



# Jersey Financial Services Commission

## Public Statement

**Miss Julie Elizabeth McClafferty (“Miss McClafferty”), born 27 October 1973**

**Former Principal Person of Horizon Trustees (Jersey) Limited (in liquidation) (“HTJL”)**

**Financial Services (Jersey) Law 1998, as amended (the “FS(J)L”)**

### **1 Action**

- 1.1 The Jersey Financial Services Commission (the “**Commission**”) issues this public statement pursuant to Article 25(a) of the FS(J)L with respect to directions issued to Miss McClafferty under Article 23 of the FS(J)L.
- 1.2 The Commission’s actions support its objectives of reducing the risk to the public of financial loss and protecting and enhancing the reputation and integrity of Jersey in commercial and financial matters.
- 1.3 An investigation into the fitness and propriety of Miss McClafferty, in her capacity as a former principal person of HTJL, has taken place and the Commission has concluded that, in all the circumstances, Miss McClafferty displayed levels of incompetence of the most serious kind, with customers being placed at unnecessary risk of financial loss.
- 1.4 The Commission has, therefore, concluded that it is necessary and proportionate in all the circumstances of the case that directions are issued under the FS(J)L.
- 1.5 The directions prevent Miss McClafferty from:
  - 1.5.1 performing any function at all for;
  - 1.5.2 engaging in any employment at all by; and
  - 1.5.3 holding any position at all in the business of any registered person.
- 1.6 The directions shall remain in force until such time as Miss McClafferty successfully applies to the Commission, pursuant to Article 23(6) of the FS(J)L, for a variance or withdrawal of the directions. Miss McClafferty has also been issued with directions under the equivalent provisions of the other regulatory laws<sup>1</sup>.

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<sup>1</sup> The Banking Business (Jersey) Law 1991, as amended.  
The Collective Investment Funds (Jersey) Law 1988, as amended.  
The Insurance Business (Jersey) Law 1996, as amended.

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## 2 Background

- 2.1 On 7 November 2013, the Commission issued a public statement in respect of the findings of its investigation into HTJL<sup>2</sup>. The Commission's investigation focused on the period from 1 January 2008 to 30 May 2012.
- 2.2 HTJL was one of a number of related companies bearing the Horizon name ("**the Horizon Group**") and had a diverse customer base. Whilst some of HTJL's customers were sophisticated ultra-high net worth individuals ("**UHNWI**"), others were unsophisticated and, indeed, vulnerable individuals.
- 2.3 HTJL provided trust company business services to a number of private fund structures. These structures were established to provide a number of the UHNWI customers with the opportunity to invest in alternative asset classes, including shipping, property and media rights.
- 2.4 A number of the UHNWI customers had financial exposure to a UK media rights company ("**the Film Co.**"). The customers included the Film Co.'s principal shareholder and Chief Executive Officer ("**CEO**"). This exposure was either by way of direct shareholder interest or by virtue of investing in a media fund ("**the Media Fund**"): one of HTJL's private in-house fund structures which effectively operated as a joint venture with the Film Co.
- 2.5 In January 2010, the Film Co.'s AIM listing was suspended due to financial uncertainty. In April 2010, a successful bid was made for the Film Co. by a company HTJL's CEO claimed to beneficially own ("**Bid Co.**"). A significant factor in the decision to acquire the Film Co. was the protection of the interests of the UHNWI customers, a number of whom assisted in financing the bid. The Film Co.'s equity was acquired for one penny per share and its Convertible Loan Notes ("**CLNs**") for £0.55 per £1.00 nominal value.
- 2.6 Subsequent to the acquisition, HTJL, a company devoid of media or film experience, was appointed to administer the Film Co. Directors of HTJL were also appointed as directors of Film Co. The acquisition and administration appointment created numerous conflicts of interest.
- 2.7 Shortly after the acquisition of Film Co., a New Zealand Limited Partnership ("**Structure X**") was created. This structure, which became a focus of the Commission's investigation, was used as a vehicle, funded by investments from HTJL's wider customer base, to purchase the Film Co.'s CLNs from the Bid Co. The CLNs were each sold for £1.00 despite only recently having been acquired for £0.55.
- 2.8 In total, £3.445 million was transferred from customer structures and invested into Structure X. The monies were not routed to Structure X but were transferred to Bid Co. and were then used to discharge the Film Co.'s numerous and pressing creditors. In essence, Bid Co. became a financing vehicle to the Film Co. which is currently in liquidation with creditor claims of circa £43 million.

