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## **FINAL NOTICE**

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To: ICM Group Limited  
Of: 11 Black Lion Street  
Brighton  
BN1 1ND

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 cancel the permission granted to ICM Group Limited to carry on regulated activities:**

### **1. THE ACTION**

- 1.1. The FSA gave ICM Group Limited ("ICM") a Decision Notice on 2 November 2006 which notified ICM that pursuant to section 45 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to cancel the permission granted to ICM pursuant to Part IV of the Act ("ICM's Part IV permission").
- 1.2. ICM confirmed in an agreement dated 11 October 2006 that it 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 ICM the facts and matters relied on, the FSA has decided to cancel ICM's Part IV permission.

### **2. REASONS FOR THE ACTION**

- 2.1. The FSA has concluded, on the basis of the facts and matters described below that ICM is not fit and proper to be authorised due to its failure to comply with Principle 3 (Management and Control), Principle 4 (Financial Prudence), Principle 6 (Customers' interests) and Principle 10 (Clients' assets) of the FSA's Principles for Businesses in that you have failed to demonstrate you were able and would ever be able and organised to conduct your affairs responsibly and effectively to comply with the FSA's requirements under the regulatory system.
- 2.2. In failing to meet the above requirement ICM has not satisfied the Threshold Conditions as set out in Schedule 6 to the Act ("the threshold conditions") in that, in the opinion of the FSA, ICM is not a fit and proper person:
- (1) By virtue of its failure to have Professional Indemnity Insurance ("PII") since at least June 2005, ICM has inadequate resources in breach of Threshold Condition 4 (Adequate resources); and
  - (2) ICM has failed to ensure that its business is conducted soundly and prudently and in compliance with proper standards in breach of Threshold Condition 5 (Suitability).
- 2.3. The FSA has concluded that since at least October 2005, ICM has:
- (1) accepted client premiums but failed to pass them over to the relevant insurers and intermediaries or to arrange the associated insurance policies, leaving clients potentially uninsured;
  - (2) used client premiums to run ICM's business.
- 2.4. These failings are viewed by the FSA as particularly serious given the following factors:
- (1) ICM failed to inform the FSA about ICM's lack of PII cover when it knew, or ought to have known, that it did not have adequate resources to meet the threshold conditions;

- (2) ICM failed to arrange insurance policies and to pass over premiums to the insurers and intermediaries which potentially left around 300 customers without insurance;
- (3) Premiums owed by ICM to insurers are approximately £50,000;
- (4) The Client Account at May 2006 reflected a balance of only £3642.52, resulting in a significant account deficit;
- (5) ICM admitted that client money had been used by ICM in contravention of the FSA's rules.

### **3. RELEVANT STATUTORY PROVISIONS AND REGULATORY RULES**

- 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. Section 41 of the Act and Schedule 6, paragraph 5, to the Act set out the threshold conditions that authorised persons are required to satisfy. The relevant threshold conditions are Threshold Condition 4 (Adequate resources) and Threshold Condition 5 (Suitability).
- 3.3. The FSA is authorised pursuant to section 45 of the Act to cancel an authorised person's Part IV permission where it appears to the FSA that such a person is failing to satisfy the threshold conditions.
- 3.4. Section 138 of the Act provides that the FSA may make such rules applying to authorised persons as appear to it to be necessary or expedient for the purpose of protecting the interests of consumers.
- 3.5. Under the FSA's rule-making powers, the FSA has published the Principles for Businesses ("the Principles") which apply either in whole or in part to all authorised persons. The relevant Principles are as follows:
  - (1) Principle 3 – Management and Control

*a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.*

(2) Principle 4 – Financial Prudence

*a firm must maintain adequate financial resources.*

(3) Principle 6 – Customers' interests

*a firm must pay due regard to the interests of its customers and treat them fairly.*

(4) Principle 10 – Client's assets

*a firm must arrange adequate protection for clients' assets when it is responsible for them.*

### **Integrated Prudential Sourcebook ("PRU")**

3.6. **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")**

3.7. **CASS 5.3.2R** permits a firm which has adequate resources, systems and controls, to hold money in a statutory client money trust.

3.8. **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).

3.9. **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.

