

## CONFIDENTIALITY AGREEMENT

This Agreement is made this 13th day of December 2012 between:

1. **SCHRODERS PLC** (Company No 03909886) of 31 Gresham Street, London EC2V 7QA ("**Schroders**"); and
2. **CAZENOVE CAPITAL HOLDINGS LIMITED** (Company No. 91495 of Ogier House, The Esplanade, St Helier, Jersey JE4 9WG (the "**Counterparty**").

### 1. Background

- A. Schroders and the Counterparty have entered into discussions with each other in connection with the proposed acquisition by Schroders from the Counterparty of **Coldstream** (the "**Transaction**").
- B. In order to evaluate the Transaction, Schroders and the Counterparty may wish to exchange certain confidential or commercially sensitive information.
- C. If the discussions lead to the execution of a definitive agreement between the parties in respect of the Transaction, any confidentiality obligations contained in that agreement will supersede this Agreement, unless otherwise provided.

In consideration of the mutual promises and covenants herein, the parties hereby agree to the following:

### 2. Definitions

In this Agreement:

- "Confidential Information"** means any information in any form or medium, whether written, electronically delivered, tangible or intangible, including (without limitation):
- (i) all business, financial, commercially sensitive, operational, regulatory, technological, strategic or other information, processes or data of any kind in (without limitation);
  - (ii) software, source codes, process flows, development methodologies, database descriptions, processes, intellectual property and functionality descriptions relating to asset management and similar systems developed by or on behalf of the Disclosing Party, or any Group Company;
  - (iii) all know-how, documentation and other information relating to asset management and similar systems developed by or on behalf of the Disclosing Party, and

any related or similar works and subject matter;

- (iv) correspondence with Customers, business partners, regulators or other members of the Group;
- (v) all copies, notes and records and all related information generated by the Receiving Party based on or arising out of any such disclosure; and
- (vi) the existence of and/ or any discussions in relation to the Transaction.

**"Control"** means the beneficial ownership of over 50% of the issued share capital or the legal power to direct or cause the direction of the general management of the entity;

**"Customers"** means any client or customer of any Group Company;

**"Disclosing Party"** means the party disclosing the Confidential Information including any Group Company;

**"Group Company"** means any member of a party's Group and any other company, partnership or other entity which from time to time Controls, or is subject to the Control of or under the common Control of a party and the term '**Group**' shall be construed accordingly;

**"Purpose"** means evaluating and/or using the Confidential Information (or part thereof) in relation to the Transaction; and

**"Receiving Party"** means the party receiving the Confidential Information.

### 3. **Scope of Confidential Information**

This Agreement does not apply to Confidential Information which:

- (i) is in the public domain and is readily available at the time of disclosure by the Disclosing Party or which enters the public domain and is readily available, other than by reason of a breach of the undertakings contained in this Agreement or a breach by any other person of any obligation of confidentiality owed by it;
- (ii) has been in the possession of the Receiving Party or known to it prior to receipt from the Disclosing Party and has not been acquired in any way directly or indirectly from the Disclosing Party or any customers, professional advisers, directors, officers, servants or employees of the Disclosing Party or any Group Company; or
- (iii) is or has been independently developed by the Receiving Party without access to such Confidential Information.

#### 4. Non-Disclosure of Confidential Information

Each of the parties hereto undertakes to the other that, except and to the extent otherwise provided or permitted in clause 5 of this Agreement, it will:

- (i) hold all Confidential Information in complete and strict confidence;
- (ii) not, without the prior written agreement of the Disclosing Party, disclose the Confidential Information, in full or in part, to anyone, other than the Permitted Disclosees (as defined in clause 5.2);
- (iii) not use the information for any purpose (including, but not limited to, any competitive or commercial purpose) other than for the Purpose;
- (iv) implement appropriate security practices against any unauthorised copying, use, disclosure (whether that disclosure is oral, in writing or in any other form), access and damage or destruction of the Confidential Information; and
- (v) promptly notify the other party if it suspects or becomes aware of any unauthorised copying, use or disclosure of the Confidential Information in any form.

#### 5. Permitted Disclosures

5.1 The Receiving Party shall be entitled to disclose any Confidential Information if and to the extent that it is required to do so by any law or by any court or regulatory agency or authority, provided that, to the extent that it is permitted to do so, the Receiving Party notifies the Disclosing Party as soon as possible upon becoming aware of any such requirement.

5.2 Providing the requirement set out in clause 5.3 below is met, the Receiving Party shall be entitled to disclose the Confidential Information to any Group Company and its/their professional advisers, directors, officers, servants or employees (the "**Permitted Disclosees**"), if it is necessary to do so for the purposes of the Transaction.

If, in accordance with clause 5.2, the Confidential Information is disclosed to a Permitted Disclosee, the Receiving Party shall

- 5.3.1 expressly inform the Permitted Disclosee of the terms of this Agreement and the confidential nature of the Confidential Information and of the purpose for which it may be used; and
- 5.3.2 procure the Permitted Disclosee's compliance with the terms of this Agreement as if they were a party to this Agreement and shall be responsible for any loss or damage whatsoever caused by the failure of the Permitted Disclosee to comply with the terms of this Agreement.

