
FINAL NOTICE

To: Mr Ian Paul Ruff

DOB: 10 March 1954

Date: 2 November 2006

TAKE NOTICE: The Financial Services Authority ("the FSA") of 25 The North Colonnade, Canary Wharf, London E14 5HS gives you final notice about a decision to make a prohibition order against you:

1. THE ACTION

- 1.1. The FSA gave you a Decision Notice on 2 November 2006 which notified you that pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act"), the FSA has decided to make a prohibition order against you, Mr Ian Paul Ruff ("Mr Ruff"), from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm (the "Prohibition Order").
- 1.2. You confirmed in an agreement dated 11 October 2006 that you will not be referring the matter to the Financial Services and Markets Tribunal.

- 1.3. Accordingly, for the reasons set out below and having agreed with you the facts and matters relied on, the FSA hereby makes the Prohibition Order against you.

2. REASONS FOR THE ACTION

- 2.1. The proposed action by the FSA relates to your conduct whilst acting as a Director of ICM Group Limited ("ICM / the Firm"). This conduct, when considered by reference to the FSA's prescribed regulatory standards for individuals, is such that it appears to the FSA that you are not a fit and proper person and that the FSA should take the proposed action.

- 2.2. In particular, you have not met the FSA's criteria for assessing fitness and propriety by your failure to comply with the FSA's rules and the Statements of Principle and Code of Conduct for Approved Persons ("APER") by:

- (1) your failure to act with due skill, care and diligence in carrying out controlled functions and in managing the business of ICM for which you were responsible, by failing to obtain Professional Indemnity Insurance ("PII") for ICM;
- (2) your failure to ensure that the Firm's affairs were conducted soundly and prudently in respect of the FSA's Rules relating to client money. In particular you facilitated ICM in using the statutory trust account to run the day to day business of the Firm;
- (3) your failure to ensure that ICM maintained adequate resources for the proper running and solvency of the firm;
- (4) your failure to ensure that customer premiums were correctly passed on to an underwriter and that customers were therefore correctly placed on risk;
- (5) your failure to ensure that risk transfer agreements between yourself and your intermediaries were in place and that customers who had purchased insurance with you were protected / placed on risk;

- (6) your failure to ensure that ICM was organised and controlled effectively in that you apportioned areas of responsibility to an individual who lacked experience and expertise in the insurance industry; and
 - (7) your failure as a holder of a significant influence function to exercise due skill, care and diligence in managing ICM by failing to monitor client money reconciliations performed by a contractor.
- 2.3. As a result of the above failings, and in performing the Director and Apportionment and Oversight Controlled Functions on behalf of ICM, you have acted in a way which resulted in ICM breaching the FSA Principles for Business 3 (Management and Control), 4 (Financial Prudence), 6 (Customers' interests) and 10 (Clients assets'), and therefore failing to satisfy Threshold Conditions 4 (Adequate resources) and 5 (Suitability).
- 2.4. The FSA has concluded by virtue of the matters referred to above that:
- (1) You are not a fit and proper person; and
 - (2) having regard to its regulatory objectives, including the severity of the risk that you pose to consumers and to confidence in the market generally, it is necessary and desirable for the FSA to exercise its power to make the Prohibition Order against you.

3. RELEVANT STATUTORY PROVISIONS AND REGULATORY RULES

Relevant Statutory Provisions

- 3.1. The FSA's statutory objectives, set out in Section 2(2) of the Act are: market confidence, public awareness, the protection of consumers and the reduction of financial crime.
- 3.2. The FSA's power to make a Prohibition Order is set out at Section 56 of the Act, which provides that the FSA may prohibit an individual from performing functions in relation to a regulated activity carried on by an authorised person.

- 3.3. The effect of making a prohibition order is to prohibit an individual from performing functions within authorised firms so that authorised firms may not employ the individual to perform specific functions. Such an order may be made:
- (i) in relation to a specified function, a class of function or any function; and
 - (ii) in relation to authorised persons generally or a class of authorised persons.
- 3.4. Section 56(1) of the Act provides that the FSA may make a prohibition order if it appears to the FSA that the individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.
- 3.5. A prohibition may, therefore, be partial or total and may be imposed if it appears to the FSA that the individual concerned is not a fit and proper person to perform such functions.

