

In the Matter of
The *FINANCIAL INSTITUTIONS ACT*
(RSBC 1996, c.141)
(the “Act”)

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and

WEI KAI (KEVIN) LIAO
(the “Licensee”)

ORDER

As Council made an intended decision on February 14, 2017, pursuant to sections 231, 236, and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Licensee with written reasons and notice of the intended decision dated March 27, 2017; and

As the Licensee 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 Licensee’s life and accident and sickness insurance licence is cancelled for a period of two years commencing **May 3, 2017** and ending at midnight on **May 2, 2019**.
2. The Licensee is fined \$2,500.00.
3. The Licensee is assessed Council’s investigative costs of \$2,500.00.
4. As a condition of this order, the Licensee is required to pay the above-ordered fine and investigative costs no later than **July 19, 2017**. If the Licensee does not pay the above-ordered fine and investigative costs in full by this date, the Licensee will not be permitted to apply for an insurance licence until such time as these amounts are paid in full.

Order
Wei Kai (Kevin) Liao
LIC-176731C122101R
April 19, 2017
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This order takes effect on the **19th day of April, 2017.**



Dr. Eric Yung
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

WEI KAI (KEVIN) LIAO
(the “Licensee”)

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Licensee acted in compliance with the requirements of the Act.

As part of Council’s investigation, on January 16, 2017, a Review Committee (the “Committee”) met with the Licensee and his legal counsel, Mark Skorah, Q.C. (“Skorah”), to discuss allegations the Licensee facilitated investments in an exempt market product (“EMP”) for 18 of his insurance clients, which was inappropriate for the clients’ financial requirements.

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

The Committee’s report, along with the aforementioned investigation report and Skorah’s submission dated January 20, 2017, were reviewed by Council at its February 14, 2017 meeting, where it was determined the matter should be disposed of in the manner set out below.

PROCESS

Pursuant to section 237 of the Act, Council must provide written notice to the Licensee of the action it intends to take under sections 231, 236, and 241.1 of the Act before taking any such action. The Licensee 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 Licensee.

FACTS

The Licensee has held a life and accident and sickness insurance agent (“life agent”) licence in British Columbia since April 2009.

Client Complaint

In December 2015, the Licensee’s managing general agent (“MGA”) notified Council of a complaint from one of the Licensee’s non-insurance clients regarding her investment in the EMP.

This client stated that she had invested \$20,000.00 in the EMP in March 2015, based on information received from the Licensee. The EMP was to pay monthly payments for the next six months, which would represent a 10% return. After receiving the promised return during that six-month period, the client invested \$200,000.00 in the EMP in September 2015. The following month, her monthly interest cheque was returned due to insufficient funds. As a result, the client requested that her investment be returned in full. The client stated that the EMP offered to return her investment in monthly installments over the course of 25 months, which she did not accept.

In notifying Council, the MGA advised that it had conducted a review of the Licensee’s files and found that a number of the Licensee’s clients who had invested in the EMP were also insurance clients. The MGA found that four clients had redeemed insurance products in order to invest in the EMP. None of the Licensee’s insurance clients who invested in the EMP submitted a complaint to Council.

The British Columbia Securities Commission (“BCSC”) Investigation

The BCSC is currently looking into the EMP. The only information that Council has regarding the EMP is that it was issued in the form of a promissory note, offering to pay 10% interest over a six-month period, in monthly installments. The EMP stopped making interest payments to investors in October 2015.

The EMP

The Licensee was introduced to the owner of the EMP (the “Owner”) by his neighbour, who was involved in promoting the EMP. The Licensee stated that his due diligence involved asking his neighbour about the EMP and where the EMP invested the funds it received. The Licensee stated he reviewed the promotional material, which included a PowerPoint presentation on the investment.

The Licensee acknowledged he did not review any financial statements. The Licensee stated he assumed the EMP was a sound investment after he invested his own money and received the promised interest payments during two six-month investment cycles.

