

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

**and**

**The INSURANCE COUNCIL OF BRITISH COLUMBIA**  
**("Council")**

**and**

**ALAN JOHN FAREY**  
**(the "Licensee")**

**ORDER**

Pursuant to section 237 of the Act, Council convened a Hearing at the request of the Licensee to dispute an Intended Decision dated September 20, 2010.

The subject of the Hearing was set out in the Notice of Hearing dated January 11, 2011.

A Hearing Committee heard the matter on February 16, 2011, and presented a Report of the Hearing Committee to Council at its March 15, 2011 meeting.

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

1. the Licensee's life and accident and sickness insurance agent licence is cancelled for a minimum period of two years;
2. the Licensee is fined \$10,000.00;
3. the Licensee is assessed the costs of Council's investigation into this matter of \$1,750.00;
4. the Licensee is assessed the costs of Council's Hearing of \$2,979.35; and
5. as a condition of the Order, the Licensee is required to pay the fine and costs no later than **June 22, 2011**.

**ORDER**

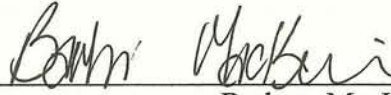
**Alan John Farey**

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**March 22, 2011**

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This Order takes effect on the 23<sup>rd</sup> day of March, 2011.



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Barbara MacKinnon, CAIB  
Chairperson, Insurance Council of British Columbia

**INSURANCE COUNCIL OF BRITISH COLUMBIA  
("Council")**

**REPORT OF THE HEARING COMMITTEE  
("Committee")**

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

**AND**

**ALAN JOHN FAREY  
(the "Licensee")**

**DATE: February 16, 2011  
9:30 A.M.**

**BEFORE: Rita Ager Chair  
Ken Thom Member  
Mary Jordan Member**

**HEARING AT: Insurance Council of British Columbia  
Suite 300, 1040 West Georgia Street  
Vancouver, British Columbia V6E 4H1**

**PRESENT: David McKnight Counsel for Council**

**Background and Issues**

On September 20, 2010, Council made an intended decision to cancel the Licensee's life including accident and sickness insurance agent licence, pursuant to section 231, 236 and 241.1 of the Act.

As set out in the Notice of Hearing dated January 11, 2011, the purpose of the Hearing was to determine whether:

- a) the Licensee failed to act in a trustworthy manner, in good faith, and in accordance with the usual practice of the business of insurance in this matter and whether the Licensee:

- i. acted appropriately in recommending and facilitating the redemption of a client's segregated funds to invest in an exempt security product contrary to the client's best interests;
  - ii. acted in whole or in part for his own financial gain; and
  - iii. in any other manner;
- b) 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 as required under Council Rule 3(2) and pursuant to section 231(1)(a) of the Act; and
- c) the Licensee should be subject to any disciplinary or other action in the circumstances.

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

### **Evidence**

Evidence reviewed by the Committee in consideration of this matter:

- Exhibit 1: Statement of Facts
- Exhibit 2: Council's Book of Documents

### **Facts**

At the request of the Licensee, the Hearing was scheduled to consider the aforementioned issues. Prior to the Hearing, the Licensee advised Council's legal counsel, David McKnight ("Mr. McKnight"), that he would not be attending the Hearing. Since the Licensee did not withdraw his request for the Hearing or request an adjournment, the Committee elected to proceed.

The Committee considered the evidence presented by Mr. McKnight, as well as a February 11, 2011 email from the Licensee to Mr. McKnight, wherein he contested certain facts.

Based on the written correspondence obtained during the investigation from the Licensee and the client, as well as information provided by the client in an interview with Council staff during the investigation, the Committee determined the following to be the facts in this matter:



1. The exempt security product in question was Horizon FX Investment Inc. ("Horizon FX"), which was an investment management company that invested in a company called Razor FX Inc. ("Razor FX"). Razor FX purported to be a foreign exchange trading company that was allegedly buying and selling foreign currencies.

