

**IN THE MATTER OF** the *Insurance Act*, R.S.O. 1990, c. I.8, as amended (the “Act”), in particular sections 441.2 and 441.3;

**AND IN THE MATTER OF** Mark Dennis Carter.

## **NOTICE OF PROPOSAL TO IMPOSE ADMINISTRATIVE PENALTIES**

**TO:** Mark Dennis Carter

**TAKE NOTICE THAT** pursuant to section 441.3 of the Act, and by delegated authority from the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario (the “Chief Executive Officer”), the Director, Litigation and Enforcement (the “Director”) is proposing to impose administrative penalties totaling \$8,500 on Mark Dennis Carter (“Carter”) for the following contraventions of the Act and its regulations:

- a. A penalty in the amount of \$2,500 for contravening section 13 of Ontario Regulation 347/04 by failing to maintain the required errors and omissions insurance coverage or to maintain another approved form of financial guarantee while holding an active life insurance agent licence;
- b. A combined penalty in the amount of \$6,000 for contravening section 447(2)(a) of the Act by directly or indirectly furnishing false, misleading or incomplete information to the Financial Services Regulatory Authority of Ontario (“FSRA”) in relation to Carter’s:
  - i. occupation or employment (\$5,000); and
  - ii. contact information (\$1,000).

Details of these contraventions and the reasons for this proposal are described below. This Notice of Proposal includes allegations that may be considered at a hearing.

**SI VOUS DÉSIREZ RECEVOIR CET AVIS EN FRANÇAIS**, veuillez nous envoyer votre demande par courriel immédiatement à: [contactcentre@fsrao.ca](mailto:contactcentre@fsrao.ca).

**YOU ARE ENTITLED TO A HEARING BY THE FINANCIAL SERVICES TRIBUNAL (THE “TRIBUNAL”) PURSUANT TO SECTIONS 441.3(2) AND 441.3(5).** A hearing by the Tribunal about this Notice of Proposal may be requested by completing the enclosed Request for Hearing Form (Form 1) and delivering it to the Tribunal within fifteen (15) days after this Notice of Proposal is received by you. The Request for Hearing Form (Form 1) must be mailed, delivered, faxed or emailed to:

Address: Financial Services Tribunal  
25 Sheppard Avenue West, 7<sup>th</sup> Floor  
Toronto, Ontario  
M2N 6S6

Attention: Registrar

Fax: 416-226-7750

Email: [contact@fstontario.ca](mailto:contact@fstontario.ca)

**TAKE NOTICE THAT if you do not deliver a written request for a hearing to the Tribunal within fifteen (15) days after this Notice of Proposal is received by you, orders will be issued as described in this Notice of Proposal. TAKE FURTHER NOTICE of the payment requirements** in section 5 of Ontario Regulation 408/12, which state that the penalized person or entity shall pay the penalty no later than thirty (30) days after the person or entity is given notice of the order imposing the penalty, after the matter is finally determined if a hearing is requested or such longer time as may be specified in the order.

For additional copies of the Request for Hearing Form (Form 1), visit the Tribunal's website at [www.fstontario.ca](http://www.fstontario.ca).

The hearing before the Tribunal will proceed in accordance with the *Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal* ("Rules") made under the authority of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended. The Rules are available at the website of the Tribunal: [www.fstontario.ca](http://www.fstontario.ca). Alternatively, a copy can be obtained by telephoning the Registrar of the Tribunal at 416-590-7294, or toll free at 1-800-668-0128 extension 7294.

At a hearing, your character, conduct and/or competence may be in issue. You may be furnished with further and/or other particulars, including further or other grounds, to support this proposal.

## REASONS FOR PROPOSAL

### I. INTRODUCTION

1. These are the reasons for the proposal by the Director, by delegated authority from the Chief Executive Officer, to impose administrative penalties in the total amount of \$8,500 on Carter.

