

## News

Home >

Marlborough Trust Company Limited, Marlborough Nominees Limited, Mr Nicholas Robert Hannah, Mr Adrian Bradley Howe, Mr David Charles Enevoldsen, Mr Benjamin John Tustin

# Marlborough Trust Company Limited, Marlborough Nominees Limited, Mr Nicholas Robert Hannah, Mr Adrian Bradley Howe, Mr David Charles Enevoldsen, Mr Benjamin John Tustin

21st November 2016

Public Statements, Fiduciary, General

**The Financial Services Commission (Bailiwick of Guernsey) Law, 1987 as amended ("the Financial Services Commission Law")**  
**The Regulation of Fiduciaries, Administration Businesses and Company Directors etc (Bailiwick of Guernsey) Law 2000 ("the Fiduciaries Law")**

**The Protection of Investors (Bailiwick of Guernsey) Law, 1987**

**The Banking Supervision (Bailiwick of Guernsey) Law, 1994**

**The Insurance Business (Bailiwick of Guernsey) Law, 2002**

**The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 (collectively "the Regulatory Laws")**

**Marlborough Trust Company Limited ("MTCL") and Marlborough Nominees Limited ("MNL") (together the "Licensees")**

**Mr Nicholas Robert Hannah ("Mr Hannah")**

**Mr Adrian Bradley Howe ("Mr Howe")**

**Mr David Charles Enevoldsen ("Mr Enevoldsen")**

**Mr Benjamin John Tustin ("Mr Tustin") (collectively "the Directors")**

On 21 November 2016 the Guernsey Financial Services Commission ("**the Commission**") decided:

To impose a financial penalty of £100,000 on MTCL under Section 11D of the Financial Services Commission Law;

To impose a financial penalty of £35,000 on each of Mr Hannah and Mr Howe under Section 11D of the Financial Services Commission Law (had it not been for their financial means these fines would have been £50,000 in each case);

To impose a financial penalty of £25,000 on Mr Enevoldsen under Section 11D of the Financial Services Commission Law;

To impose a financial penalty of £10,000 on Mr Tustin under Section 11D of the Financial Services Commission Law;

To make orders under the Regulatory Laws prohibiting Mr Hannah and Mr Howe from performing the functions of director, controller, partner or manager in relation to business carried on by an entity licensed under the Regulatory Laws for a period of 5 years;

To make an order under the Regulatory Laws prohibiting Mr Enevoldsen from performing the functions of director, controller, partner or manager in relation to business carried on by an entity licensed under the Regulatory Laws for a period of two years and six months ;

To disapply the exemption set out in Section 3(1)(g) of the Fiduciaries Law in respect of Mr Hannah and Mr Howe for five years, Mr Enevoldsen for two years and six months and in respect of Mr Tustin for two years;

To serve notices of objection under Section 15 of the Fiduciaries Law to Mr Hannah and Mr Howe objecting to Mr Hannah and Mr Howe remaining controllers of MTCL;

To impose a condition on the licence of MTCL under Section 9 of the Fiduciaries Law requiring the removal of Mr Hannah and Mr Howe as controllers of the Licensee and the removal of Mr Hannah, Mr Enevoldsen and Mr Howe as directors of MTCL; and

To issue 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 MTCL's and the Directors' management and administration of asset holding companies ("**the SPVs**") wholly owned by a Guernsey closed ended investment fund, Arch Guernsey ICC Limited ("**the ICC**", together with its incorporated cells, "**the Fund**"), exhibited serious breaches of the minimum licensing criteria for licensing. Furthermore their activities do discredit to the professionalism with which Guernsey's fiduciary sector is generally regarded. Each individual who served as Director during that time, and the roles each of them played is reflected in the level of sanctions levied against each of them.

