

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

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

and

INVESTIA FINANCIAL SERVICES INC.
(the “Agency”)

and

SUSAN PATRICIA RICHARDS
(the “Nominee”)

ORDER

As Council made an intended decision on January 22, 2019, pursuant to sections 231 and 236 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Agency and the Nominee with written reasons and notice of the intended decision dated February 5, 2019; and

As the Agency and Nominee have not requested a hearing of Council’s intended decision within the time period provided by the Act;

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

1. the Nominee is reprimanded;
2. a condition is imposed on the Nominee’s life and accident and sickness insurance agent (“Life Agent”) licence that she successfully complete the Council Rules Course;
3. a further condition is imposed on the Nominee that failure to successfully complete the Council Rules Course on or before June 3, 2019 will result in the automatic suspension of her Life Agent licence and the Nominee will not be permitted to complete any annual filing until such time as the Council Rules Course is successfully completed;
4. the Agency is fined \$20,000; and

Order

Investia Financial Services Inc. and Susan Patricia Richards

LIC-2017-0007573-R01 (formerly LIC-2016-0000407-R01 and LIC-171299C106454R1) and

LIC 98203C120390R1 / COM-2017-00579

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5. a condition is imposed on the Agency that failure to pay the \$20,000 fine on or before June 3, 2019 will result in the automatic suspension of the Agency's Life Agent licence and the Agency will not be permitted to complete any further annual filing until such time as the fine is paid in full.

This order takes effect on the **5th day of March, 2019.**



Ken Kukkonen
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
(“Council”)

respecting

INVESTIA FINANCIAL SERVICES INC.
(the “Agency”)

and

SUSAN PATRICIA RICHARDS
(the “Nominee”)

Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Agency failed to meet the requirements of Council Rule 7(3)(a)(i) by failing to notify Council of discipline by a financial sector regulator, and whether the Agency and Nominee breached section 231(1)(c) of the Act by making a material misstatement on a licence application.

Rule 7 Licence Conditions

Applicable to All Classes of Licences

- ...
- (3) A licensee must notify Council within 5 business days:
- (a) where the licensee or any business the licensee owns or has participated in as a director, officer or partner:
 - (i) is disciplined by any financial sector regulator, or any professional or occupational body;
- ...

Section 231(1)(c)

231(1) If, after due investigation, the council determines that the licensee or former licensee or any officer, director, employee, controlling shareholder, partner or nominee of the licensee or former licensee

- ...
- (c) has made a material misstatement in the application for the licence of the licensee or in reply to an inquiry addressed under this Act to the licensee,
- ...

then the council by order may do one or more of the following:

- (f) reprimand the licensee or former licensee;
- (g) suspend or cancel the licence of the licensee;
- (h) attach conditions to the licence of the licensee or amend any conditions attached to the licence;
- (i) in appropriate circumstances, amend the licence of the licensee by deleting the name of a nominee;
- (j) require the licensee or former licensee to cease any specified activity related to the conduct of insurance business or to carry out any specified activity related to the conduct of insurance business;
- (k) in respect of conduct described in paragraph (a), (b), (c), (d), (e) or (e.1), fine the licensee or former licensee an amount
 - (i) not more than \$20 000 in the case of a corporation, or
 - (ii) not more than \$10 000 in the case of an individual.

As part of Council's investigation, on May 14, 2018, a Review Committee met with the Nominee, the Agency's legal counsel and Agency representatives to discuss allegations that Council was not notified by the Agency of disciplinary action taken by a financial sector regulator and that a material misstatement was made on a licence application to Council by failing to disclose an investigation and discipline by other professional and/or regulatory bodies.

Prior to the Committee's meeting with the Agency and Nominee, an investigation report was distributed to the Committee, the Agency and Nominee for review. A discussion of this report took place at the meeting and the Agency and Nominee were provided an opportunity to make further submissions. Having reviewed the investigation materials and after discussing this matter with the Agency and Nominee, the Committee prepared a report for Council.

The Committee's report, along with the aforementioned investigation report, were reviewed by Council and 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 Agency and Nominee of the action it intends to take under sections 231 and 236 of the Act before taking any such action. The Agency and 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 Nominee.

FACTS

The Agency is domiciled in Quebec and holds an insurance licence in Alberta, Saskatchewan, Manitoba, Ontario and Quebec. It is also a registered mutual fund dealer and is governed by the Mutual Fund Dealers Association of Canada (“MFDA”).

The Nominee has held a life and accident and sickness insurance agent (“Life Agent”) licence with Council since November 1992 and is currently authorized to represent the Agency. She also holds an insurance licence in Alberta, Saskatchewan and Manitoba.

In 2012, the Agency was disciplined by the MFDA. Pursuant to Council Rule 7(3)(a)(i), insurance licensees are required to notify Council within 5 business days of discipline by any financial sector regulator or any professional or occupational body. Upon learning of the Agency’s failure to notify Council of the MFDA discipline, Council staff sent a letter to the Agency reminding it of its notification obligations under Council Rules.

In 2015, an investigation of the Agency was commenced by the Autorité des marchés financiers (“AMF”). The Agency was subsequently disciplined by the AMF in July 2017. However, the Agency did not notify Council of the AMF’s discipline as required.

In December 2016, a Notice of Hearing was issued by the MFDA against the Agency, followed by a subsequent meeting related to the investigation occurring in March 2017.

