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**FINAL NOTICE**

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To: **Towergate Underwriting Group Limited**

Firm Reference Number: 313250

Address: Towergate Underwriting Group Limited  
Towergate House  
Eclipse Park  
Sittingbourne Road  
Maidstone  
Kent  
ME14 3EN

Date 13 July 2016

**1. ACTION**

- 1.1. For the reasons given in this notice, the Authority has decided to impose on Towergate Underwriting Group Limited ("TUGL") a financial penalty of £2,632,000 in relation to conduct during the period 29 June 2005 to 31 December 2013 (the "Relevant Period").
- 1.2. TUGL agreed to settle at an early stage of the Authority's investigation. TUGL therefore qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £3,760,000 on TUGL.

**2. SUMMARY OF REASONS**

- 2.1. TUGL is an insurance intermediary and during its normal business operations holds both client and insurer money. TUGL accumulated a shortfall of £12.6

million in its client and insurer money accounts, which due to significant systems and control weaknesses went undetected for several years.

- 2.2. The Authority has decided to take action for breaches of Principles 3 (Management and Control) and 10 (Clients' Assets) as well as rules contained in the Client Assets Sourcebook ("CASS Rules") during the Relevant Period.
- 2.3. Specifically, TUGL failed during the Relevant Period to comply with requirements to:
  - a) take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems in relation to the management of its client and insurer money accounts; and
  - b) arrange adequate protection for clients' assets when it was responsible for them.
- 2.4. In addition, TUGL breached the CASS Rules, specifically CASS 5.5.3R, 5.5.63(1)R, 5.5.63(4)R, 5.5.76R and 5.5.84R, which required TUGL to:
  - a) ensure that client money was properly segregated from its own money;
  - b) carry out accurate client money calculations and reconciliations;
  - c) immediately correct any client money shortfall upon becoming aware that a shortfall might exist;
  - d) immediately notify the Authority of its failure to perform required client money calculations;
  - e) have adequate processes in place to identify interest accruing on its client money accounts in error and to then remove that interest to TUGL's office account; and
  - f) ensure that it accurately maintained its records to ensure correspondence to the actual client money held in its bank accounts.
- 2.5. Although TUGL breached the CASS Rules as described, there was no actual loss of client or insurer money and TUGL rectified the shortfall once it had been identified in the course of 2013. Nonetheless these failings placed insurer money at risk of loss and may have led to complications and delays in distribution of insurer money had TUGL become insolvent during the Relevant Period.
- 2.6. The principal objective of the CASS Rules is to ensure that client money is

adequately protected in the event of a firm's failure. To achieve this, firms are required to ensure that their arrangements for client money comply with the CASS Rules. A fundamental requirement of the CASS Rules is that firms must keep client money separate from firm money in segregated client money accounts. This ensures that client money is ring-fenced, in the event of the insolvency of the firm.

- 2.7. TUGL did not detect that it was in breach of the Authority's rules for over eight years. During this period, the Authority repeatedly stressed in its publications, including Final Notices, the importance of protecting client assets and complying with the CASS Rules.
- 2.8. As a consequence, the Authority has concluded that TUGL failed to arrange its affairs responsibly and effectively with adequate risk management systems and failed to arrange adequate protection for client and insurer money for which it was responsible.
- 2.9. The Authority considers TUGL's failings to be serious for the following reasons:
  - a) several failings were found in TUGL's client and insurer money processes, indicating that TUGL's client and insurer money arrangements were inadequate;
  - b) the breaches of the CASS Rules took place over a period of eight years;
  - c) the failings took place during a period of significant expansion of TUGL's business; and
  - d) these failings placed insurer money at risk of loss and may have led to complications and delays in distribution of insurer money had TUGL become insolvent.
- 2.10. The Authority recognises that TUGL has co-operated during the course of the investigation, has effected material changes to its systems and controls and has restructured its operating model.
- 2.11. The Authority has further taken into account that:
  - a) after identifying client and insurer money deficits following a review of its client and insurer money processes, TUGL subsequently self-reported the breaches and failings to the Authority and remedied the situation by rectifying the deficits in the client and insurer money accounts;

- b) TUGL has co-operated and worked constructively with the Authority during its investigation and accepted the failings set out in this Final Notice;
- c) TUGL has devoted significant resources to investigating the extent of the failings and to identifying and remediating the control weaknesses which led to them; and
- d) although insurer money was at risk for an extended period, there were no actual losses of any insurer money.

2.12. The Authority therefore has decided to impose a financial penalty on TUGL in the amount of £2,632,000 pursuant to section 206 of the Financial Services and Markets Act 2000 (the "Act").

2.13. The action supports the Authority's operational objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

### **3. DEFINITIONS**

3.1. The definitions below are used in this Final Notice.

"Business Units" means insurance intermediary firms acquired by TUGL;

"the Act" means the Financial Services and Markets Act 2000 (as amended);

"the Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;

"CASS" means the Client Assets Sourcebook contained in the Authority's Handbook;

"CASS Rules" means the rules contained in CASS;

"Central Finance Department" means TUGL's central finance function consisting of sub teams including the treasury team and finance team;

"Central Sweep Accounts" means the five central client and insurer money sweep accounts operated by TUGL and referred to in paragraph 5.2 below;

"Central Transfers" means eight transfers from Central Sweep Accounts made between August 2010 and January 2011;

“Client Money Manual” means the Group Finance and Operations Policy and its Client Money Procedures Manual, which together detailed the client money policies and procedures applicable to TUGL during the Relevant Period;

“DEPP” means the Authority’s Decision Procedure & Penalties Manual;

“ENF” means the Authority’s Enforcement Manual;

“Handbook” means the Authority’s Handbook of Rules and Guidance;

“Principles” means the Authority’s Principles for Businesses;

“Relevant Period” means the period between 29 June 2005 and 31 December 2013;

“TOBA” means TUGL’s Terms of Business Agreements with insurers;

“Towergate Group” means the Towergate group of companies;

“the Tribunal” means the Upper Tribunal (Tax and Chancery Chamber); and

“TUGL” means Towergate Underwriting Group Limited.