The conduct that was criticised throughout the investigation was serious. There was a complete failure to lay down and record responsibilities at MTCL and MNL board level and by the individual directors to ensure that any delegated powers were properly monitored and controlled. There was a complete abdication of responsibility at SPV Board level. The backdating of records and creation of false board minutes was deliberate, knowing and in relation to significant matters. The failure to have in place written advisory agreements was serious given the key importance of them to the investment activity carried on by the SPVs in question. All these failings were systemic and widespread as regards the SPVs. The false answers given to the Commission were at the very least made recklessly. The failure to report to the Commission and to carry out a timely and full review was serious given (a) the publicity and size of the Arch cru debacle; (b) the faults and failings which have emerged. The matter is exacerbated by the large numbers of retail investors whose interests MTCL and MNL were ultimately in charge of. These matters also impact on the reputation of Guernsey as a centre of financial services provision.

## **BACKGROUND**

### **The Fund**

The sanctions and measures imposed in this case, flow from an investigation by the Commission into the Licensee, undertaken after the collapse of the Fund. Although the collapse of the Fund brought about the investigation, the Commission does not suggest that the conduct of the Licensee and its Directors, who are criticised in this case, had any causal link to that collapse.

The Fund was incorporated in Guernsey as an incorporated cell company on 21 December 2006. It was a closed-ended investment company. At its largest, the Fund had 26 incorporated cells ("**the ICs**").

### **The Relationship between the Fund and the Licensee**

One of the ICs, Arch Treasury IC Limited, operated as a treasury vehicle through which the Fund channelled certain investments in which a number of ICs participated. These investments were structured so that the ICs owned SPVs, which were mainly asset holding companies ultimately owned by the Fund structure.

In or about August 2007, Arch FP approached the Licensee to provide corporate services to the SPVs – principally those services were to form the companies, act as nominee shareholder of the companies for the ICs, provide directors to the SPVs and administer the SPVs. MTCL ultimately acted for 23 of the SPVs owned by the Fund.

The persons provided to the SPVs to act as their directors were the MTCL itself and one of its joint licensees, MNL.

The administration services provided by MTCL to the SPVs included covering the company secretarial function and recordkeeping in relation to maintaining the statutory and administrative records of client companies, and those companies' correspondence records, bank statements and financial information.

The Fund was structured in such a way that it was MCTL who was ultimately responsible for decisions over investment of the Fund's underlying assets held by the SPVs.

The assets held in the SPVs fell into three broad categories:

- i)* Real estate properties for rental or re-sale following refurbishment;
- ii)* Fine wine for long term investment and secondary sales;
- iii)* Shareholdings in a company which owned other companies invested in ships.

### **Background to the Licensee**

The Licensee is licensed under the Fiduciaries Law, and also the POI Law to carry out administration of category 1 investments: collective investment schemes. On 4 May 2005, this POI licence was extended to include category 2 investments: general securities and derivatives.

Mr Hannah was MTCL's managing director between January 2004 and his resignation on 11 September 2011. After that date, he continued and continues to serve as director. Mr Enevoldsen, previously director of administration, was appointed managing director in Mr Hannah's place.

3/6/2017 Marlborough Trust Company Limited, Marlborough Nominees Limited, Mr Nicholas Robert Hannah, Mr Adrian Bradley Howe, Mr David Charles Enevoldsen... Mr Howe, who was largely responsible for business development, resigned from the boards of MTCL and five of the joint licenses at the same time as Mr Hannah in September 2011. He continues to act as the alternate director to Mr Hannah. On 9 January 2014 MTCL notified the Commission that it wished to re-appoint Mr Howe as a director of MTCL and the other joint licensees responsible for the MTCL business from which he had resigned.

Mr Tustin resigned as a director of MTCL with effect from 16 August 2013. Mr Tustin ceased employment with MTCL on 10 October 2013.

The directors of MNL were, at the relevant time, Messrs Hannah, Howe, Enevoldsen and Tustin.

As at 1 December 2012, Mr Hannah was a director of 705 client corporate companies. As a natural person director of a corporate director he was involved on the boards of a further 156 companies. As at 30 June 2013, the number of personally held directorships held by Mr Hannah had grown to 1,405. A significant number of Mr Hannah's directorships relate to a fractional property ownership scheme that MTCL administered. By the end of August 2014, the number of personal directorships he had, had fallen to 82.