- 3.10. **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. 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, it also offers 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. ICM was authorised by the FSA on 14 January 2005 with permission to hold and control client money and to conduct the following insurance mediation activities:
- (1) Arranging deals in investments (insurance mediation) and
  - (2) Agreeing to carry on a regulated activity
- 4.3. Mr Ian Paul Ruff ("Mr Ruff") is the person responsible for insurance mediation at ICM and he is approved to perform the following significant influence controlled functions:
- CF1 (Director);
  - CF2 (Non Executive Director) and
  - CF8 (Apportionment and Oversight)
- 4.4. Mr Jon Uglow Batchelor ("Mr Batchelor") is the marketing director at ICM and he is approved to perform the following significant influence controlled functions:
- CF1 (Director) and
  - CF2 (Non Executive Director)
- 4.5. Mr Ruff and Mr Batchelor are the only directors at ICM and were responsible for running the business.

- 4.6. 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").
- 4.7. 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**

- 4.8. 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.
- 4.9. Shortly after ICM began using the administration system to submit policies, the insurance Firm A informed ICM that it could no longer accept monthly premiums, only annual payments. As an alternative, 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.
- 4.10. Six weeks after ICM began using the administration system, the system 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.
- 4.11. 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 cancellation of all the policies, or leaving 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.

- 4.12. 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).
- 4.13. At a supervisory visit to ICM on 12 June 2006, ICM could not adequately explain the status of their Client Account or whether or not it had a risk transfer agreement in place.
- 4.14. The FSA commenced an investigation 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 Principles.

### **FSA Investigation**

- 4.15. The FSA investigation has established that:
  - (1) ICM had no PII cover in place;
  - (2) the Client Account had not been used in accordance with the FSA's rules for statutory trust accounts;
  - (3) ICM was technically insolvent to the sum of approximately £250,000;
  - (4) the directors of ICM have not exercised all due skill, care and attention to ensure that the correct monies for customers had been passed on, as appropriate, to the relevant intermediary (Firm A or Firm B); and

- (5) the directors had not ensured that there were appropriate systems and controls in place to ensure that customers were placed on risk with the relevant underwriter.

4.16. The following admissions were made at a compelled interview on 25 July 2006:

- (1) Mr Ruff admitted that ICM had failed to have PII cover for over a year;
- (2) Mr Ruff admitted that ICM had treated the Client Account as an office account and that he knew this contravened FSA rules;
- (3) when asked specifically about the mixing of client money, Mr Ruff stated that he was aware of what was happening and confirmed that this was in breach of FSA rules;
- (4) Mr Ruff stated that there was/is no risk transfer agreement in place between ICM and the Brokers;
- (5) Mr Ruff acknowledged that he was responsible for the running of the business of ICM; and
- (6) Mr Ruff also stated that he would no longer continue in the insurance business.

#### **Factors taken into account**

In taking this action, the FSA has also considered the following:

- (7) ICM voluntarily agreed to a variation of permission of its Part IV permission on 30 June 2006 which removed all regulated activities from its permission and imposed various requirements
- (8) Mr Ruff has stated that he does not intend to remain in the insurance industry
- (9) Mr Ruff and Mr Batchelor have both agreed to Prohibition Orders by consent.
- (10) As a result of a repayment plan between ICM and the intermediaries, the clients are no longer at risk.



- (11) ICM has been fully cooperative with the FSA and has admitted to the failings referred to in this notice.

## **5. RELEVANT GUIDANCE ON SANCTION**

- 5.1. In deciding to exercise its power to cancel ICM's Part IV permission, the FSA must have regard to guidance published in the Enforcement section of the FSA Handbook ("ENF"). The relevant considerations in relation to the action specified above are set out below.

### **ENF 5.5 – The FSA's policy on exercising its power to cancel a Part IV permission**

- 5.2. ENF 5.5.2, ENF 3.3.2 provide examples of the circumstances in which the FSA will consider cancelling a Part IV permission, including where it appears to the FSA that the authorised person is failing, or is likely to fail, to satisfy the threshold conditions in relation to one or more, or all, of the regulated activities for which the authorised person has Part IV permission.

### **Guidance concerning the relevant Threshold Conditions**

#### **Threshold Condition 4: Adequate resources**

- 5.3. The FSA must have regard to the guidance set out in the threshold conditions section of the FSA's Handbook ("COND").
- 5.4. COND 2.4.1(1) states that the resources of the person concerned must, in the opinion of the FSA, be adequate in relation to the regulated activities that he seeks to carry on, or carries on.
- 5.5. COND 2.4.1 (2) permits the FSA, when forming its opinion as to whether the resources of an authorised person are adequate in relation to the regulated activities that he carries on, to have regard to the provision he makes in respect of the liabilities (including contingent and future liabilities).

