

IN THE MATTER OF THE *FINANCIAL INSTITUTIONS ACT*
(RSBC 1996, c.141)
(the “Act”)

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
 (“Council”)

and

SENTINEL FINANCIAL MANAGEMENT CORP.
(the “Agency”)

and

MERLIN HENRY CHOUINARD
(the “Former Nominee”)

ORDER

As Council made an intended decision on February 11, 2020, 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 Former Nominee with written reasons and notice of the intended decision dated March 31, 2020; and

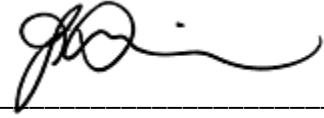
As the Agency and the Former Nominee have not requested a hearing of Council’s intended decision within the time period provided by the Act;

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

1. The Agency is fined \$1,500, due and payable by no later than August 10, 2020;
2. The Former Nominee is fined \$1,000, to be paid by no later than August 10, 2020;
3. Council will not consider any future licensing applications by the Former Nominee to Council until the fine is paid in full;
4. The Former Nominee is required to complete the Council Rules Course prior to any future licensing applications by him being considered by Council; and
5. A condition is imposed on the Agency’s licence that failure to pay the fine by August 10, 2020 will result in the automatic suspension of the Agency’s licence, and the Agency will not be permitted to complete the 2021 annual filing until such time as the Agency has paid the fine in full.

Order
Sentinel Financial Management Corp. and Merlin Henry Chouinard
LIC-166217C101614R1, LIC-74600C120121R1, COM-2018-00451
May 11, 2020
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This order takes effect on the **11th day of May, 2020.**



Janet Sinclair
Executive Director, Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA

(“Council”)

respecting

SENTINEL FINANCIAL MANAGEMENT CORP.

(the “Agency”)

and

MERLIN HENRY CHOUINARD

(the “Former Nominee”)

1. Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Agency and/or the Former Nominee acted in compliance with the requirements of the Act, Council Rules, and Code of Conduct, and in particular whether the Agency and/or the Former Nominee had breached Council Rules 7(3)(a)(i) and 7(4)(b)(ii) by failing to notify Council of disciplinary action by the Mutual Funds Dealers Association of Canada (the “MFDA”) in 2011 and 2018, and of a material change in ownership of the Agency that occurred in 2016.
2. As part of Council’s investigation, on December 17, 2019, a Review Committee (the “Committee”) met to discuss the alleged failures to notify. The Former Nominee, as well as the Agency’s current nominee (the “Current Nominee”), joined the Committee via teleconference. Prior to the meeting, a report prepared by Council staff was distributed to the Committee for review and to the Agency and Former Nominee for review and response. A discussion of the report and submissions provided by the Agency and Former Nominee took place at the meeting. Having reviewed all the relevant materials and discussed the matter, the Committee prepared a recommendation for Council.
3. The Committee’s recommendation, along with the aforementioned report prepared by Council staff, were reviewed by Council at its February 11, 2020 meeting, where it was determined the matter should be disposed of in the manner set out below.

PROCESS

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

FACTS

5. The Former Nominee was the Agency's nominee at all times material to this matter. He is not currently licensed in British Columbia, but maintains licences in several other provinces. The Current Nominee has served as the Agency's nominee since May 2019.
6. The Agency was disciplined by the MFDA in August 2018 for failing to adequately conduct proper Tier 1 trade supervision, failing to adequately supervise the activity of approved persons, and failing to complete reviews of sub-branches and their approved persons. The MFDA fined the Agency \$75,000 and assessed \$10,000 in costs. The Agency did not notify Council about the discipline.
7. Council staff became aware of the MFDA's discipline of the Agency in September 2018 and contacted the Agency to inquire as to why Council had not been notified of the discipline. The Former Nominee, who was still the Agency's nominee at the time, explained to Council staff that he had not known that the Agency was obligated to inform Council of the MFDA discipline. He also informed Council staff that ownership of the Agency had changed in 2016, which had not previously been disclosed to Council.
8. Council staff subsequently discovered that the Agency had also been disciplined by the MFDA in July 2011 for failing to conduct proper tier-two trade supervision and failing to maintain adequate records of trade supervision. The Agency had been fined \$35,000 and assessed \$2,500 in costs on that occasion. The discipline had not been disclosed to Council.
9. The Former Nominee admitted in the course of his meeting with the Committee that the Agency's failure to provide notice had been his fault, as he had been unaware of the disclosure requirements set out in the Council Rules. The Current Nominee explained to the Committee that the Agency has since taken steps to improve its ability to ensure compliance with regulatory requirements, and to ensure that its licensees are up to date with regulatory rules.

ANALYSIS

10. Council determined that the failure by the Agency and Former Nominee to notify Council of discipline by the MFDA in both 2011 and 2018 constituted breaches of Council Rule 7(3)(a)(i), which requires that "A licensee must notify Council within 5 business days where the licensee or any business the licensee owns or has participated in as a director, officer or partner is disciplined by any financial sector regulator, or an professional or occupational body."