As at 1 December 2012, Messrs Howe, Enevoldsen and Tustin were each directors of some 35 to 37 companies. As the natural person director of the corporate director they were each involved on the boards of a further 35 to 36 companies. Mr Tustin relinquished his directorships when he ceased employment at MTCL.

### **Facts of the Case - Record Keeping and Corporate Governance**

MTCL provided services to the ICs by (among other things) acting as nominee shareholder of the incorporated SPVs, or some of them, and in acting as director of the SPVs and providing its related company MNL as the other director.

There was no record anywhere in the available board minutes of MTCL of a decision of its board to act in relation to the ICs, as shareholder or director. The same applies as regards MNL. Furthermore, and as regards their respective roles as director, there was no record in the board minutes of either company, of any relevant decision as director of any of the SPVs, including any decision to appoint natural persons to act on its behalf at any board meetings of the SPVs. From the perspective of good corporate governance, that authorisation should have been properly made and properly documented. It was not.

The person with primary responsibility is said to have been the person who *"in the ordinary course would attend and participate in board meetings of the underlying company."* This did not explain or deal with the position of the person who purported to act for the other joint licensee director. It was said that on occasions where it was *"impossible or impracticable for the individual allocated general responsibility for the business in question to participate in board meetings of the underlying companies, another of the natural person directors of the relevant licensee would participate."* This in effect meant that, not only might the person with primary responsibility for the line of business not attend the board meeting of the SPV in question but the decision as to how to vote or make a determination as director of the SPV would, in such circumstances, be taken by another. In effect, the decision making process at all levels was only recorded at the SPV level. The records of the purported board meetings of the underlying SPV companies indicated that the natural persons who acted for MTCL and MNL at board meetings varied considerably and on at least one occasion encompassed persons who were not natural person directors of MTCL or MNL.

To the extent that the boards of MTCL and MNL delegated decision making to specific persons there was no record of any delegation and no record of any overall supervision and control of this delegated function by the respective boards of MTCL and MNL. The directors' submissions made clear that there was no such supervision and control. Mr Tustin, asserted in his submissions there was no need for him to play any role in supervising and controlling the relevant Arch area of business or the role played by his co-directors. Furthermore, the explanation given, whereby directors or employees could stand in as representatives of MTCL or MNL at board meetings of SPV companies shows that those persons might have no real understanding of the decisions they were implementing acting as natural person representatives of the directors of the underlying SPV companies. Mr Tustin signed crucial documents in relation to Anchor Limited. However, his case is that he was unaware of any failings of MTCL to properly consider investment recommendations put forward to it as director of SPVs or of any failure in record keeping and documentation regarding the conduct of the businesses of the SPVs and that he was not actively involved in the administration of the SPVs. He did however play a role in that respect.

Mr Tustin's case is that he was unaware that any investment decision making responsibility "devolved" to MTCL. Instead his case is that his understanding was that the role of MTCL and MNL as directors was simply to carry out the instructions of "their shareholder" and that all actions as directors would be ratified by the shareholder. However, the legal shareholders of most of the SPVs were in fact MTCL and MNL. More significantly, a stated case that MTCL and MNL as directors of the SPVs were at the time to operate on the basis that they were simply to exercise no discretion as directors over major investment decisions and instead were to surrender their discretion and delegate their decision making powers to the ultimate beneficial owner, when that was no-where recorded nor apparently was even a matter to be discussed at board level of those companies but simply something that was "understood" from the flexible operations in place, demonstrates the failure of corporate governance, proper exercise of directors' duties and record keeping at MTCL/MNL board level.

### **Savile Fine Wine Investments Limited ("SFWI")**

3/6/2017 Marlborough Trust Company Limited, Marlborough Nominees Limited, Mr Nicholas Robert Hannah, Mr Adrian Bradley Howe, Mr David Charles Enev... Savile Fine Wine Investments Limited ("**SFWI**") was incorporated on 30 November 2007 and was a SPV. Its directors at all material times were MTCL and MNL. During the relevant period while MTCL was involved, SFWI was "advised" by Arch FP or Baron Fine Goods Limited ("**Baron**") with regard to investment decisions in relation to wine purchases and sales. Baron was incorporated sometime in 2008 by Arch FP. For most wine purchases SFWI was invoiced for the purchases by Baron.