### II. BACKGROUND

#### A. Licencing History and Failure to Maintain E&O Insurance

2. Carter was a licenced life insurance and accident & sickness agent (licence #01068957) under the Act between December 20, 2001, and December 19, 2021. From May 2008 through April 2021, Carter was under contract through The Gryphin Advantage Inc. ("Gryphin"), a Managing General Agent.
3. Carter provided both insurance products and financial advice to his clients. Carter's clients held insurance products including segregated funds, insurance protection products and group insurance.
4. Carter sold his book of business to another licenced life insurance agent in or around June 2021. Approximately 30 client accounts were sold.
5. Between October 2019 and October 2020, Carter carried errors and omissions insurance ("E&O insurance") with Merlin Underwriting Inc. The coverage expired on October 15, 2020 and was not renewed. A previous insurance certificate shows that the cost of Carter's E&O insurance coverage from October 2018 to October 2019 was \$485.00 plus taxes of \$38.80 for a total cost of \$523.80.
6. Between October 15, 2020 and the expiry of his licence on December 19, 2021, Carter did not have E&O insurance. Carter has not renewed his life insurance licence since it expired on December 19, 2021.
7. Carter was sent multiple automated messages from FSRA about the expiry of his E&O insurance. He was sent an email on September 15, 2020, warning him that his insurance would expire in 30 days. On October 15, 2020, Carter was sent an email stating that his E&O insurance had expired. On November 16, 2020, he was sent another email indicating that his E&O insurance had expired.
8. The automated reminder emails were sent to the email address that had been provided to FSRA in Carter's most recent renewal application. The provided email was that of Carter's assistant.
9. Agents are required to keep their email address current with FSRA to ensure they receive timely updates and communications from FSRA, including updates about

licence applications. The renewal application makes clear that the email address provided should be that of the agent.

10. Carter did not submit any new insurance business to Gryphin after the expiry of his E&O insurance on October 15, 2020. However, Carter received \$2,561.12 in commissions related to investment trailer fees during the period from October 15, 2020 to December 19, 2021 when he was licenced but not covered by E&O insurance. He also continued to service his clients' investment and insurance needs. He still sent emails to clients and provided them with financial statements.
11. Carter never applied to surrender his licence.
12. On his last renewal application to FSRA dated December 18, 2019 (the "2019 Renewal Application"), Carter declared that, as an insurance agent, he would maintain his E&O insurance as required.
13. Carter had previously submitted a successful renewal application in 2017 (the "2017 Renewal Application"). That application was dated December 20, 2017.

#### **B. FSRA's Investigation**

14. FSRA received a complaint dated April 23, 2020 about the conduct of another life insurance and accident & sickness agent, LCM. The complaint suggested that LCM had referred the complainant to Carter for an investment opportunity that resulted in the loss of the entire \$55,000 investment made by the complainant.
15. A number of individuals were interviewed as part of FSRA's investigation including LCM, individuals who made loans to Carter's businesses, the agent who bought Carter's book of business, and contractors employed by Carter or his businesses.
16. Carter was interviewed by FSRA investigators on three occasions. The first interview was done on January 19, 2022, pursuant to a summons under the Act. The second interview was conducted over two days, March 10, 2022, and March 15, 2022, and was held pursuant to a summons under the *Loan and Trust Corporations Act*, R.S.O. 1990, c. L.25 and were done under oath.
17. In the first interview, Carter indicated that it may have been his assistant who completed the 2019 Renewal Application, though he could not recall with certainty.

#### **C. Carter's Other Businesses**

18. Carter has been the Director, President and Secretary of Earthink Inc. ("Earthink") since March 5, 2014. He is also the sole shareholder of Earthink. The corporation is registered in London, Ontario. The business address listed at the time of incorporation was Carter's residence at the time. The current business address is an office that is no longer used by Carter.
19. Earthink also had a German sister company, Earthink Germany. Earthink Germany was incorporated as a limited liability company in Germany in 2015 by Carter.

Carter is the President and sole shareholder of Earthink Germany. The Managing Director of the Company was Gisbert Heinz Wagner.

20. Carter was the primary person to solicit individuals to make loans to Earthink or Earthink Germany. Carter solicited at least 32 lenders for Earthink and Earthink Germany. This included at least three (3) of his insurance clients who made loans to Earthink and Earthink Germany in a combined total of \$340,000 between October 2015 and November 2017. None of these clients have received any interest or principal repayment on their loans.
21. In the first interview with FSRA investigators, Carter also confirmed that he drew a salary from Earthink, saying “*there was some personal funds that came out, yes.*”
22. Carter was asked on his 2017 Renewal Application and his 2019 Renewal Application “*do you have any other occupation or employment other than as an insurance agent?*”. Carter, or the person completing the form on his behalf, responded “no”. These answers were never revised by Carter or anyone acting on his behalf.
23. When submitting the 2017 Renewal Application and the 2019 Renewal Application, Carter certified the following statement, which appears in red lettering at the end of a renewal application and before an agent submits the application:

Providing false, misleading or incomplete information in this application and/or any attachments requested may be sufficient grounds to reject the application or revoke a licence, or result in your prosecution. By clicking the “Confirmed” button below, you swear that you have truthfully answered all questions contained within this electronic application.