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<sup>2</sup> [www.jerseyfsc.org/pdf/Public-Statement-Horizon-Trustees-\(Jsy\)-Limited-November-2013.pdf](http://www.jerseyfsc.org/pdf/Public-Statement-Horizon-Trustees-(Jsy)-Limited-November-2013.pdf)



- 2.9 Concerns over the serious financial position of the Film Co. were first documented by officers of HTJL shortly after the acquisition by Bid Co. Such were these concerns, placing the Film Co. into a company voluntary arrangement was considered only one month after Bid Co.'s acquisition, namely in May 2010.
- 2.10 Despite the Film Co.'s serious financial difficulties, valuations were sent to customers, during 2010 and 2011, in which their investments were recorded at cost and the financial statements of the Media Fund were signed reporting that the assets were not impaired. At no time were customers informed about the Film Co.'s serious financial difficulties.
- 2.11 HTJL's customers have not been able to recover their investments or loans and it appears that substantial losses have been incurred.

### **3 Role**

- 3.1 Miss McClafferty was appointed as a director of HTJL in October 2010; she was, therefore, a principal person of HTJL for a relatively short period of time. By the time of her appointment, half of the investments had already been made in Structure X.
- 3.2 Prior to joining HTJL, Miss McClafferty was a director of an associated Horizon Group Company. In this capacity, Miss McClafferty played a key role in the incorporation and establishment of Structure X.

### **4 Summary of Findings**

- 4.1 The Commission has already concluded that HTJL breached all seven principles of the Codes, including failing to conduct business with integrity, failing to ensure conflicts of interest were managed and failing to act in the best interests of customers. Given Miss McClafferty was a director of HTJL for a short period of time, she bears some responsibility for these failings.
- 4.2 Miss McClafferty held numerous reservations over the way in which HTJL conducted trust company business. Miss McClafferty's reservations included the failure by HTJL to:
- 4.2.1 follow its own procedures;
  - 4.2.2 undertake adequate monitoring and assessments of its operations; and
  - 4.2.3 understand the fund structures which it administered.

Miss McClafferty failed to document her concerns and raise them with her fellow directors. Miss McClafferty also failed to contact the Commission. This conduct lacked competence.

### **Structure X**

- 4.3 When incorporating Structure X, Miss McClafferty did not have a complete understanding of the underlying investment. As an example, Miss McClafferty only



learnt of the CLNs issued by the Film Co. some two months after the date of incorporation of Structure X. This conduct lacked competence.

- 4.4 In spite of her lack of understanding of the investment structure, Miss McClafferty co-authorised three investments totalling £700,000 into Structure X, thereby placing customer assets at inappropriate and avoidable risk. This conduct lacked competence.
- 4.5 The Commission's investigation revealed that the trustee resolutions were executed in the following circumstances:
  - 4.5.1 the decisions to invest were based purely on an instruction issued by a colleague;
  - 4.5.2 little, if any consideration had been given to the key documents associated with the investments;
  - 4.5.3 no bespoke consideration had been given to the interests of the customers;
  - 4.5.4 the investments were made in the knowledge the monies were not to be remitted to Structure X but would be transferred directly to the Bid Co. for the purposes of discharging the Film Co.'s creditors;
  - 4.5.5 no consideration was given to the numerous and significant conflicts of interest associated with an investment in Structure X to include that the CLNs had, only a short time earlier, been acquired by the Bid Co., which she understood to be beneficially owned by HTJL's CEO;
  - 4.5.6 customer structures acquired their respective interests in the CLNs by paying 80 per cent more (the difference between £0.55 and £1.00) than had recently been paid by the Bid Co;
  - 4.5.7 there remained significant concerns over the previous management of the Film Co.; and
  - 4.5.8 the investments were high risk, suitable for professional investors only and were made knowing those officers of HTJL directing the affairs of the Film Co. had no experience whatsoever of the film and media industry.
- 4.6 The resolutions authorising investments in Structure X were taken from a bank of pro-forma precedents, bore little or no resemblance to the facts and therefore presented a false record. The circumstances in which the investments were authorised by Miss McClafferty revealed a failure to discharge the function of a professional fiduciary. Miss McClafferty's conduct lacked competence.
- 4.7 Miss McClafferty knew HTJL customers received valuations in circumstances where questions had been raised about the reliability of the valuations.
- 4.8 As a result of the conduct of Miss McClafferty and others, HTJL's customers face the loss of very significant sums of money.



## 5 Conclusion

5.1 The Board of Commissioners has therefore concluded that, in all the circumstances, Miss McClafferty displayed levels of incompetence of the most serious kind, with customers being placed at unnecessary risk of financial loss.

## 6 Sanction

6.1 The directions prohibit Miss McClafferty from performing any function, holding any position or being employed by any business licensed to conduct financial services business in Jersey.

6.2 The directions shall remain in force until such time as Miss McClafferty successfully applies to the Commission, pursuant to Article 23(6) of the FS(J)L, for a variance or withdrawal of the directions.

6.3 Miss McClafferty will commit an offence, under Article 23(15) of the FS(J)L, in the event she fails to comply with the provisions of the directions.

6.4 Pursuant to Article 23(15A) of the FS(J)L, any person who allows Miss McClafferty to perform a function, engage in employment or hold a position knowing that such performance, engagement or holding is in contravention of the directions shall be guilty of an offence.

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