#### **4. FACTS AND MATTERS**

##### **Background**

- 4.1. TUGL is an insurance intermediary and was incorporated on 31 July 2000. It has been authorised and regulated by the Authority since 14 January 2005 and is permitted to hold and control client money.
- 4.2. TUGL is part of the Towergate group of companies (the “Towergate Group”), which is one of the largest general insurance networks in the UK and managed gross written premiums of £3.07 billion in 2013. The Towergate Group includes a large number of regulated and unregulated entities in a relatively complex legal structure. Its growth to the current position in the market has predominantly come through the acquisition of other insurance intermediary firms with over 200 acquisitions since incorporation.
- 4.3. TUGL itself has experienced a period of rapid growth since 2007. For example, in 2007 it acquired 13 insurance intermediary firms whose businesses were merged into TUGL (“Business Units”). The following year, in 2008, TUGL acquired 16 more Business Units. In total between January 2007 and December 2013 TUGL acquired 70 Business Units.

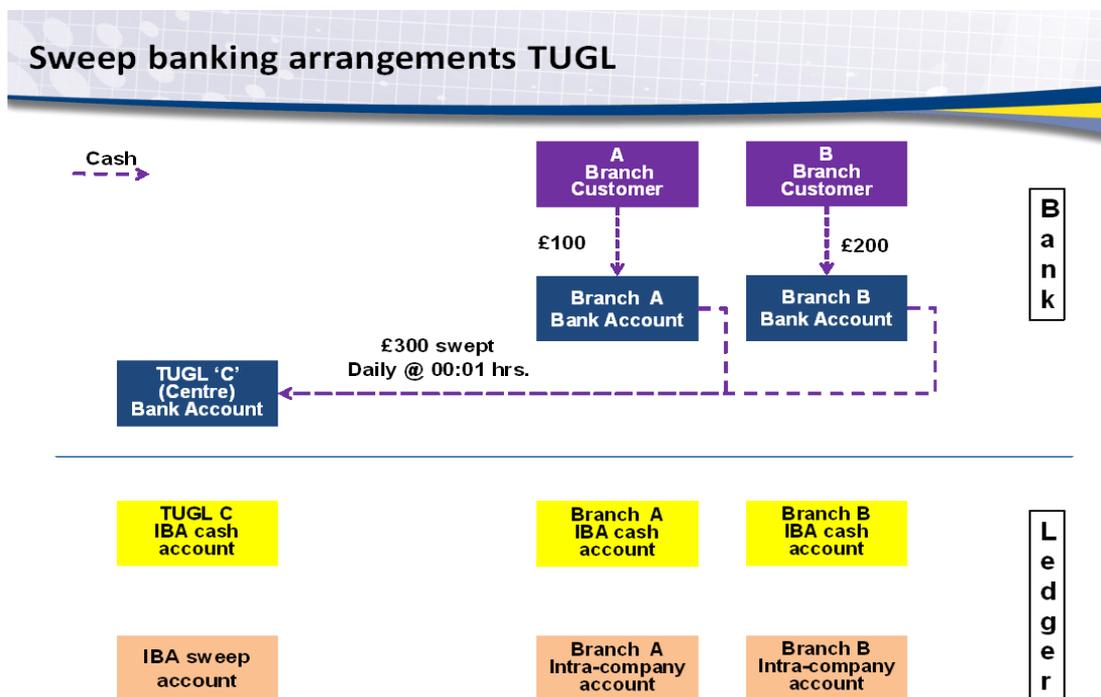
- 4.4. The principal activities of TUGL in the Relevant Period were the provision of insurance intermediary services. In the course of its business, TUGL arranged insurance cover for clients and received a payment in respect of each policy. A portion of the payment received was retained by TUGL as commission for its role in the transaction whilst the remaining portion was payable to the insurer underwriting the relevant policy, as a premium. TUGL held payments received from clients either as client or insurer money, depending on the underlying contract in place with the insurer underwriting the policy.
- 4.5. Where TUGL held money as agent of an insurer, the monies could be held as insurer money in a separate account or held with client money provided that the insurer agreed their funds be co-mingled with those of clients and that any claim on that money would be subordinated to claims by a client. This meant that in the event of the insolvency of the firm any claims by clients for the funds held in the client non-statutory trust accounts would be dealt with ahead of claims from insurers in respect of those same accounts. In the Relevant Period, TUGL held a substantial majority of payments received from clients as agent of an insurer, a proportion of which was held in insurer trust accounts and the remaining proportion held with client money in client non-statutory trust accounts. Insurer money that was held with client money was subject to the same rules as for client money.
- 4.6. As TUGL acquired new Business Units, it permitted them to remain as separate Business Units, all forming part of the same legal entity but each operating their own client money bank account and/or insurer bank account and office bank account and each conducting their individual client and/or insurer money monthly calculations.