### **III. CONTRAVENTIONS OR FAILURES TO COMPLY WITH THE ACT**

#### **A. Failure to Maintain E&O Insurance**

24. Section 13 of Ontario Regulation 347/04 provides that licenced life insurance agents must maintain E&O insurance of at least \$1,000,000 or must maintain another form of financial guarantee in a form approved by the Chief Executive Officer in an amount of at least \$1,000,000.
25. Carter did not have a financial guarantee in a form approved by the Chief Executive Officer and was thus required to carry E&O insurance pursuant to section 13(a) of Ontario Regulation 347/04.
26. The Director is satisfied that Carter contravened section 13 of Ontario Regulation 347/04 by failing to have the required E&O insurance or guarantee for the 14-month period between October 15, 2020 and December 19, 2021.

**B. Providing False, Misleading, or Incomplete Employment and Occupation Information to FSRA**

27. Section 447(2)(a) of the Act provides that every person is guilty of an offence who directly or indirectly furnishes false, misleading or incomplete information to FSRA.
28. Carter provided FSRA with false, misleading or incomplete information in his 2017 and 2019 renewal applications in violation of section 447(2)(a) of the Act.
29. In particular, when asked in his 2017 Renewal Application and 2019 Renewal Application, “*do you have any other occupation or employment other than as an insurance agent?*”, Carter, or the person completing the form on his behalf, responded “no”.
30. Carter was required to tell FSRA about his other occupation or employment related to Earthink and Earthink Germany. Omitting this information meant the information provided on the applications was false, misleading or incomplete.

**C. Providing False, Misleading, or Incomplete Contact Information to FSRA**

31. Carter also directly or indirectly provided FSRA with false, misleading or incomplete contact information on his 2019 Renewal Application in contravention of section 447(2)(a) of the Act.
32. In particular, the email address provided on the 2019 Renewal Application was false or misleading as it was Carter’s assistant’s email and not his own email.
33. The renewal application form states that the email requested is “*Your E-Mail Address*” (emphasis added). The renewal application form also clearly specifies that only the agent is entitled to complete the application and that no one else should be allowed to complete the form on their behalf.
34. Carter was responsible for the accuracy of his contact information whether he entered it directly or his assistant entered it on his behalf. The confirmation statement at the end of the renewal applications reminds agents of their obligation to provide accurate, truthful information. Carter would have been aware of his obligations given that he had submitted numerous renewal applications since 2001.

**IV. GROUNDS FOR IMPOSING AN ADMINISTRATIVE PENALTY**

35. The Director is satisfied that imposing an administrative penalty on Carter under section 441.3(1) of the Act will satisfy one or both of the following purposes under section 441.2(1) of the Act:
  1. To promote compliance with the requirements established under the Act.
  2. To prevent a person from deriving, directly or indirectly, any

economic benefit as a result of contravening or failing to comply with a requirement established under this Act.

36. The Director is satisfied that administrative penalties in the amount of \$8,500 should be imposed on Carter. These penalties are based on the following:
  - a. \$2,500 for failing to maintain E&O insurance or a suitable financial guarantee contrary to section 13 of Ontario Regulation 347/04;
  - b. \$6,000 for contravening section 447(2)(a) of the Act by directly or indirectly furnishing false, misleading or incomplete information to the Financial Services Regulatory Authority of Ontario ("FSRA") in relation to Carter's:
    - i. occupation or employment (\$5,000); and
    - ii. contact information (\$1,000).
37. Section 2 of Ontario Regulation 408/12 provides that the provisions of the Act and its regulations that are listed in schedules 1, 2, and 2.1 are prescribed for the purpose of imposing administrative penalties under section 441.3 of the Act.
38. Section 447(2)(a) is listed in Schedule 1, which means a maximum penalty of \$100,000 for an individual is applicable for a contravention of this section in accordance with section 3(1) of Ontario Regulation 408/12 and section 441.5(1) of the Act.
39. Section 13 of Ontario Regulation 347/04 is listed in Schedule 2, which means a maximum penalty of \$50,000 is applicable for a contravention of this section in accordance with section 3(2) of Ontario Regulation 408/12.
40. In determining the amount of the administrative penalties under s. 441.3, the Director has considered the following criteria as required by section 4(2) of Ontario Regulation 408/12:
  1. The degree to which the contravention or failure was intentional, reckless or negligent.
  2. The extent of the harm or potential harm to others resulting from the contravention or failure.
  3. The extent to which the person or entity tried to mitigate any loss or take other remedial action.
  4. The extent to which the person or entity derived or reasonably might have expected to derive, directly or indirectly, any economic benefit from the contravention or failure.
  5. Any other contraventions or failures to comply with a requirement established under the Act or with any other financial services legislation of Ontario or of any jurisdiction during the

preceding five years by the person or entity.

