In the Matter of

The *FINANCIAL INSTITUTIONS ACT*
(RSBC 1996, c.141)
(the "Act")

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

APEX INSURANCE SERVICES LTD.
(the "Agency")

ORDER

As Council made an intended decision on March 8, 2016, pursuant to sections 231, 236, and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Agency with written reasons and notice of the intended decision dated April 7, 2016; and

As the Agency has not requested a hearing of Council's intended decision within the time period provided by the Act;

Under authority of sections 231, 236, and 241.1 of the Act, Council orders:

1. The Agency is reprimanded.
2. The Agency is assessed Council's investigative costs of $1,250.00.
3. A condition is imposed on the Agency's general insurance licence that requires the Agency to pay the above-ordered investigative costs no later than **July 26, 2016**. If the Agency does not pay the ordered investigative costs in full by this date, the Agency's general insurance licence is suspended as of **July 27, 2016**, without further action from Council and the Agency will not be permitted to complete any subsequent annual filings until such time as the ordered investigative costs are paid in full.

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This order takes effect on the **26th day of April, 2016**.

Brett Thibault
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

respecting

APEX INSURANCE SERVICES LTD.
(the "Agency")

and

KAY BONG-KAH LAU
(the "Nominee")

Pursuant to section 232 of the *Financial Institutions Act* (the "Act"), Council conducted an investigation to determine whether the Agency and the Nominee acted in compliance with the requirements of the Act.

As part of Council's investigation, on January 11, 2016, a Review Committee (the "Committee") met with the Nominee and Kenneth Lau ("the "Licensee") to discuss allegations that the Licensee was permitted to include a minimum retained premium ("MRP") on some cover notes issued by the Agency that did not coincide with the MRP established by the insurance company issuing the policy.

The Committee was comprised of two voting members and one non-voting member of Council. Prior to the Committee's meeting with the Nominee and the Licensee, an investigation report was distributed to the Committee, the Nominee, and the Licensee for review. A discussion of this report took place at the meeting, and the Nominee and the Licensee were provided an opportunity to make further submissions. Having reviewed the investigation materials and after discussing this matter with the Nominee and the Licensee, the Committee prepared a report of its meeting for Council.

The Committee's report, along with the aforementioned investigation report, were reviewed by Council at its March 8, 2016 meeting, where it was determined the matter should be disposed of in the manner set out below.

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PROCESS

Pursuant to section 237 of the Act, Council must provide written notice of the action it intends to take under sections 231, 236, and 241.1 of the Act before taking any such action. The Agency and the Nominee may then accept Council's decision or request a formal hearing. This intended decision operates as written notice of the action Council intends to take against the Agency and the Nominee.

FACTS

The Agency has held a general insurance licence since January 2013, and was established as a result of an amalgamation of four previously licensed general insurance agencies. The Nominee, who is both the president and a director of the Agency, has been licensed since 1995 and a nominee since 2006.

The Licensee has been licensed to engage in general insurance activity for over 30 years, and is a part-owner of the Agency.

The Licensee stated that he has been imposing a charge for MRP on certain Agency customers. In all cases where this was done by the Licensee, it was contrary to the actual MRP applied by the insurance company issuing the policy. In some circumstances, the Licensee added an MRP even if the insurer did not apply one. In some of the cases reviewed, the amounts of the MRP on the cover note and the insurance policy did not match.

The Nominee advised that the practice of adding an MRP started approximately two or three years ago, following the introduction of detailed cover notes for more complex risks.

The Agency's practice came to Council's attention when a consumer (the "Complainant") reported that he paid an MRP of $1,000.00 when he cancelled a policy nine days after it was issued. The Licensee and the Nominee acknowledged that the MRP was charged, despite the insurance company not applying an actual MRP, believing they were acting appropriately by fully disclosing the MRP on the cover note, which the Complainant signed and accepted.

Ultimately, the Complainant was reimbursed the MRP by the Agency, and was only charged time on risk and a policy fee. The Nominee and the Licensee stated that this was not normal practice, and was only done on complicated or difficult-to-place risks. The Nominee advised that this was the only instance where such an MRP was actually charged by the Agency.

Council reviewed approximately 80 policies transacted by the Agency. Of those 80, six were found to have an MRP applied that was not consistent with the policy issued by the insurer. After being advised that an agency or policy fee cannot be called an MRP, the Agency agreed to stop this practice immediately.

The Nominee and the Licensee acknowledged that they had been using incorrect terminology. In fact, the charges identified as MRPs were Agency cancellation fees, which were to be applied when, owing to the nature of the risk, extra work was required, and the policyholder did not remain on risk for a sufficient amount of time.

The Licensee stated that the MRP was explained verbally to the Complainant. However, due to the Licensee's use of a cover note template and failure to carefully review the terminology, the Agency fee was identified as an MRP rather than an Agency fee.

The Nominee and the Licensee acknowledged that they understood their error, and stated that they had amended their practices accordingly.

ANALYSIS

Council accepted that the Agency was not attempting to deceive clients when it permitted an Agency fee to be referred to as an MRP, but it was concerned that the Agency and the Nominee were not familiar with the proper practice. Council was concerned that the Agency and the Nominee failed to appreciate the importance of accurate cover notes, so as to ensure that clients are fully informed about their insurance decisions.

Council noted that the distinction is important as, for example, an insurer's premium cannot be retained in order to pay an agency fee, as all agency fees must be disclosed and collected separately. Just as importantly, agency fees also require that a clear explanation first be provided to the client regarding the circumstances under which a fee will be charged.

Council concluded that the Agency's and the Nominee's actions were not an intentional attempt to mislead clients, but reflected a lack of knowledge as to the usual practice of the business of insurance.

INTENDED DECISION

Pursuant to sections 231, 236, and 241.1 of the Act, Council made an intended decision to:

1. Reprimand the Agency.
2. Assess the Agency Council's investigative costs of $1,250.00.

The Agency is advised that should the intended decision become final, the investigative costs will be due and payable within 90 days of the date of the order. In addition, failure to pay the investigative costs within the 90 days, will result in the automatic suspension of its general insurance licence, and the Agency will not be permitted to complete any annual filing until such time as the investigative costs are paid in full.

The intended decision will take effect on **April 26, 2016**, subject to the Agency's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If the Agency wishes to dispute Council's findings or its intended decision, the Agency may have legal representation and present a case at a hearing before Council. Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Agency must give notice to Council by delivering to its office written notice of this intention by **April 25, 2016**. A hearing will then be scheduled for a date within a reasonable period of time from receipt of the notice. Please direct written notice to the attention of the Executive Director.

If the Agency does not request a hearing by **April 25, 2016**, the intended decision of Council will take effect.

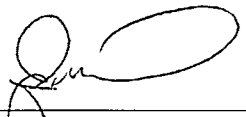
Even if this decision is accepted by the Agency, pursuant to section 242(3) of the Act, the Financial Institutions Commission still has a right to appeal this decision of Council to the Financial Services Tribunal ("FST"). The Financial Institutions Commission has 30 days to file a Notice of Appeal, once Council's decision takes effect. For more information respecting appeals to the FST, please visit their website at fst.gov.bc.ca or contact them directly at:

Financial Services Tribunal
PO Box 9425 Stn Prov Govt
Victoria, British Columbia
V8W 9V1

Reception: 250-387-3464
Fax: 250-356-9923
Email: FinancialServicesTribunal@gov.bc.ca

Dated in Vancouver, British Columbia, on the **7th day of April, 2016.**

For the Insurance Council of British Columbia



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