

March 2, 2023

Administrative Review – 22-10-002  
Served Personally

### **Administrative Penalty**

1347374 ALBERTA LTD.  
o/a NORTHSTAR HYUNDAI/GO AUTO  
14803 137 AVENUE  
EDMONTON, ALBERTA  
T5P 4C3

**Attention: Chris Burrows and Michael Priestner**

Dear Chris Burrows and Michael Priestner:

**Re: 1347374 Alberta Ltd. operating as Northstar Hyundai/Go Auto  
– Provincial Automotive Business Licence B1025989**

As the Director of Fair Trading (as delegated) (the “Director”), I am writing to you pursuant to Section 158.1(1) of the *Consumer Protection Act* (“CPA”) to provide you with written notice of the Administrative Penalty issued under that section.

### **Facts**

The evidence before me in relation to this matter consists of the material contained in an Alberta Motor Vehicle Industry Council (“AMVIC”) industry standards department application report (the “Application Report”) prepared by an industry standards officer (“ISO”) and the manager of industry standards. A copy of the Application Report is attached as Schedule “A” to this letter.

### ***Licensee Status***

1347374 Alberta Ltd. operating as Northstar Hyundai/Go Auto (the “Supplier”) holds an automotive business licence and is licensed to carry on the designated business activities of retail sales, wholesale sales, leasing, service station and garage in the Province of Alberta.

### ***Direct communications with the Supplier and its representatives***

1. On May 20, 2016, a routine AMVIC industry standards inspection was completed at the business location of the Supplier. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on June 1, 2016. The Findings Letter outlined the following concerns:
  - a) Online advertisements (Kijiji) did not include the AMVIC logo or equivalent wording.

- b) During the inspection, five deals were reviewed by the ISO and of those five deals, two of the deals did not reflect all-in pricing contrary to Section 11(2)(l) of the Automotive Business Regulation (“ABR”).
    - c) The Mechanical Fitness Assessment (“MFA”) in one of the seven used sales deal jackets that were reviewed did not include the name and address of the Supplier contrary to Section 15(1) of the Vehicle Inspection Regulation (“VIR”).
2. On May 30, 2018, an AMVIC industry standards inspection was completed on the Supplier. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on June 12, 2018. The Findings Letter outlined the following concerns:
  - a) Online advertisements (Kijiji) did not include the AMVIC logo or equivalent wording.
  - b) During the inspection, 16 deals were reviewed by the ISO and of those 16 deals, three did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.
  - c) Accessory prices in the showroom quoted payments but did not contain the disclosure required under Section 6 of the Cost of Credit Disclosure Regulation (“COCD”).
  - d) Two of the 14 used sales deal jackets that were reviewed had various issues with the completion of and/or disclosure of MFAs contrary to Section 15(1) of the VIR.
3. As a result of a consumer complaint an AMVIC investigator issued the Supplier a Warning Letter to the Supplier on May 12, 2020. The Supplier sold a vehicle to a consumer and failed to disclose that the vehicle had sustained damage exceeding \$3,000 as required by Section 31.1(1) of the ABR.
4. On July 13, 2020, a follow-up AMVIC industry standards inspection was completed on the Supplier. The inspection was completed via telephone due to the COVID-19 pandemic. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on July 13, 2020. The Findings Letter outlined the following concerns:
  - a) During the inspection, seven deals reviewed by the ISO did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.
  - b) Advertisements making claims such as “6 Month Payment Deferral” and “Get 0% financing on ALL models” need to disclose which models are included or excluded, and disclose any terms and conditions. The Supplier cannot make representations, statements or claims that are not true or are likely to mislead a consumer as per Section 6(4)(a) of the CPA and Section 12(a) of the ABR. Further, it is a requirement to disclose terms and conditions as per Section 76(2) of the CPA and the associated regulation.
  - c) Two Facebook posts advertised bi-weekly payments but did not contain the disclosure required under Section 6 of the COCD.
  - d) One Facebook advertisement did not include the vehicle’s stock number contrary to Section 11(2)(m) of the ABR.
  - e) The Supplier was maintaining their salespeople on the AMVIC Online database. Nine salespeople were designated to act on behalf of the Supplier but no longer were employed with the Supplier and one salesperson was working for the Supplier but was not designated to act on their behalf. This is contrary to Sections 16 and 21 of the ABR.