The Licensee became aware of Horizon FX in early 2007 when he was contacted by a representative of the Sterling Financial Group in Abbotsford, British Columbia. The representative offered to provide the Licensee with a presentation about Horizon FX at a seminar in Nanaimo, British Columbia. The representative assured the Licensee that he had done his due diligence on Horizon FX during the course of the preceding year.

2. The Licensee attended the seminar in Nanaimo and received promotional material and an Offering Memorandum for Horizon FX.
3. The Horizon FX promotional material included charts and brochures as evidence of financial success of the company. Under the subheading "Track Record", the brochure stated:

*Over the past seven years our traders have provided our clients with unprecedented average annual returns. In particular, over the last three years there has been a remarkable average return of approximately 1% per week or 60% per annum.*

4. Under the subheading "Liquidity", the brochure stated:

*HFX provides our investors with an extremely liquid investment. There are no minimum investment terms and withdrawal orders can be fulfilled and cheques received within two weeks of the requested date – leaving you free to have your money when you want it.*

5. The brochure also included the following warning:

*This is a risky investment and Forex Exchange is a volatile market. Investors should invest only what they can afford to lose. Despite Horizon FX Investments' great track record, there are no guarantees for tomorrow.*

6. The Horizon FX Offering Memorandum included the following statement of risk factors:

*This is a speculative Offering. The purchase of Units involves a number of significant risk factors and is suitable only for Subscribers who have no immediate need for liquidity. Prospective purchasers of Units should consider the following risks in connection with purchasing Units in addition to the factors set forth elsewhere in this Offering Memorandum and are strongly advised and encouraged to consult with their own independent professional legal, tax, investment and accounting advisors to assess, prior to purchasing any Units, the investment merits, income tax, legal and other aspects of this investment, including its suitability to their own particular financial circumstances and goals. Subscribers are also advised that the Partnership's solicitors and accountants act for the Partnership do not act for individual Subscribers in this transaction.*

7. The Offering Memorandum also contained the following additional cautionary language relating to the finances of a suitable purchaser, and the extent to which purchasers ought to be able to bear a significant loss on their investment:
- *POTENTIAL SUBSCRIBERS WHO ARE NOT FINANCIALLY ABLE TO WITHSTAND THE RISK OF TRADING IN THEIR FOREX MARKET (SIC) WITHOUT SIGNIFICANT IMPACT ON THEIR FINANCIAL WELL BEING SHOULD NOT PURCHASE UNITS;*
  - ***Investment in the Foreign Exchange Markets:** Investment in the Spot Foreign Exchange market is a highly leveraged investment and therefore the chance of losing all your investment is significant;*
  - ***Security of Units:** The Units are unsecured and, therefore, the Unitholders will have limited security available to secure repayment of the Units. There is significant risk that the income from spot foreign exchange trades will be insufficient to return the Subscriber's capital to the Subscriber;*
  - ***Speculative Nature of the Investment:** An investment in Units is highly speculative in nature. The Units are primarily suitable for Subscribers whose net worth and income from other sources is sufficient that the Subscriber is prepared to accept the risk inherent in spot foreign exchange trading and is able to bear the loss of the Subscriber's entire investment. There is no assurance of return on an investment in the Units;*



