In the Matter of

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

and

The INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

and

JASON FREDERICK NETHERTON
(the "Licensee")

ORDER

Pursuant to section 237 of the Act, Council convened a hearing at the request of the Licensee regarding Council's intended decision, dated November 5, 2013.

The subject of the hearing was set out in a Notice of Hearing, dated March 11, 2014.

A Hearing Committee heard the matter on April 4, 2014, and presented a Report of the Hearing Committee (the "Report") to Council at its June 16, 2014 meeting.

Council considered the Report and made the following order pursuant to sections 231, 236, and 241.1 of the Act:

1. A condition is imposed on the Licensee's life and accident and sickness insurance licence that requires him to get all marketing material approved by either the related insurance company or managing general agent before use.

2. A condition is imposed on the Licensee's life and accident and sickness insurance licence that requires the Licensee to successfully complete at least one course per licence year toward either a Chartered Life Underwriter designation or a Certified Financial Planner designation, until he has successfully completed all of the courses required to attain either designation.

3. A condition is imposed on the Licensee's life and accident and sickness insurance licence that if the Licensee fails to meet the licence condition outlined in number 2 above, the Licensee must only conduct insurance activities under the supervision of a qualified life and accident and sickness insurance agent until such time as the designation has been obtained.

.../2

4. The Licensee is fined $5,000.00.

5. The Licensee is assessed Council's investigative costs of $3,562.50.

6. A condition is imposed on the Licensee's life and accident and sickness insurance licence that requires him to pay the above-ordered fine and investigative costs no later than **September 16, 2014**. If the Licensee does not pay the ordered fine and investigative costs in full by this date, the Licensee's life and accident and sickness insurance licence is suspended as of **September 17, 2014**, without further action from Council and the Licensee will not be permitted to complete any annual filing until such time as the ordered fine and investigative costs are paid in full.

This order takes effect on the **16th day of June, 2014**.

Rita Ager, CFP, CLU, CHS, CPCA, FEA
Chairperson, Insurance Council of British Columbia

INSURANCE COUNCIL OF BRITISH COLUMBIA
("Council")

REPORT OF THE HEARING COMMITTEE

IN THE MATTER OF THE *FINANCIAL INSTITUTIONS ACT*
(S.B.C. 1996, c. 141)
(the "Act")

AND

JASON FREDERICK NETHERTON
(the "Licensee")

Date:	April 4, 2014 9:30 a.m.	
Before:	Izumi Miki McGruer Rita Ager Frank Mackleston	Chair Member Member
Location:	The Insurance Council of British Columbia Suite 300, 1040 West Georgia Street Vancouver, British Columbia V6E 4H1	
Present:	David McKnight Gil J. Korn Jason Frederick Netherton	Counsel for Council Counsel for Licensee Licensee

BACKGROUND AND ISSUES

On October 15, 2013, Council made an intended decision, pursuant to sections 231, 236, and 241.1 of the Act, regarding allegations the Licensee failed to act in a trustworthy and competent manner, in good faith, and in accordance with the usual practice of the business of insurance by:

a) Distributing misleading marketing material.

b) Promoting of the financial strategy to help clients secure and use low-interest loans in a manner contrary to the terms under which the loans were procured.

c) Selling variable annuities on a deferred sales charge ("DSC") basis even though the annuities were being marketed as a short-term investment.

.../2

In response, the Licensee requested a hearing pursuant to section 237(3) of the Act. The purpose of the hearing was to determine if the Licensee is able to carry on the business of insurance in a trustworthy and competent manner, in good faith, and in accordance with the usual practice of the business of insurance as required under Council Rule 3(2) and pursuant to section 231(1)(a) of the Act. If the Hearing Committee determines the Licensee acted in a matter which brings into question his suitability, it may recommend to Council appropriate disciplinary action in the circumstances.

The Hearing Committee is constituted pursuant to section 232 of the Act. This is a report of the Hearing Committee, as required pursuant to section 223(4) of the Act.

Evidence reviewed by the Hearing Committee in consideration of this matter included:

Exhibit 1	Agreed Statement of Facts
Exhibit 2	Council's Book of Documents
Exhibit 3	Licensee's Book of Documents
Exhibit 4	B2B Bank's email
Exhibit 5	CIBC marketing material

FACTS

An Agreed Statement of Facts was reached and was entered as an exhibit to this hearing. The pertinent details are contained below.