#### **TUGL's client and insurer money systems and processes**

- 4.7. Following the classification of insurance mediation as a regulated activity from 14 January 2005, TUGL was required to comply with the CASS Rules, and specifically those contained in Chapter 5 of the CASS Rules which apply to firms that receive or hold client money in the course of, or in connection with, insurance mediation activity. TUGL was also required to comply with Principle 10 of the Authority's Principles for Businesses which require firms to arrange adequate protection for clients' assets for which they are responsible and with Principle 3 which requires firms to take reasonable care to organise and control their affairs responsibly and effectively and with adequate risk management systems.

Banking (sweep) arrangements

- 4.8. TUGL’s client money processes and procedures had been designed around its business model. To facilitate cash management, TUGL had in place an automated daily process, performed by the bank, whereby cleared funds in the client and insurer money bank accounts of the Business Units were transferred, or “swept”, into central client and insurer money bank accounts (“Central Sweep Accounts”). At the relevant time, TUGL operated five Central Sweep Accounts.
- 4.9. The sweep arrangement meant that although client and insurer money calculations were performed by the individual Business Units, in accordance with the processes and procedures set out in the Client Money Manual, the majority of client, insurer and office money was in fact held centrally in separate client, insurer and office accounts following the daily sweep process.
- 4.10. Below is an illustration of how TUGL’s sweep process operated. In this illustration there are two example Business Units, Branch A and Branch B. The central sweep account is referred to as the TUGL ‘C’ Bank Account. The bank account for each Business Unit is referred to as the Individual Brokerage Account (“IBA”) cash account.



Client money calculations

- 4.11. The CASS Rules require an insurance intermediary firm to perform client money calculations at least every 25 business days by checking whether its client

money resource (the amount of client money segregated in appropriate accounts) was at least equal to the client money requirement (the amount of money the Business Unit had to segregate to meet its obligations to clients). Any shortfall identified from the client money calculation is required to be paid into a client bank account by the close of business on the day the client money calculation is performed. Likewise, any excess identified is required to be withdrawn within the same time period (subject to certain exceptions).

- 4.12. In practice, TUGL Business Units performed client money calculations on the first working day of each month using a prescribed template. The client money calculation worked out the Business Unit's client money resource and the client money requirement and then compared the two amounts. When calculating its client money resource, a Business Unit principally relied on the nominal sweep account balance shown in its ledger. The Business Unit did not rely on the actual cash balance as this amount was held centrally by TUGL, having been swept into the Central Sweep Accounts.
- 4.13. On a monthly basis, Business Units sent their client money calculations to TUGL's Central Finance Department which then reviewed Business Units' compliance with prescribed processes, including checking that reconciliations were performed as required and identify potential issues when they arose. The Central Finance Department collated all the client money calculations received from the Business Units on a central spreadsheet.

#### Reconciliation

- 4.14. As required by the CASS Rules, an insurance intermediary firm must, within 10 days of performing the client money calculation, reconcile the balance on each client bank account as recorded by the firm with the balance on that account as set out in the statement or other form of confirmation used by the bank with which that money is held. During the Relevant Period this reconciliation was performed at Business Unit level. It compared the relevant Business Unit's ledger balance against the balance in the Business Unit's client money account as shown on the bank statement for that account. Because of the sweep arrangement, both would typically show nil when the reconciliation was performed.
- 4.15. TUGL's client money process did not include an effective reconciliation which was necessary to ensure overall compliance with the CASS Rules. In this regard, one significant system weakness was that TUGL did not perform an effective

reconciliation between the aggregated Business Unit ledger balances, in which the Business Units recorded their entitlement to the funds held in the Central Sweep Accounts, and the cash actually held in those Central Sweep Accounts.

#### Insurer money

- 4.16. Whilst insurer money held in an insurer trust account is not subject to the provisions of the CASS Rules, Principle 3 of the Principles for Businesses requires firms to take reasonable care to organise and control their affairs responsibly and effectively, with adequate risk management systems. The systems and controls established by TUGL required Business Units handling insurer money to follow processes, which effectively mirrored the client money processes described above.

#### Mid-month calculations

- 4.17. On occasion, in addition to the calculations carried out on the first working day of the month, TUGL would carry out mid-month client and insurer money calculations in order to meet business expenses. This was done to identify whether it was possible to withdraw commission due to TUGL mid-month rather than on the first working day of the month. During the Relevant Period the process in place for mid-month calculations was in essence the same as the process carried out on the first working day of the month: the Central Finance Department would request individual Business Units within TUGL to prepare a client or insurer money calculation and transfer any surplus identified to its own local office account, which, where attached to a sweep account, would then be swept to the Central Sweep Accounts overnight.

#### **TUGL's knowledge of the Authority's concerns over client money protection at TUGL**

- 4.18. On 19 January 2010, the Authority sent letters to the Chief Executive Officers of all firms with permission to hold client money, including TUGL. This letter emphasised that the Authority was giving a higher priority to achieving compliance with client asset requirements because it was concerned that firms were not always achieving an adequate level of protection. The letter enclosed a report, which noted that the Authority considered compliance with the CASS Rules to be poor across the financial services industry. It also required confirmation that the contents of the letter and report had been properly considered and that TUGL was in compliance with its obligations regarding the protection of client money and assets. TUGL responded to the Authority on 25

January 2010 confirming that the contents of the letter had been noted and that TUGL was "*in compliance with its obligations ... for protecting client money*".