- f) Two used sales deal jackets that were reviewed had various issues with the completion of and/or disclosure of MFAs contrary to Section 15(1) of the VIR.
  - g) A number of the Bills of Sale ("BOS") that were reviewed in the deal jackets had multiple issues contrary to Section 31.2 of the ABR. It was noted in the Findings Letter for the Supplier to ensure all optional products have their own line and not to combine multiple products into one price. In addition, the Findings Letter stated the BOS for new vehicles did not disclose actual selling price or trade in value and to ensure that negative equity and optional products are not included in the purchase price of the vehicle.
5. On May 16, 2022, a follow-up AMVIC industry standards inspection was completed on the Supplier. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on June 7, 2022. The Findings Letter outlined the following concerns:
- a) The Supplier's Twitter and Instagram did not include the AMVIC logo or equivalent wording.
  - b) Two advertisements on Autotrader failed to disclose vehicle history as required by Section 31.1 of the ABR.
  - c) Advertisements making claims such as 0% interest rates, no payments for 90 days, and \$10,000 cash back on approved credit but do not disclose the terms and conditions. It is a requirement to disclose terms and conditions as per Section 76(2) of the CPA and Section 6 of the COCD.
  - d) During the inspection, six deals reviewed by the ISO did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.
  - e) On one used sales deal jacket that was reviewed the MFA was completed and signed after the date of the BOS contrary to Section 15(1) of the VIR.
  - f) Nine used sales deal jackets were missing the vehicle history information as required by Section 31.1 of the ABR.
  - g) A number of the BOS that were reviewed in the deal jackets had multiple issues contrary to Section 31.2 of the ABR. This included 17 BOS missing whether the odometer reading was in miles or kilometres, six BOS missing the AMVIC registration number of the salesperson, one BOS did not indicate whether the vehicle was new, used or a demo vehicle, two failed to add options provided to the consumer and one BOS was missing the delivery date.
  - h) Service and repair invoices did not disclose that the Supplier offered to return all parts removed from the vehicle back to the consumer contrary to Section 12(n) of the ABR.
  - i) The Supplier was advertising a vehicle for sale on April 1, 2022 that had been sold on Oct. 30, 2021 contrary to Section 11(2)(o) of the ABR.
  - j) On one BOS the Supplier used a rebate offer as fake cash down payment. This is not financially accurate and therefore contrary to Section 132(1) of the CPA.
  - k) An Offer to Purchase document stated a vehicle was being sold "AS IS". The sale of all used vehicles require a MFA be completed and the phrase "As Is" is not acceptable as a consumer cannot waive their rights as per Section 2 of the CPA.
  - l) The Findings letter provided educational reminders regarding written estimates and authorization of repair work.

6. There were several issues found in more than one inspection. In addition, based on the Findings Letters (see Schedule "A"), the number of breaches found in each inspection has increased rather than decreased despite the education provided to the Supplier after each inspection.
7. On Feb. 2, 2023, the proposed Administrative Penalty was served on the Supplier. The proposed Administrative Penalty provided the Supplier an opportunity to make written representations with respect to the matter by March 1, 2023. The Supplier did not provide any written representations in response to the proposed Administrative Penalty.

### **Applicable Legislation**

#### **Automotive Business Regulation**

##### **Records**

##### **Section 9**

In addition to the requirement to create and maintain financial records in accordance with section 132(1) of the Act, every business operator and former business operator must maintain all records and documents created or received while carrying on the activities authorized by the licence for at least 3 years after the records were created or received.

#### **Advertising**

##### **Section 11**

- (1) Every business operator must ensure that the business operator's advertising indicates in a conspicuous manner
  - (b) in the case of print and television advertising, that the business operator holds an automotive business licence under the Act.
- (2) A business operator must ensure that every advertisement for an automotive business that promotes the use or purchase of goods or services
  - (l) includes in the advertised price for any vehicle the total cost of the vehicle, including, but not limited to, all fees and charges such as the cost of accessories, optional equipment physically attached to the vehicle, transportation charges and any applicable taxes or administration fees, but not including GST or costs and charges associated with financing, and
  - (m) includes the stock number of the specific vehicle that is advertised as being available for sale at the time the advertisement is placed.
  - (o) does not advertise a specific vehicle for sale if more than 14 days have elapsed since the vehicle was sold.

## General codes of conduct

### Section 12

Every business operator must comply with section 6 of the Act and in addition must

- (a) not make any representations, statements or claims that are not true or are likely to mislead a consumer.
- (n) offer to return all parts removed from the vehicle in the course of work or repairs to the consumer, and return them unless advised by the consumer that the consumer does not require the parts to be returned, and
- (o) comply with any legislation that may apply to the selling, leasing, consigning, repairing, installing, recycling or dismantling of vehicles.

## Registration

### Section 16

(1) A salesperson of an automotive sales business operator must be registered for automotive sales before acting on behalf of the business operator.