The Licensee submitted that his usual practice was to meet with clients, complete a risk analysis, and then discuss financial options. The Licensee stated that in the case of the 18 insurance clients who invested in the EMP, all of the clients initiated the discussion with him about whether there were other investment opportunities available to them. The Licensee stated that in these situations he would tell the client about the EMP, explaining how the investment options worked, and the fact that he had personally invested in the EMP. If the client was interested in investing in the EMP, the Licensee would obtain from the Owner the paperwork necessary to complete the investment and would then meet with the client to complete the necessary documentation.

The Licensee took care of the investment process and the client was never afforded the opportunity to meet with a representative of the EMP. The Licensee acknowledged that in assisting clients with the EMP documentation, he did not review the EMP risk acknowledgement or subscription documents with the clients, other than to indicate that the client should read and sign the documents to complete the investment. The Licensee submitted that in terms of risk disclosure, the fact that none of the insurance clients complained to Council regarding the investment indicates that they acknowledged they understood the risks associated with the EMP investment.

Of the four clients who redeemed insurance products for the purpose of investing in the EMP, two of the clients did not sign an acknowledgment of risk.

The Licensee acknowledged that he was not familiar with the securities legislation relating to the sale of the EMP and did not know the meaning of terms such as “accredited investor”, which relates to a potential investor’s suitability to invest in the EMP.

The Licensee stated he did not advise clients that he would be compensated by the EMP in regard to the specific transaction unless he was directly asked by a client. The Licensee explained that his generic advisor compensation disclosure form, which he provided to all of his clients, included disclosure about how he was compensated, although it did not specifically reference the EMP.

The Licensee did not inform his MGA during the material time of his involvement with the EMP, as he did not feel the investment was related to his insurance activities.

Clients who Redeemed Insurance Products

Client A

Client A is in his thirties and first met with the Licensee in March 2011. He classified himself as having little to no investment knowledge; willing to take a moderate risk in investing; and with an investment horizon of three to five years. The Licensee's file notes for Client A did not indicate Client A's salary, but did record that in March 2011 Client A owned a home valued at \$400,000.00, with a mortgage of \$323,000.00 and monthly mortgage payments of \$1,255.00. In April 2011, Client A purchased \$100,000.00 in segregated funds through the Licensee. The insurance purchase was 100% leveraged.

Client A stated that the Licensee contacted him in April 2015 to discuss an investment opportunity. On April 24, 2015, the Licensee met with Client A and his fiancée at a coffee shop to discuss the EMP investment. The Licensee's handwritten file notes indicate that Client A was advised that a minimum \$20,000.00 was required to invest in the EMP for a six-month term, resulting in a maturity amount of \$22,000.00 at the end of the six-month investment. Client A stated he told the Licensee he did not have \$20,000.00 to invest, at which point the Licensee suggested he use the \$12,000.00 in available capital from his segregated fund investment. The Licensee denies he suggested that Client A use funds from the segregated fund investment.

A letter of direction to withdraw all available funds from Client A's segregated fund investment was dated April 27, 2015 and reflected a client notification date of April 24, 2015. His fiancée contributed the remaining \$8,000.00. On May 5, 2015, Client A agreed to the EMP promissory note for \$20,000.00. Client A acknowledged the Licensee "somewhat" discussed the risks of entering into such an investment.

Client A stated that after he invested in the EMP, he received seven post-dated cheques from the Licensee. Client A also stated he successfully cashed five cheques totaling \$10,000.00. Client A had a remaining post-dated cheque for \$2,000.00, and a final post-dated cheque for \$10,000.00; both cheques were dated November 6, 2015. The Licensee explained he received the signed post-dated cheques from the EMP office after he submitted the investment documentation and Client A's \$20,000.00 investment.

Client A stated the Licensee contacted him in October 2015 advising him not to cash the next cheque as the EMP bank account had been compromised. On November 3, 2015, Client A received a letter by email from the EMP advising payments would be postponed for 60 days due to restrictions of cash flow. Client A stated that his main concern was with the failure of the EMP investment and not the Licensee's conduct in facilitating the EMP investment.