- 4.19. TUGL was also the subject of heightened scrutiny from the Authority's Supervision Division between January 2010 and December 2013 in relation to various issues including the protection of client money. Consequently, from at least January 2010 onwards, TUGL should have had a heightened awareness of the importance of affording adequate protection to client money and the concerns of the Authority in this respect.

#### **Reconciliation differences**

- 4.20. In May 2013, TUGL undertook an internal review of its control environment with a view to enhancing its client and insurer money controls. As a result TUGL identified a shortfall of approximately £9.04 million in its Central Sweep Accounts.
- 4.21. In September 2013, TUGL carried out an internal investigation to determine how the shortfall had arisen. The investigation concluded that the shortfall consisted of a number of transactions which included, amongst other things, the transfer out of the Central Sweep Accounts of a total of £10.5 million incorrectly identified as commission due to TUGL and £1.45 million of interest incorrectly received in client money accounts and not removed.
- 4.22. After work to verify the findings of its internal investigation in September 2013, on 18 October 2013, TUGL instructed external consultants to undertake an independent forensic investigation to determine whether there had been a breach of the CASS Rules. On 28 October 2013, the external consultants produced a report of their preliminary findings, which confirmed TUGL's findings. On the same day TUGL self-reported the issue to the Authority and on 31 October 2013 transferred approximately £9.04 million into its client and insurer money accounts to correct the shortfall.
- 4.23. There was a delay of approximately four months between the identification of the shortfall by TUGL and the time it made good the shortfall. TUGL therefore failed to make good the shortfall as soon as it became aware that it might exist in May 2013 following its internal review. It also failed to immediately notify the Authority that it was unable to perform the client money calculations required by the CASS Rules in order to ensure the accuracy of its client money records.

- 4.24. Subsequent investigations identified an additional shortfall of approximately £3.6 million in TUGL's insurer money account which was corrected by 8 November 2013.
- 4.25. The reconciliation differences that produced the client and insurer money shortfall of approximately £12.6 million consisted of the following elements:
- a) accrued interest of £1.45 million which TUGL had failed to hold separate from client money;
  - b) eight transfers from the Central Sweep Accounts of client and insurer money totalling £10.5 million to TUGL's parent company's office account;
  - c) a £2.13 million duplicate transfer made from a client money account into an insurer trust account;
  - d) an alteration of the basis on which commission was removed from insurer money accounts in breach of its arrangements with insurers, resulting in a £3.6 million deficit in its insurer money accounts; and
  - e) some smaller items which have not been separately considered in this Final Notice.

#### Interest

- 4.26. TUGL's agreements with its clients permit it to retain interest earned on balances held on client money accounts. Accordingly, any interest earned on client money account balances is TUGL's money and should be held separately from client and insurer funds. Although the client money sweep accounts were set up in such a way that no interest should have accrued on them, interest did in fact accrue on them on a number of occasions from 29 June 2005, but was not in all instances identified and removed by TUGL. TUGL failed to adequately and clearly allocate responsibility for the:
- a) monitoring of all transactions in the client money sweep accounts; and
  - b) removing interest credited to client money sweep accounts in error.
- 4.27. This resulted in a total of £1.45 million of interest accruing on client money sweep accounts between June 2005 and October 2011 which was not removed from those accounts until October 2013.

### The Central Transfers

- 4.28. On four separate occasions in August 2010, November 2010, December 2010 and January 2011, round sums totalling £10.5 million were transferred from TUGL's Central Sweep Accounts to the office account of an intermediate parent company of TUGL for the purpose of meeting business expenses. Details of these Central Transfers are set out in the table below:

<b>Date</b>	<b>Client money transfer</b>	<b>Insurer money transfer</b>
24/08/2010	£1,500,000	£1,500,000
22/11/2010	£1,000,000	£1,000,000
22/12/2010	£1,000,000	£1,500,000
20/01/2011	£1,500,000	£1,500,000
<b>Total</b>	<b>£5,000,000</b>	<b>£5,500,000</b>

- 4.29. The Central Transfers were based on an analysis of all the Business Units' client and insurer money calculations on an aggregated basis. On an aggregated basis, the analysis indicated that whilst Business Units had removed commission from the Central Sweep Accounts to the extent that cash was available, some had been unable to transfer the full amount specified by the client and insurer money calculations at the time they were performed. The analysis of the individual TUGL Business Units' client and insurer money calculations therefore indicated perceived surpluses that had not been removed which, when looked at on an aggregated basis, could be removed from the Central Sweep Accounts as commission belonging to TUGL.
- 4.30. TUGL's client money processes and procedures did not make provision for, or envisage, either an aggregated calculation or central transfers. Central transfers based on an aggregated calculation represented a significant departure from TUGL's established processes and procedures.
- 4.31. Notwithstanding the fact that existing processes and procedures provided for the client and insurer money calculations and transfer of commission due to TUGL to be performed at Business Unit level, round sums were withdrawn from the Central Sweep Accounts on the four occasions identified above. Following each of the Central Transfers, the sums removed from the Central Sweep Accounts

were not allocated back to individual Business Units, neither were the Business Units informed of the Central Transfers. As a result, those Business Units whose perceived client and insurer money surplus cash had been withdrawn were not aware of the Central Transfers and as a consequence subsequent monthly client and insurer money calculations prepared by these individual Business Units did not recognise that surpluses had been previously withdrawn from the Central Sweep Accounts. Likewise, as the aggregated calculations did not reflect these transfers, TUGL consequently overstated the funds available in the Central Sweep Accounts for subsequent Central Transfers.

