



Jersey Financial Services Commission

Public Statement

Mr Daniel Patrick Leonard Noding (“Mr Noding”), born 2 January 1978

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

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

Codes of Practice for Trust Company Business (the “Codes”)

1 Action

- 1.1 The Jersey Financial Services Commission (the “**Commission**”) issues this public statement under Article 25(a) of the FS(J)L with respect to directions issued to Mr Noding 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 Mr Noding in his capacity as the former key person of HTJL has taken place and the Commission has concluded that, in all the circumstances, Mr Noding acted without integrity and his displayed level of incompetence was of the most serious kind.
- 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 Mr Noding 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 Mr Noding successfully applies to the Commission, pursuant to Article 23(6) of the FS(J)L, for a variance or withdrawal of the directions. Mr Noding has also been issued with directions under the equivalent provisions of the other regulatory laws¹.

¹ 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.



2 Background

- 2.1 On 7 November 2013, the Commission issued a public statement in respect of the findings of its investigation into HTJL². 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.

² [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 Throughout the period of the investigation, Mr Noding was the Key Person at HTJL. He was the Compliance Officer, Money Laundering Compliance Officer and Money Laundering Reporting Officer.
- 3.2 As HTJL's Compliance Officer, Mr Noding was responsible, together with HTJL's board of directors, for ensuring HTJL had robust arrangements for compliance with the FS(J)L and the Codes. He was also responsible for ensuring appropriate monitoring of operational performance and promptly instigating action to remedy any deficiencies.
- 3.3 In his role as Money Laundering Compliance Officer, Mr Noding was to ensure that the relevant anti-money laundering legislation was complied with in HTJL's conduct of financial services business.
- 3.4 Mr Noding had no client-facing responsibilities and was not a member of HTJL's board of directors.

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.
- 4.2 While the Commission regards the board of directors as responsible for a registered person's compliance with the legal and regulatory regime, as HTJL's Key Person, and in his role as Compliance Officer, Mr Noding bears particular responsibility for HTJL's failings. His conduct lacked integrity and competence.
- 4.3 Mr Noding failed to ensure appropriate controls were in place. There was no effective monitoring or reporting of HTJL's business operations. Consequently, Mr Noding shares responsibility for the following:
- 4.3.1 a confused and ineffective corporate governance structure;



- 4.3.2 a failure to oversee and control the business of HTJL through the implementation and monitoring of robust systems and controls;
- 4.3.3 a failure to realise a Horizon services company was conducting unauthorised financial services business;
- 4.3.4 a lack of transparency over fees levied to customers; and
- 4.3.5 a failure to manage risk and to identify and address issues facing HTJL.

This conduct lacked competence.

4.4 Mr Noding regularly attended HTJL's board meetings. On those occasions when issues were identified, Mr Noding failed to take any action. As an example, whilst Mr Noding presented a register of conflicts of interest to HTJL's board of directors, this was never populated and Mr Noding failed to robustly pursue this omission with HTJL's board. In respect of Structure X, the following conflicts were easily identifiable:

- 4.4.1 HTJL's provision of trust company business services to the Film Co.'s former CEO and principal shareholder;
- 4.4.2 Bid Co.'s acquisition of the Film Co. was made, at least in part, to protect some of the UHNWI customers, principally those customers who had invested in the Media Fund;
- 4.4.3 the first ranking charge over the Film Co.'s media rights was in favour of a company controlled by HTJL for the benefit of one of its UHNWI customers;
- 4.4.4 officers of HTJL acted as directors of the Film Co. and HTJL; and
- 4.4.5 HTJL's CEO claimed to be the beneficial owner of Bid Co.

Mr Noding's failure to ensure conflicts of interest, which were known to exist, were properly identified, documented and managed, lacked integrity.

- 4.5 Mr Noding was aware of concerns over the private fund structures and the accuracy of valuations presented to customers. These matters were referred to repeatedly in the minutes of Board meetings which Mr Noding attended. However, Mr Noding took no action even though it was clear no progress was being made. In wilfully neglecting his responsibilities, Mr Noding's conduct lacked integrity.
- 4.6 The Compliance reporting to HTJL's board of directors was inadequate and no reports were presented by Mr Noding in his capacity as Money Laundering Compliance Officer. This conduct lacked competence.
- 4.7 Mr Noding was confronted with a number of serious issues, including: inaccurate valuations; poor administration of private fund structures; and a failure to manage conflicts of interest. However, he failed to take any action and, importantly, failed to contact the Commission. In the Commission's view, a failure by the Compliance Officer to take any action when confronted with such serious issues, represents a lack of integrity.



5 Conclusions

5.1 The Commission has therefore concluded that, in all the circumstances, Mr Noding acted without integrity, and his displayed level of incompetence was of the most serious kind.

6 Sanction

6.1 The directions prohibit Mr Noding 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 Mr Noding 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 Mr Noding will commit an offence, under Article 23(15) of the FS(J)L, in the event he 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 Mr Noding 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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