



Jersey Financial Services Commission

Public Statement

Mr James Nicholls (“Mr Nicholls”), born 27 February 1967.

Former employee 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 under Article 25(a) of the FS(J)L with respect to directions issued to Mr Nicholls under Article 23 of the FS(J)L.
- 1.2. The issuance of directions to Mr Nicholls supports the Commission’s regulatory 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 Nicholls, in his capacity as a former employee of HTJL, has taken place and the Commission has concluded that, in all the circumstances, Mr Nicholls 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 Mr Nicholls from:
 - 1.5.1. holding any key person or principal person¹ position in the business of any registered person²;
 - 1.5.2. performing any function in the business of a registered person whereby he has, whether singly or jointly, authority to:
 - a. control client assets; and/or
 - b. provide advice to, or exercise discretion for, or on behalf of, clients of that registered person.

¹ Key person and principal person as defined in Article 1 of the FS(J)L

² Registered person as defined in Article 1 of the FS(J)L



- 1.6. Mr Nicholls has also been directed to copy all written correspondence arising from his activities as an employee of any registered person, to either a director or the compliance officer³ of that registered person as soon as is reasonably practicable.
- 1.7. The directions shall remain in force until such time as Mr Nicholls successfully applies to the Commission, pursuant to Article 23(6) of the FS(J)L, for a variance or withdrawal of the directions. In the particular circumstances of Mr Nicholls's case, the directions listed at 1.5.2 and 1.6 may, and subject to all relevant circumstances, be withdrawn once Mr Nicholls has demonstrated to the Commission's satisfaction that he has obtained appropriate further qualifications. Mr Nicholls has also been issued with directions under the equivalent provisions of the other regulatory laws⁴.

2. Background

- 2.1. On 7 November 2013, the Commission issued a public statement in respect of the findings of its investigation into HTJL⁵. The Commission's investigation focussed 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 and its Convertible Loan Notes ("**CLNs**") for £0.55 per £1.00 nominal value.

³ Director and compliance officer as defined in Article 1 of the FS(J)L

⁴ 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

⁵ [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)



- 2.6. 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.
- 2.9. 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. Mr Nicholls was not a principal person, he joined HTJL as a Trust Manager and was in post throughout the period of the Commission’s investigation. Given Mr Nicholls was not a principal or key person, the Commission does not consider him responsible for HTJL’s corporate governance and compliance failings.
- 3.2. Mr Nicholls acted as a director to a number of customer structures and was a director to the General Partner of the Media Fund.

4. Summary of Findings

Structure X

- 4.1. Mr Nicholls was aware the only way the Film Co. remained solvent was through the use of customer monies to discharge its numerous and significant liabilities. In spite of his complete lack of understanding of the investment structure, Mr Nicholls co-authorised



17 investments totalling £3.33 million into Structure X, thereby placing customer assets at inappropriate and avoidable risk. Mr Nicholls's conduct lacked competence.

- 4.2. In some cases, the relevant trustee or directors' meeting, in respect of the customer structure in question, was held after monies had been transferred for the purposes of investing in Structure X. Mr Nicholls frequently acted as Chairman of those meetings in which it was resolved to invest customer monies in Structure X. The Commission's investigation revealed that the minutes and resolutions were executed in the following circumstances:
 - 4.2.1. the decisions to invest were based purely on an instruction issued by a colleague;
 - 4.2.2. little, if any, consideration had been given to the key documents associated with the investments;
 - 4.2.3. no bespoke consideration had been given to the interests of the customers;
 - 4.2.4. 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;
 - 4.2.5. 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 he understood to be beneficially owned by HTJL's CEO;
 - 4.2.6. customer structures acquired their respective interests in the CLNs by paying 80% more (the difference between £0.55 and £1.00) than had been paid by the Bid Co;
 - 4.2.7. there remained significant concerns over the previous management of the Film Co.; and
 - 4.2.8. 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.
- 4.3. The minutes and 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 Mr Nicholls revealed a failure to discharge the function of a professional fiduciary. Mr Nicholls's conduct lacked competence.
- 4.4. Mr Nicholls acted with a disregard to his fiduciary obligations. He knew that customers' assets, including those of vulnerable individuals, were used to reduce the risks to which a number of HTJL's UHNWI customers were already exposed. Mr Nicholls's conduct lacked competence.



- 4.5. As a result of the conduct of Mr Nicholls and others, HTJL's customers face the loss of very significant sums.

The Media Fund

- 4.6. Despite being a director to the General Partner of the Media Fund, Mr Nicholls possessed very little knowledge of the activities of this fund to include the security of significant loans advanced by the fund. Mr Nicholls's conduct lacked competence.

5. Mr Nicholls

- 5.1. Mr Nicholls has acknowledged that he acted with serious incompetence and failed to fulfil his fiduciary responsibilities whilst an employee of HTJL. He has apologised for these failings and for any financial losses which may have been suffered by clients.

6. Conclusion

- 6.1. The Commission has concluded that, in all the circumstances, Mr Nicholls displayed levels of incompetence of the most serious kind, with customers being placed at unnecessary risk of financial loss.

7. Sanction

- 7.1. The directions prohibit Mr Nicholls from:

7.1.1. holding any key person or principal person position in the business of any registered person;

7.1.2. performing any function in the business of any registered person whereby he has, whether singly or jointly, authority to:

a. control client assets; and/or

b. provide advice to, or exercise discretion for, or on behalf of, the clients of that registered person.

- 7.2. Further, Mr Nicholls has been directed to copy all written correspondence arising from his activities as an employee of any registered person, to either a director or the compliance officer of that registered person as soon as is reasonably practicable.

- 7.3. The directions shall remain in force until such time Mr Nicholls successfully applies to the Commission, pursuant to Article 23(6) of the FS(J)L, for a variance or withdrawal of the directions. In the particular circumstances of Mr Nicholls's case, the directions listed at 7.1.2 and 7.2 may, and subject to all relevant circumstances, be withdrawn once Mr Nicholls has demonstrated to the Commission's satisfaction that he has obtained appropriate further professional qualifications.



- 7.4. Mr Nicholls 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.
- 7.5. Pursuant to Article 23(15A) of the FS(J)L, any person who allows Mr Nicholls 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.

Jersey Financial Services Commission

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