Relevant regulatory rules

The Enforcement manual

- 3.6. The FSA's policy in relation to prohibition orders is set out in Chapter 8 of the Enforcement Manual ("ENF"). ENF 8.4 summarises the FSA's policy on making prohibition orders and the circumstances under which Enforcement will consider recommending such action. In particular ENF 8.4.2 provides that:
- "(1) the FSA will have the power to make a range of prohibition orders depending on the circumstances of each case and the range of regulated activities to which the individual's lack of fitness and propriety is relevant. (ENF 8.4.2G(1));*
 - (2) depending on the circumstances of each case, the FSA may seek to prohibit individuals from carrying out any class of relevant function in relation to any class of regulated activity, or it may limit the prohibition order to specific functions in relation to specific regulated activities. The FSA may also make an order prohibiting an individual from being employed by a particular firm, type of firm or any firm. (ENF 8.4.2G(2));*

- (3) *the scope of a prohibition order will depend on the range of functions which the individual concerned carries out in relation to regulated activities, the reasons why he is not fit and proper and the severity of risk which he poses to consumers or the market generally (ENF 8.4.2G(3))."*

3.7. ENF 8.5.1A provides that:

"The FSA will consider exercising its power to make a prohibition order against approved persons only in the more serious cases of lack of fitness and propriety where it considers that the other powers available to it are not sufficient to achieve the FSA's regulatory objectives."

3.8. ENF 8.5.2 states when it decides whether to exercise its power to make a prohibition order against an approved person the FSA will consider a number of factors including the criteria for assessing the fitness and propriety of approved persons contained in the Fit and Proper test for Approved Persons.

3.9. In summary, the relevant considerations are whether, in terms of competence and capability, the relevant individual is fit and proper to perform functions in relation to regulated activities and, if not, the severity of the risk posed by him. Having established these matters, it can be determined whether prohibition will be necessary to achieve the FSA's regulatory objectives and what degree of prohibition would best serve the achievement of those objectives in each case.

The Fit and Proper test

3.10. The FSA has issued specific guidance on the fitness and propriety of individuals in the Fit and Proper Test for Approved Persons ("FIT").

3.11. FIT identifies three criteria as being the most important considerations, namely:

- (i) honesty, integrity and reputation - this includes an individual's openness and honesty in dealing with consumers, market participants and regulators and ability and willingness to comply with the requirements placed on him by or under the Act as well as with other legal and professional obligations and ethical standards (FIT 2.1);

- (ii) competence and capability – this includes an assessment of the individual's skills in carrying out the controlled functions that he is performing (FIT 2.2); and
- (iii) financial soundness (FIT 2.3).

APER

- 3.12. APER sets out the Statements of Principle in respect of approved persons. It also sets out descriptions of conduct which, in the opinion of the FSA, does not comply with the Statement of Principles. It further describes factors which, in the opinion of the FSA, are to be taken into account in determining or not whether an approved person's conduct complies with a Statement of Principle.
- 3.13. The guidance set out in APER 3.1.3 stipulates that when establishing compliance with, or a breach of, a Statement of Principle, account will be taken of the context in which a course of conduct was undertaken, the precise circumstances of the individual case, the characteristics of the particular controlled function and the behaviour to be expected in that function. APER 3.1.4 states that an Approved Person will only be in breach of a Statement of Principle if he or she is personally culpable, that is in a situation where his or her conduct was deliberate or where his or her standard of conduct was below that which would be reasonable in all the circumstances.

Statement of Principle 2 states that:

- 3.14. *"An approved person must act with due skill, care and diligence in carrying out his controlled function"*
- 3.15. APER 4.2 lists type of conduct which does not comply with Statement of Principle 2. In particular, APER 4.2.11 states that failing to provide adequate control over a client's assets is conduct which, in the opinion of the FSA, does not comply with Statement of Principle 2. Behaviour of this type includes failing to process a client's payments in a timely manner (APER 4.2.12).

Statement of Principle 5 states that:

- 3.16. *"An approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function is organised so that it can be controlled effectively."*
- 3.17. APER 4.5 lists types of conduct which does not comply with Statement of Principle 5. APER 4.5.3 states that failing to take reasonable steps to apportion responsibilities for all areas under the approved person's control is such conduct.
- 3.18. APER 4.5.6 provides that in the case of an approved person responsible for dealing with the apportionment of responsibilities under SYSC 2.1.1R, failing to take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among the firm's directors and senior managers is conduct which breaches Statement of Principle 5. APER 4.5.7 provides that this behaviour could include:
- "(1) *Failing to review regularly the significant responsibilities which the firm is required to apportion...;*
- (2) *Failing to act where that review shows that those significant responsibilities have not been clearly apportioned."*
- 3.19. APER 4.5.8 states that failure to take reasonable steps to ensure that suitable individuals are responsible for those aspects of the business under the control of the individual performing a significant influence function constitutes conduct breaching Statement of Principle 5. Behaviour of this type includes failing to review the competence, knowledge, skills and performance of staff to assess their suitability to fulfil their duties, despite evidence that their performance is unacceptable. (APER 4.5.9 (1)).