41. In respect of the **first criterion**, the Director is of the belief that, at minimum, Carter was negligent or reckless in failing to maintain his E&O insurance. This requirement is clear under Ontario Regulation 347/04, on FSRA's public website and in the required licence renewal applications. The onus was on Carter to monitor the status of his E&O insurance and to maintain it.
42. The Director is also of the belief that Carter's conduct in failing to inform FSRA of his other employment or occupation information was, at minimum, reckless or negligent. An agent has responsibility for accurately and completely responding to the questions asked on the applications. Carter's repeated failure to disclose this on his applications in 2017 and 2019 is not consistent with an inadvertent mistake.
43. The Director is also satisfied that Carter's actions in failing to update his email address were, at minimum, negligent or reckless. The requirement to provide complete, truthful information is clear in the renewal application and Carter had sole responsibility for completing the application. The requirement is also made clear on FSRA's public website. Having an assistant or staff member inaccurately or falsely complete an application is negligent or reckless, at minimum, given the agent's responsibility to complete the application.
44. In respect of the **second criterion**, the Director is of the belief that there was a substantial risk of potential harm to the public given that Carter had a valid insurance agent licence for 14 months where he did not maintain E&O insurance. For at least 8 of those 14 months, Carter still had active clients. The requirements for licensed agents to maintain E&O insurance is necessary to protect their clients.
45. The Director is also of the belief that Carter created a substantial risk of harm by failing to report his other employment activities to FSRA. Self-reporting by insurance agents on applications is a key component of FSRA's monitoring activities and allows the agency to conduct risk-based monitoring of insurance agents. By not giving the proper disclosure, FSRA could not assess whether further protective measures were needed to protect the public or whether conditions should be placed on Carter's licence.
46. Finally, the Director is also of the belief that by providing a false or misleading email address, Carter created a risk of harm. Email is an important part of FSRA's communications with insurance agents, and by providing an inaccurate email, Carter put himself at risk of missing important information that contributes to the protection of consumers, such as reminders of E&O insurance expiring.
47. In respect of the **third criterion**, the Director is of the belief that there is no evidence that Carter took steps to mitigate or rectify his failure to have E&O insurance, despite the multiple email reminders that were sent to him. The Director also submits that Carter never took any steps to correct his email address nor to inform FSRA of his other occupational and employment activities. These contraventions only came to light after a complaint triggered an investigation into Carter's actions.



48. In respect of the **fourth criterion**, the Director is of the belief that Carter had the benefit of not having to pay premiums for E&O insurance for approximately 14 months while still holding a valid insurance agent licence. Between October 2018 and October 2019 Carter paid \$523.80 for 12 months of E&O insurance. Fourteen months at this rate would total premiums of roughly \$611.10 that Carter did not pay. Carter received \$2,561.12 in commissions related to investment trailer fees during this uninsured period. An administrative penalty will prevent Carter from deriving an economic benefit from his failure to comply with this requirement.
49. The Director is of the belief that Carter also had the benefit of operating without the regulatory scrutiny and possible licence conditions or undertakings that would have been required of him had he properly disclosed his other occupations or employment. The lack of restrictions allowed Carter to solicit loans from his insurance clients of at least \$340,000 towards his businesses. Most or all of these funds have not been repaid. Carter then derived a financial benefit by taking a salary and other funds from the companies.
50. The Director submits that there is no reason to think that Carter benefited economically from his provision of an incorrect email address.
51. In respect of the **fifth criterion**, the Director is aware that the Chief Executive Officer may be issuing a notice of proposal under the *Loan and Trust Corporations Act*.
52. Such further and other reasons as may come to my attention.

**DATED** at Toronto, Ontario, April 11, 2022

Elissa Sinha  
Director, Litigation and Enforcement

By delegated authority from the Chief Executive Officer