Client B

Client B is 31 years old and has been a client of the Licensee's insurance business since 2009. At that time, Client B had an annual income of \$31,000.00. In June 2009, Client B purchased \$50,000.00 in segregated funds, which were 100% leveraged. In July 2010, Client B purchased another \$50,000.00 in segregated funds, which were also 100% leveraged.

An investor profile completed by the Licensee in May 2012 depicted Client B as having average investor knowledge; willing to take risks with some investments; and wanting high returns with a relatively short term investment horizon. His overall score reflected a balanced investor.

Client B stated the Licensee approached him about the EMP in July 2015. They met at a coffee shop and the Licensee showed him a PowerPoint presentation about the EMP. The Licensee told him it was a great company to invest with.

Client B stated the Licensee proposed he redeem his segregated funds to purchase the EMP. Client B stated he felt pressured to make the purchase, but trusted the Licensee. The Licensee denied recommending Client B use funds from his segregated funds investment to purchase the EMP investment. On August 14, 2015, Client B completed a promissory application for EMP as an accredited investor.

The Licensee provided Client B post-dated cheques, but Client B was only able to cash two of the cheques before the EMP stopped paying its investors.

Client C

Client C is 32 years old. The Licensee's file notes indicate that Client C completed an investor profile in 2012, which depicted him as having limited investor knowledge; preferring secure investments over a 11 to 15 year horizon; and willing to take a little risk with some investments. His overall score reflected a moderate to balanced investor.

Around the same time in 2012, Client C purchased \$100,000.00 in segregated funds, all of which were leveraged. Shortly afterwards, Client C borrowed another \$10,000.00, which was put into an Registered Retirement Savings Plan by the Licensee.

In 2013, the Licensee had Client C complete a new investor profile, which indicated that Client C's risk tolerance had declined since 2012.

In 2015, the Licensee met with Client C at a coffee shop and showed him the EMP PowerPoint presentation. The Licensee stated that it was Client C's idea to use available funds from his segregated fund investment to purchase the minimum \$20,000.00 EMP investment. He withdrew \$19,000.00 from the leveraged investment and used \$1,000.00 of his own funds for the investment.

Client C stated that he did not approach the Licensee about seeking an alternative investment, but that the Licensee approached him about the EMP, suggesting Client C use available funds from his segregated fund investment. The Licensee submitted that Client C had in the past asked whether there were other opportunities for him “*to grow his money*”. The Licensee submitted he told Client C about the EMP in response to that question. The Licensee stated it was Client C who proposed the funds for the EMP could come from his segregated funds.

Client D

Council was unable to contact Client D, but a review of the Licensee’s notes depicts Client D as a balanced investor with average investor knowledge, who was prepared to experience moderate risk.

In April 2011, Client D completed an application for a segregated fund for \$100,000.00, which was leveraged by a loan. The application indicates Client D’s age was 56 and that she was retired.

Client D subsequently withdrew funds from her segregated funds to purchase the EMP. The Licensee submitted it was Client D’s idea to withdraw funds from the segregated fund investment.

The Licensee’ s Submissions

When asked how he justified recommending the EMP to clients with limited financial means, the Licensee stated he was simply advising the clients of an opportunity that he was aware of, and it was always their decision whether to invest.

Compliance History

In October 2012, the Licensee paid referral fees to two individuals, but failed to provide his clients with the required disclosure. This resulted in the Licensee receiving a reminder letter about his responsibility to provide disclosure to his clients before arranging insurance transactions that would result in compensation being paid to third parties.

On December 30, 2014, Council disciplined the Licensee after it found the Licensee used a boilerplate sales approach, which was to discuss certain products and financial strategies with potential clients before conducting an assessment of their individual needs. This resulted in conditions being placed on the Licensee’s life agent licence requiring him to complete four courses covering best practices in financial planning and risk assessment; and to be supervised until the later of the Licensee’s accumulation of an additional 12 months of active licensing or until he had completed the required courses, whichever was later. To date, the Licensee has completed two of the four courses.