11. Further, Council determined that the failure to report the change in ownership of the Agency that occurred in 2016 constituted a breach of Council Rule 7(4)(b)(ii), which requires that “A licensee must notify Council within 30 calendar days in the case of an insurance agency, adjusting firm or the nominee of a direct writer of a material change in the ownership of an insurance agency of adjusting firm.”
12. Council considered the two instances of the Agency and Former Nominee having failed to notify Council of discipline from the MFDA to be of primary concern. The failure to report the 2016 change in ownership was considered to be a comparatively minor issue, which in normal circumstances would have been addressed at the staff level by the sending of a reminder letter. In this case, however, the failure to report the ownership change was considered an aggravating factor that served to emphasize the Agency and Former Nominee’s routine non-compliance with the disclosure requirements set out in the Council Rules.
13. Council accepted the Current Nominee’s submission that the Agency has recently implemented changes and new policies in order to ensure compliance with the Council Rules going forward, as well as with the rules of other provincial regulators. Council considered the Agency’s implementation of new compliance processes to be a mitigating factor.
14. Council was concerned, however, based on the Committee’s meeting with the Former Nominee and the written submissions provided by the Former Nominee, that the Former Nominee had had an inadequate understanding of the Council Rules during the material time period. The Former Nominee admitted that he did not know the rules for every jurisdiction in which he was licensed, and that he had last reviewed the Code of Conduct four years ago. Council was further troubled by the Former Nominee’s admission that he did not know whether the necessary insurance companies had been informed about the 2016 change in Agency ownership.
15. In determining a disposition in this matter, two previous cases involving failures by licensees to provide notice of required information were reviewed and considered by Council.
16. *Prosperity Protection Corp.* (February 2017) concerned an agency that was disciplined by the Insurance Council of Saskatchewan in 2015 but failed to report the matter to Council. The agency also failed to notify Council about a lapse in its errors and omissions insurance that had occurred in 2014, as required by Council Rule 7(11). The agency was fined \$1,000, and its nominee was required to complete the Council Rules Course.

17. *Garrett Agencies Ltd. and John Richard Garrett* (June 2018) concerned an agency that was disciplined by the Insurance Council of Saskatchewan in 2015 but failed to report the matter to Council. Council issued a reminder letter to the agency in October 2015, in which it was explained that the agency has a duty to notify Council if they are disciplined by a professional regulator in another jurisdiction. The agency was subsequently disciplined by the Alberta Insurance Council in 2017, and again failed to report the matter to Council. The agency was fined \$2,000 and the nominee was required to take the Council Rules Course.
18. Council acknowledged that these two precedents establish a general pattern by Council of fining agencies \$1,000 for each failure to report discipline from another regulatory body. Although this present matter involved two failures by the Agency to report discipline in accordance with the Council Rules, Council was of the opinion that a fine of \$1,500, rather than \$2,000, should be assessed in order to reflect the efforts that the Agency has taken to improve compliance.
19. Council also determined that it was appropriate in this case to fine the Former Nominee. The Former Nominee was the Agency's nominee at the time of each of the three occasions on which the Agency had failed to provide necessary notice to Council, and it was his deficient understanding of both the Council Rules and his own duties as nominee that were the ultimate cause of the Agency's repeated breaches of the Council Rules.

INTENDED DECISION

20. Pursuant to sections 231 and 236 of the Act, Council made an intended decision to:
 - i. Fine the Agency \$1,500, to be paid within 90 days of Council's order;
 - ii. Fine the Former Nominee \$1,000, to be paid within 90 days of Council's order;
 - iii. Not consider any future licensing applications by the Former Nominee to Council until the fine is paid in full;
 - iv. Require the Former Nominee to complete the Council Rules Course prior to any future licensing applications by him being considered by Council; and
 - v. Impose a condition on the Agency's licence that failure to pay the fine within 90 days of Council's order will result in the automatic suspension of the Agency's licence, and the Agency will not be permitted to complete annual filing until such time as the Agency has paid the fine in full.

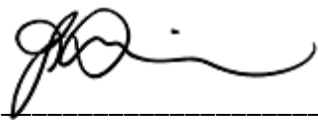
21. Subject to the right of the Agency and Former Nominee to request a hearing before Council pursuant to section 237 of the Act, the intended decision will take effect after the expiry of the hearing period.

RIGHT TO A HEARING

22. If the Agency or Former Nominee wishes to dispute Council's findings or its intended decision, the Agency or Former Nominee 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 or Former Nominee 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 of time from receipt of the notice. Please direct written notice to the attention of the Executive Director. If the Agency or Former Nominee does not request a hearing **within fourteen (14) days of receiving this intended decision**, the intended decision of Council will take effect.
23. Even if this decision is accepted by the Agency and Former Nominee, pursuant to section 242(3) of the Act, the British Columbia Financial Services Authority ("BCFSA") still has a right to appeal this decision of Council to the Financial Services Tribunal ("FST"). The BCFSA has 30 days to file a Notice of Appeal, once Council's decision takes effect. For more information regarding appeals, contact the FST directly at 250-387-3464 or view their appeal guide at www.fst.gov.bc.ca/pdf/guides/ICGuide.pdf.

Dated in Vancouver, British Columbia, on the **31st day of March, 2020**.

For the Insurance Council of British Columbia



Janet Sinclair
Executive Director