The Licensee has been a life and accident and sickness insurance agent ("life agent") since 1999. Until 2010, he was contracted to represent Sun Life Assurance Company of Canada ("Sun Life") (or one of the several predecessors that became part of Sun Life by way of acquisition). The Licensee operates his life insurance business in Lake Country, British Columbia, under an agency named JFN Holdings Ltd. dba Your Future Financial Group and dba Insure Wealth (the "Agency"). The Agency has been licensed since December 2010, and the Licensee is the nominee and the only authorized representative of the Agency. The Licensee is also licensed in Alberta as a life insurance agent.

In February 2012, Sun Life raised concerns with the Licensee's insurance activities. More specifically, it identified a pattern of systemic Registered Retirement Savings Plan ("RRSP") withdrawals from some of the Licensee's clients, all of which had made recent deposits to their RRSP accounts. The sources of these RRSP deposits were loans advanced from B2B Trust ("B2B").

As part of its complaint, Sun Life stated that the behavior of the Licensee gave rise to a question in the individual's ethics, judgment, responsibilities, and trustworthiness. Sun Life had concerns with respect to the negative impact to the client, including the DSC, withholding tax on withdrawals, impact on RRSP contribution room, and the breaching of loan contracts. As a consequence of these concerns, Sun Life terminated the Licensee's contract on March 1, 2012. While Sun Life raised concerns with the Licensee's conduct, none of the clients involved filed a complaint with Council, nor did B2B, which continues to do business with the Licensee.

MARKETING MATERIAL

The Licensee prepared marketing material entitled "*Benefits of an RRSP consolidated loan!*" which contained a number of investment strategies. Included in the marketing materials was a strategy where the Licensee represented a $287,174.00 growth assumption based on a $50,000.00 RRSP loan invested at 6% over a 30 year period. In addition, the marketing material proposed that the monthly financial obligations of an individual can be reduced by shifting high interest debt to a lower rate RRSP loan, under a debt consolidation concept. As an example: a family debt of $35,000.00 is shown with interest ranging from 7% to 18%, along with life insurance premiums of $250.00 (representing a total monthly payment of $950.00) in comparison to an RRSP loan at 5.75% with a monthly payment of only $564.00.

The Licensee identified an opportunity where clients, who were otherwise unable to secure financing, could obtain a low interest loan that they could use for various purposes. The strategy involved having clients obtain an RRSP loan from B2B at interest rates varying from 3% to prime plus 2.75%. Once the loan was obtained, the Licensee recommended depositing the loan proceeds into a Sun Life RRSP variable annuity with a money market fund underlying the investment. The RRSP loans were not secured against any assets or property and clients were told they could withdraw their RRSP assets at any time for any purpose. In promoting this strategy, the Licensee did disclose to clients that there would be an associated DSC and that the withdrawal of funds from any RRSP account would result in a withholding tax of 10% (so long as no more than $5,000.00 was withdrawn at any one time).

The B2B RRSP loan applications include the following excerpts which were included in the advisory information version of the B2B RRSP loan application:

8. Demand Note

> *"I hereby promise to pay on demand to the order of the bank....the principle with interest thereupon..."*

9. Payment Options

"Although the loan is repayable on demand..."

12. Terms and Conditions

Transfer of the RRSP

"Prior to terminating or transferring the RRSP to which the proceeds of the loan have been contributed, I undertake to repay the entire amount of the indebtedness, and I acknowledge that I will be solely responsible for any fiscal or tax costs or consequences arising from such termination or transfer. I further agree not to sell, transfer, mortgage, hypothecate, pledge, assign, or diminish the value of the funds held within my RRSP without the bank's prior written consent..."

Events of Default

"In the absence of an earlier demand by the bank, I agree to repay the indebtedness in full on my death, or on the occurrence of the following events of default:

If I take any action to transfer or diminish the value of the funds or the assets held in my RRSP..."

The Licensee was aware of the default language in the loan applications. The Licensee stated he spoke to a B2B manager before promoting the strategy and was told there were no restrictions on how the RRSP loans could be accessed or used. Based on discussions with B2B staff, the Licensee understood the above referenced language in the loan agreement was included because the loan application used blanket contract language.