Statement of Principle 6 states that:

- 3.20. *"An approved person performing a significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function"*

- 3.21. A "*significant influence function*" is defined in the Glossary of the Handbook as meaning any of the controlled functions 1 to 20 listed in the table of controlled functions under Rule 10.4.5R of the Supervision Manual.
- 3.22. APER 4.6 lists types of conduct which does not comply with Statement of Principle 6. APER 4.6.3 provides that the failure of an individual performing a significant influence function to take reasonable steps to adequately inform himself about the affairs of the business for which he is responsible constitutes a breach of Statement of Principle 6.
- 3.23. APER 4.6.6 provides that failure to take reasonable steps to maintain an appropriate level of understanding about an issue or part of the business that he has delegated to an individual constitutes a breach of Statement of Principle 6. Behaviour of this type includes disregarding an issue or part of the business once it has been delegated (APER 4.6.7(1)).
- 3.24. APER 4.6.8 provides that the failure to supervise and monitor adequately the individual to whom responsibility for dealing with an issue or authority for dealing with part of the business has been delegated constitutes a breach of Statement of Principle 6. Behaviour of this type includes failing to review the performance of an outside contractor in connection with the delegated issue of business.

Statement of Principle 7 states that:

"An approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system".

- 3.25. Conduct which, in the opinion of the FSA, does not comply with Statement of Principle 7 includes:
- (i) failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant requirements and standards of the regulatory system in respect of its regulated activities (APER 4.7.3);

- (ii) failing to take reasonable steps to monitor (either personally or through a compliance department or other departments) compliance with the relevant requirements and standards of the regulatory system in respect of its regulated activities (APER 4.7.4);
- (iii) failing to take reasonable steps adequately to inform himself about the reason why significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system in respect of regulated activities may have arisen (taking account of the systems and procedures in place) (APER 4.7.5); and
- (iv) failing to take reasonable steps to ensure that procedures and systems of control are reviewed and, if appropriate, improved, following the identification of significant breaches (whether suspected or actual) of the relevant requirements and standards of the regulatory system relating to its regulated activities (APER 4.7.7)

Integrated Prudential Sourcebook ("PRU")

- 3.26. **PRU 9.2.10R** provides that a *firm* must take out professional indemnity insurance that is at least equal to the requirements of PRU 9.2.10R, which sets out the minimum limits of indemnity required.

Client assets manual ("CASS")

- 3.27. **CASS 5.3.2R** permits a firm which has adequate resources, systems and controls, to hold money in a statutory client money trust.
- 3.28. **CASS 5.5R** sets out the rules and guidance applicable to the segregation and the operation of client money accounts and provides that unless otherwise permitted, client money is kept separate from the firm's own money (CASS 5.5.2G).
- 3.29. **CASS Rule 5.5.3R** requires a firm to hold client money separate from the firm's money and CASS Rule 5.5.5(1) requires that a firm must segregate client money by paying it as soon as practicable into a client bank account. Guidance on a firm's

obligations to periodically calculate and reconcile the money in its client bank account is given at CASS 5.5.62.

- 3.30. **CASS Rule 5.5.63(2)R** requires a firm to reconcile the balance on each client account within 10 days of calculating whether the client money resource is at least equal to the client money requirement.

4. FACTS AND MATTERS

Background

- 4.1. You have been a Director and shareholder of ICM since it commenced trading in the year 2000. ICM is a small firm that carries out credit and employment references on potential tenants on behalf of landlords and letting agencies. As part of this service, ICM also offer insurance on buildings and contents, as well as policies that protect landlords against non-payment of rent and the cost of evicting tenants.
- 4.2. The FSA became responsible for the regulation of general insurance firms on 14 January 2005 on which date ICM became a FSA authorised firm with permission to hold and control client money and to conduct the following insurance mediation activities:
- (1) Arranging deals in investments and
 - (2) Agreeing to carry on a regulated activity.
- 4.3. ICM was permitted to hold and control client money but only in respect of non-investment insurance contracts and operated a statutory client trust account ("the Client Account").
- 4.4. You are the person responsible for insurance mediation at ICM and are approved to perform the following significant influence controlled functions:
- CF1 (Director);
 - CF2 (Non Executive Director); and
 - CF8 (Apportionment and Oversight)

- 4.5. On 30 June 2006, ICM's Part IV permission was voluntarily varied to remove all regulated activities and requirements were imposed in relation to the use of the Client Account and ICM's assets.