### **The Directors knowledge of wine and use of independent information**

One of the reasons cited by the directors of MTCL as to why Arch FP identified MTCL to act for the ICs' asset holding companies was because of MTCL's expertise in managing investments in real property. However, MTCL, MNL and the directors of MTCL had little expertise in relation to wine investment, which was highlighted when each of the directors was spoken to.

On 18 June 2013, the Commission asked MTCL whether any of its administrators had had access to a wine price index in the course of their work between 2007 and 2009. In its response MTCL considered this function to be the remit of the relevant investment advisor(s).

MTCL and MNL and their respective directors did not meaningfully consider any recommendations made to them by any advisor. There was no meaningful independent decision making or review of the "advice" tendered to it, by the board of SFWI in relation to wine investment decisions made by it.

In circumstances where the directors of MTCL and MNL themselves had little or no knowledge of the wine investment market, the intention was formally to appoint an adviser to SFWI. However in the MTCL timesheet entry of 27 November 2008, almost a year after SFWI was incorporated, no written advisory agreements were in place between SFWI and either Arch FP or Baron. When the Commission asked MTCL to confirm that no investment advisory agreement was in place between SFWI and Baron prior to 27 November 2008 and MTCL agreed that there was not although attempts had been made to obtain one.

The natural person directors of MTCL and MNL did not have the experience or expertise to take decisions over wine investment. Nor was such expertise otherwise available within MTCL and MNL.

Mr Howe's explanation of how directors' decisions about wine were reached placed reliance on an index that MTCL did not have access or subscribe to nor was it one which the administrators at MTCL would check any recommendation against. In the circumstances there was no evidence that the directors of MTCL (and therefore MTCL itself as director of SFWI) received recommendations and then did, or were able, to check them in any meaningful way before acting upon them. The investment recommendations in some instances were simply a Robert Parker rating of quality and its price. Messrs Hannah and Tustin effectively accepted this.

There were also a number of board minutes that were created after the event which did not record actual meetings of the board. There should, instead, have been records of meetings of the board ratifying transactions entered into.

### **Anchor Limited: Joint venture with Marine Technologies Holdings Corporation through Nautical Ventures inc.**

#### **Background and the structure**

In an email sent by Arch FP to MTCL, Arch FP envisaged a new strategic investment arrangement involving investment in a Marshall Islands incorporated company, Nautical Ventures Inc. ("**Nautical Ventures**"), investing, through wholly owned SPVs ("**Owner SPVs**"), in ships. Arch's investment was proposed as being a 50% shareholding in Nautical Ventures, held through a "nominee SPV" - i.e. the Arch nominee SPV company would act as a nominee shareholder in the joint venture company, Nautical Ventures. In due course the nominee SPV became the company called Anchor Limited.

Anchor Limited ("**Anchor**") was incorporated on 20 February 2008. Its directors were MTCL and MNL; both of these companies were also the shareholders of Anchor as nominees for and on behalf of Arch Treasury IC Limited ("**AT1**"), an unlisted incorporated cell of the Fund. The ships that were acquired required conversion or refurbishment.

Nautical Ventures itself came to own a number of subsidiary Owner SPVs. Each Owner SPV owned a ship registered in the Marshall Islands: four ships had been purchased in 2007; another one was purchased on or about 9 April 2008 and another was purchased on or about 7 May 2008. The Owner SPVs were all wholly owned by Nautical Ventures other than Saint Mary Shipping Corporation. In the latter case Nautical Ventures owned a large proportion of the shares of the Owner SPV.

Minutes record that on 9 April 2008, the board of Anchor, comprising Mr Enevoldsen representing MTCL and Mr Howe representing MNL, approved a number of documents relating to this joint venture. In particular a number of written resolutions of the directors and shareholders of Nautical Ventures were tabled and approved for execution.

