



# Jersey Financial Services Commission

## Public Statement

### New World Trustees (Jersey) Limited (“New World Jersey”)

### Financial Services (Jersey) Law 1998, as amended (the “Financial Services Law”)

## 1 Action

- 1.1 The Jersey Financial Services Commission (the “**Commission**”) issues this public statement under Article 25 of the Financial Services Law.
- 1.2 This action supports the Commission’s 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 This public statement serves to highlight breaches by New World Jersey, or companies under its administration and control, of:
  - 1.3.1 Article 7 of the Financial Services Law;
  - 1.3.2 Articles 1 and 3 of the Control of Borrowing (Jersey) Order 1958 (“**COBO**”); and
  - 1.3.3 the Codes of Practice for Trust Company Business (the “**Codes**”).

## 2 Background

- 2.1 New World Jersey is authorised by the Commission to conduct Trust Company Business as defined in the Financial Services Law.
- 2.2 In February 2011, the Commission received a complaint which raised significant concerns over the conduct of New World Jersey in its provision of trust company business services to a particular customer group comprising an investment company administered by New World Jersey (the “**Investment Vehicle**”) and a number of structures, in some cases also administered by New World Jersey, which invested into or were connected to the Investment Vehicle (together, the “**Customer Group**”). New World Jersey provided a range of administrative services to the Customer Group from 2004.
- 2.3 The Investment Vehicle was incorporated in 2004 and initially had one beneficial owner (“**Person X**”). Person X acted as investment adviser to the Investment Vehicle.
- 2.4 Family members of Person X subsequently invested into the Investment Vehicle via their own personal structures, many of which were administered by New World Jersey or associated group companies.



- 2.5 The Investment Vehicle acted principally as a vehicle for onward investment into US based investment funds. The Investment Vehicle also made investments on its own account, not directly linked to the money received from investors.
- 2.6 The concerns presented by the complaint were such that the Commission commenced an investigation, which included the issuance of a Notice under Articles 32(1)(a) and 32(4)<sup>1</sup> of the Financial Services Law requiring New World Jersey to appoint an independent reporting professional to review and report on New World Jersey's compliance with the legal and regulatory regime in its provision of trust company business services to the Customer Group. The investigation focussed primarily on the period 2004 to 2010.

### **3 Summary of findings**

- 3.1 The Commission's investigation of New World Jersey's conduct identified multiple and repeated breaches of the Codes. In particular, New World Jersey failed to comply with the following requirements:
- 3.1.1 Section 2.1: A registered person must act with due skill, care and diligence to fulfil the responsibilities that it has undertaken;
- 3.1.2 Section 2.2: Where a registered person is responsible for exercising discretion for or in relation to its customers, it must take all reasonable steps to obtain sufficient information in order to exercise its discretion or other powers in a proper manner;
- 3.1.3 Section 2.3: A registered person must only exercise its power or discretion for a proper purpose and must be able to evidence, in writing, any decision made;
- 3.1.4 Section 2.4: A registered person must either avoid any conflict of interest arising or, where conflicts arise, must address such conflicts by: disclosure; applying internal rules of confidentiality; declining to act; or otherwise as appropriate;
- 3.1.5 Section 3.2.1: A registered person must operate robust arrangements for meeting the standards and requirements of the regulatory system;
- 3.1.6 Section 3.2.9.2: A registered person must, if providing services defined in Article 2(4)(b) of the Financial Services Law (namely acting or fulfilling the function of or arranging for another person to act as or fulfil the function of a director or alternate director of a company under a registration for Class G trust company business), be able to demonstrate that reasonable care has been taken to have knowledge of the activities of the companies for which it acts for or arranges for another to act for as director, and any material changes thereto;
- 3.1.7 Section 3.5.5: A registered person must ensure that its compliance function is adequately resourced; and

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<sup>1</sup> The "reporting professional" provisions are now set out in Article 32(6) of the Financial Services Law.



- 3.1.8 Section 3.7: Record keeping: Maintenance of adequate and orderly records.
- 3.2 Furthermore, the Commission concluded the Investment Vehicle, under the administration and control of New World Jersey, breached Article 7 of the Financial Services Law and Articles 1 and 3 of COBO in that it:
- 3.2.1 failed to apply for consent under Article 1 of COBO (re: External body corporate raising money in Jersey by issue of shares);
  - 3.2.2 failed to apply for consent under Article 3 of COBO (re: External body corporate having shares registered in Jersey); and
  - 3.2.3 failed to apply for an investment business licence under the Financial Services Law and thus conducted unauthorised business in breach of Article 7 of the Financial Services Law.
- 3.3 The Commission considers there was insufficient appreciation of, or insufficient caution in relation to, regulatory compliance on the part of the Customer Group by New World Jersey. Further, the Commission concluded there was a lack of competence on the part of New World Jersey over the administration and corporate governance of the structures under review.

#### Record keeping and administration

- 3.4 New World Jersey's administration of the Customer Group was found to be deficient. The contractual relationship between the Investment Vehicle and its investors was inadequately documented. In many cases minutes were missing, misleading or inadequate and were, until a number of years after the commencement of the relationship with the Customer Group, silent on "notice", "quorum" and "directors' interests."
- 3.5 Transactions were on occasions poorly documented, with supporting documentation such as loan agreements, investment management agreements and subscription agreements found to be either absent, inadequate or inappropriate. In a number of instances New World Jersey was found to have "re-classified" transactions after the event, with poor documentation making it difficult to assess whether the reclassifications were agreed reorganisations or were, for example, a reflection of poor record keeping or confusion over a transaction.

#### Conflicts of interest

- 3.6 New World Jersey failed to consider or apply its own policies on conflicts of interest when providing services to the Customer Group. Not until a number of years after the commencement of the relationships was there any recognition or management of the numerous conflicts of interest presented, including: officers of New World Jersey acting as director to (i) the Investment Vehicle, (ii) investor entities within the Customer Group, (iii) the corporate trustee on related trusts and (iv) related entities.



### Provision of information to investors

- 3.7 New World Jersey provided inadequate information to investors in the Investment Vehicle, such that there was no clear distinction drawn between activities undertaken on behalf of investors and proprietary company activity.
- 3.8 This was exacerbated by the over-reliance New World Jersey placed on Person X as the investment adviser to the Investment Vehicle. Person X liaised with members of his family and other investors in respect of the Investment Vehicle and the Customer Group, as well as playing a significant role in investment decisions. New World Jersey had little, if any, formal control or record of what was said to investors or what information was provided to them by Person X.

### Anti-money laundering and combatting the financing of terrorism

- 3.9 In many cases, New World Jersey failed to complete customer take on forms or document the customer's source of wealth and source of funds. Customer relationships were inadequately documented.
- 3.10 There was also a failure to undertake the necessary on-going re-assessment of customers and to chase up missing information.

### Compliance function

- 3.11 In the period until October 2010, the compliance function at New World Jersey was under resourced.

## **4 New World Jersey**

- 4.1 New World Jersey co-operated with the Commission throughout the course of the investigation. Before and during the investigation New World Jersey made additional appointments to its compliance and management team to strengthen its business. The company also undertook remediation work as a result of the issues identified during the investigation and from on-site examinations performed by the Commission.
- 4.2 New World Jersey was sold in April 2013 and is now a participating member of another regulated trust company business. The acquirer has shown a commitment to working with the Commission to ensure the issues noted in this public statement are remediated appropriately.

### **Jersey Financial Services Commission**

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