### ***Facts and Matters***

- 5.6. At a supervision visit on 12 June 2006, ICM confirmed that it had been technically insolvent since 2003 to the sum of approximately £250,000. This was further confirmed by ICM's accountants on 19 June 2006.
- 5.7. ICM has stated that it has not obtained PII cover since the last renewal became due in June 2005 and provided no valid explanation for this failure. This meant that ICM did not have regard to the provision it made in respect of the liabilities (including contingent and future liabilities) and in the event of a claim being made by a customer, given the lack of resources at ICM it could have resulted in the claim not being met. Therefore, the FSA has concluded that ICM has inadequate resources and does not meet Threshold Condition 4.

### **Threshold Condition 5: Suitability**

- 5.8. COND 2.5.1 reproduces the relevant statutory provision that the person concerned must satisfy the FSA that it is a fit and proper person having regard to all the circumstances, including, among other things, the need to ensure that its affairs are conducted soundly and prudently.
- 5.9. COND 2.5.4(2) requires the FSA, when forming its opinion as to whether an authorised person is conducting its affairs soundly and prudently, to have regard to relevant matters including whether it:
- (a) conducts its business with integrity and in compliance with proper standards;
  - (b) has competent and prudent management; and
  - (c) can demonstrate that it conducts its affairs with the exercise of due skill, care and diligence.
- 5.10. In making its assessment COND 2.5.4(4) states that the FSA will consider the circumstances of each firm on a case by case basis.

COND 2.5.6, in giving guidance on the interpretation of whether a firm will satisfy and continue to satisfy Threshold Condition 5 in respect of conducting its business

with integrity and in compliance with proper standards gives examples of relevant matters which include:

- (1) whether the firm has been open and co-operative in all its dealings with the FSA and is ready willing and organised to comply with the requirements under the regulatory system (COND 2.5.6(1));
- (2) whether the firm has contravened any provisions of the Act or the regulatory system (COND 2.5.6(4)); and
- (3) whether the firm has taken reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system applicable to it (COND 2.5.6(6)).

5.11. In considering whether ICM meets Threshold Condition 5 the FSA has had regard to the guidance published in the Principles section of the FSA Handbook (“PRIN”).

5.12. PRIN 1.1.2 provides that the Principles are a general statement of the fundamental obligations of firms under the regulatory system. They derive their authority from the FSA’s rule-making powers as set out in the Act and reflect the regulatory objectives.

5.13. PRIN 1.1.4 provides that, in substance, the Principles express the main dimensions of the “fit and proper” standard set for firms in Threshold Condition 5 (Suitability) although they do not derive their authority from that standard or exhaust its implications.

### ***Facts and Matters***

#### **Principle 3 (Management and Control)**

5.14. By virtue of Principle 3, ICM was required to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

5.15. ICM operated with serious systems and controls failings, in that it had no organisation or effective method in place to demonstrate proper records management and the

individuals controlling the business admitted not having the ability to run an FSA authorised firm and were having great difficulty in doing so.

- 5.16. Mr Ruff has admitted that he had insufficient experience to perform controlled functions and Mr Batchelor had no experience of the insurance industry and therefore ICM has failed to demonstrate that it has a competent and prudent management in place.
- 5.17. ICM employed a sub-contractor to reconcile the Client Account; however, his work was never reviewed. ICM did not have the systems and controls to review the reconciliations on a periodic basis as the rules require and this demonstrates that ICM had failed to organise its affairs in a manner so it is able to comply with the regulatory requirements.
- 5.18. Mr Ruff, the holder of the CF8 (Apportionment & Oversight) function was in the office once a week and Mr Batchelor admitted that he had no previous experience of the insurance industry. Mr Ruff admitted that he did not properly oversee the work of Mr Batchelor or the running of the business.
- 5.19. An authorised firm is expected to implement measures that adequately address risks posed by the business to protect its customers, for example, ensuring the Client Account is operated properly. Given the above and by not obtaining PII cover and with no risk transfer agreement in place, ICM have not organised its affairs responsibly and have failed to have adequate risk management systems in place.