The same B2B manager confirmed that he did not have a discussion with the Licensee regarding the contractual terms of the B2B RRSP loan, as it pertained to a loan default, or whether there were any restrictions regarding the use of the loan. In addition, Sun Life confirmed that in its discussions with B2B that B2B was not in support of the Licensee's strategy.

Before commencing the strategy, the Licensee did not obtain written confirmation from either B2B or Sun Life confirming that there were no restrictions on how the RRSP loan funds could be accessed or used. The Licensee stated he did not receive compensation from B2B for taking the loans but did receive commissioned payments for the subsequent deposit of the loan proceeds into a variable annuity as part of the strategy.

The Licensee stated that in setting up the variable annuities through Sun Life, he discussed the DSC charges with his clients, but there was no evidence to suggest the Licensee also disclosed to the clients that they had a second option which involved buying the variable annuities on a no-load basis ("No Load").

The Licensee facilitated 34 variable annuity investments (deposited in an RRSP) for clients in 2011, all financed through B2B. The underlying investments were exclusively money market based and procured on a DSC basis. As part of each transaction the Licensee completed a B2B RRSP loan application and a Sun Life variable annuity application with deposits ranging from $5,000.00 to $56,000.00. The total dollar amount of client RRSP loans and correlating variable investments equaled (approximately) $870,000.00.

All the variable annuities were available for purchase by the clients on a No Load basis. Reviewing the client RRSP annuity redemptions, all were for $5,000.00 or less and most of the withdrawals occurred within a few months of the inception of the variable annuity investment. These redemptions, as they were sold on a DSC basis, were subject to a 5.5% commission as well as the associated withholding taxes. In total, the Licensee received approximately $43,000.00 in commissions for these investments. Of the $870,000.00 invested, approximately $270,000.00 was redeemed by the Licensee's clients.

B2B advised that although the RRSP loan contract permits it to demand full repayment immediately if any or all of the RRSP is redeemed, a decision was made not to pursue this course of action as the clients were meeting the loan repayment terms. In all cases, the clients who took out loans have either paid off the loan or continued to keep the loans in good standing.

EVIDENCE OF THE LICENSEE

The Licensee stated that his marketing material was developed with the assistance of an accountant, and was designed to give clients a good understanding of his strategy. The Licensee stated that no client was induced into taking out a B2B loan based on his marketing material. The Licensee explained that he was providing a service to clients who were seeking low interest loans or trying to re-structure existing high interest debt.

The Licensee stated that he has been affiliated with B2B and its products since 2001. Throughout his relationship with B2B the Licensee has never had one of his client's loans called. The Licensee's position was that the borrowers could do whatever they wanted with the funds, so long as the loans were properly serviced. The Licensee stated that B2B does not compensate him for initiating these loans, explaining that the motive was solely to assist qualified clients with obtaining lower interest loans which could be used to consolidate debt, buy a home, or put to another purpose.

The Licensee explained that he has now modified his disclosure and practices with regard to the B2B loans, as well as his advice to clients regarding withdrawals from an RRSP account.

The Licensee stated that when he was preparing his marketing material he contacted Council in 2010 to get direction regarding marketing material and the use of referral fees. The Licensee stated that he was advised that Council did not have specific policies regarding marketing material.

The Licensee acknowledged that the marketing material on his website could have been better, but did not believe that it was misleading nor was it intended to mislead consumers.

The Licensee explained that of all the B2B loans he helped clients initiate in 2011, only a portion of the clients took the next step and actually withdrew funds from their RRSP. In addition, none of his clients have complained and, to date, B2B has not called any of the loans as a result of his clients cashing in some, or all, of their RRSP's.

The Licensee stated that it is common knowledge within the industry that B2B loans can be used for various purposes, and that as the RRSP loans cannot be collateralized, it was acceptable to request cash payouts of the RRSPs without having to first obtain the approval of B2B. The Licensee gave an example of where one of his clients did contact B2B before cashing it out, and was instructed that as the loans were not collateralized the client did not need their consent, and should be in contact with the relevant insurance company.

The Licensee stated he believed he was using the B2B loan process appropriately, and stated that he would not have done so if he thought a loan would be called or it would have placed his clients at risk. The Licensee felt he was not reckless in how he developed and promoted this strategy, and did not believe he acted or made recommendations that were outside the spirit of the B2B loans.