## Salesperson ceases to be authorized

### Section 21

(1) When an automotive sales business operator, automotive leasing business operator or automotive consignment business operator ceases to authorize a salesperson to act on its behalf, the business operator must send to the Director written notification of

- (a) the name of the salesperson, and
- (b) the date that the salesperson ceases to be authorized to act on its behalf.

(2) The business operator must notify the Director either before the salesperson ceases to be authorized or within 15 days after the salesperson ceases to be authorized.

## Vehicle history information

### Section 31.1

(1) A business operator engaged in automotive sales must disclose the following information in accordance with subsection (2), on the basis of information the business operator knew or ought to have known:

- (a) whether the vehicle has been bought back by the manufacturer under the Canadian Motor Vehicle Arbitration Plan;
- (b) whether the vehicle has sustained damage caused by fire;
- (c) whether the vehicle has sustained damage caused by immersion in liquid to at least the level of the interior floorboards;
- (d) whether the vehicle has been used as a police car or an emergency vehicle;

(e) whether the vehicle has been used as a taxi cab or a limousine;  
(f) whether the vehicle has been previously owned by a rental vehicle business or used as a rental vehicle on a daily or other short-term basis;  
(g) whether the vehicle has, at any time, been assigned a status in one of the following categories under the Vehicle Inspection Regulation (AR 211/2006) or an equivalent status under the laws of another jurisdiction:

- (i) salvage motor vehicle;
- (ii) non-repairable motor vehicle;
- (iii) unsafe motor vehicle;

(h) whether the vehicle has been damaged in an incident or collision where the total cost of repairs fixing the damage exceeded \$3000 and, if the repairs were carried out by the business operator, the total cost of the repairs;

(i) whether the vehicle was registered in any jurisdiction other than Alberta immediately before it was acquired by the business operator and, if so,

(i) the name of the jurisdiction in which the vehicle was previously registered,

(ii) whether the vehicle was required to be inspected prior to registration in Alberta, and

(iii) whether the vehicle passed or failed any required inspections.

**(2)** The business operator must disclose the information required under subsection (1) in a clear and legible manner

- (a) in any online advertisement for the vehicle,
- (b) on any sales tag affixed to the vehicle, and
- (c) in writing to the consumer before purchase.

## Bill of sale

### Section 31.2

**(1)** A business operator engaged in automotive sales must use a bill of sale that includes the following:

- (a) the name and address of the consumer;
- (b) the number of the government-issued identification that the business operator uses to confirm the identity of the consumer;
- (c) the name, business address and licence number of the business operator;
- (d) if a salesperson is acting on behalf of the business operator, the name and registration number of the salesperson;
- (e) the make, model and model year of the vehicle;
- (f) the colour and body type of the vehicle;
- (g) the vehicle identification number of the vehicle;

- (h) the date that the bill of sale is entered into;
  - (i) the date that the vehicle is to be delivered to the consumer;
  - (j) an itemized list of all applicable fees and charges the consumer is to pay, including, without limitation:
    - (i) charges for transportation of the vehicle;
    - (ii) fees for inspections;
    - (iii) fees for licensing;
    - (iv) charges for warranties;
    - (v) taxes or levies, including GST;
  - (k) the timing for payment by the consumer of the fees and charges under clause (j);
  - (l) an itemized list of the costs of all extra equipment and options sold to the consumer in connection with the vehicle or installed on the vehicle at the time of sale;
  - (m) the total cost of the vehicle, which must include the fees, charges and costs listed under clauses (j) and (l);
  - (n) the down payment or deposit paid by the consumer, if any, and the balance remaining to be paid;
  - (o) if the consumer is trading in another vehicle to the business operator in connection with the purchase of the vehicle,
- (2)** the business operator must ensure that all restrictions, limitations, and conditions imposed on the consumer under the bill of sale are stated in a clear and comprehensible manner.

### Receipt of information

#### Section 31.3

A business operator engaged in automotive sales must not enter into a bill of sale with a consumer unless the business operator has obtained written confirmation from the consumer that the consumer has received the information required under section 31.1.

