In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

HILTON INSURANCE AGENCY (1989) LTD.
(the "Agency")

ORDER

As Council made an intended decision on September 16, 2014, pursuant to sections 231 and 236 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 October 17, 2014; 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 and 236 of the Act, Council orders:

1. The Agency is fined $2,000.00.

2. A condition is imposed on the Agency's general insurance licence that requires it to pay the above-ordered fine no later than **February 5, 2015**. If the Agency does not pay the ordered fine in full by this date, the Agency's general insurance licence is suspended as of **February 6, 2015**, without further action from Council and the Agency will not be permitted to complete any annual filing until such time as the ordered fine is paid in full.

This order takes effect on the **5th day of November, 2014**.

Ruth Hoyte
Chairperson, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

respecting

GERHARD HORST STUDENSKY
(the "Nominee")

and

HILTON INSURANCE AGENCY (1989) LTD.
(the "Agency")

INTRODUCTION

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

As part of Council's investigation, on August 11, 2014, a Review Committee (the "Committee") met with the Nominee to discuss the allegation that the Agency breached Council Rule 7(3)(a)(i) by not notifying Council within five business days of disciplinary action taken by another professional body.

The Committee was comprised of one voting member and three non-voting members of Council. Prior to the Committee's meeting with the Nominee, an investigation report was distributed to the Committee and the Nominee for review. A discussion of this report took place at the meeting and the Nominee was provided an opportunity to clarify the information contained therein and make further submissions. Having reviewed the investigation materials and after discussing this matter with the Nominee, the Committee made a recommendation to Council as to the manner in which this matter should be disposed.

A report setting out the Committee's findings and recommended disposition, along with the aforementioned investigation report, were reviewed by Council at its September 16, 2014 Council meeting. At the conclusion of its meeting, Council accepted the Committee's recommended disposition and 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 to the Agency of the action it intends to take under sections 231 and 236 of the Act before taking any such action. The Agency 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.

FACTS

The Nominee has been licensed with Council as a Level 3 general insurance nominee since February 12, 2008. The Nominee is a non-resident whose home jurisdiction is Manitoba. The Agency has been licensed with Council since February 12, 2008.

In 2012, the Nominee and the Agency were the subject of disciplinary action by the Insurance Council of Manitoba (the "ICM") for allowing an unlicensed individual to conduct insurance activities. The disciplinary action was not reported to Council and Council sent the Nominee a letter on September 25, 2012, reminding him of his responsibility to notify Council within five business days where a licensee is disciplined by another professional body.

In 2013, the Nominee and the Agency were subject to disciplinary action by the Insurance Council of Saskatchewan (the "ICS") for failure to notify it of the disciplinary action taken by the ICM in 2012. The Nominee did not notify Council of the disciplinary action taken by the ICS.

The Nominee, in explaining his oversight, confirmed the address on Council's September 2012 letter was correct; however, he has no recollection of receiving the reminder letter and he was unaware of the obligations under Rule 7(3)(a)(i).

At the time of the disciplinary action taken by the ICM and the ICS, the Nominee had delegated his responsibility for ensuring compliance with the various rules and regulations of the jurisdictions within which the Agency was licensed to a staff member in the Agency. In 2012, due to health reasons, this staff member had not been as diligent with respect to Council Rules and a new staff member was hired to be responsible for compliance. That staff member is currently on leave and was in the process of informing herself of Council Rules. The Nominee's understanding was that where there was disciplinary action in other jurisdictions he was only required to inform his home jurisdiction.

The Nominee did not have a full understanding of Council Rules and was in the process of informing himself of Council Rules. When first licensed in 2008 with Council, the Nominee did not review the Rules.

ANALYSIS

Council found that the above-detailed facts constituted an unintentional breach of Council Rule 7(3)(a)(i) when the Agency failed to inform Council within five days of disciplinary action taken by another professional body. In determining the breach was unintentional, Council determined that whether or not the Nominee received the reminder letter dated September 25, 2012, was not relevant.

Council was concerned that the Nominee was unaware of his obligations to Council, was unaware of Council Rules, and that he delegated his obligations and responsibilities as nominee to staff members within the Agency who were also unaware of Council Rules.

Council was also concerned that after being disciplined by the ICS, the Nominee did not review the requirements of the other jurisdictions in which the Agency was licensed to determine notification criteria.

In considering an appropriate disposition in this matter, Council considered the prior decision of Council in *Lotus Byoungyeon Chung* ("*Chung*") to be informative. In that case, the licensee was disciplined by the Real Estate Council of British Columbia (the "RECBC") and failed to notify Council. Council sent a letter to the licensee reminding her of Council Rule 7(3). The licensee again failed to notify Council of disciplinary action by the RECBC. The licensee accepted that she had breached Council Rules, but explained that she believed her lawyer, who represented her in the RECBC disciplinary action, had provided the required disclosure to Council. Council found that the licensee was aware of her obligations to Council and that she unintentionally breached Council Rule 7(3)(a)(i) a second time. The licensee was fined $1,000.00.

Council considered the facts in *Chung* to be similar. However, in *Chung*, the licensee was aware of her obligations to Council, had received a reminder letter, and was aware of Council Rules. This matter is distinguishable in that the Nominee was unaware of Council Rules and had delegated his obligations to staff who were also unaware of Council Rules. Further, the Agency was subject to disciplinary action by the ICS under a rule similar to 7(3)(a)(i) and Council felt that the ICS disciplinary actions would lead a reasonably prudent person to investigate the requirements of other jurisdictions with which the Agency was licensed. Council determined that in this matter, the fine should be higher than that in *Chung*.

INTENDED DECISION

Pursuant to sections 231 and 236 of the Act, Council made an intended decision to fine the Agency $2,000.00 for the breach of Council Rule 7(3)(a)(i). The Nominee and the Agency are advised that should the intended decision become final, the fine will be due and payable within 90 days of the date of the order. The Agency is advised that failure to pay the fine 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 fine is paid in full.

The intended decision will take effect on **November 5, 2014**, 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 **November 4, 2014**. 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 **November 4, 2014**, 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 www.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 **17th day of October, 2014.**

For the Insurance Council of British Columbia

Gerald D. Matier
Executive Director

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