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# COMMONWEALTH OF MASSACHUSETTS DIVISION OF INSURANCE

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**via email**

July 6, 2016

Thomas P. Durkin  
c/o Jonathan Roth, Esq.  
Innovative Risk Solutions Insurance Agency, LLC  
270 Littleton Road  
Westford, MA 01886

Re: SIU Investigation No. 9011

Dear Mr. Durkin:

I represent the Massachusetts Division of Insurance (“Division”) with regard to the above referenced investigation. The Division has cause to believe that Durkin & Durkin Insurance Agency, LLC (“D&D”), now known as Innovative Risk Solutions Insurance Agency, LLC, (“IRS”) did unintentionally violate Massachusetts insurance laws as set forth in summary below.

On or about May 2, 2014, Zurich North America (“Zurich”), via certified letter, notified D&D of the termination of the relationship between D&D and all Zurich North America affiliated companies. Zurich’s letter clearly indicated D&D’s ability to submit or bind business was suspended effective immediately. Zurich also revoked all discretionary authority plus the ability to bind or to issue bonds on Zurich’s behalf on any account.

D&D continued to conduct business on behalf of Zurich well after the May 2, 2014 termination. Specifically, the Division is in receipt of a July 9, 2014 letter issued on Fidelity and Deposit Companies letterhead (a Zurich subsidiary company) signed by Thomas P. Durkin to Match Charter Public School, Boston with regard to Commodore Builders Corporation. This power of attorney letter appoints Thomas P. Durkin and Marie Ferguson as agents of Zurich. Curiously, it was issued long after the dissolution of the relationship between Zurich and D&D.

Pursuant to the Zurich Business Authority and Commission Schedule which D&D was subject to, all bonds, binders, certificates and endorsements issued by D&D were to be reported to Zurich within three business days. The Division is in

receipt of documentation whereby more than a dozen bonds issued by D&D effective in 2013 were not reported to Zurich until March 2014. Notwithstanding that the letter was used to transition Durkin customers to new agents and that Durkin understood he had the local office's permission to issue such letters so long as the local Zurich office or another agent issued any new policies, his misunderstanding does not absolve him of the violations.

Based upon the Division's investigation, it appears that IRS has violated the following Massachusetts insurance laws:

M.G.L. c. 175, § 162R(a)

(2) violating any insurance laws, or violating any regulation, subpoena or order of the commissioner or of another state's insurance commissioner.

(5) intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(7) having admitted or been found to have committed any insurance unfair trade practice or fraud

(8) using fraudulent or dishonest practices, or demonstrating incompetence or untrustworthiness in the conduct of business in the commonwealth or elsewhere.

Pursuant to M.G.L. c.176D, § 7, the penalty for **each** and every violation of M.G.L. c. 175, § 162R(a) is a fine of \$1,000.00 and having the insurance producer license revoked, suspended, or placed on probation.

M.G.L. c. 176D, § 2 - prohibits unfair methods of competition and unfair or deceptive acts or practices in the business of insurance in Massachusetts. The penalty for **each** violation is a fine of not more than \$1,000.

M.G.L. c. 176D, §§ 3,5- prohibit the dissemination of untrue, deceptive or misleading information in the business of insurance. The penalty for **each** violation is a fine of not more than \$1,000.

## ADDITIONAL STATUTES AND ALLEGED VIOLATIONS

M.G.L. c. 175, § 107 - The bonds on which such company becomes surety shall not be deemed insurance contracts as defined in section two, but the company shall otherwise be subject to this chapter so far as applicable, and insurance agents and brokers shall in respect to such bonds be subject to all the provisions of this chapter applying to them in respect to insurance contracts.

M.G.L. c. 175, § 3 – No company shall make a contract of insurance and no person shall negotiate, solicit, sell or in any manner aid in the transaction of such contracts except as authorized in c. 175 and c. 176 or as expressly authorized by law.

M.G.L. c. 175, § 189- A company or agent who makes, issues or delivers an insurance policy or annuity in violation of G.L. c. 175. shall be fined.

The Division is authorized to issue an order requiring IRS to show cause why it should not be made to cease and desist from the above-alleged conduct. If, after a public hearing, the Commissioner of Insurance finds that IRS did commit the alleged violations, he may order the revocation of its insurance license or issue fines up to the amounts listed above.

At this time, the Division proposes to resolve this matter through a settlement if IRS agrees to waive its right to a public hearing, agrees to cease and desist from the above-alleged conduct, and agrees to pay a fine of \$8,500.00. The total amount shall be paid within four months and no later than October 7, 2016. Failure to complete payment of the total fine amount shall constitute a separate violation of M.G.L. c. 175, § 162R(a)(2). The provisions of this settlement may be amended, modified, or expanded only with the express written consent of the Division.

If IRS chooses to accept the Division's offer please sign this settlement letter where provided below and return it to my attention, together with a check made payable to the Commonwealth of Massachusetts. This will be a reportable administrative action.

Thank you for your prompt attention to this matter. Should you have any questions or wish to discuss this matter further, I may be reached at (617) 521-7389.

Sincerely,

Robert J. Kelly, Esq.  
Counsel to the Commissioner

SIGNED: \_\_\_\_\_  
Authorized representative for  
Innovative Risk Solutions Insurance Agency, LLC

NAME: \_\_\_\_\_

DATE: \_\_\_\_\_