### Vehicle Inspection Regulation

#### Sale of used motor vehicle

#### Section 15

- (1)** Subject to subsection (2), a dealer in used motor vehicles shall, before entering into a contract to sell a motor vehicle, give to the buyer a used motor vehicle mechanical fitness assessment that contains the following:
- (a) a statement identifying the type of motor vehicle as a truck, motorcycle, bus, van, light truck, automobile or other type of motor vehicle;

- (b) a statement showing the make, model, year, vehicle identification number, odometer reading in kilometres or miles, licence plate number and province of registration of the vehicle;
- (c) the name and address of the dealer selling the vehicle and the name of the technician who issued the mechanical fitness assessment;
- (d) a statement that the mechanical fitness assessment expires 120 days after the date on which it was issued;
- (e) a statement certifying that at the time of sale the motor vehicle
  - (i) complies with the Vehicle Equipment Regulation (AR 122/2009), or
  - (ii) does not comply with the Vehicle Equipment Regulation (AR 122/2009) and containing a description of the items of equipment that are missing or do not comply with the Vehicle Equipment Regulation (AR 122/2009);
- (f) the signature of the technician who conducted the mechanical fitness assessment;
- (g) the date the mechanical fitness assessment was issued.

### Cost of Credit Disclosure Regulation

#### Advertisements

#### Section 6

- (1)** This section applies only to advertisements that offer credit and state the interest rate or amount of any payment.
- (2)** The information required to be disclosed for the purposes of section 76(1) of the Act is
  - (a) the APR, and
  - (b) the term.
- (3)** In addition to the information required under subsection (2),
  - (a) an advertisement for a credit sale of a specifically identified product must disclose the cash price, and
  - (b) an advertisement for a credit sale in connection with which any non-interest finance charge would be payable must disclose
    - (i) the cash price, and
    - (ii) the total cost of credit,except that an advertisement on radio, television or a billboard or other media with similar time or space limitations is not required to disclose the total cost of credit.
- (4)** Where any of the information required to be disclosed by subsections (2) and (3) would not be the same for all credit agreements to which the advertisement relates, the information must be for a representative transaction and must be disclosed as such.



## **Advertising interest-free periods**

### **Section 7**

(1) The information required to be disclosed for the purposes of section 76(2) of the Act must disclose whether

- (a) the transaction is unconditionally interest-free during the period, or
- (b) interest accrues during the period but will be forgiven under certain conditions.

(2) If interest accrues during the period but will be forgiven under certain conditions, the advertisement must also disclose

- (a) the conditions, and
- (b) the APR for the period, assuming the conditions for forgiveness of the interest are not met.

## **Consumer Protection Act**

### **Act prevails**

#### **Section 2**

(1) Any waiver or release by a person of the person's rights, benefits or protections under this Act or the regulations is void.

## **Interpretation of documents**

### **Section 4**

If a consumer and a supplier enter into a consumer transaction, or an individual enters into a contract with a licensee and the licensee agrees to supply something to the individual in the normal course of the licensee's business, and

- (a) all or any part of the transaction or contract is evidenced by a document provided by the supplier or licensee, and
- (b) a provision of the document is ambiguous,

the provision must be interpreted against the supplier or licensee, as the case may be.

## **Unfair practices**

### **Section 6**

(1) In this section, "material fact" means any information that would reasonably be expected to affect the decision of a consumer to enter into a consumer transaction.

(1.1) It is an offence for a supplier to engage in an unfair practice.

(4) Without limiting subsections (2) and (3), the following are unfair practices if they are directed at one or more consumers or potential consumers:

- (a) a supplier's doing or saying anything that might reasonably deceive or mislead a consumer;

## **Advertising for fixed credit**

### **Section 76**

- (1) An advertisement that states or implies that no interest is payable for a certain period in respect of a transaction must, in the form and manner referred to in the regulations, disclose the information prescribed by the regulations.
- (2) An advertisement that states or implies that no interest is payable for a certain period in respect of a transaction must, in the form and manner referred to in the regulations, disclose the information prescribed by the regulations.

## **Duty to maintain records**

### **Section 132**

- (1) Every licensee and former licensee must create and maintain
  - (a) complete and accurate financial records of its operations in Alberta for at least 3 years after the records are made, and
  - (b) other records and documents described in the regulations for the period specified in the regulations.

## **Administrative Penalties**

### **Notice of administrative penalty**

#### **Section 158.1**

- (1) If the Director is of the opinion that a person
  - (a) has contravened a provision of this Act or the regulations,
  - or
  - (b) has failed to comply with a term or condition of a licence issued under this Act or the regulations,the Director may, by notice in writing given to the person, require the person to pay to the Crown an administrative penalty in the amount set out in the notice.
- (2) Where a contravention or a failure to comply continues for more than one day, the amount set out in the notice of administrative penalty under subsection (1) may include a daily amount for each day or part of a day on which the contravention or non-compliance occurs or continues.
- (3) The amount of an administrative penalty, including any daily amounts referred to in subsection (2), must not exceed \$100 000.
- (4) Subject to subsection (5), a notice of administrative penalty shall not be given more than 3 years after the day on which the contravention or non-compliance occurred.
- (5) Where the contravention or non-compliance occurred in the course of a consumer transaction or an attempt to enter into a consumer transaction, a notice of administrative penalty may be given within 3 years after the day on which the consumer first knew or ought to have known of the contravention or non-compliance but not more than 8 years after the day on which the contravention or non-compliance occurred.