In its letter to the Commission, dated 19 July 2013, MTCL stated amongst other things that it had been unable to find any investment advisory agreement for Anchor. The Senior Decision Maker in reaching his decision took these answers to mean that no final investment plan was provided to Anchor (or MTCL) to approve or even to operate by; no final version of any technical agreement was ever produced to

3/6/2017 Marlborough Trust Company Limited, Marlborough Nominees Limited, Mr Nicholas Robert Hannah, Mr Adrian Bradley Howe, Mr David Charles Enev...  
MTCL/Anchor, so that there was no ability to oversee such agreement and that no investment advisory agreement was entered into for Anchor which therefore operated much in the same way as SFWI in this respect.

### **The Directors' Knowledge of Shipping**

Mr Hannah described the relevant experience that he and his co-directors had of shipping as '*extremely limited*'.

Mr Howe stated that he thought that neither he nor his fellow directors had any expertise in shipping.

Mr Tustin described his knowledge of the commercial shipping market as 'virtually none'.

Mr Howe had been asked what he meant by, in a note of a meeting held on 17 January 2008, that "*Marine Technology will send over individual business plans for the purchase of a ship which will be retained on file and not vetoed therefore accepted*".

In effect this was made after a meeting held by Mr Howe in the UK and in effect once Anchor had been established the board would not have been vetoing anything that was proposed to it. Mr Howe admitted that his colleagues were "*not very happy with it*" (the contents of the note).

In its submissions to the Commission, MTCL stated that this note had not been formally tabled, but that an '*informal discussion was undertaken between relevant directors and employees of MTC*'. The identities of the parties to this discussion were not revealed; nor has any note of such discussion and its conclusion been made available. The Senior Decision Maker therefore inferred that there had never been such a note.

Mr Hannah, Mr Enevoldsen and Mr Tustin stated that they had been unaware of any note until they were spoken to by the Commission. The note does not show that MTCL had any concerns over an arrangement under which it would, as director (and with MNL the board), abdicate its responsibilities, relinquish control and allow other parties to direct what Anchor should do. There is no contemporary documentation which suggests that MTCL considered refusing the purchase of ships when this was suggested by Arch FP or that it meaningfully considered and approved such purchases or the acquisition of the shares in the relevant Owner SPVs. There was no certainty at MTCL as to the ships that had been purchased and what sort of ships they actually were.

In reality no-one at MTCL had any sufficient expertise to be in a position to come to a considered view that a "veto" could or should be deployed.

The Commission was not satisfied on the balance of probabilities that there was any intentional scheme to mislead relevant authorities, or anyone else, as to whether management of Anchor and associated matters was carried on from Guernsey. However, the evidence did assist in confirming its view that in practice no meaningful independent judgment was exercised by MTCL and MNL as directors of Anchor (or when acting as or for directors of any of the subsidiary companies of Nautical Ventures).

MTCL's lack of knowledge about the types of vessels held within the structure of Nautical Ventures' year end, and of Anchor's appointment as corporate director of a number SPVs owned by Nautical Ventures, and the absence of relevant board minutes dealing with the latter point, confirms the absence of meaningful management role played by MTCL and MNL as directors of Anchor (and of Anchor as itself a director).

As was the case regarding SFWI, neither MTCL nor MNL (being provided to Anchor to act as corporate directors) nor their respective natural directors had the experience or expertise, in this case shipping matters, to take relevant investment decisions regarding transactions involving shipping. The contractual arrangements for this multi-million pound venture were never finalised as evidenced by the outstanding schedules. In effect, Anchor was expected to act as a "nominee" director and did in fact do so as shown in its consideration of the financing arrangements for the joint venture. This was epitomised by the fact that MTCL did not know what type of vessels had been acquired with a loan facility of US\$200 million.

### **The Property SPVs**

Arch Real Estate Limited ("**AREL**") was intended to advise the real property holding SPVs owned by the ICs. AREL was incorporated on 24 October 2007.