#### Principle 4 (Financial Prudence)

- 5.20. By virtue of Principle 4, ICM was required to maintain adequate financial resources.
- 5.21. ICM are technically insolvent to the sum of £250,000 and their financial difficulties resulted in ICM being unable to secure a finance agreement to pay monthly premiums to insurance intermediaries.

#### Principle 6 (Customers' interests)

- 5.22. By virtue of Principle 6, ICM was required to pay due regard to the interest of its customers and treat them fairly. The protection of consumers is one of the four

regulatory objectives embodied in the Act. A breach of this Principle is seen as particularly serious.

- 5.23. When a customer purchases an insurance policy as cover for insurance risk, he expects to be covered for that risk and ICM's failure to pass on premiums could have resulted in the cancellation of a number of policies potentially leaving them without adequate cover. As a result of this failure, customers could have been paying premiums and potentially then have had to pay for an insurance risk if it had crystallised, so effectively paying for it twice, causing loss to the customer and to the reputation of the industry. In fact, more customers could have been affected had the FSA not become aware of the problems at ICM.
- 5.24. By failing either to pass on insurance premiums received from clients to the relevant insurer or to arrange the associated insurance policies, and therefore failing to ensure that approximately 300 customers had adequate insurance cover, not only have ICM failed to discharge their fiduciary duty to its clients, ICM could not be regarded as having acted in its clients interests or as having treated them fairly.

Principle 10 (Client's assets)

- 5.25. By virtue of Principle 10, ICM was required to arrange adequate protection for clients' assets when it is responsible for them. An essential part of that protection is the proper accounting and handling of client money. This includes taking care to ensure that clients' assets are applied only for the purpose for which they were intended.
- 5.26. By using client premiums to pay, among other things, ICM's day to day expenses such as payments for credit cards, ICM could not be regarded as using them for the purpose which they were intended. Mr Ruff also admitted that client money was mixed with other funds knowingly in breach of FSA rules.
- 5.27. Mr Ruff admitted that one of the expenses paid from the Client Account was repayments on a loan that Mr Ruff and Mr Batchelor had made to ICM. The funds in the Client Account were not being applied for the purpose for which they were intended. ICM had effectively been using money from the Client Account as ICM's

money to pay all ICM's expenses and were therefore failing to hold client money separate from ICM's money in breach of this rule.

- 5.28. The conduct outlined above could potentially have prevented ICM from fulfilling its liabilities on behalf of its customers. Additionally, ICM's conduct was wrong, unlawful, and in breach of the FSA's requirements relating to holding client assets and client money ("CASS").

**CASS 5.5.3 R** (requirement to hold client money separate from the firm's money)

- 5.29. ICM has admitted to "mixing" the client money with ICM's money and bank statements show that it transferred funds from the Client Account to other ICM accounts. This is compounded by Mr Ruff admitting that he was fully aware that the Client Account was maintained in such a way that FSA rules were being contravened.

**CASS Rule 5.5.63 (2) R** (requirement for a firm to reconcile the balance on each client account)

- 5.30. ICM has admitted to not being certain when reconciliations were being carried out on the Client Account and not reviewing the Client Account reconciliations carried out by a sub-contractor hired by ICM. This failure to monitor whether a reconciliation had been completed demonstrates that ICM were not fulfilling the requirement to reconcile the balance in line with the requirements of the CASS and therefore prevented, if necessary making good any shortfall in the Client Account.

## **Conclusion**

- 5.31. The facts and matters described above lead the FSA, having regard to its regulatory objectives, to the conclusion that ICM, in breaching the Principles as stated above, has demonstrated that it is not a fit and proper person because it has failed to conduct its business with integrity and in compliance with proper standards, and has failed to demonstrate that it would ever be able and organised to do so.
- 5.32. This failure is compounded by ICM's blatant disregard of the FSA's rules and Principles and is material in relation to the regulated activities for which ICM has permission and ICM therefore fails to satisfy Threshold Conditions 4 (Adequate

resources) and 5 (Suitability). Accordingly, the FSA must take steps to cancel ICM's Part IV permission.

## **6. DECISION MAKER**

- 6.1. 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.

## **7. IMPORTANT NOTICES**

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

### **Publicity**

- 7.2. Sections 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.
- 7.3. The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

### **FSA Contacts**

- 7.4. 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**