## **Right to make representations**

### **Section 158.2**

Before imposing an administrative penalty in an amount of \$500 or more, the Director shall

- (a) advise the person, in writing, of the Director's intent to impose the administrative penalty and the reasons for it, and
- (b) provide the person with an opportunity to make representations to the Director.

## **Vicarious liability**

### **Section 166**

For the purposes of this Act, an act or omission by an employee or agent of a person is deemed also to be an act or omission of the person if the act or omission occurred

- (a) in the course of the employee's employment with the person, or
- (b) in the course of the agent's exercising the powers or performing the duties on behalf of the person under their agency relationship.

### **Analysis – Did the Supplier fail to comply with the provisions of the CPA, ABR and VIR?**

A routine AMVIC industry standards inspection was completed on May 20, 2016. The inspection findings were discussed with the Supplier and the Findings Letter was sent to the business. The 2016 inspection findings found minimal concerns. A second inspection was completed on May 30, 2018. A findings letter outlining the inspection findings was sent to the Supplier on June 12, 2018. The inspection completed in 2018 found legislative breaches consistent with those that had been previously identified in the initial inspection, as well as additional legislative breaches.

On July 13, 2020, a third inspection was completed. This inspection was completed via telephone due to the COVID-19 pandemic. The inspection findings were discussed with the Supplier and the Findings Letter was sent to the Supplier on July 13, 2020. The inspection found legislative breaches consistent with those that had been identified in the two previous inspections, as well as additional legislative breaches.

On May 16, 2022, a fourth inspection was completed. A findings letter outlining the inspection findings was sent to the Supplier on June 7, 2022. The fourth inspection completed in 2022 found legislative breaches consistent with those that had been previously identified in the previous inspections, as well as additional legislative breaches. Details of the breaches that are currently under consideration are identified in the Findings Letter dated June 7, 2022. Based on the facts outlined by the ISO and the supporting documents, I will be considering the alleged breaches from the 2022 inspection that have supporting evidence provided in the Application Report. There are legislative breaches identified in the 2022 Findings Letter with no supporting evidence. While these breaches may be included above and may be discussed briefly for educational purposes, they will not be considered when determining whether the legislative sections have been breached nor considered in the amount of the Administrative Penalty. In the opinion of the Director, the number of legislative breaches for the Supplier has increased

rather than decreased, despite the education provided in three previous inspections and a warning letter from AMVIC investigations north which is a concern.

#### A. Selling Above Advertised Price (11(2)(I) ABR)

During each inspection it was identified that the Supplier was not complying with Section 11(2)(I) of the ABR by selling vehicles over the advertised price. According to the Findings Letter, during the first inspection in 2016, five deals were reviewed, of which two vehicles were sold over the advertised price. The Application Report only provides evidence for one of the vehicles sold over the advertised price. The Findings Letter resulting from the 2018 inspection outlines that out of 16 used deals reviewed three vehicles were sold over the advertised price. The Application Report provides evidence for two of the three vehicles sold over the advertised price. During the 2020 inspection the ISO found seven vehicles sold over the advertised price and the Application Report provides evidence of the seven vehicles. It is to be noted that there was a typographical error in the 2020 Findings Letter and one stock number was listed twice and therefore the Findings Letter states eight vehicles were sold over the advertised price. The Application Report rectifies that fact and specifies the number of vehicles found to be sold over the advertised price during the 2020 inspection was in fact seven. After each inspection the Supplier was provided with information and education that selling vehicles above the advertised price is contrary to Section 11(2)(I) of the ABR.

During the 2022 inspection, the ISO found six vehicles sold above the advertised price. The Findings Letter indicates seven vehicles were found to be sold over the advertised price however, the Application Report specifies that there was insufficient evidence regarding one of the deals and therefore only the six deals that have supporting evidence will be considered for this Administrative Penalty. In these six consumer transactions the Supplier derived an economic benefit of \$7,256.50 at the cost of the consumers (see Schedule A, Exhibits 30-35).

- Stock No. 22SZ3318 was sold over the advertised price by \$50.25;
- Stock No. 22K07703 was sold over the advertised price by \$1,125.25;
- Stock No. 22SF1553 was sold over the advertised price by \$4,283.25;
- Stock No. 22SF8915B was sold over the advertised price by \$1,031.25 (The number indicated on page 8 in the application report reflected an amount that included a \$20 tire levy and \$100 air tax which was not included on the BOS (see Exhibit 33));
- Stock No 22PA2244 was sold over the advertised price by \$750.25; and
- Stock No. 22TC6989C was sold over the advertised price by \$6.25.