On 20 December 2007, in relation to a transfer request relating to Savile ML1 Ltd, a formal advisory agreement was not yet in place between that real property asset holding SPV and AREL, and that the agreement was awaited from a firm of UK lawyers. In fact it appeared that no advisory agreements were then in place between AREL and any of the property holding SPVs.

On 16 January 2008, MTCL emailed a spread sheet of 'agreement dates' to AREL and scanned copies of the signed pages of the agreements. There was evidence provided to the Commission to suggest that there was some backdating of agreements taking place.

There was no evidence to indicate that the execution of these agreements took place after a board meeting to consider the agreements and determine whether to execute them. The timesheets indicated that minutes recording the decisions to enter into the agreements were not prepared until 15 February 2008, which was most likely to refer to the drafting of a minute. MTCL had further stated that an internal review

3/6/2017 Marlborough Trust Company Limited, Marlborough Nominees Limited, Mr Nicholas Robert Hannah, Mr Adrian Bradley Howe, Mr David Charles Enev... on 15 February 2008 noted that there were no minutes to record approval of the agreements and so minutes were drafted which reflected approval at purported meetings which took place on the commencement date of each agreement. MTCL now accept that the minutes erroneously recorded the commencement date of the agreements. It has stated that it recognises that the proper course would have been to have held meetings to consider and ratify entering into those agreements to take effect from their commencement dates.

In the circumstances:

- i) On any view, 17 agreements dated on their face on various dates in 2007 were in fact incorrectly dated and backdated. The signatories were Mr Howe and Mr Hannah. The dates on the agreements were in each case consciously so dated: the dates on the agreements contain manuscript amendment.
- ii) 11 were dated on a date prior to incorporation of the counter party to the SPV. That had the potential to raise issues as to its validity and/or effect.
- iii) When the agreements were signed, no board meetings were held. Instead some time later false board minutes were prepared showing meetings happening approving the agreements on the dates on which they were respectively dated. These were each signed by Mr Hannah.

### **The Directors' Role and Conduct**

The directors MTCL provided to the companies gave no meaningful consideration to proposed investments recommended by the investment adviser. This included investments relating to wine and shipping over which the directors' knowledge and experience was negligible. In relation to the wine asset holding company, recommendations were often made by the adviser and approved by the Board of the SPV within minutes of the recommendation having been made without any due consideration on whether this was a good investment for the Fund or not.

The Licensee and the Directors were prepared to enter into arrangements with the investment adviser to create the false impression that management and control rested with the Licensee, and that the Boards of the asset holding companies were meaningfully engaged in the decision-making process over the companies' assets when, in reality they were being told what to do by the adviser or an associated company of the adviser.

In relation to the asset holding company investing in wine, Mr Howe met with the Fund's investment adviser and a note following that meeting referred to the directors of the wine asset holding company needing to review recommendations and would no doubt decline some of them. The Commission established that there was an arrangement whereby the advisors would occasionally suggest that they would send some deals for consideration with a phone call first to say that this is a deal the adviser has looked at, and it is not one that the asset holding company would want to consider, thereby giving the false impression that meaningful consideration and due process had taken place in Guernsey by the directors of that company provided by the licensee.

It was clear that the 8 July 2008 letters to shareholders were back-dated, because the timesheet entry of 15 September 2008 refers to drafting such a letter. The Commission accepted that the parties had agreed to make the effective date of change of ownership as from 7 July 2008 but the documentation should reflect the correct dates upon which they were created and in the case of minutes record accurately when meetings occurred. Where an event precedes a meeting of a board, the proper course is for the directors to consider ratifying those actions and for minutes of meetings to be created which accurately record any such ratification.

The Commission also concluded, from MTCL's timesheets and a fax from the Designated Manager, that between 1 July 2008 and 31 December 2008, MTCL backdated minutes of board meetings to 7 and 8 July 2008, the loan notes and declarations of trusts (dating them to 7 July 2008) all pertaining to the restructuring of equity and debt of six SPVs managed and administered by MTCL.

