



Public Statement

David Jonathan Francis (Mr Francis)

Date of birth: 4 August 1969

Principal Person of Horizon Trustees (Jersey) Limited (In Liquidation) (HTJL)

25 May 2018

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

1 Action

- 1.1 The Jersey Financial Services Commission (**JFSC**) issues this public statement pursuant to Article 25(a) of the FS(J)L with respect to directions issued to Mr Francis under Article 23 of the FS(J)L.
- 1.2 The JFSC'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 Francis, in his capacity as a principal person and a former director of HTJL, has taken place and the JFSC has concluded that, in all the circumstances, Mr Francis acted with a most serious lack of integrity and his displayed level of incompetence was of the most serious kind.
- 1.4 The JFSC 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 Francis 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 Francis successfully applies to the JFSC, pursuant to Article 23(6) of the FS(J)L, for a variance or withdrawal of the directions. Mr Francis 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 JFSC issued a public statement in respect of the findings of its investigation into HTJL². The JFSC'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 Mr Francis claimed to own beneficially (**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.
- 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 the Film Co.. This acquisition and HTJL's administration appointment created numerous conflicts of interest.
- 2.7 Shortly after the acquisition of the Film Co., a New Zealand Limited Partnership (**Structure X**) was created. This structure, which became a focus of the JFSC'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 on 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 £31 million, subject to the possibility of the liquidators' rejection of what may be certain duplicate claims.
- 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 [http://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)

- 2.10 Despite the Film Co.'s serious financial difficulties, during 2010 and 2011 investment valuations were sent to customers, 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 the HTJL customers concerned 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 Francis was the CEO of the Horizon Group. He was the driving force behind HTJL. During the period (2008 – 2012) he increased his shareholding in HTJL to 50.2%. He was a director of HTJL but not throughout the period. As the majority shareholder and by then acting as a shadow director, he was able to direct the affairs of HTJL to a large extent.
- 3.2 Mr Francis had a particularly close relationship with certain of the UHNWI customers, and was the principal point of contact for the majority of HTJL's customers. He was invariably the originator of decisions to create private fund structures which provided customers with the opportunity of investing in alternative asset classes.
- 3.3 Mr Francis was the disclosed beneficial owner of Bid Co. and the originator of the plan to refinance the Film Co., at least in part to protect the existing investments held by the Media Fund and certain UHNWI customers. He was a director of the General Partner of the Media Fund and signed its financial statements and letter of representation to the auditors.
- 3.4 It was upon Mr Francis's instructions that Structure X was established. He also gave instructions to his colleagues, on 20 separate occasions, specifying the customer structure and amount to be invested in Structure X.

4 Summary of findings

- 4.1 The JFSC has previously concluded that HTJL breached all seven principles of the Codes of Practice for Trust Company Business, 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. As majority owner of HTJL, a director for part of the period and given his ability to direct the affairs of the company, Mr Francis bears significant responsibility for these failings.
- 4.2 Mr Francis, as CEO of the Horizon Group and major shareholder of HTJL, shares significant responsibility for the following:
 - 4.2.1 a confused and ineffective corporate governance structure;
 - 4.2.2 a failure to oversee and control the business of HTJL through the implementation and monitoring of robust systems and controls;
 - 4.2.3 a failure to realise a Horizon services company was conducting unauthorised financial services business;
 - 4.2.4 a lack of transparency over fees levied to customers; and
 - 4.2.5 a failure to manage risk and to identify and address issues facing HTJL.

Mr Francis's conduct lacked integrity and competence.

As approved by the Royal Court on 4 December 2017, published by the JFSC on 25 May 2018 upon discontinuance of the appeal.

Structure X

- 4.3 Mr Francis devised Structure X and instructed his colleagues to invest customer monies in the structure. Mr Francis should, therefore, have carefully reviewed the constitutive and key documents. However, Mr Francis failed to undertake a careful review, which would have revealed numerous discrepancies and inconsistencies. Mr Francis's conduct lacked integrity and competence.
- 4.4 Mr Francis's decision to acquire the Film Co. presented numerous conflicts of interest, for which Mr Francis and his colleagues had total disregard. Such conflicts of interest included, but were not limited to:
- 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 Mr Francis claimed to be the beneficial owner of Bid Co.

The above conflicts of interest should not have been permitted to arise and became unmanageable. Mr Francis should not have proceeded with the acquisition of the Film Co. solely on the basis of these significant conflicts of interest. This conduct lacked integrity and competence.

- 4.5 Mr Francis drafted a "Terms Sheet", which he provided to his colleagues and set out his views in respect of how Structure X was to operate as an investment. Referred to in the Terms Sheet was "Headroom": the mechanism, under which customer structures purchasing the Film Co.'s CLNs paid 80% more for the CLNs (the difference between £0.55 and £1.00) than the Bid Co., which Mr Francis held out as being beneficially owned by him. The majority of these customers did not know about this significant price difference. This conduct lacked integrity.
- 4.6 In providing instructions to invest customer monies in Structure X, Mr Francis failed to give any meaningful consideration to the risks and the appropriateness of the investments for those customers. At the time of the investments, Mr Francis knew serious issues existed in respect of the Film Co., including in respect of its solvency. He was aware the only way the Film Co. remained solvent was through the use of customer monies to discharge its numerous and significant liabilities. Mr Francis's conduct lacked integrity and competence.
- 4.7 Mr Francis provided false assurances to his colleagues about the existence and extent of his discussions with beneficiaries and shareholders of structures to be invested in Structure X. Mr Francis knew that colleagues had relied upon his assurances. Mr Francis's conduct, and his failure to correct their misunderstandings, despite being afforded the opportunity to do so, lacked integrity.
- 4.8 Mr Francis acted with wilful disregard to his fiduciary obligations. He issued instructions to his colleagues, which resulted in customers' assets, including those of vulnerable individuals, being used to reduce the risks to which a number of HTJL's UHNWI customers were already exposed. As a result of the conduct of Mr Francis and others, HTJL's customers face the loss of very significant sums of money. This conduct was not in the best interests of the customers. Mr Francis's conduct lacked integrity.

As approved by the Royal Court on 4 December 2017, published by the JFSC on 25 May 2018 upon discontinuance of the appeal.

Media Fund

- 4.9 In 2011, in his capacity as a director of the Media Fund's General Partner, Mr Francis signed the financial statements of the Media Fund, together with a letter of representation. When signing these documents, Mr Francis was on notice of numerous and significant issues. Notwithstanding his concerns, the notes to the financial statements provided confirmation the General Partner was not aware of any circumstances, which undermined the value of the investment. This was demonstrably not the case. Mr Francis's conduct lacked integrity.

5 Conclusion

- 5.1 The JFSC has therefore concluded that, in all the circumstances, Mr Francis acted with a most serious lack of integrity and his displayed level of incompetence was of the most serious kind.

6 Sanction

- 6.1 The directions prohibit Mr Francis 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 Francis successfully applies to the JFSC pursuant to Article 23(6) of the FS(J)L for a variance or withdrawal of the directions.
- 6.3 Mr Francis 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 Francis 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.

For further enquiries, please contact Barry Faudemer, Director of Enforcement