According to the Application Report the ISO reviewed 27 deal jackets during the 2022 inspection, six of which the Supplier sold over the advertised price contrary to Section 11(2)(I) of the ABR. In the year 2021 the Supplier sold 1,546 vehicles. Based on the small sample size of 27 deal jackets reviewed by the ISO and before me as evidence, the Supplier has derived significant economic benefit by charging consumers over the advertised price. Six of 27, or 22 per cent of the deal jackets reviewed, were sold over the advertised price; 22 per cent of the 1,546 vehicles sold by the Supplier is approximately 340 and on average the Supplier overcharged consumers \$1,227.75 per transaction. **This would equate to**

**deriving an economic benefit of over \$417,000 in one year alone.** This is concerning as the Supplier has been provided more than ample opportunity and education to rectify this business practice that breaches the legislation, however continues to engage in this practice and derive an economic benefit at the cost of consumers.

The writer finds that on a balance of probabilities, the Supplier has breached Section 11(2)(l) of the ABR.

#### B. MFA Concerns (15(1) VIR and 12(o) ABR)

During each inspection it was identified that the Supplier was not complying with Section 15(1) of the VIR due to various issues with the completion of or disclosure of the MFA. All four Findings Letters completed as a result of the findings of the industry standards inspections indicate concerns with the Supplier's business practices in regards to the MFA and provides education to the Supplier on the requirements that must be followed in order to be compliant with Section 15(1) of the VIR, however the Supplier continues to engage in non-compliant business practices in regards to their MFA.

During the 2022 industry standards inspection, one deal jacket reviewed had an MFA that was completed and signed after the Supplier entered into a contract to sell a motor vehicle. This business practice specifically causes concern for the Director. The Supplier is required to ensure the MFA is provided to the consumer prior to entering into the transaction. An MFA is a key document given to a consumer before entering into a contract to purchase a vehicle. Failing to provide an MFA prior to entering into a transaction leverages the Supplier's knowledge and does not foster a level playing field between the consumer and the Supplier. There is an onus on the Supplier to relay correct and accurate information to the consumer to allow the consumer to make an informed purchasing decision. Section 12(o) of the ABR requires automotive businesses to comply with all legislation regarding the sale of vehicles, therefore by breaching Section 15(1) of the VIR, the Supplier has further breached Section 12(o) of the ABR.

#### C. Bill of Sale Issues (31.2 ABR)

On Oct. 31, 2018, new legislation was put into effect with regards to BOS requirements. Between Sept. 25, 2018 and Nov. 6, 2018 AMVIC sent out a number of industry bulletins, updated the AMVIC website with information regarding the new legislation, sent multiple bulletins to inform the industry and the public regarding the changes, updated social media regularly, sent out a special edition of the IMPACT newsletter to the industry regarding the legislative changes and all AMVIC employees had an email signature attached to staff emails regarding the legislative changes. These are just a few of the initiatives that AMVIC took to ensure all licensees were advised of the legislative changes that were coming into effect on Oct. 31, 2018 regarding the BOS.

Two of the inspections completed on the Supplier were completed prior to this legislative change. The Supplier was educated regarding the BOS requirements during the 2020 industry standards inspection. The Findings Letter provided to the Supplier as a result of the 2020 industry standards inspection provides the Supplier with the legislation they must comply with in the completion of their BOS.

In each of the inspections conducted by the AMVIC industry standards department, the Supplier was educated on the errors the ISO found when reviewing the BOS. Although the first two inspections were completed prior to this legislative change, the ISO found deficiencies in the Supplier's BOS and educated the Supplier regarding the importance of properly completing the BOS, and ensuring all information is accurate.

While the issues found during the 2020 and 2022 industry standards inspections are not the exact same issues, the Supplier was provided with the BOS legislative requirements in the 2020 Findings Letter yet additional compliance issues with their BOS were discovered during the 2022 industry standards inspection. The ISO noted in the 2022 Findings Letter the following legislative breaches regarding the BOS requirements as per Section 31.2(1).

- Seventeen BOS did not identify if the vehicle odometer was in miles or kilometres;
- Six BOS were missing the AMVIC registration number of the salesperson;
- One BOS did not indicate whether the vehicle was new, used or a demo vehicle; and
- One BOS was missing the delivery date.