- 4.32. This departure from TUGL's existing processes and procedures, coupled with the failure to properly consider the potential implications of the Central Transfers and take appropriate steps to mitigate the risks so created, resulted in a deficit of £5 million accruing in TUGL's client money accounts and a deficit of £5.5 million accruing in its insurer money accounts.
- 4.33. Additionally, TUGL, in the course of carrying out its general reconciliation work, did not recognise the significance, for overall compliance with CASS Rules, of differences identified from the reconciliation between the cash actually held in the Central Sweep Accounts and the total aggregated expectation of the individual Business Units to the amounts held in these accounts as recorded in the Business Unit ledgers. The significance of the reconciliation differences was not recognised until May 2013.

#### Duplicate transfer

- 4.34. On 25 October 2007, TUGL transferred the sum of £2.13 million from a client money sweep account to an insurer money sweep account following the re-designation of a particular Business Unit's client money account to an insurer money account. The transfer was not reflected accurately in TUGL's accounting records which resulted in the same sum being transferred again in January 2009 creating a £2.13 million shortfall in its client money sweep account and an equivalent surplus on the insurer money account.
- 4.35. As TUGL did not perform an effective reconciliation between the cash actually held in the Central Sweep Accounts and the total aggregated expectation of the Business Units to those funds as recorded in the Business Unit ledgers, this shortfall was not detected until May 2013 when an aggregated bank reconciliation was first performed.

#### Commission drawdown adjustment

- 4.36. The Terms of Business Agreements between TUGL and the relevant insurers (“TOBAs”) set out when TUGL was entitled to withdraw the commission due. The standard provision agreed between TUGL and the insurers was to withdraw commission on “receipt of premium”.
- 4.37. From 1 December 2008, however, the majority of TUGL’s Business Units that operated insurer money accounts began to withdraw commission from these accounts on an “inception of policy” basis, that is to say prior to the premium being received from the client, in breach of the TOBAs.
- 4.38. The issue was discovered by TUGL in July 2013 during a review of its TOBA compliance. The impact on the aggregated insurer money balance held across all the TUGL Business Units that had used the incorrect basis to withdraw commission from the insurer money accounts (calculated as at 1 November 2013) was a £3.62 million shortfall compared to the balance had the correct receipt of premium basis been used. The shortfall was corrected across the affected Business Units between 1 November 2013 and 8 November 2013 and the process for insurer money drawdowns was adjusted accordingly to ensure compliance with TOBAs.
- 4.39. During the Relevant Period there was no single individual or team responsible for the ongoing monitoring of TUGL’s compliance with its TOBAs. Responsibility for different aspects of such compliance was divided and the interplay between these different aspects was not sufficiently well understood across TUGL to ensure compliance.

#### Governance and control framework

- 4.40. During the Relevant Period TUGL implemented a three lines of defence model risk control framework as set out below:
- a) first line: Local line management and risk management were responsible for the day to day risk management activities as part of TUGL’s processes and procedures;
  - b) second line: the compliance monitoring function provided oversight monitoring and challenged the effectiveness of the risk and internal control framework. This served to provide assurance to TUGL’s board of directors and senior management that business risks regarding regulatory matters were effectively managed; and

c) third line: internal audit had responsibility for assessing the scope of the systems established by management to identify, assess, manage and monitor financial and non-financial risks and give assurance that the systems in place were correct and suitable to TUGL's business model.

4.41. In spite of the above, in relation to client and insurer money processes, TUGL only implemented this risk control framework at Business Unit level such that the client and insurer money processes within TUGL's Central Finance Department fell outside the scope of its second and third lines of defence risk control framework. Consequently, neither TUGL's compliance monitoring nor internal audit functions reviewed the operation of the Central Sweep Accounts. TUGL's internal audit function did not review the suitability of the processes and systems for dealing with client and insurer money within TUGL's Central Finance Department.

4.42. TUGL also relied on its external auditors as a key control despite the fact that in January 2010 the Authority had raised an industry wide concern on firms' overreliance on CASS audit reports rather than performing their own assurance checks.

#### **Improvements to client money controls at TUGL**

4.43. In 2013, TUGL embarked on a comprehensive client money improvement programme to improve the effectiveness of its systems. As part of the programme, client money processes and procedures were reviewed and overhauled, extensive staff training rolled out and TUGL moved to a centralised non-fragmented client money model with amended processes. Client money processes within TUGL's central finance function were made subject to regular internal audit and compliance monitoring reviews.

### **5. FAILINGS**

5.1. Based on the facts and matters described above, the Authority considers that TUGL has breached Principle 3 and Principle 10 and associated CASS Rules. The statutory and regulatory provisions relevant to this Final Notice are set out in the Annex to this Final Notice.

5.2. Specifically, during the Relevant Period, TUGL breached Principle 3 by failing to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. Specifically, TUGL failed to:

- a) ensure that it accurately maintained all of its records to ensure correspondence to the actual insurer money held in its bank accounts;
- b) follow its own documented procedures by making repeated transfers from the Central Sweep Accounts and failed to identify and control the resulting risks adequately;
- c) perform adequate client and insurer money reconciliations and as a result TUGL failed to identify accurately surpluses and shortfalls;
- d) ensure that responsibility for the monitoring of TUGL's compliance with TOBAs was adequately and sufficiently allocated; and
- e) ensure that TUGL's risk framework adequately monitored and reviewed the suitability of the processes and systems in place for dealing with client and insurer money within its Central Finance Department.