Various descriptions of the process for taking and recording decisions of client boards were given to the Commission but the description which was most plausible was that of Mr Enevoldsen. He asserted that minutes were generally prepared in draft form prior to board meetings and this was corroborated by other staff members and the time sheets. He also claimed that staff would generally not be present at a meeting for the purpose of recording what was discussed and subsequently producing minutes, although they might be called in if something was unclear and the directors might amend draft minutes. This was also supported by comments made by staff members.

The Commission did not consider that there was anything in itself wrong with draft minutes being prepared in advance of a meeting to act as an aide memoire for the conduct of the meeting and, in effect, a form of agenda. Obviously, if the draft minute was simply "approved" or "signed" with no discussion or consideration of the matters set out in the draft minutes, then the position would not be satisfactory. However in reaching its decision, it was not satisfied, on the balance of probabilities, that this latter course was adopted on any particular occasion or that it more generally reflected the practice at MTCL/MNL at the relevant time.

For example, there was the evidence of, Mr Tustin with regard to inaccurate minutes when dealing with minutes of one of the property owning SPVs in September 2007. The minute of the meeting recorded a meeting at which Mr Hannah and Mr Tustin were recorded as present but the minute was signed by Mr Howe. The transaction was the major one of the acquisition of the property then held by the SPV at

### **False information/statement by MTCL**

Mr Hannah had been asked about missing investment advisory agreements regarding other SPVs, and about the quality of recordkeeping at MTCL. He was asked whether the issues explored regarding absence of agreements might arise in connection with other SPVs and said he would like to think not.

In a letter dated 21 August 2013 from MTCL to the Commission, signed by Mr Hannah, director of MTCL, MTCL falsely stated that seventeen asset holding companies managed and administered by MTCL had entered 'Property Investment Advisory Agreements' with AREL on dates between 28 August 2007 and 10 December 2007.

The dates at which these agreements were said to have been signed were incorrect. The agreements had been back dated and signed by the natural person directors of the corporate directors MTCL and MNL. The minutes recording decisions to enter into these agreements had also been back-dated too.

These points are now essentially accepted by MTCL.

An internal review the following month then identified that the decisions had not been minuted. MTCL states that there was no intention to mislead. In all the circumstances, including the accompanying falsified minutes and agreements, these representations by MTCL in 2013 were not true. Furthermore, and in the circumstances, the Commission considers that they were made without due care.

### **False information/ statement by Nicholas Hannah**

Mr Hannah made a number of false claims to the Commission. In particular:

- i) His initial description of the process whereby board meetings were minuted either by a secretary in attendance or, in the absence of a secretary, by the directors recording matters and relaying them to an administrator after the meeting was inaccurate: minutes were generally drafted in advance.
- ii) As appears from above, Mr Hannah, who is known to have signed a number of backdated minutes of board meetings in circumstances where he must have known that there had been no meeting declared at interview that to the best of his knowledge, he was '*absolutely certain*' that minutes indicated that there had been a meeting.
- iii) He signed the letter, dated 21 August 2013 from MTCL to the Commission, in response to a Notice requesting information under section 23 of the Fiduciaries Law, which contained false statements.

### **False information/statement by Adrian Howe**

Mr Howe, when spoken to, falsely stated that, in order to take decisions about wine investments, the directors of SFWI made use of a price index to which MTCL had access. Mr Howe knew that this statement was false or he was dishonestly reckless as to its veracity.

On his behalf it is submitted that if the indices did not exist he would not have referred to them. The Commission did not accept this. The mere fact that such indices exist was not strong evidence that the evidence given by Mr Howe about the use in fact made of the indices was correct.

Mr Howe also falsely stated that a note he had written on 17 January 2008, envisaging that Anchor would accept recommendations of ship purchases by Marine Technologies Holdings Corporation, had been reviewed by the board of MTCL, which they had been uncomfortable about, with the effect that Arch FP changed the nature of its arrangement with MTCL in relation to Anchor. Mr Howe knew that the statement about the board reviewing the note was false.

