In the Matter of

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

and

THE INSURANCE COUNCIL OF BRITISH COLUMBIA (the "Council")

and

KALANO Y.L. JANG (the "Nominee")

and

TRILLION FINANCIAL CORP. ("Trillion")

and

BILLION FINANCIAL CORPORATION ("Billion")

DECISION AND ORDER
UNDER SECTIONS 231 & 238 OF THE ACT

Upon reviewing an investigation report and supporting documents prepared by Council staff and submissions put forward by the Nominee, Council is of the opinion that:

The Transamerica ILS Investment Plan

1. The Transamerica Life Insurance Company ("Transamerica") Investment Loan Strategy (ILS) was a 10-8 investment plan designed for high net worth clients who required permanent life insurance protection. Ideally, clients would be business owners or individuals with substantial taxable income and liquid assets, as the concept required a $50,000.00 premium per year for the first three years.

2. Under the Transamerica ILS investment plan, a client would purchase a universal life insurance policy and deposit the first premium payment. Once the policy was in force, the client would take out a policy loan and be charged a guaranteed interest rate of 10 percent per year. The client would be responsible for paying the accrued interest on the outstanding policy loan from a source outside the policy. The client would then reinvest this borrowed money into a qualified investment, essentially one that earned income from a business or property, with

the intention that this reinvestment would enable him to deduct the interest being accrued on his policy loan. In the interim, an amount equal to the policy loan amount would be transferred to an interest bearing account that guaranteed a rate of 8 percent per year.

3. Transamerica strongly encouraged its agents to have their clients, prior to investing in any ILS products, seek professional advice from tax advisors, accountants and/or lawyers to determine whether the strategy would work, bearing in mind each client's individual circumstances. This would also assist the client in determining whether his interest expense would be deductible, as there was considerable debate as to whether the Canada Revenue Agency (CRA) allowed such deductions.

The Nominee's Recommended Investment Planning Strategy

4. The Nominee, Trillion and Billion (the latter two being collectively referred to as the "Agencies") operated under a multi-level marketing system whereby clients who had purchased insurance products from either of the Agencies were encouraged to successfully complete the Life Licence Qualification Program (LLQP) to become licensed as life insurance agents with Trillion in order to collect partial commissions on their own policies. These clients were then asked to recruit or "sponsor" family, friends and acquaintances by inviting them to seminars held by the Nominee. If these friends and family members purchased insurance products from the Nominee or other Agency advisors, the clients who had initially referred the business received a portion of the commissions.

5. The Nominee marketed himself and the Agencies by conducting seminars to prospects. After each seminar, the Nominee, oftentimes along with some of his senior advisors and a host of his secretaries, would meet with these prospects to collect their personal and financial information.

6. Between 2003 to 2006, the Nominee and the Agencies' advisors solicited and recommended to their clients Transamerica ILS products as a way to minimize income tax. In particular, they sold to the majority of their clients Transamerica Wealth Advantage universal life insurance policies and Transamerica segregated fund policies.

7. In recommending to clients Transamerica universal life insurance policies and segregated funds, the Nominee promoted his own version of the Transamerica ILS investment plan. However, he had modified the Transamerica ILS investment plan in such a manner as to distort the intent of the plan and potentially negate any tax sheltering benefits it offered.

8. The Nominee recommended a 10-8 program, using Transamerica ILS products, to all prospects at his seminars and, in order to have them commit to his investment plan before they changed their minds, he had them invest first in segregated fund policies while he took them through the underwriting process and they waited for approval of their universal life insurance policies. These were short term deferred sales charge segregated funds. He did not give them the option of purchasing the same segregated funds with initial sales charges.

9. The Nominee also recommended to his clients that they invest in 2-for-1 loans, whereby their initial investment was used as leverage to triple the size of their segregated fund policies.

10. Upon approval of their universal life insurance policies, which typically had high amounts of insurance in the $1 million to $2 million range, the Nominee liquidated the clients' segregated fund accounts. The clients incurred 6 percent deferred sales charges and the money was transferred into universal life insurance policies. The Nominee then had the clients take out loans against the policies' accounts, which he again invested in deferred sales charge segregated fund accounts.