Chronology of events

- 4.6. In March 2005, ICM decided to offer monthly insurance policies to their customers. To assist in this it started using an online administration system that was provided by an insurance intermediary ("Firm A"). The system was to provide administrative support by organising the amount premiums due, client lists and providing bordereaux of the insurance customers.
- 4.7. Shortly after ICM began using the administration system to submit policies, Firm A informed ICM that it could no longer accept monthly premiums, only annual payments. Instead Firm A recommended that all monthly payments be forwarded through an insurance premium financing company ("Firm B") to the overall underwriter of the policies. ICM continued to forward annual premiums to Firm A.
- 4.8. Six weeks after ICM began using the administrative system, it broke down and all future documentation was submitted to Firm A manually. ICM continued to make payments based on manual submissions both to Firm A and Firm B until October 2005. In October 2005 ICM stopped receiving invoices for payment for policies. Despite several reminders, no invoices were received by ICM until early 2006.
- 4.9. As a result of the failure to pass premiums on to the insurers, a dispute arose between ICM and both Firm A and Firm B as to the outstanding amounts owed by ICM to both parties. As part of this dispute both Firm A and Firm B threatened the relationship with ICM and the underwriter which would result in the cancellation of all the policies, or leave all the policies with no underwriting in place. The potential ramifications of this action would leave approximately 300 clients at risk of not having insurance cover.
- 4.10. Documentation provided to the FSA by Firm A stated that ICM owed it approximately £35,000 in unpaid premiums, and a further amount of £15,000 was owed to Firm B (these amounts are disputed by ICM). However the ICM Client Account at May 2006 reflected a balance of only £3642.52, which meant that ICM

was unable to immediately satisfy the premiums owing to the intermediaries. (ICM has now established a repayment plan to Firm A and B for the outstanding premiums, safeguarding the clients from risk of losing underwriting cover).

- 4.11. At a supervisory visit to ICM on 12 June 2006, ICM could not adequately explain the status of its Client Account or whether or not it had a risk transfer agreement in place.
- 4.12. The FSA appointed investigators on 14 July 2006. An investigation commenced into the matters referred to above given concerns that ICM may have accepted insurance premiums from clients but failed either to pass these sums over to the relevant intermediaries or underwriters or to arrange the associated insurance policies and as such, may have breached the FSA's Rules concerning the requirements relating to holding client money and client assets and the FSA's Principles for Business.

FSA Investigation

- 4.13. The FSA investigation has established that:
 - (1) in interview you admitted ICM had no Professional Indemnity Insurance ("PII") in place and that you had failed to obtain it since at least June 2005
 - (2) in interview you admitted that the Client Account had not been used in accordance with the FSA's rules for statutory trust accounts;
 - (3) in interview you admitted that as a director of ICM you did not exercise all due skill, care and attention to ensure that the correct monies for customers had been passed on, as appropriate, to the relevant intermediary or insurance premium financing company (Firm A or Firm B);
 - (4) in interview you admitted that you failed to ensure that there were appropriate systems and controls in place to ensure that customers were placed on risk with the relevant underwriter;

Factors taken into account

- 4.14. In taking this action, the FSA has also considered the following:
 - (1) You have stated that you do not intend to remain in the insurance industry.

- (2) You have agreed to this Prohibition Order by consent.
- (3) As a result of a repayment plan between ICM and the intermediaries, the clients are no longer at risk.
- (4) You have been fully cooperative and open with the FSA and have admitted to the failings referred to in this notice.

5. RELEVANT GUIDANCE ON SANCTION

5.1. Paragraphs 3.18 and 3.22 above explains FSA's policy in relation to Prohibition Orders as set out in Chapter 8 of the Enforcement Manual. In exercising its power to prohibit an individual from performing functions in relation to a regulated activity carried on by an authorised person in relation to a regulated activity, the FSA must have regard to guidance published on the fitness and propriety of individuals and the Statements of Principles. The FSA considers that the conduct described above at 4.13 above was in breach of the following Statements of Principles:

- (1) Principle 2: *"An approved person must act with due skill, care and diligence in carrying out his controlled function"*

5.2. You have admitted that as the holder of the CF 8 (Apportionment & Oversight) function you were in the office only once a week and that you did not properly oversee the day to day conduct of business at the Firm.