Although the legislation does not specify the requirement for the BOS to state miles or kilometres, it is vital to include this because it is common for vehicles to be imported and in the opinion of the Director, in order to meet Section 31.2(1)(s) the Supplier must indicate whether the odometer is in miles or kilometres as without this distinction the odometer reading included in the BOS is ambiguous.

Based on the evidence before me, on a balance of probabilities, I find the Supplier has breached Section 31.2 of the ABR.

#### D. Disclosure of Vehicle History (31.1 ABR)

As part of the legislative changes put into effect on Oct. 31, 2018, as mentioned above, requirements regarding the disclosure of vehicle history were also included. When reading Sections 31.1, 31.2 and 31.3 it is clear the spirit and intent of the legislation was to ensure consumers were not only being provided the vehicle history information, but that the information being provided was clearly documented and included in advertisements, on any sales tag affixed to the vehicle and provided in writing to the consumer before purchase.

During the 2022 industry standards inspection, the ISO reviewed some of the Supplier's advertisements and compared them to corresponding deal jackets. Two advertisements on Autotrader failed to disclose the vehicle history as required by Section 31.1 of the ABR. One vehicle had damage that exceeded \$3,000 which was not disclosed in the advertisement and one vehicle did not indicate that it was registered in another jurisdiction immediately before it was acquired by the Supplier.

It was also found that seven used sales deal jackets were missing the vehicle history information as required by Section 31.1 of the ABR. In reviewing the BOS (see Schedule "A") it was noticed that of the deal jackets that did not include the vehicle history information in writing, some of the BOS did have

consumers initials beside a statement that indicated this information was disclosed to the consumer. However, given that the vehicle history information must be provided to the consumer in writing and the Supplier does not have the appropriate records, in accordance with Section 4 of the CPA, the writer must interpret the documents against the Supplier. Therefore, based on the evidence before me, on a balance of probabilities, the Supplier has contravened Section 31.1 by not disclosing the required vehicle history information in advertisements and by not disclosing the required vehicle history information in writing to consumers prior to the purchase of their vehicles.

#### E. Maintain Records (132 CPA and 9 ABR)

The Director does want to address an overarching issue. Specifically, the Findings Letters revealed to the Director that the Supplier has issues with record keeping. It is imperative that the Supplier creates and maintains accurate records. Creating and maintaining accurate records is the best way for the Supplier to ensure the consumer is fully aware of all the details and required information during their transaction and is also the best way for the Supplier to demonstrate they are complying with the legislative requirements.

Issues that the Director found in the Findings Letters such as fake cash down, issues with the completion of the BOS, deal jackets missing the vehicle history information, and service and repair documents missing a required disclosure statement all demonstrate a need for the Supplier to be more diligent in creating and maintaining records. The legislation is very clear, that being negligent in keeping records not only is an offence under the CPA but in addition, if documents are ambiguous the Director must find against the Supplier in accordance with Section 4 of the CPA. The Supplier is vicariously liable for all records created and maintained by an employee or agent acting on behalf of the Supplier in the course of completing the Supplier's delegated business activities.

A recent Service Alberta Appeal Board rendered a decision (attached as Scheduled "B") regarding the importance of record keeping as a member of a regulated industry. Paragraph 152 of the Service Alberta Appeal Board decision states:

*The Board finds that there is a need for general deterrence as well, such that other members of the industry understand that failure to keep proper records is an extremely serious contravention of the act, and a business practise that puts the public at risk.*

Based on the totality of all of the issues and concerns with the Supplier's paperwork on a balance of probabilities, the Director does find that the Supplier is in contravention of Section 132 of the CPA and Section 9 of the ABR.

#### F. Other Considerations

There are a number of additional legislative breaches outlined in the Findings Letter resulting from the 2022 industry standards inspection. The information provided in the Application Report (Schedule "A") does not address all the breaches identified in the 2022 Findings Letter, nor does it include supporting

evidence of all the breaches specified in the Findings Letter. Therefore the breaches listed in the 2022 Findings Letter that do not have supporting evidence will not be considered in determining the amount of the Administrative Penalty. However, the Supplier has been provided ample opportunity to bring their business practices into compliance but instead has continued engaging in non-compliance business practices with an apparent trend of the Supplier becoming less compliant in every subsequent inspection. This continued non-compliance is an aggravating factor and causes the Director concern.