11. Under the Nominee's investment plan, clients were advised in years two and three of the universal life insurance policies to deposit additional premiums into their policies, either by using money from another source or collapsing their segregated fund accounts and re-depositing those funds back into the policies.

12. Each time the segregated fund accounts were opened, the Nominee and the Agencies' advisors earned commissions, and each time these accounts were collapsed, clients incurred deferred sales charges.

13. The Nominee also recommended to clients that they invest with a lawyer in Ontario, Ming Ngoc Pham ("Pham"), whose firm loaned out money for mortgages. The Nominee did not disclose to clients the details of this investment but advised them that they would guarantee a 12 or 13 percent rate of return.

14. On or about June 1, 2006, Transamerica terminated its contracts with the Nominee, the Agencies, and all other advisors affiliated with the Agencies. According to Transamerica, it was the Agencies' selling practices that caused it to terminate its contracts.

Submissions from Clients

15. Council staff interviewed six of the Nominee's and the Agencies' clients. Their submissions were consistently the same.

16. These clients were not individuals who had disposable incomes, high net worth or were in high tax brackets. None of them were business owners.

17. These clients submitted that the Nominee encouraged them to invest most, if not all, of their assets into the aforementioned investment plan. This included recommendations that they liquidate assets, such as RRSPs and real estate, or that they mortgage their homes to obtain lines-of-credit. They were also advised to take out 2-for-1 leveraged loans.

18. These clients submitted that the Nominee advised them to artificially create or inflate their personal debt in order to qualify for higher amounts of insurance. These clients were told that it would only be beneficial to them to have insurance with large face amounts, generally 1 or 2 million dollars.

19. These clients stated that they were advised by the Nominee and other Trillion advisors that they would make substantial profits in a short period of time, and that their segregated fund policies would perform well enough to cover any leveraged loan payments they had.

20. These clients submitted that the Nominee and the Agencies' advisors advised them that their funds could be accessed at any time without any cost consequences. They were not advised of any deferred sales charges or surrender fees.

21. These clients claimed that the Nominee instructed them to sign blank insurance documents which would later be completed by the Agencies' staff.

22. One client was advised by the Agencies' advisors not to disclose to Transamerica that she was on a leave of absence from work or that she had applied for long term disability coverage, as that would impair her ability to qualify for an insurance policy.

23. These clients, not even those who had passed the LLQP and had become licensed as life insurance agents, were clear on how the Nominee's investment plan worked. They did not understand the nature of the short term investments into segregated fund policies nor did they comprehend how the 10-8 plan worked.

Once the policies were issued, the Nominee did not review them with these clients.

24. These clients did not understand the Agencies' commission structure.

25. Some of these clients, who were not able to meet their loan or premium obligations, were advised by the Nominee to invest with Pham. One client was encouraged to obtain a line-of-credit so that she could invest with Pham. The Nominee refused to disclose any information to these clients about Pham and the investment arranged by her. He only told them that this was a solid investment. These clients did not receive their interest payments from Pham as scheduled and in one case, a client did not receive any payments, nor was his initial investment returned to him.

Submissions from the Nominee

26. The Nominee submitted that in his seminars, he advised people on how to use the universal life insurance policy to minimize income tax, and in doing so, he recommended his 10-8 investment plan to everyone.

27. The Nominee stated that, up until 2006, the majority of his and the Agencies' clients had purchased Transamerica Wealth Advantage universal life insurance policies. This product was consistently recommended and sold by the Nominee because it was the only product that provided an automatic policy loan.

28. The Nominee stated that after each seminar, he met with prospects and had each of them complete financial statements. Based on the information provided on the financial statement, he prepared a needs analysis for each client. The Nominee's recommendations were based on the needs analysis reports. While the Nominee determined the amount of insurance each client required, the investment plan always stayed the same. He stated that he recommended the same plan to all his clients because he did not have the time to proceed with each person individually.