5.3. You have also admitted to operating the Client Account in a manner that contravened the regulatory rules. You have failed to implement systems that would enable clients' payments to be processed in a timely manner and therefore failed to provide adequate control over your clients' assets.

5.4. By virtue of the matters outlined above, the FSA considers that you have demonstrated a lack of skill, care and diligence in carrying out your controlled function.

- (2) Principle 5:

"An approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function is organised so that it can be controlled effectively."

5.5. Mr Batchelor has admitted that he lacked experience and expertise in the insurance industry and that his skills were primarily in marketing.

5.6. By apportioning areas of responsibility to Mr Batchelor, you failed to review the competence, knowledge, skills of a key member of the business to assess his suitability to fulfil his duties and therefore failed to take reasonable steps to ensure that suitable individuals are responsible for aspects of the business.

(3) Principle 6:

"An approved person performing a significant influence function must exercise due skill care and diligence in managing the business of the firm for which he is responsible in his controlled function"

5.7. You have admitted that you were not aware of how the business was being conducted, in particular as to the state of the accounts of the business. This demonstrates that as holder of a significant influence function you failed to take reasonable steps to adequately inform yourself about the affairs of the business for which you are responsible.

5.8. By your own admission you failed to monitor the client money reconciliations carried out by a contractor hired by ICM. This shows you failed to maintain an appropriate level of understanding about the task of client money reconciliations that you have delegated to an individual by disregarding the task once it was delegated.

5.9. You admitted not being aware of whether client money reconciliations had taken place and not having seen evidence of them. This demonstrates your failure to supervise and monitor adequately the contractor to whom responsibility for dealing with the reconciliations had been delegated.

- 5.10. By virtue of the circumstances outlined above the FSA considers you, the holder of a significant influence function have failed to exercise due skill, care and diligence in managing the business of the firm.

(4) Principle 7:

An approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system".

- 5.11. By failing to ensure that, following the malfunction of the administration system to process payments of insurance premiums to third parties, correct monies were submitted to underwriters and funding intermediaries, you have failed to oversee the establishment and maintenance of appropriate systems and controls and failed to remedy the malfunction of the systems which resulted in the potential for clients to be left without cover.
- 5.12. Your admission that the Client Account was operated in contravention of the regulatory rules demonstrates that you failed to take steps to monitor compliance with the relevant requirements and standards of the regulatory system.
- 5.13. By virtue of the circumstances outlined above the FSA considers you, the holder of a significant influence function, have failed to take steps to ensure the business complies with the relevant requirements and standards of the regulatory system.

6. CONDUCT FOLLOWING THE CONTRAVENTION

- 6.1. When approached by the FSA, you admitted the misuse of the Client Account and failure to obtain PII cover. You also made frank admissions in relation to the other aspects of your misconduct as set out in this Final Notice. You agreed to voluntarily vary ICM's Part IV permission and you agreed to a Prohibition Order by consent at the earliest possible opportunity.

7. CONCLUSION

- 7.1. In light of the facts and matters described above, the FSA considers that you failed to demonstrate competence and capability required of an Approved Person and failed to satisfy the FSA's fit and proper criteria. You have also failed to demonstrate readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and ethical standards.
- 7.2. Having regard to its regulatory objectives including the need to maintain confidence in the financial system, and the severity of risks posed to consumers, the FSA considers it necessary to impose a Prohibition Order prohibiting you from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm.

8. DECISION MAKER

- 8.1. The decision which gave rise to the obligation to give this Final Notice was made by Margaret Cole, Director, Enforcement Division and Stephen Bland, Director of Small Firms, as Settlement Decision Makers on behalf of the FSA.

9. IMPORTANT

- 9.1. This Final Notice is given to you in accordance with section 390 of the Act.

Publicity

- 9.2. Section 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.
- 9.3. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA Contacts

- 9.4. For more information concerning this matter generally, you should contact Felicity Rowan (direct line 020 7066 1424 fax: 020 7066 1425) or Nadia Krusche (direct line: 020 7066 0562 fax: 020 7066 0563) at the FSA.

Jonathan Phelan

Head of Department - Retail 3

Enforcement Division