There exists an onus on the Supplier to do their due diligence and ensure they are complying with the legislation that governs the regulated industry they have chosen to be a member of. The Supreme Court of British Columbia in *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers, 2014 BCSC 903* addressed the issue of the onus and responsibility the Supplier has when operating within a regulated industry. The court at paragraph 59 stated:

*“In my view, it is incumbent upon a party that operates within a regulated industry to develop at least a basic understanding of the regulatory regime, including its obligations under the regime, as well as the obligations, and the authority, of the regulator.”*

By failing to create and maintain accurate business records not limited to the Supplier’s BOS and MFA, failing to disclose a vehicle’s history and by selling over the advertised price this leverages the Supplier’s knowledge and does not foster a level playing field between the consumer and the Supplier which eliminates the consumer’s ability to make an informed purchasing decision. It further concerns the Director that the Supplier despite all of the education is repeating similar breaches of the legislation to the detriment of consumers.

The aggravating factors in this matter include the resulting financial impact adversely affecting the consumer due to paying over the advertised price (on six out of 27 files reviewed Supplier derived economic benefit of **\$7,256.50**) and the non-compliance with the rather straightforward requirements of the legislation after multiple education actions and attempts to educate the Supplier.

This Administrative Penalty is taking into account the number and seriousness of the contraventions of the legislation found during the fourth inspection; the aggravating factors listed above; and the continued non-compliant business practices despite education and enforcement.

The amount of the Administrative Penalty cannot be viewed as a cost of doing business but rather as a deterrent for continuing to engage in non-compliant business practices.

### **Action**

In accordance with Section 158.1(a) of the CPA and based on the above facts, I am requiring that 1347374 Alberta Ltd. operating as Northstar Hyundai/Go Auto pay an Administrative Penalty. This is based on my opinion that 1347374 Alberta Ltd. operating as Northstar Hyundai/Go Auto contravened Section 132 of the CPA, Sections 9, 11(2)(l), 12(o), 31.1(2) and 31.2(1) of the ABR, and Section 15(1) of the VIR.



Taking into consideration all the evidence currently before the Director, the amount of the Administrative Penalty is **\$15,000**.

The amount takes into consideration the factors outlined in Section 2 of the Administrative Penalties (*Consumer Protection Act*) Regulation, AR 135/2013 and the principles referenced in *R v Cotton Felts Ltd., (1982), 2 C.C.C (3d) 287 (Ont. C.A.)* as being applicable to fines levied under regulatory legislation related to public welfare including consumer protection legislation. In particular the Director took into account:

1. The financial harm on the persons adversely affected by the contraventions or failure to comply;
2. The seriousness of the contraventions or failure to comply;
3. The previous history of enforcement and non-compliance;
4. The economic benefit derived from the contraventions or failure to comply;
5. The degree of willfulness or negligence in the contravention or failure to comply;
6. The maximum penalty under Section 158.1(3) of the CPA of \$100,000; and
7. The deterrent effect of the penalty.

**The amount of the Administrative Penalty is \$15,000.**

Pursuant to Section 3 of the Administrative Penalties (*Consumer Protection Act*) Regulation, you are required to submit payment within **thirty (30) days** of the date of service of this notice. Failure to pay the Administrative Penalty will result in a review of the licence status. Payment may be made payable to the **“Government of Alberta” and sent to AMVIC** at:

Suite 303, 9945 – 50th Street  
Edmonton, AB T6A 0L4.

If payment has not been received in this time period, the Notice may be filed in the Court of King’s Bench and enforced as a judgement of that Court pursuant to Section 158.4 of the CPA and further disciplinary action will be considered.

Section 179 of the CPA allows a person who has been served a notice of Administrative Penalty to appeal the penalty. To appeal the penalty, the person must serve the Minister of Service Alberta and Red Tape Reduction

Minister of Service Alberta and Red Tape Reduction  
103 Legislature Building  
10800 - 97 Avenue NW  
Edmonton, AB  
Canada T5K 2B6

with a notice of appeal within **thirty (30) days** after receiving the notice of Administrative Penalty. The appeal notice must contain your name, your address for service, details of the decision being appealed and your reasons for appealing.

Pursuant to Section 180(4) of the CPA, service of a notice of appeal operates to stay the Administrative Penalty until the appeal board renders its decision on the appeal or the appeal is withdrawn.

Under Section 4 of the Administrative Penalties (*Consumer Protection Act*) Regulation, the fee for appealing an Administrative Penalty is the lesser of \$1,000 or half the amount of the penalty. As such, the fee for an appeal of this Administrative Penalty, should you choose to file one, would be \$1,000. Should you choose to appeal this Administrative Penalty, you must send the appeal fee to the Minister of Service Alberta and Red Tape Reduction at the above noted address, made payable to the "Government of Alberta".

Yours truly,

"original signed by"

Alberta Motor Vehicle Industry Council (AMVIC)  
Gerald Gervais, Registrar  
Director of Fair Trading (as Delegated)

/kl  
Encl.

cc: Evelyn L-J., Manager of Industry Standards, AMVIC