29. The Nominee conceded that some people lost money on his investment plan, but these were clients who were not willing to commit to the plan for the time required. A minimum three year deposit was required and the program took approximately six years before it would work.

30. According to the Nominee, for those people who did not have any debt, he advised them that he could not assist them in obtaining insurance. However, if they were insistent, he then advised them that they would have to accumulate debt in order to obtain insurance.

31. Although he denied making recommendations to his clients that they create or inflate their personal debt, the Nominee advised them that they would need to increase their debt in order to obtain higher amounts of insurance.

32. The Nominee acknowledged that there were deferred sales charges and management expense ratios (MERs) on each of the segregated fund policies. He stated that these fees were explained to all of his clients.

33. The Nominee stated that he did not recommend any other funds, such as initial sales charge segregated funds, because he was not familiar with them. He invested all his clients into the same segregated fund.

34. The Nominee denied ever directing any of his clients to sign blank forms. He would have his team of secretaries complete the forms, but conceded that there were times when they were not able to complete the forms in their entirety before having his clients sign them.

35. The Nominee claimed that he spent a lot of time with each client explaining his investment plan and insurance concepts with them and therefore, he could not be blamed if his clients were still confused about the plan.

36. The Nominee stated that, with respect to the commission structure, when a person brought in a new client, he would earn a 40 percent commission, provided he was licensed to sell insurance. He himself would make a maximum of 35 percent commissions, but averaged approximately 16 percent.

37. The Nominee explained that, for those clients who did not want to reinvest their monies into the recommended segregated funds, he introduced them to Pham. Pham then dealt directly with the clients and he had no further involvement in Pham's investment opportunity.

Council found the aforementioned facts to constitute a breach of section 231(1)(a) of the Act in that the Nominee and the Agencies failed to act in a trustworthy and competent manner, in good faith and in accordance with the usual practice of the business of insurance. In particular, the Nominee and the Agencies failed to act in the best interests of their clients and made unsuitable recommendations to their clients to invest in the same investment plan, regardless of their individual insurance needs and financial circumstances. As well, Council determined that the Nominee had distorted this investment plan in such a way as to potentially negate any tax sheltering benefits, even for clients deemed suitable for the plan. As well, in recommending this program, Council found that the Nominee and the Agencies engaged in improper sales techniques in order to generate sales of these Transamerica products.

As stated by Transamerica in their materials, and as is the case with most other variations of the 10-8 plan as offered by other insurance companies, this strategy is a complex and aggressive one designed specifically for a select group of clients, those being high net worth clients, typically business owners, in high tax brackets who are looking for tax deductions, and who have large amounts of disposable income to inject into a policy for the first few years. It is a plan that requires rigid adherence to CRA tax rules and as such, it is recommended that clients also seek other expertise from tax professionals. In this case, Council found that the Nominee and the Agencies was marketing the Transamerica 10-8 strategy, or his version thereof, to all their clients. This started with the Nominee's seminars, which led to a mass production line of luring clients in with a segregated fund policy while he attempted to get them approved for the Transamerica Wealth Advantage universal life insurance policies, with face amounts generally in the 1 to 2 million dollar range.

The Nominee conceded that he had recommended this investment plan to all his clients. He even stated that he did not have the time to look at each individual case on its own merits. Council found that his only attempt at an individualized assessment of a client's needs, if one could even call it that, was his review of a purported needs analysis to determine the amount of insurance the client should have. Notwithstanding, this assessment appeared generally to amount to a choice between a 1 million or 2 million dollar policy. The Nominee admitted that those who did not have enough debt and who did not care to create or inflate their debt were turned away and told that he could not help them obtain insurance. The Nominee did not offer any other options to these people. In reviewing the submissions of the six clients above who had purchased insurance products from the Nominee and the Agencies to partake in his investment plan, Council found that none of these people fit Transamerica's targeted market group for its 10-8 plan. These clients did not have a lot of assets and were not earning high incomes. They were not business owners who had excess capital, over the course of three years, to deposit into a universal life insurance policy. In short, they did not have a need for a tax sheltering plan such as the 10-8 strategy.