5.3. TUGL also breached Principle 10 and the CASS Rules (CASS 5.5.3R, 5.5.63(1)R, 5.5.63(4)R, 5.5.76R and 5.5.84R), by failing to:

- a) ensure that client money was properly segregated from TUGL's money;
- b) carry out accurate client money calculations and reconciliations;
- c) immediately correct the client money shortfall when it became aware that a shortfall might have existed;
- d) immediately notify the Authority of its failure to perform required client money calculations;
- e) have adequate processes in place to identify interest accruing on its client money accounts in error and to then remove that interest to TUGL's office account; and
- f) ensure that it accurately maintained all of its records to ensure correspondence to the actual client money held in its bank accounts.

### **Conclusion**

5.4. Having regard to the issues above, the Authority considers it appropriate and proportionate in all the circumstances to take disciplinary action against TUGL for its breaches of the Principles and the CASS Rules during the Relevant Period.

5.5. It is recognised that TUGL eventually self-reported the reconciliation differences to the Authority. However, the weaknesses in TUGL's client and insurer money

arrangements as set out above meant that clients and insurers were not adequately protected for a prolonged period of time. Had TUGL become insolvent during this period, these failings would have placed insurer money at risk of loss. Insurers could have faced difficulties and/or delay in recovering their money.

## **6. SANCTION**

- 6.1. The Authority has considered the disciplinary and other options available to it and has concluded that a financial penalty is the appropriate sanction in the circumstances of this particular case.
- 6.2. The Authority's policy in relation to the imposition of financial penalties or public censures is set out in Chapter 6 of the Authority's Decision Procedures & Penalties Manual ("DEPP") which forms part of the Authority's Handbook. In determining the financial penalty, the Authority has had regard to this guidance.
- 6.3. The principal purpose of a financial penalty is to promote high standards of regulatory conduct by deterring firms who have breached regulatory requirements from committing further contraventions, helping to deter other firms from committing contraventions and demonstrating generally to firms the benefits of compliant behaviour.

### **Financial penalty**

- 6.4. The conduct in issue took place both before and after 6 March 2010. As set out at paragraph 2.7 of the Authority's Policy Statement 10/4, when calculating a financial penalty where the conduct straddles penalty regimes, the Authority must have regard to both the penalty regime which was effective before 6 March 2010 (the "old penalty regime") and the penalty regime which was effective after 6 March 2010 (the "new penalty regime").
- 6.5. The Authority adopted the following approach:
  - a) calculated the financial penalty for TUGL's misconduct from 29 June 2005 to 5 March 2010 by applying the old penalty regime to this misconduct;
  - b) calculated the financial penalty for TUGL's misconduct from 6 March 2010 to 31 December 2013 by applying the new penalty regime to this misconduct; and
  - c) added the penalties calculated under a) and b) to produce the total financial penalty.

### Financial penalty under the old regime

- 6.6. The Authority's policy on the imposition of a financial penalty relevant to the misconduct prior to 6 March 2010 is set out in Chapter 6 of DEPP that was in force from 27 March 2007 to 5 March 2010. All references to DEPP in paragraphs 6.7 to 6.17 are references to that version.
- 6.7. The Authority has also had regard to the corresponding provisions of Chapter 7 of the Authority's Enforcement Guide in force at the time and the relevant sections of the Enforcement Manual ("ENF"), which applied to the period preceding 26 March 2007.

#### *Deterrence (DEPP 6.5.2(1))*

- 6.8. The penalty will help demonstrate to TUGL and others in the industry, not limited to insurance intermediary firms, the importance of having adequate systems and controls in place for client and insurer money processes. This case will send an important message to the insurance intermediary industry about the importance of having appropriate controls around client money. The penalty will also help demonstrate to TUGL and others in the insurance intermediary industry, the importance of acting in compliance with their terms of business agreements with insurers and having appropriate systems and controls in place to ensure that these agreements are properly adhered to. This case will also highlight to the industry that the Authority will take action in respect of insurer money failings to promote good market conduct and ensure that market integrity is maintained.
- 6.9. The Authority considers that a significant financial penalty is an appropriate sanction given the serious nature of the breaches and the risks.

#### *The nature, seriousness and impact of the breach (DEPP 6.5.2(2))*

- 6.10. The Authority considers TUGL's breach of Principles 3 and 10 and the CASS Rules to be serious for the following additional reasons:
- a) several failings were found in TUGL's client and insurer money processes;
  - b) the breaches took place over a period of eight years (of which four years and eight months fell under the old penalty regime);
  - c) the failings took place during a period of significant expansion of TUGL's business;
  - d) these failings placed insurer money at risk of loss and may have led to

complications and delays in distribution of insurer money had TUGL become insolvent;

- e) as TUGL is part of the Towergate Group of companies, one of the United Kingdom's largest insurance intermediaries, an insolvency event could have an impact on the UK insurance market; and
- f) during the Relevant Period there was a high level of awareness in the financial services industry of the importance of adequately protecting client money.

*The extent to which the breach was deliberate or reckless (DEPP 6.5.2(3))*

- 6.11. The Authority does not consider TUGL to have committed the breaches deliberately or recklessly.

*The size, financial resources and other circumstances of the firm (DEPP 6.5.2(5))*

- 6.12. In deciding on the level of penalty, the Authority has had regard to the size of the financial resources of TUGL. The Authority has no evidence to suggest that TUGL is unable to pay the financial penalty.