Mr Howe also falsely stated that minutes of board meetings were not drafted prior to board meetings. As set out above, this is untrue. Mr Howe must have known this statement was false or been reckless as to its truth.

### **Co-operation with regulatory authorities**

Under principle 8 of the CSP Code and principle 10 of the Principles of Conduct of Finance Business regarding co-operation with the regulator and relations with the Commission respectively, licensees are expected to deal openly and co-operatively with the Commission and keep it informed promptly of anything concerning the financial institution which might reasonably be expected to be disclosed to it.

Whilst there is a list of matters that the Commission would expect to be notified of, as explained in the guidance underpinning this principle, that list is not exhaustive. The Commission would expect a licensed fiduciary to use its judgement as to what matters it should inform its regulator about.

3/6/2017 Marlborough Trust Company Limited, Marlborough Nominees Limited, Mr Nicholas Robert Hannah, Mr Adrian Bradley Howe, Mr David Charles Enev...  
When the then UK Financial Services Authority ("UK FSA") suspended the UK Arch Cru funds in March 2009, significant adverse publicity over the management and administration of the fund's ultimate assets, such as the ships, was generated.

Publicity about the collapse escalated through 2010 and 2011 and led to the UK FSA launching, in June 2011, a compensation scheme for Arch Cru investors. By November 2011, an All-Party Parliamentary Group on the Arch Cru Investment Scheme had been established with the aim of achieving the maximum possible compensation for individual investors who have been affected by the collapse.

Whilst none of this publicity identified MTCL's involvement, during this time MTCL made no approach to the Commission to notify it of its involvement in the management and administration of the Fund's assets nor did this publicity trigger any internal review by MTCL into its role in relation to its management and administration of these companies underlying the Fund.

The Commission first approached MTCL about its relationship with the Fund on 21 February 2012 when it issued a notice under section 23 of the Fiduciaries Law.

The Commission expects licensees to engage openly with the Commission and report matters of significance about their business of which they consider the Commission should be informed.

MTCL had nearly three years from when the problems on the Fund first emerged to the Commission's first notice issued under section 23 of the Fiduciaries Law to act. From the manner with which MTCL has responded to the Commission in writing, and when the directors have been spoken to, the Commission came to the conclusion that MTCL and its directors have failed to act promptly and with diligence in investigating MTCL's performance in relation to the Arch Cru SPVs and in co-operating and informing the Commission in terms of full, frank and accurate answers to the questions sought.

#### **AGGRAVATING FACTORS**

MTCL was managing and administering asset holding companies owned by a fund which ultimately had a large retail investor base. The invested sums were considerable in size.

As regards Mr Hannah and Mr Howe, their co-operation in attending for interview as a mitigating factor, has to be balanced against the finding that in certain respects they gave false answers in interview.

#### **MITIGATING FACTORS**

No specific losses have been identified as flowing from the conduct criticised in this case.

MTCL no longer provides corporate services to the underlying asset holding companies of the Fund.

MTCL submitted documents and information requested under the section 23 notices issued on 21 February 2012 (as amended on 23 March 2012) and 6 November 2012 within the timeframes stipulated.

The Directors and staff of MTCL agreed to the Commission's request to attend for interview.

MTCL was entitled to draw comfort from the fact that there were other parties to the Fund structure which were regulated to provide financial services in the UK and Guernsey.

MTCL has participated in a mediation process between various parties connected to legal proceedings being brought to recover losses by the Fund.

MTCL was frank in making certain admissions to the Commission for example, in its letter of 19 July 2013 that it had not been "made privy to the final versions" of the schedules to the shareholders' agreement between Anchor Limited and Marine Technologies Holdings Limited and its letter of 21 August 2013 to the Commission that there was no investment advisory agreement for Savile Fine Wine Investments Limited.

Although the failures in relation to the Arch SPVs was widespread and serious, the assumption must be that the failings do not extend to the other parts of the sizeable business carried on by MTCL (and MNL) at the same time or thereafter.

**END**