- **Marketability and Transferability of Units:** *There is no market for the Units of the Partnership and there are no assurances that any market will develop in the future or at all...Accordingly, an investment in Units is unsuitable for those who may be required to liquidate their investment on a timely basis;*
  - **Review by Regulatory Authority:** *...Subscribers to this Offering Memorandum will not have the benefit of a review of material by any regulatory authority;*
  - **Lack of Operating History and Nominal Net Worth:** *The Partnership has no history of business operations or revenues and has nominal assets. Accordingly, the business of the Partnership is subject to the risks inherent in the establishment of a new business enterprise...; and*
  - **Key Personnel:** *The operations of the Partnership are highly dependant upon the participation of Cem Ali. The loss of their services may materially affect the ability of the Partnership to implement its business plan. Because of this, the absence of key-man insurance represents an additional risk to the successful completion of the project. In addition, Mr. Ali is also involved in other Projects...and may have a conflict of interest in allocating his time between the business of the General Partner and the Partnership, and other businesses or projects in which he is or may become involved.*
8. The Licensee earned a 4% commission from each Horizon FX sale and these commissions were reinvested in Horizon FX.
  9. Horizon FX and Razor FX were fraudulent scams and Razor FX was not engaging in foreign exchange trading.
  10. For approximately 15 years, the Licensee had a friendship and business relationship with a 72 year old retired female client (the "Client"). The Licensee had previously provided investment advice to the Client and her husband, as well as providing tax preparation services for them.
  11. In or around 1998 or 1999, the Client and her husband divorced. It was the Client's first opportunity to handle money as her ex-husband was the one who had previously taken care of the finances.
  12. The Licensee had an in-depth knowledge of the Client's finances. On a yearly basis, the Licensee provided the Client with a written account of all her assets and income, inclusive not only of assets that the Licensee had written but also of assets held by the Client's bank.

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13. On April 22, 2004, the Licensee prepared an investor profile for the Client through Industrial Alliance Pacific ("IAP"). The Client's profile indicated that the Client's gross annual income before taxes was \$25,000.00 or less and her net worth was recorded as between \$50,000.00 to \$100,000.00. The profile calculated the Client's tolerance for risk as "moderate".
14. The Licensee prepared the Client's 2006 income tax return. Her total income for 2006 was \$29,281.48.
15. While the Licensee was acting as the Client's financial advisor, the Client purchased a variable annuity within an IAP Registered Retirement Income Fund ("IAP RRIF") and a variable annuity within an IAP Non-Registered Savings Plan ("IAP NRSP").
16. In June 2007, the Client's assets consisted of an IAP NRSP valued at approximately \$90,000.00, an IAP RRIF valued at approximately \$155,000.00, personal effects, and a used car. She did not own her own home. She rented accommodation.
17. The Client described herself as a conservative investor. She informed the Licensee that her investments were all she had to live on for the rest of her life.
18. On June 25, 2007, the Licensee attended the Client's home to review her portfolio. The Licensee provided the Client with a presentation on his laptop computer about Horizon FX and told her it was a way to earn good returns. The Licensee informed the Client that he and his partner had been tracking Horizon FX for quite some time. The Licensee proposed that she take out one third (1/3) of her IAP NRSP in order to purchase stock in Horizon FX.
19. The Client signed a risk acknowledgement form for Horizon FX. The Client submitted that she had some reservations about signing the acknowledgement but trusted the Licensee implicitly.
20. To facilitate the transaction, the Licensee prepared a letter of authorization dated June 24, 2007, which he presented to the Client at the June 25, 2007 meeting. The letter authorized IAP to withdraw a net amount of \$33,000.00 from the IAP NRSP.
21. The Licensee counseled the Client to obtain a bank draft of \$29,400.00 USD (\$31,061.10 CDN) when the redeemed funds from IAP arrived. On July 12, 2007, the Client received the insurance funds, had a bank draft prepared, and delivered the bank draft to the Licensee's partner.
22. Based on the Client's June 30, 2007 IAP Statement, the Client's rate of return for the previous year was at 15.92% for the IAP NRSP and 17.69% for the IAP RRIF.



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23. The total gross redemption from IAP was \$34,247.61. The net amount of the cheque to the Client was \$33,000.00. IAP charged the Client \$1,247.61 in fees for the withdrawal of 1/3 of her non-registered variable annuity.
24. The Client was only in the fourth year of contract with IAP that contained surrender charges and/or fees for ten years. The Client claims that the Licensee did not advise her that she would be charged a redemption fee of \$1,247.61 by IAP.
25. In terms of an investment recommendation, the Licensee advised that the Client's variable annuities had not performed as he had hoped and he saw Horizon FX as a short term investment opportunity for no longer than 9 months.
26. On January 16, 2008, the Client received an email from Horizon FX stating that one of the owners of Razor FX had been arrested in New York on fraud charges. The Client has not been able to retrieve the money that she invested in Horizon FX.