*The benefit gained or loss avoided (DEPP 6.5.2(6))*

- 6.13. TUGL did not profit from the breaches or avoid any loss.

*Conduct following the breach (DEPP 6.5.2(8))*

- 6.14. TUGL has cooperated fully with the Authority's investigation and has taken action to remedy the failings identified.

*Disciplinary record and compliance history (DEPP 6.5.2(9))*

- 6.15. TUGL has not previously been the subject of an adverse finding by the Authority.

Conclusions in relation to old penalty regime

- 6.16. The Authority considers that the seriousness of TUGL's failings merit a financial penalty. In determining the financial penalty, the Authority has considered the need to send a clear message to the industry of the need to ensure that firms organise and control their affairs responsibly and effectively with adequate risk management systems in place in relation to client and insurer monies and arrange adequate protection for client money.

- 6.17. The Authority therefore has decided to impose a financial penalty for TUGL's breaches under the old penalty regime of £280,000 (£400,000 before application of a 30% settlement discount).

Financial Penalty under the new regime

- 6.18. All references to DEPP in paragraphs 6.18 to 6.34 are references to the version of DEPP implemented as of 6 March 2010 and currently in force. Under the new regime, from 6 March 2010 the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5A sets out the details of the five-step framework that applies in respect of financial penalties imposed on firms.

*Step 1: Disgorgement*

- 6.19. Pursuant to DEPP 6.5A.1G, at Step 1 the Authority seeks to deprive a firm of the financial benefit derived directly from the breach where it is practicable to quantify this.
- 6.20. The Authority has not identified any financial benefit that TUGL derived as a result of the breaches. The Step 1 figure is therefore £0.

*Step 2: Seriousness of breach*

- 6.21. DEPP 6.5A.2G(1) provides that at Step 2 the Authority determines a figure that reflects the seriousness of the breach. Although DEPP 6.5A.2G(1) indicates that in many cases the amount of revenue generated by a firm from a particular business area is indicative of the harm that the breach may cause, it also recognises that revenue may not be an appropriate indicator of the harm. In those cases, the Authority will use an appropriate alternative.
- 6.22. The Authority does not consider revenue to be an appropriate indicator of harm in this case. This is because whilst revenue generated by TUGL can increase or decrease, which will in turn have an impact on the amount of client and insurer monies held, this does not alter the risk of harm or potential harm caused by its breaches.
- 6.23. As revenue is not the appropriate metric, to arrive at Step 2 figure, the Authority has adopted the approach set out in DEPP 6.5A.2G(13) and has taken into account those factors which are relevant to an assessment of the level of seriousness of the breach.

6.24. The Authority assesses the level of seriousness on a sliding scale between levels 1 and 5, with level 5 representing the most serious breaches and level 1 representing the least serious. These factors also reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly.

6.25. The Authority considers that the following factors are relevant:

- a) the breaches ultimately created a total shortfall of £12.60 million in TUGL's client and insurer money accounts;
- b) there was a risk of loss to market users, such as insurance firms who bore the risk of loss in the event of insolvency;
- c) TUGL committed multiple on-going breaches;
- d) TUGL's breaches collectively exposed serious weaknesses in its systems and controls;
- e) the breaches were neither deliberate nor reckless; and
- f) the financial penalty needs to act as a credible deterrent.

6.26. Taking all of these factors into account, the Authority considers the seriousness of TUGL's breach to be level 3 and the Step 2 figure is therefore £2,800,000.

*Step 3: mitigating and aggravating factors*

6.27. Pursuant to DEPP 6.5A.3G(2), at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2 (but not including any amount disgorged at Step 1) to take into account factors which aggravate or mitigate the breach.

6.28. The following factors aggravate the breach:

- a) during the Relevant Period TUGL received a key industry-wide communication from the Authority about the importance of client money protection and rule compliance; and
- b) during the Relevant Period TUGL was the subject of heightened scrutiny from the Authority's Supervision Division in relation to various issues including the protection of client money.

6.29. There are no factors that mitigate the breach.

6.30. Having taken these matters into account the Authority considers that a 20% uplift at Step 3 is appropriate.

6.31. The Step 3 figure is therefore £3,360,000.

*Step 4: adjustment for deterrence*

6.32. Pursuant to DEPP 6.5A.4G, if the Authority considers that the Step 3 figure is insufficient to deter the firm that committed the breach, or others, from committing further or similar breaches, the Authority may increase the penalty.

6.33. There are no relevant factors that justify a change to the Step 3 figure. The figure at Step 4 remains £3,360,000.

*Step 5: settlement discount*

6.34. Pursuant to DEPP 6.7.2G, settlement discounts may be applied for early settlement. DEPP 6.7.3G identifies the four stages at which agreement may be reached. TUGL agreed to settle at Stage 1 and therefore qualifies for a 30% discount and the Step 5 figure is therefore £2,352,000.

*Conclusions in relation to new penalty regime*

6.35. The Authority has therefore decided to impose a financial penalty under the new penalty regime of £2,352,000 (£3,360,000 before Stage 1 discount).

Conclusion as to financial penalty

6.36. The Authority has therefore decided to impose on TUGL a total combined financial penalty for its breaches spanning both the old and new penalty regimes of £2,632,000 (£3,760,000 before Stage 1 discount).

## **7. PROCEDURAL MATTERS**

### **Decision maker**

7.1. The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.

7.2. This Final Notice is given under and in accordance with section 390 of the Act.

### **Manner of and time for Payment**

7.3. The financial penalty must be paid in full by TUGL to the Authority by no later than 28 July 2016.

### **If the financial penalty is not paid**

- 7.4. If all or any of the financial penalty is outstanding on 29 July 2016, the Authority may recover the outstanding debt as a debt owed by TUGL to the Authority.