In September 2017, following a corporate restructuring, the Agency submitted a new corporate licence application to Council. In completing the application, which was signed by the Nominee, the Agency responded “no” to the question of whether the Agency was currently under investigation or had ever been subject to disciplinary action by any financial service regulator, insurance or otherwise, or any professional or occupational body. This was despite the fact that the Agency was under investigation by the MFDA at the time of the application and had been disciplined by the AMF in July 2017.

The Agency was disciplined a second time by the MFDA in October 2017.

In response to the allegation of failing to notify Council of the July 2017 AMF discipline and the non-disclosure of the MFDA investigation on the September 2017 licence application, the Agency’s legal counsel advised the Committee that the Agency does not dispute the non-compliance, which he noted was unintentional. He also noted that compliance is a top priority for the Agency moving forward and that, as such, new protocols and procedures are in place to ensure compliance is achieved.

Intended Decision

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The Agency's legal counsel also advised that the Agency and Nominee were unaware that non-insurance related discipline in other provinces should have been reported to Council and he submitted that there had been no harm to the public as a result of the failures.

The Nominee advised the Committee that she relied on the Agency's compliance department to provide her with accurate materials before signing the Agency's September 2017 licence application. She stated she was not aware of the investigation and discipline at issue due to her role being confined to British Columbia. The Agency representatives who attended the Committee meeting confirmed that the Nominee had not been aware of the AMF or MFDA issues. The AMF issue was handled in the Quebec office, and the MFDA issue in the Toronto office, and adequate procedures were not in place at the time to ensure that all provincial nominees were aware of extra-provincial non-insurance discipline.

Despite her lack of knowledge with respect to the Agency's investigations and/or discipline, the Nominee stated that she understands her role as the nominee and that ultimately it is her responsibility to be aware of the Agency's obligations to Council.

ANALYSIS

Pursuant to the principle set out in section 13 of Council's Code of Conduct, Licensees are expected by Council to adhere to all regulatory requirements.

Pursuant to the principle set out in section 12 of the Code of Conduct, licensees benefit from a degree of self-regulation under the Act, in that they are able to participate in the regulation of their industry. This privilege requires the co-operation and support of licensees. It follows that, as per guideline 12.3.2 of the Code of Conduct, it is a breach of the Act under section 231(1)(c) to make a material misstatement in an application for a licence or in response to an inquiry from Council.

With these principles and the guideline in mind, Council considered the actions and submissions of the Agency and the Nominee.

With respect to the Agency, Council was concerned that the Agency had failed to report multiple instances of discipline by other regulatory bodies, contrary to Council Rule 7(3)(a)(i). Council noted that the Agency had previously been reminded of its notification obligations when it was disciplined by the MFDA in 2012. However, despite this reminder, the Agency again failed to notify Council that it had been disciplined by the AMF in July 2017.

Council also found that the Agency made a material misstatement when it failed to disclose the 2017 AMF discipline and the ongoing MFDA investigation on its licence application. While Council accepted that this was an unintentional oversight, Council found it demonstrated the Agency lacked adequate procedures to ensure compliance.

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In light of the previous reminder letter from Council on the issue of disclosure and the multiple failures by the Agency, Council concluded that the maximum fine against the Agency is warranted.

Council held that, as the signatory on the Agency's licence application, the Nominee was also responsible for the material misstatement on the licence application. While Council accepted that the Nominee was unaware of the 2012 MFDA discipline, the 2017 AMF discipline and the ongoing MFDA investigation, Council felt it was important to re-inforce the personal responsibility of nominees to ensure the accuracy of licence applications and re-applications and the fulfillment of reporting obligations. Therefore, Council determined that the Nominee ought to be reprimanded and required to complete the Council Rules Course.

INTENDED DECISION

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

1. Fine the Agency \$20,000.00;
2. Reprimand the Nominee; and
3. Impose a condition on the Nominee's Life Agent licence that requires her to successfully complete the Council Rules Course.

The Nominee is advised that failure to successfully complete the Council Rules Course within 90 days of the date of Council's order will result in the automatic suspension of her insurance licence and the Nominee will not be permitted to complete any annual filing until such time as the Council Rules Course is successfully completed as required.

The Agency is advised that failure to pay the fine within 90 days of the date of Council's order will result in the automatic suspension of its Life Agent licence and the Agency will not be permitted to complete any annual filing until such time as the fine is paid in full.

Subject to the licensees' right to request a hearing before Council pursuant to section 237 of the Act, the intended decision will take effect after the expiry of the hearing period.

RIGHT TO A HEARING

If the licensees wish to dispute Council's findings or its intended decision, the licensees 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 licensees must give notice to Council by delivering to its office written notice of this intention **within fourteen (14) days of receiving this intended decision**. A hearing will then be scheduled for a date within a reasonable period

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of time from receipt of the notice. Please direct written notice to the attention of the Executive Director.

If the licensees do not request a hearing **within fourteen (14) days of receiving this intended decision**, the intended decision of Council will take effect.

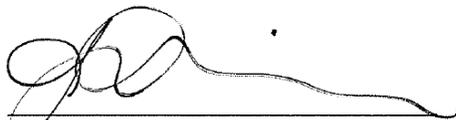
Even if this decision is accepted by the licensees, pursuant to section 242(3) of the Act, the Financial Institutions Commission still has a right to appeal this decision of Council to the Financial Services Tribunal ("FST"). The Financial Institutions Commission has 30 days to file a Notice of Appeal, 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 **5th day of February, 2019.**

For the Insurance Council of British Columbia



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