**Submissions of the Licensee in email to Mr. McKnight, dated February 11, 2011**

27. He had followed Horizon FX for a number of months and had reviewed the prior 3 year returns. The British Columbia Securities Commission ("BCSC") had jurisdiction over Horizon FX and they had no problems with the offering memorandum or complaints about this Vancouver based company.
28. He had a lawyer review the Offering Memorandum and he was told by the lawyer that there was "no hint of fraud". It was Razor FX that committed the fraud, not Horizon FX.
29. At the time of the Horizon FX sale to the Client, he was not required to complete another investor profile. The Client's situation had drastically changed as her investments were almost at \$250,000.00. He was looking to invest only a small percentage of the portfolio (15%) in Horizon FX. The plan was to return the monies used to invest in Horizon FX, back to the IAP investment and reimburse the Client for the sales charges she incurred in redeeming part of the IAP investment.
30. In selling Horizon FX, he completed all of the documents required by the BCSC, including warning letters.
31. The Client never said she did not understand the type of investment or that she did not understand the warning letter. He kept her up to date weekly and the Client seemed pleased with the growth of Horizon FX. He was cleared of any wrongdoing by the BCSC.

32. He was one of the top insurance producers in 2006 with IAP. His business has suffered as a result of Council's investigation.

**Submissions of Mr. McKnight**

33. The Licensee was first licensed as a life insurance agent on December 2, 1986.
34. Horizon FX was marketed as a high risk investment which targeted individuals with significant net worth able to bare the loss of their investment. Horizon FX invested in a company called Razor FX which purported to be a foreign exchange trading company that was buying and selling different foreign currencies. Eventually, it came to light that Razor FX was a "scam" and that it was not involved in foreign exchange trading.
35. The Client purchased Horizon FX's shares through the Licensee using proceeds from a partial redemption of a variable annuity contract. It was inappropriate for the Licensee to facilitate this transaction in the circumstances.
36. While Council does not regulate the exempt market business, it is responsible for protecting the public by ensuring that insurance agents demonstrate competence and good faith in servicing the needs of clients. Thus, when a life insurance agent such as the Licensee recommends and facilitates a transaction which involves the use of insurance monies, Council expects the agent to exercise due care to ensure the transaction is in the client's best interest. If the transaction is not in the client's best interest, the agent should not be proposing or recommending such a transaction.
37. In the present case, the Client was a long time client of the Licensee, was retired, had little investment experience, and was restricted to a relatively limited budget.
38. Further, the Horizon FX promotional material and Offering Memorandum contained representations that the product did not come with any guarantees, that it was not liquid, and that it warned that investors could potentially lose their entire investment.
39. The Horizon FX warnings were incongruent with the Client's financial profile and her tolerance for risk. Further, they were incongruent with the fact that the Client had not expressed any dissatisfaction with her insurance products and that her insurance products had performed well during the previous year.
40. The Licensee was presented with information that ought to have led him to reasonably conclude that the investment was too risky for the Client in the given circumstances.



41. The Licensee had little exposure to the exempt market business and appeared to lack the competence to fully appreciate what is required when selling financial products to clients. In particular, there was more than sufficient information available to the Licensee regarding Horizon FX and the Client's financial situation that ought to have deterred him from making the recommendation that he did. Second, the Licensee stood to earn commissions by selling Horizon FX and, while the commissions were not substantial, to some extent they were a motivating factor which caused the Licensee to put his interests ahead of the Client. This was contrary to Council's good faith requirement.

### **Findings of the Committee**

The Committee found the Licensee set out on a course of conduct that was irresponsible and completely incongruent with the interests of the Client, whose personal and financial situation was well known to him.