HEARING COMMITTEE'S DELIBERATIONS

The Hearing Committee found the Licensee, while not intentionally setting out to mislead his clients, established a strategy that could have been better prepared and explained. In reviewing the Licensee's marketing material, the Hearing Committee found the Licensee established a strategy that was not consistent with the intent and direction of B2B or the insurance company. The B2B RRSP loan agreement clearly states that it was designed for persons seeking to obtain funds to invest in an RRSP account. While recognizing that the B2B RRSP loan agreement was a demand loan, there were additional provisions in the loan that clearly indicated that if the borrower were to cash in the RRSP, it could result in the loan being called. The Hearing Committee identified this as being a unique condition, different from the overall demand loan.

While accepting that as a demand loan B2B could have called the loan at any time, a client's decision to cash in a portion, or all, of an RRSP that was funded by a B2B loan did potentially increase the risk of the loan being called. The Hearing Committee saw this as a distinct difference from a basic demand loan.

The Hearing Committee heard evidence that the loans could not be collateralized against an RRSP, and that this evidence demonstrated that B2B did not care whether or not the client cashed in all, or part, of a B2B funded RRSP. The Hearing Committee did not accept this was a correct interpretation. The Hearing Committee acknowledges that RRSP's cannot be collateralized, and thought it reasonable to believe that this was a reason why the B2B loan agreement contained a provision that if the underlying RRSP was cashed, the loan could be called. The Hearing Committee acknowledges that it is B2B's discretion as to whether it will call the loan and noted that, to date, none of the loans in question have been called.

The Hearing Committee acknowledged that the B2B loans were demand loans and B2B could call the loan at any time, although it was unlikely to do so as long as it was being properly serviced. The specific provision that allowed B2B to call the loan, if the loan funds were withdrawn from the RRSP, represented a distinct condition that went to the fact that these were RRSP loans, which provided a lower interest rate than conventional unsecured loans. The Hearing Committee determined that as this was a strategy being marketed by the Licensee, he had a duty to his clients to ensure they were aware of this loan provision as it ran counter to what the strategy was proposing. By failing to do so, the Hearing Committee felt the Licensee failed to adequately address his clients' best interests.

The Hearing Committee was concerned that the Licensee failed to bring this loan condition in the B2B loan agreement to the attention of each client, as the premise of his strategy involved subsequent removal of funds from an RRSP, which was contrary to the above mentioned loan condition.

Having reached this conclusion, the Hearing Committee did not believe the Licensee intentionally set out to mislead or deceive his clients. This was in part demonstrated by the fact that none of the clients have made a complaint or raised the issue with Council. The Hearing Committee noted that all the B2B loans in question continued to be serviced by the clients, suggesting the Licensee only promoted his strategy to individuals who had the financial wherewithal to service their loans.

In addition, the Hearing Committee noted that only a portion of the clients who obtained B2B RRSP loans actually withdrew funds from their RRSP.

In regard to the Licensee's actions in selling the variable annuities for the RRSPs, the Hearing Committee was concerned with how the Licensee addressed the issue that the clients were purchasing the variable annuities on a DSC (5.5%) basis. The Hearing Committee accepts that the Licensee disclosed the DSC to the clients, but found no evidence to suggest that clients were told there was an alternative, No Load.

The Licensee advised that part of the reason for the DSC was to earn income, which in part was the reason why the strategy was originally developed. However, the Hearing Committee feels the Licensee had a duty to advise the clients there was another option, and if the client had wanted to exercise that option, the Licensee could have charged his clients a fee for his services.

The Hearing Committee noted that the Licensee made over $43,000.00 in commissions in the sale of the RRSP products and that a significant portion of those funds are still in RRSPs and, therefore, the clients have not incurred any DSC's as a result.

Overall, the Hearing Committee felt the financial strategy, as promoted by the Licensee, fell short of what is expected from a life agent with his experience. The Hearing Committee determined the Licensee, in developing the marketing material, should have first discussed this strategy with both B2B and Sun Life to ensure both understood and supported his strategy.

The Hearing Committee found that it is not common practice to have the clients put funds into an RRSP when there is a reasonable expectation that some, or all, of the funds would be withdrawn in a short period of time. RRSPs are not considered short-term investments and, therefore, the strategy employed by the Licensee is, at least, questionable. The Licensee knew, or ought to have known, that his financial strategy was inconsistent with the norms within the insurance industry and should have taken additional steps to ensure it conformed with the usual practice of the business of insurance.