ANALYSIS

Council found that the Licensee recommended to 18 of his insurance clients that they invest in the EMP, despite having done little or no due diligence on the EMP, and having little understanding of the inherently risky product. Council found the Licensee did not thoroughly read or understand the documents and financial statements associated with the EMP; was unfamiliar with relevant securities legislation; and did not know the key requirements for determining the suitability of a potential investor.

Council found the Licensee, at the very least, assisted four clients in redeeming insurance products so they could invest in the EMP, without taking any steps to ensure the clients understood the risks related to the EMP. Council noted that the four clients had all indicated they were low-to-medium risk tolerant clients. Council determined that a competent insurance agent would not have facilitated, let alone recommended, such an investment to an insurance client with a low risk tolerance, who was already highly leveraged, and with modest financial assets. Council determined the Licensee's conduct in facilitating the EMP investment for these clients was unreasonable. The fact that he had failed to conduct proper due diligence regarding the EMP in advance of such recommendations made his actions even more egregious.

Council found, based on statements from his clients, that the Licensee did more than simply refer clients to the EMP. Council determined that the Licensee played a pivotal role in having his clients invest in the EMP. Council noted that the Licensee facilitated every step of the sale of the EMP, from presenting promotional material and completing the application documents, to collecting cheques from the clients and providing clients with their post-dated cheques.

The Licensee was instrumental in presenting a high-risk investment to these clients, for which he benefitted financially through the receipt of commissions. Even if Council were to accept his argument that he was only complying with his clients' requests, the Licensee had a responsibility to ensure his clients understood the risks involved with such an investment. There was no evidence in his files that at any time he cautioned any of his clients about the risks or recommended against the investment.

Council noted that the Licensee was under supervision at the time of these transactions and found no evidence that he had discussed these transactions with his supervisor.

Council determined that the Licensee took a reckless approach to the financial affairs of his clients when he facilitated an investment that he did not understand. The Licensee made no effort to understand the relevant securities legislation and failed to draw the clients' attention to the cautions outlined in the risk acknowledgement documents, or otherwise highlight the extent of the risk related to the EMP.

Council found the Licensee's actions were further aggravated by his history. At the time the Licensee facilitated the EMP investment, he was subject to licence conditions that were intended to prevent him from making such recommendations to his clients. Council found the Licensee knew, or ought to have known, that his actions in facilitating his clients' investment in the EMP were inappropriate, and is left to conclude that the Licensee's actions were motivated by financial gain and not the best interests of his clients.

Council concluded that the Licensee's conduct in the circumstances reflected on his competency, and demonstrated a failure to act in accordance with the usual practice of the business of insurance. Council determined the Licensee is not suitable to hold an insurance licence, and poses an ongoing risk to the public.

INTENDED DECISION

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

1. Cancel the Licensee's life accident and sickness insurance licence for a period of two years.
2. Fine the Licensee \$2,500.00.
3. Assess the Licensee Council's investigative costs of \$2,500.00.

The Licensee is advised that should the intended decision become final, the fine and investigative costs will be due and payable within 90 days of the date of the order. In addition, failure to pay the fine and investigative costs will result in the Licensee not being permitted to apply for an insurance licence until such time as the fine and investigative costs are paid in full.

The Licensee's termination will begin on **May 3, 2017**, and end at midnight on **May 2, 2019**.

The intended decision will take effect on **April 19, 2017**, subject to the Licensee's right to request a hearing before Council pursuant to section 237 of the Act.

RIGHT TO A HEARING

If the Licensee wishes to dispute Council's findings or its intended decision, the Licensee 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 Licensee must give notice to Council by delivering to its office written notice of this intention by **April 18, 2017**. 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.

Intended Decision
Wei Kai (Kevin) Liao
LIC-176731C122101R1
March 27, 2017
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If the Licensee does not request a hearing by **April 18, 2017**, the intended decision of Council will take effect.

Even if this decision is accepted by the Licensee, 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 **27th day of March, 2017**.

For the Insurance Council of British Columbia



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GM/bk