In particular, the Licensee recommended to a retired client of modest resources and limited income that she redeem a portion of her variable annuity contract (that he had sold to her a few years prior and which included some guarantees), to invest in an unregulated, risky and inappropriate investment.

Regardless of the extent of disclosure the Licensee provided to the Client about the risks of the unregulated investment, he should never have promoted it to her, particularly given its inherent risks. Ultimately, the investment was a scam and the Client lost money she could ill afford to lose. The Committee concluded that even if the investment had not been a scam, the recommendation of such an investment to the Client represented irresponsible conduct by the Licensee.

Making matters worse, the Licensee appeared to conduct little to no due diligence on the investment, which, if he had, would have alerted him to the inappropriateness of the investment for the Client. Specifically, the Licensee claimed that the investment was intended to be for the short term. However, had he read the material pertaining to the investment, it would have been obvious to him that the investment was not liquid and that it is only suitable for investors who can afford to lose all of their investment. This does not align with the Client's profile, her circumstances, or the Licensee's recommended short term investment strategy. The Committee determined that these findings reflect on the Licensee's competency.



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The Committee also found that the Licensee stood to benefit financially from his recommendation, leading it to believe his behaviour was somewhat self serving. The Committee reached this conclusion because it could not understand why an experienced life insurance agent would recommend such a product to a client who had limited assets, was self described as a conservative investor and was satisfied with her existing investments and not looking for change. Even an inexperienced life agent would have been able conclude such an investment was not appropriate for this type of client. In light of these findings, the Committee believes the Licensee's actions were driven, at least in part, by personal benefit.

In view of the above, the Committee concluded that the Licensee no longer meets the requirements for licensing under section 231(1) of the Act in that he has demonstrated he is not trustworthy or competent, and does not intend to carry on the business of insurance in good faith.

### **Recommendation on Penalty**

In determining an appropriate penalty, the Committee considered two precedent cases as presented by Mr. McKnight.

In the *B. Feller* ("*Feller*") case, the licensee was fined \$2,000.00, required to review Advocis' Best Practices Manual and pay the investigative costs. Council determined that due to his lack of competency, the licensee sold an insurance policy to a client that was inappropriate given her stated objectives and he failed to make full and fair disclosure of all material facts to enable the client to make an informed decision.

In *S. Matthews* ("*Matthews*"), Council found the licensee unsuitable to hold an insurance licence for a minimum period of three years and fined her \$10,000.00. Council also determined that as part of any future application for licensing, the licensee would be required to successfully complete education courses towards a certified financial planning designation as well as an ethics course. It was found that the licensee did not act in a trustworthy and competent manner, in good faith, and in accordance with the usual practice of the business of insurance by making unsuitable insurance recommendations and providing problematic tax advice, to three clients.

The Committee distinguished the current matter from *Feller* in that *Feller* involved incompetent conduct by an agent who had good intentions and the misconduct was not reflective of the licensee's practice. Whereas in the Licensee's case, he was found to have engaged in egregious conduct that was indicative of his overall abilities as an insurance agent.

However, in comparing the current matter with *Matthews*, the Committee found some similarities as both cases involved intentional and inappropriate conduct that resulted in detriment to clients.

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Using these precedents as a guide and wanting to ensure that any penalty will have a punitive and deterrent affect, the Committee recommends that the Licensee's life and accident and sickness insurance agent licence be cancelled for a minimum period of two years and that he be fined \$10,000.00. The Committee also recommends that he be assessed the investigation costs of \$1,750.00.

The Committee further determined that the Licensee should be responsible to pay Council's hearing costs.

Finally, the Committee recommends that if the Licensee applies for licensing with Council in the future, his suitability ought to be reviewed by Council and that consideration should be given to placing him under supervision for a period of three years.

Dated in Vancouver, British Columbia, on the 15<sup>th</sup> day of March, 2011.



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Rita Ager, Chair of Hearing Committee