What Council found to be even more egregious was that the Nominee had undermined the intent of the Transamerica ILS plan and had manipulated it in such as way as to potentially reverse any tax sheltering benefits for those who even qualified as suitable investors under the plan. Council concluded that the manner in which the Nominee counselled his clients to take out policy loans each year, to invest in new segregated fund accounts, before re-depositing the monies back into the policy the following year, amounted to a commission driven scheme. Each of these transactions enabled the Nominee and the Agencies to generate compensation, and subjected clients to needless deferred sales charges. The constant deposits, subsequent withdrawals and re-deposits clearly affected the adjusted cost base, growth and performance of the insurance policy as well. Ultimately, and most significantly, however, is that the Nominee's recommendation of investing the policy loans into segregated funds, would not have enabled his clients to qualify for a tax deduction on the interest on their policy loans, thereby negating a significant aspect of the

plan. As stated above, the CRA rules on what constitutes a qualified investment are rigid and complex, and Council was of the view that the Nominee himself did not fully understand the plan and the implications of having the policy loan invested in segregated fund accounts.

Council determined that the Nominee not only acted in an untrustworthy manner, in bad faith and outside of the usual practice of the business of insurance by recommending to all his clients, regardless of their financial circumstances and insurance needs, that they invest in his multi-level marketed 10-8 insurance plan, but that he acted incompetently also. Council found that the Nominee failed to demonstrate that he himself fully understood this complex strategy. He did not appear to be aware that there were strict rules involved in determining whether an investment of a policy loan qualified for a tax deduction, or even that once planned premiums are taken out of a policy, the client may become exposed to certain tax liabilities. As well, the Nominee admitted that the there were deferred sales charges and MERs to consider in determining whether the segregated fund contracts were in the best interests of the clients. Council found his explanation, that he put all his clients in the same deferred sales charge segregated funds, because he was not familiar with any other funds, to be wholly inadequate and further illustrated his lack of competency. Council concluded that the Nominee's distorted version of Transamerica's 10-8 plan only served to generate commissions for himself and the Agencies. The Nominee's insurance business amounted simply to a mass production of the same universal life insurance policy for each and every client.

The Nominee's and the Agencies' sales practices were also problematic. The Nominee admitted that insurance related documents were signed by clients before being completed. He would have his secretaries, not his licensed agents, complete these forms. Furthermore, despite the Nominee's submissions, it was clear that his clients did not fully comprehend his investment strategy or the Agencies' commission structure, despite some of them being licensed as life agents themselves. As the Nominee himself did not properly understand the 10-8 concept, it was clearly impossible for him to explain it to his clients in a manner that they would understand.

Based on the foregoing, Council determined that the Nominee and the Agencies no longer meet the requirements for licensing under section 231 of the Act and Rule 3(2) of the *Council Rules*. In particular, the Nominee and the Agencies are not trustworthy or competent, and cannot be relied upon to publicly conduct insurance business in good faith and in accordance with the usual practice. Their practice of recommending their flawed version of a complicated and aggressive tax sheltering strategy to all of their clients, solely for the purpose of generating commissions, demonstrated to Council that the Nominee and the Agencies posed an ongoing risk to the public and were not suitable to be licensed as insurance agents. Council did not find it mitigating that the Nominee and the Agencies had not sold these types of ILS products since 2006. But for the termination of their contracts with Transamerica, these practices would likely still be continuing.

