



Jersey Financial Services Commission

Public Statement

Equity Trust (Jersey) Limited (“Equity”)

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 pursuant to Article 25 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.

2. Introduction

- 2.1. In 2005, Equity was one of the largest trust company businesses operating in Jersey. In 2011, Equity became a member of TMF Group which operates in more than 75 countries.
- 2.2. This public statement primarily relates to matters arising from Equity’s role as trustee to two Jersey non-charitable purpose trusts, the Bacchus Factoring Services Trust (“**Bacchus**”) and the Proteus Factoring Services Trust (“**Proteus**”), collectively (the “**FSTs**”).
- 2.3. In addition to providing trust company business services; as a licensed fund services business, Equity provided services to a number of collective investment funds. In particular, Equity acted as trustee (and its wholly-owned subsidiary as manager) to a number of funds investing in Eastern European property (the “**Funds**”).

3. Background

- 3.1. Establishment of the FSTs, the Funds and related investment vehicles
 - 3.1.1. The impetus for the promotion of the Eastern European property investments came initially from a couple resident in England, who operated principally through their owner managed company (“**X Co.**”). X Co. was a property marketing company whose principal activities included the identification of potential investment opportunities in a number of countries and enticing investors through mailshots and seminars.



- 3.1.2. Initially, the FSTs were established in January 2005 and April 2005 respectively as sub-trusts of a master trust. Equity was appointed trustee. The FSTs were not regulated by the Commission. The FSTs were established prior to the Funds (see 3.1.6 below). X Co. procured members of the public (principally residents of the United Kingdom) to make loans to the FSTs and thereafter to intermediary funding companies incorporated predominantly in the British Virgin Islands (the “**BVI Funding Companies**”).
- 3.1.3. The loans were intended to be used by the FSTs and the BVI Funding Companies to obtain indirect interests in property in Eastern Europe.
- 3.1.4. It may have been intended lenders to the FSTs would subsequently be offered an opportunity to convert their loans into units in the Funds but this process of conversion was never completed.
- 3.1.5. There is doubt about the validity of the FSTs. Although Equity had stated it intended to resolve this doubt by making an application to the Royal Court in 2006, no such application was, in fact, made. Thus the validity of the FSTs remains uncertain.
- 3.1.6. Following concerns the FSTs and BVI Funding Companies were acting as unlicensed collective investment funds, three Jersey unclassified collective investment funds were established (the “**Funds**”).
- 3.1.7. The Funds comprise three closed-ended umbrella unit trusts – each comprising four sub-funds (the “**Sub-Funds**”). The Funds were established to invest in properties located in:
- 3.1.7.1. Arkoutino, Kranevo and Obzor, Bulgaria.
 - 3.1.7.2. Dubrovnik, Croatia.
 - 3.1.7.3. Sveti Stefan and Lucice, Montenegro.
- 3.1.8. The FSTs, the Funds and other unregulated “side-car” vehicles invested in the various developments.

3.2. Intervention by the Commission

- 3.2.1. Following the exercise of its powers and careful consideration of all available information; in 2007 the Commission made an application to the Royal Court for the appointment of a new, independent trustee in respect of the Funds and directions for the winding-up of the Funds and the investigation of their operation since 2005.



3.3. Outcome of the Court Action

- 3.3.1. Following representations by a number of interested parties, the Court considered that, rather than winding up the Funds, an independent report should be commissioned from a firm of accountants (the “**Report**”). The purpose of the Report was: (i) to review the current position of the Funds; (ii) to consider the potential viability of the Funds; (iii) to assess the whole structure with a view to improving functionality.
- 3.3.2. Following the Commission's Application to the Royal Court, in December 2007, two new companies (“**New Co.s**”) were appointed; one to act as the trustee to the Funds and one as manager.
- 3.3.3. The Report considered the six property developments and considered that four of them were viable. It identified a number of obstacles to investors realising a successful outcome from the projects. The Report noted the Obzor land had been sold by a secured creditor and considered the Kranevo project only marginally viable. In respect of the remaining four projects, the Report recommended a number of key steps to be taken.
- 3.3.4. The Court determined unit holders should have an opportunity to consider and vote on a reconstruction (the “**Reconstruction**”). Subsequently the Reconstruction of each of the Funds was approved by a substantial majority of unit holders in 2008.

3.4. The position following the Reconstruction

- 3.4.1. The Reconstruction was finally approved by all relevant parties on 19 December 2008.
- 3.4.2. Turmoil in the financial markets post 2008 exacerbated the difficulty obtaining external finance. The lack of liquidity throughout the structure was a contributory factor that prevented the developments proceeding as envisaged by investors, who voted for the Reconstruction in 2008.
- 3.4.3. The lack of finance, failure to obtain planning permission and subsequent action by creditors resulted in the sale of the Dubrovnik, Kranevo and Sveti Stefan sites. In 2014, following offers by one of the significant investors in the Funds, the two remaining sites in Arkoutino and Lucice were sold.

3.5. Complaints

- 3.5.1. In the latter part of 2010, the Commission was apprised of a number of complaints making serious allegations in relation to the operation of the Funds, FSTs and related investment vehicles.



3.5.2. In December 2010, just prior to the end of the limitation period, the New Co.s commenced legal action against Equity with respect to its previous roles in relation to the Funds.

