
| <p>3. Insert the nature and amount of any preference under Schedule 6 to the Act claimed in respect of the debt.</p>  | <p><b>3. Preference claimed for Debt</b></p> |
| <p>4. Specify and give details of the nature of any security held in respect of the debt, including:-</p> <p>(a) the subjects covered and the date when it was given;</p> <p>(b) the value of the security</p> <p>Security is defined in section 248(b) of the Insolvency Act 1986 as meaning 'any security (whether heritable or moveable), any floating charge and any right of lien or preference and any right of retention (other than a right of compensation or set off)'. For claims in administration procedure security also includes a retention of title agreement, hire purchase agreement, agreement for the hire of goods for more than three months and a conditional sale agreement (see Rules 2.11 and 2.12).</p> | <p><b>4. Security for debt</b></p>           |
| <p>In liquidation only the creditor should state whether he is surrendering or undertakes to surrender his security; the liquidator may at any time after 12 weeks from the date of commencement of the winding up (note (e)) require a creditor to discharge a security or to convey or assign it to him on payment of the value specified by the creditor.</p>  |  |
| <p>5. In calculating the total amount of his claim in a liquidation, a creditor shall deduct the value of any security as estimated by him unless he surrenders it (see note 4.). This may apply in administration (see Rule 2.11).</p>   | <p><b>5. Total amount of debt</b></p>        |