Council reviewed the *Larry James Clark and Clark Thomas Insurance Services* decision, which it considered to be most similar in fact and circumstance to the case at bar. In that case, the licensee, who was at the time under investigation by the British Columbia Securities Commission for possible breaches of provisions in the provincial securities legislation, was found to have acted contrary to the best interests of his insurance clients by soliciting the sale of shares for a company in which he was a director, for personal benefit and to the detriment of these clients. Specifically, he made misrepresentations to his clients in order to compel them to purchase these shares, failed to conduct a needs analysis with each client to determine whether the investments were appropriate for their needs, and allowed one client to surrender two life insurance policies and use the proceeds to purchase shares in the company. Both the licensee's and the agency's licences were cancelled for a minimum period of five years. As well, he and the Agency failed to provide prompt responses to inquiries from Council and were fined a total of $6,000.00 as a result.

The Nominee and the Agencies in this case acted in the same manner. They clearly did not conduct themselves in the best interests of their clients. The recommendations made to their clients were for their own personal benefit, in generating substantial commissions, and prejudicial to the clients. The Nominee put each of his clients in the same investment plan and in doing so, he failed to properly assess their needs and goals. He made misrepresentations about his investment plan, stating to his clients that they would be able to obtain tax deductions and make substantial profits over a short period of time. Thus, with the exception of the licensees' failure to provide prompt responses to inquiries from Council, Council found the *Larry James Clark and Clark Thomas Insurance Services* case to be directly on point.

Accordingly, Council determined that the Nominee's and the Agencies' insurance licences should be cancelled for a minimum period of five years, following which time their suitability would be reviewed should they reapply for licences in the future. This five year period prohibiting the Nominee and the Agencies from working in the insurance industry would serve to protect the public, demonstrate that such conduct will not be tolerated and maintain the public's confidence in the integrity of the profession. This should serve as a sufficient deterrent for the Nominee, the Agencies and other licensees from carrying out this or similar kinds of misconduct in the future.

INTENDED DECISION

Pursuant to sections 231 of the Act, Council intends to order the following:

1. the Nominee's licence be cancelled and that he is not suitable to hold an insurance licence for a minimum period of five years from the date Council's order takes effect; and

2. the Agencies' licences be cancelled and that they are not suitable to hold insurance licences for a minimum period of five years from the date Council's order takes effect.

DECISION PURSUANT TO SECTION 238 OF THE ACT

WHEREAS the Nominee is currently licensed as a Life and Accident and Sickness Insurance Agent and the Agencies are currently licensed as Life and Accident and Sickness Insurance Corporate Agents;

AND WHEREAS Council conducted an investigation pursuant to section 232 of the Act into allegations that:

(a) the Nominee and the Agencies recommended to clients a Transamerica insurance plan that the Nominee had modified in such a way that it was not in the best interests of any of their clients;

(b) the Nominee and the Agencies employed or had their advisors employ improper selling techniques in order to generate the sale of Transamerica universal life insurance policies and segregated fund policies; and

(c) the Nominee and the Agencies recommended clients invest in an investment managed by a lawyer in Ontario without disclosing or explaining the nature of the investment.

AND WHEREAS Council has determined on the basis of its investigation that the Nominee's and the Agencies' actions demonstrated they are not trustworthy and competent and cannot be relied on to publicly carry on the business of insurance in good faith and in accordance with the usual practice, and that they all pose a continuing and imminent risk of serious harm to the public;

AND WHEREAS Council considers it to be in the public interest to cancel the Nominee's and the Agencies' licences pursuant to section 231 of the Act;

AND WHEREAS Council considers the length of time required to hold a hearing would be detrimental to the due administration of the Act;

NOW THEREFORE Council orders the Nominee's and the Agencies' licences are cancelled pursuant to sections 231 and 238, effective immediately;

TAKE NOTICE that pursuant to section 238 of the Act, the Nominee and the Agencies have the right to require a hearing on this order before the Council by delivering written notice within 14 days of receipt of this order to the Council at Suite 300 – 1040 West Georgia Street, Vancouver, B.C., V6E 4H1; alternatively, the Nominee and/or the Agencies may appeal this order to the Financial Services Tribunal.

This order takes effect on the 18th day of March, 2008.

Ken Hawley, BComm, FLMI, CFP, CLU, ChFC
Vice-Chairperson, Insurance Council of B.C.