## **6. Returning Confidential Information**

6.1 Upon receipt of a written request from the Disclosing Party or following the termination of any discussions between the parties relating to the Transaction or either party's involvement with it, subject to clause 6.2, the Receiving Party shall:

- (i) at its sole option: either return to the Disclosing Party; or, destroy all documents and all other materials (including computer media) or such parts thereof which contain or reflect any Confidential Information, together with any copies which are in the Receiving Party's possession or control or are in the possession or control of any of its directors, officers, servants, employees or professional advisers; and
- (ii) to the extent practicable, expunge all Confidential Information from any computer, word processor, mobile telecommunications device or device similar to the foregoing into which it was programmed by or on behalf of that party.

6.2 Notwithstanding clause 6.1, each party shall be permitted to retain:

- (i) one copy of the Confidential Information for the purposes of and for so long as required by any law, court or regulatory agency or authority or its internal compliance procedures; and
- (ii) copies of any computer records and files containing any Confidential Information which has been created pursuant to its automatic archiving and back-up procedures.

6.3 Each party acknowledges that neither the destruction nor return of any Confidential Information nor the expunging of any of the same from any of the devices listed at clause 6.1 above or any other similar such devices will release it from the obligations contained in this Agreement.

## **7. Duration**

The obligations of confidentiality of each party under this Agreement will continue for a period of 2 years from the later of: the date of this Agreement; or, to the extent the document or material containing the Confidential Information is marked "confidential" or "sensitive" and dated, from said date.

## **8. Remedies**

Both parties hereby acknowledge and agree that:

- 8.1 damages would not be an adequate remedy for any breach of the provisions of this Agreement;
- 8.2 either party shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of the provisions of this letter and that the other party shall not object to any such remedy; and

8.3 no proof of special damage shall be required for the enforcement of this Agreement.

**9. Waiver**

No failure or delay in exercising any right, power or privilege under this Agreement will operate as a waiver of it, nor will any single or partial exercise of it preclude any further exercise.

**10. Severability**

The provisions of this Agreement shall be severable in the event that any of the provisions are held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable and the remaining provisions shall remain enforceable to the fullest extent permitted by law.

**11. Limitation of Liability**

The Disclosing Party (including its officers, employees, agents or advisers):

- (i) does not make any express or implied representation or warranty as to the accuracy or completeness of the Confidential Information; and
- (ii) is not liable for any direct or indirect losses arising in any way out of the use of, or termination of the Receiving Party's right to use, the Confidential Information.

**12. Entire Agreement**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and may be modified or amended only by an agreement between the parties in writing. Neither party is relying upon any statement or conduct by the other in entering into this Agreement.

**13. Obligations**

No part of this Agreement shall constitute an obligation on either party to enter into any further agreements in relation to the Transaction.

**14. Assignment**

Neither party shall assign the benefit (or part thereof) to any person without the prior written consent of the other party.

**15. Third Party Rights**

A person who is not a party to this Agreement shall have no rights under the Contracts (Right of Third Parties) Act 1999 to enforce any term of this Agreement except as follows:

15.1 rights and benefits referred to in this Agreement may be enforced or relied on by any Group Company; and

15.2 a person who is a permitted successor or assignee of the rights or benefits of a party may enforce such rights or benefits

and the parties agree that no consent from the persons referred to in this clause is required for the parties to vary or rescind this Agreement.

## **16. Intellectual Property**

Nothing in this Agreement is intended to grant a right or licence in relation to any intellectual property contained in or forming part of the Confidential Information.

## **17. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the English Courts over any dispute arising out of or in connection with this Agreement.

## **18. Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall constitute an original, and all the counterparts shall together constitute one and the same agreement.

## **19. Data Protection**

Each of the parties hereto acknowledges that, from the date of the commencement of discussion regarding the Transaction, they have had or may have access to and/or may possess personal data and sensitive personal data within the meaning of the Data Protection Act 1998 ("**the Act**"). The Receiving Party agrees that it will comply with the terms of the Act, keep any such data confidential and secure from loss or destruction or damage and obey all and any reasonable instructions given by the Disclosing Party in relation to such data. The Receiving Party shall take appropriate technical and organisational security measures against unauthorized or unlawful processing of personal data supplied to it by the Disclosing Party and against accidental loss or destruction of, or damage to, such personal data in accordance with the Seventh Data Protection Principle as set out in Schedule 1 Part II of the Act. The Receiving Party:

- (i) undertakes to the Disclosing Party that any personal data it processes pursuant to this Agreement shall be treated as confidential information of the Disclosing Party for the purposes of the Agreement; and
- (ii) undertakes to consider all reasonable suggestions which the Disclosing Party may set out to ensure that the level of protection the Receiving Party provides for personal data is in accordance with this Agreement and to make such changes as are reasonably requested by the Disclosing Party.

**SIGNED** as an agreement.

Signed .....

Signed .....

Name .....

Name .....

Dated .....

Dated .....

By an authorised representative for and on  
behalf of Cazenove Capital Holdings Limited

By an authorised representative for and on  
behalf of Schroders PLC