The Hearing Committee also noted that in accordance with Council's Code of Conduct, the Licensee owes a duty of care to the insurer. It is reasonable to assume that the insurer relies on its contracted licensees to market its insurance products in a manner consistent with the specific product's purpose. The Hearing Committee found the Licensee's use of the RRSP accounts was not consistent with the insurer's intent. The Hearing Committee concluded that the Licensee knew or ought to have known this and, at the very least, should have discussed his strategy with the insurer before marketing it to the public.

The Hearing Committee noted that the Licensee stated he called Council to determine what, if any, provisions were in place with regard to marketing material, and was advised that Council does not approve marketing material. While this represents Council's position, the Licensee had other ways in which his marketing material could have been reviewed, including speaking with his insurance company or his managing general agent ("MGA"). Neither of which appears to have occurred.

The Hearing Committee concluded the Licensee developed a strategy that was a benefit to some clients who were looking to obtain a cheaper loan for purposes other than what the loan was intended. The Hearing Committee was satisfied with the sincerity of the Licensee, and that it was his intention to provide services that were in the best interest of the client, but concluded he did not go far enough to ensure there was proper disclosure to all interested parties, including B2B and Sun Life.

The Hearing Committee felt the use of RRSP accounts for short term investment purposes fell well outside the usual practice of the business of insurance, however, the Hearing Committee concluded that while it did not believe the Licensee failed to act in a competent manner, it believed the Licensee could have done a much better job in developing and promoting his strategy, and that his failure to do so could have had a significant impact on his clients if B2B had elected to exercise its right to call the RRSP loans.

In considering the appropriate parameters for discipline, the Hearing Committee considered the cases presented by legal counsels as being relevant in this matter. These cases included *M. Pavicic; A.M. Aranton, et al.; and J.A. Scantland.* Of these, *A.M. Aranton* was the most relevant.

In *A.M. Aranton*, the licensee developed a strategy where clients deposited proceeds of an RRSP loan into newly implemented RRSP accumulation annuity contracts, only to have the clients making withdrawals from these accounts a few weeks later. Council found this activity brought into question her competency and ability to carry on the business of insurance in accordance with the usual practice. The licensee was put under supervision for 24 months, prohibited from supervising other life agents, and assessed Council's investigation costs.

In considering the *A.M. Aranton* case, the Hearing Committee concluded that while there are a number of similarities, it did not believe supervision was the best way to address the Licensee's actions. The Hearing Committee determined that oversight of the Licensee's marketing material would be appropriate as well as further education. With regard to education, the Hearing Committee felt the Licensee should be required to obtain a recognized designation, having to successfully complete courses during each licence period, until the designation is obtained. Failure to do so should then require on-going supervision.

In addition, the Hearing Committee felt that a fine was appropriate to bring the point home to the Licensee that greater care should have been taken in developing and marketing his strategy, and as a general deterrent to licensees that they have a duty to fully research, and provide complete disclosure when marketing financial strategies to the public.

The Hearing Committee concluded that the Licensee failed to exercise appropriate discretion and common sense in developing this strategy. The Hearing Committee concluded that most of its concerns can be addressed through education and some oversight regarding the Licensee's marketing material. Based on this, the Hearing Committee found the Licensee to be suitable to hold a life agent licence but recommends the following penalty be considered by Council:

1. The Licensee have a condition placed on his licence that requires him to get all marketing material approved by either the related insurance company or MGA before use.

2. The Licensee be required to successfully complete the Chartered Life Underwriter or Certified Financial Planner program with a requirement that he must complete at least one course per licence period in each year until the program is complete.

3. A failure to complete a minimum of one course per licence period will result in the Licensee being put under supervision until such time as the designation has been obtained.

4. The Licensee be fined $5,000.00.

5. The Licensee be assessed Council's investigative costs.

The Hearing Committee considered whether or not hearing costs should be assessed, but determined that based on Council's practice in these issues, that costs should not be assessed for a hearing in this matter.

Dated in Vancouver, British Columbia, on the **27th day of May, 2014.**

Izumi Miki McGruer, CFP, CLU, CH.F.C., CHS
Chair of Hearing Committee