### **Publicity**

- 7.5. 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 Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
- 7.6. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

### **Authority contacts**

- 7.7. For more information concerning this matter generally, contact Steve Page (direct line: 020 7066 1420/ email: [steve.page@fca.org.uk](mailto:steve.page@fca.org.uk)) of the Enforcement and Market Oversight Division of the Authority.

Rebecca Irving  
Financial Conduct Authority  
Enforcement and Market Oversight Division

## **ANNEX**

### **RELEVANT STATUTORY AND REGULATORY PROVISIONS**

#### **1. STATUTORY PROVISIONS**

##### **Statutory objectives**

1. The Authority's strategic objective, set out in section 1B(2) of the Act, is to ensure that the relevant markets function well.
2. The Authority's operational objectives, set out in sections 1B to 1H of the Act, are as follows:
  - a) securing an appropriate degree of protection for consumers (the "consumer protection objective");
  - b) protecting and enhancing the integrity of the UK financial system (the "integrity objective"); and
  - c) promoting effective competition in the interests of consumers (the "competition objective").

##### **Imposition of a financial penalty**

3. Section 206 of the Act provides that the Authority may impose a penalty on an authorised person, of such amount as it considers appropriate, if it considers that it has contravened a relevant requirement imposed on it.
4. TUGL is an authorised person for the purposes of section 206 of the Act. The requirements imposed on authorised persons include those set out in the Authority's rules and made under section 137A of the Act.

#### **2. REGULATORY GUIDANCE AND POLICY**

##### **Principles for Businesses (the "Principles")**

5. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the Authority's Handbook. They derive their authority from the Authority's rule-making powers set out in the Act, reflect the Authority's regulatory objectives and apply with respect to the carrying out of regulated activities. The relevant Principles are as follows.
6. Principle 3 (Management and Control) which states that:

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

7. Principle 10 (Clients' Assets) which states that:

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

#### **Client Assets Sourcebook ("CASS") Rules**

8. CASS is the part of the Authority's Handbook which sets out the Authority's requirements in relation to holding client money assets and client money. In respect of all the rules within Chapter 5 of CASS ("CASS 5") set out below, they were in force throughout the Relevant Period unless otherwise made clear.

9. CASS Rule 5.5.3 provides:

*"A firm must, except to the extent permitted by CASS 5.5, hold client money separate from the firm's money."*

10. CASS Rule 5.5.63(1) provides:

*"A firm must, as often as is necessary to ensure the accuracy of its records and at least at intervals of not more than 25 business days:*

*(a) check whether its client money resource, as determined by CASS 5.5.65R on the previous business day, was at least equal to the client money requirement, as determined by CASS 5.5.66R or CASS 5.5.68R as at the close of business on that day; and*

*(b) ensure that: (i) any shortfall is paid into a client money bank account by the close of business on the day the calculation is performed; or (ii) any excess is withdrawn within the same time period unless CASS 5.5.9R or CASS 5.5.10R applies to the extent that the firm is satisfied on reasonable grounds that it is prudent to maintain a positive margin to ensure the calculation in (a) is satisfied having regard to any unreconciled items in its business ledgers as at the date on which the calculations are performed; and*

*(c) ..."*

11. CASS Rule 5.5.63(2) provides:

*"A firm must within ten business days of the calculation in (a) reconcile the balance on each client money bank account as recorded by the firm with the balance on that account as set out in the statement or other form of confirmation used by the bank with which that account is held."*

12. CASS Rule 5.5.63(3) provides:

*"When any discrepancy arises as a result of the reconciliation carried out in (2), the firm must identify the reason for the discrepancy and correct it as soon as possible, unless the discrepancy arises solely as a result of timing differences between the accounting systems of the party providing the statement or confirmation and those of the firm.*

13. CASS Rule 5.5.63(4) provides:

*"While a firm is unable to resolve a difference arising from a reconciliation, and one record or a set of records examined by the firm during its reconciliation indicates that there is a need to have a greater amount of client money than is in fact the case, the firm must assume, until the matter is finally resolved, that the record or set of records is accurate and either pay its own money into a relevant account or make a withdrawal of any excess."*

14. CASS Rule 5.5.65 provides:

*"The client money resource, for the purposes of CASS 5.5.63R(1)(a) is (1) the aggregate of the balances on the firm's client money bank accounts, as at the close of business on the previous business day ..."*

15. CASS Rule 5.5.76 provides:

*"A firm must notify the FCA immediately if it is unable to, or does not, perform the calculation required by CASS 5.5.63 R (1)2."*

16. CASS Rule 5.5.84 provides:

*"A firm must ensure that proper records, sufficient to show and explain the firm's transactions and commitments in respect of its client money, are made and retained for a period of three years after they were made."*

### **Decision Procedure and Penalties Manual ("DEPP")**

17. Guidance on the imposition and amount of penalties is set out in Chapter 6 of DEPP, which forms part of the Authority's Handbook.
18. The relevant sections of DEPP are set out in the main body of this Notice.

### **Enforcement Guide ("EG")**

19. The Enforcement Guide sets out the Authority's approach to exercising its main enforcement powers under the Act.
20. Chapter 7 of the Enforcement Guide sets out the Authority's approach to exercising its power to impose a financial penalty.