3.5.3. Following consideration of the complaints and other information, the Commission determined a further review (the “**Investigation**”) was warranted and during 2011 appointed Inspectors under Article 33 of the FS(J)L. The Inspectors’ Report was completed in early 2014 and provided yet further information on the history of the Funds and FSTs.

3.5.4. During the course of the Investigation, further litigation was commenced in the UK against Equity and others on behalf of circa 360 investors in the Funds and other “side-car” vehicles. These proceedings against Equity were discontinued in 2014.

4. Scope of the Investigation

4.1. The scope of the Investigation was to report on the nature, conduct and state of the financial services business of Equity (to include its principal persons and former principal persons) with particular regard to the aspect of its business involving it as trustee of the FSTs. The Investigation focussed on the period subsequent to 19 December 2008, following the Reconstruction (see para 3.4.1).

4.2. Although the Investigation focussed on events post 19 December 2008, the Inspectors considered a vast amount of information dating back to the establishment of the relationship with the owners of X Co.

5. Findings of the Investigation

5.1. The Investigation revealed Equity failed to conduct adequate due diligence from the outset. As a result Equity did not appreciate the intentions of the owners of X Co. and lacked a full understanding of the basis on which monies had been loaned to Bacchus and the BVI Funding Companies owned by Proteus.

5.2. In early 2005, despite not having received due diligence on all lenders to Bacchus, Equity paid away substantially all of the £5.45 million received.

5.3. A number of significant payments were made by Equity without a proper understanding of the rationale; or without understanding who the ultimate beneficiary was.

5.4. Equity failed to ensure loans advanced by Bacchus were formally documented and relevant information received to enable Equity to properly monitor the loans on a regular basis. The lack of monitoring contributed to Equity’s failure to identify an overpayment of €500,000 in relation to the purchase of the Dubrovnik site.



- 5.5. Equity failed to properly manage the conflicts of interest arising from the myriad of roles it performed.
- 5.6. Equity failed to ensure appropriate accounting records were maintained and did not prepare timely, accurate financial statements for Bacchus and Proteus. Assurances given by Equity to the Commission that accurate records were being maintained were inappropriate.
- 5.7. Equity failed to prepare cash-flow forecasts or similar financial assessments to demonstrate that it would be able to meet the liabilities of Bacchus and Proteus out of trust assets on an ongoing basis. Equity provided assurances to the Commission that Bacchus was not “cash-flow insolvent” as at 19 December 2008, without any reasonable basis for doing so.
- 5.8. As part of the Reconstruction, Equity as trustee of Proteus made a commitment to buyback shares from investors who had received them in exchange for units held in the Obzor and Kranevo Sub-Funds. Equity did so without prior cash flow forecasts to ensure this commitment could be honoured.
- 5.9. At the time lenders advanced monies to Bacchus, Equity did not fully understand the basis on which lenders had done so. Equity provided inconsistent information to lenders over an extended period about the terms of their loans and the possibility of conversion.
- 5.10. Equity failed to implement an effective complaint handling system.

6. Breaches of the Codes

- 6.1. From the findings summarised above, it follows that Equity breached Principles 2, 3 and 6 of the Codes. Equity failed to:
 - 6.1.1. have the highest regard for the interests of customers;
 - 6.1.2. organise and control its affairs effectively for the proper performance of its business activities and demonstrate the existence of adequate risk management systems; and,
 - 6.1.3. deal with the Commission in an open and co-operative manner.

7. Events subsequent to the Investigation

- 7.1. Following the appointment of a new Managing Director in early 2014 and changes to the board of directors, Equity commissioned an independent consulting firm to conduct a “Regulatory Healthcheck” on the current state of the business. This encompassed a review of a number of customers.



- 7.2. In October 2014, Equity acting in an open and co-operative manner, formally advised the Commission of the results of the Regulatory Healthcheck. A number of serious issues were identified in relation to other customers of Equity; including similar issues to those identified by the Investigation in relation to historic matters. As a responsible entity, Equity openly acknowledged its failings.
- 7.3. In response to the Regulatory Healthcheck, Equity, supported by TMF Group, initiated a significant remediation exercise, including a review of the board effectiveness, to address the findings (the “**Remediation Plan**”). Equity has committed to work with the Commission to resolve all outstanding matters within agreed timeframes.
- 7.4. In addition, as a result of discussions with the Commission, Equity made a settlement offer to New Co.s in their capacities as current manager and trustee of the Funds. Equity has also made a meaningful settlement offer to investors in the FSTs and “side-car” vehicles.
- 7.5. The Commission considers the actions by Equity in 2014 demonstrate a positive change in its relationship with the Commission. This change is welcomed as previously, since 2006, Equity had generally adopted an adversarial approach in dealing with the Commission. This detrimental stance has now been superseded by the current board’s candid, accountable and collaborative attitude.
- 7.6. The Commission has devoted significant resources investigating and dealing with numerous investor complaints over the previous eight years in relation to the Funds, FSTs and related entities. In recognition of this, Equity has made a significant contribution towards the Commission’s costs.

8. Conclusion

- 8.1. The Commission is committed to working with regulated entities to resolve issues whenever possible and appropriate. In the Commission’s view the issues highlighted in this public statement may have been resolved much sooner had Equity sought to work with the Commission rather than against it.

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