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# Louvre Fund Services Limited, Kevin Paul Gilligan, Charles Peter Gervais Tracy

19th September 2016

Public Statements, Consumers, General, Investment

## **The Financial Services Commission (Bailiwick of Guernsey) Law, 1987 as amended (“the Financial Services Commission Law”) The Protection of Investors (Bailiwick of Guernsey) Law, 1987 as amended (the “POI Law”)**

### **Louvre Fund Services Limited – (“Louvre”)**

#### **Mr Kevin Paul Gilligan – Executive Director (“Mr Gilligan”)**

#### **Mr Charles Peter Gervais Tracy – Executive Director (“Mr Tracy”) (together “the Directors”)**

On 16 September 2016 the Guernsey Financial Services Commission (“the Commission”) decided:

- to impose a financial penalty of £42,000 under Section 11D of the Financial Services Commission Law on Louvre;
- to impose financial penalties of £24,500 and £10,500 on Mr Gilligan and Mr Tracy respectively under Section 11D of the Financial Services Commission Law;
- to make this public statement under Section 11C of the Financial Services Commission Law.

The Commission considered it reasonable and necessary to make these decisions having concluded that Louvre and the Directors failed to act in accordance with the minimum criteria for licensing contained in Schedule 4 to the POI Law.

### **BACKGROUND**

The background to these decisions is as follows.

Louvre took over as the designated administrator of an authorised collective investment scheme (“the Fund”) in August 2013. The Fund was a protected cell company with three cells. Mr Gilligan is the Managing Director of Louvre and was a director of the Fund between October 2013 until September 2015 and Mr Tracy is the Chairman and Compliance Officer of Louvre.

### **FINDINGS**

Following an investigation into the Fund and Louvre, the Commission found:

#### **Louvre**

- Louvre demonstrated a lack of understanding of the risk profile of the Fund and the Fund’s main underlying investment;
- Louvre had a number of concerns regarding the Fund but allowed the Fund to continue pre-existing actions that had a dubious benefit to investors. For example Louvre:
  - permitted a 20% audit hold-back without understanding the reasons for the hold-back; and
  - allowed inter-cell loans to continue despite having concerns about the legitimacy of the loans;
- Despite having a number of concerns and recognising that the Fund presented a high risk to Louvre, it failed to implement enhanced compliance procedures to manage the risk of the Fund;
- Despite the concerns of Louvre, it did not inform the Commission of any of these concerns.

- As a result, the Commission concluded that Louvre did not administer the Fund with the appropriate soundness of judgement and diligence.

### **Mr Gilligan**

- Mr Gilligan failed to demonstrate he acted with diligence, experience and soundness of judgement in relation to the Fund. For example, Mr Gilligan:

was unable to explain why the Fund was applying a 20% audit hold-back; and

did not give sufficient thought as to the benefit to the investors of inter-cell lending or the detriment to the cell, and ultimately investors, of the repayment of the loans with illiquid assets.

- The Commission formed the view that due to his level of experience, Mr Gilligan was unable to withstand the pressures put on him by the promotor of the Fund, who had a significant amount of control over the Fund. As a result, Mr Gilligan found himself in a position in which he has had to change stance on a number of matters;

- Mr Gilligan's conduct contributed to Louvre's failure to administer the Fund appropriately.

### **Mr Tracy**

- Mr Tracy failed to demonstrate he acted with diligence and soundness of judgement in relation to his role as Louvre's Compliance Officer. Mr Tracy had a significant role in ensuring compliance standards were satisfied. Mr Tracy failed to ensure that enhanced compliance procedures were undertaken to manage the identified risks of the Fund and despite being aware of a number of concerns regarding the Fund;

- Despite the concerns of Louvre and himself, Mr Tracy did not inform the Commission;

- Mr Tracy's conduct contributed to Louvre's failure to administer the Fund appropriately.

### **MITIGATING FACTORS**

Louvre recognises that there were issues with its compliance obligations and have taken steps to remediate these issues. This includes a review of their compliance processes and a number of changes to their policies and procedures have been made as a result of the review, including the proposed appointment of a new Compliance Officer.

Efforts were made to remedy some of Louvre's concerns.

Mr Gilligan resigned as a director of the Fund in September 2015.

At all times Louvre and the Directors co-operated fully with the Commission. Louvre and the Directors agreed to settle at an early stage of the process and this has been taken into account by applying a discount in setting the financial penalties.