

March 27, 2023

Administrative Review – 23-02-003
Served Personally

Administrative Penalty

PRECISION MOTORS LTD.
o/a PRECISION HYUNDAI
130 GLENDEER CIRCLE SE
CALGARY, AB
T2H 2V4

Attention: John W. Robinson

Dear John Robinson:

**Re: Precision Motors Ltd. operating as Precision Hyundai
– Provincial Automotive Business Licence No. B211025**

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. The Supplier provided written representations via email dated March 14, 2023 (attached as Schedule “C”), in response to the Proposed Administrative Penalty, which I have also taken into consideration.

Licensee Status

Precision Motors Ltd. operating as Precision Hyundai (the “Supplier”) holds an automotive business licence and is licensed to carry on the designated business activities of retail sales, garage, autobody, leasing, and wholesale sales in the Province of Alberta.

Direct communications with the Supplier and its representatives

1. On March 13, 2017, a routine AMVIC industry standards inspection was completed at the business location of the Supplier. A Findings Letter dated March 21, 2017 outlining the

inspection findings was completed and sent to the Supplier. The Findings Letter outlined a number of concerns including but not limited to:

- a) During the inspection, eight deals were reviewed by the ISO and of those eight deals, four did not reflect all-in pricing contrary to Section 11(2)(l) of the Automotive Business Regulation ("ABR").
 - b) Advertising issues contrary to the requirements found in Sections 11 and 12 of the ABR.
 - c) Issues with the completion of and/or disclosure of Mechanical Fitness Assessments ("MFAs") contrary to Section 15(1) of the VIR.
2. On May 8, 2018, a followup AMVIC industry standards inspection was completed on the Supplier. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on May 16, 2018. The Findings Letter outlined a number of concerns including but not limited to:
- a) During the inspection, 10 deals were reviewed by the ISO and of those 10 deals, two did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.
 - b) Advertising issues contrary to requirements found in Sections 11 and 12 of the ABR.
 - c) Various issues with the completion of and/or disclosure of MFAs contrary to Sections 15(1) and 16 of the VIR.
3. On Jan. 24, 2023 a followup AMVIC industry standards inspection was completed on the Supplier. This inspection focused specifically on the Supplier's advertising and compliance with all-in pricing legislation. The inspection conducted on Jan. 24, 2023 was therefore not comprehensive in nature and as such, not all documentation or business practices were reviewed in comparison to the two previous comprehensive inspections conducted in 2017 and 2018. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on Jan. 31, 2023. The Findings Letter stated that 27 used vehicle and 27 new vehicle sale files were reviewed. The Application Report clarified that 27 used and 27 new vehicle advertisements online were reviewed by the ISO, however only 14 vehicles had been sold at the time of the inspection. The Findings Letter outlined the following concerns:
- a) During the inspection, 14 deals were reviewed by the ISO and of those 14 deals, seven did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.
4. Selling vehicles over the advertised price was found in all three AMVIC inspections. Based on the Findings Letters provided to the Supplier following each AMVIC industry standards inspection.
5. The Supplier provided written representations, dated March 14, 2023, in response to the Proposed Administrative Penalty (see Schedule "C").

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

(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

Consumer Protection Act

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.

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 and ABR?

A routine AMVIC industry standards inspection was completed on March 13, 2017. The inspection findings were discussed with the Supplier and the Findings Letter dated March 21, 2017 was sent to the Supplier. The 2017 inspection findings identified a number of breaches including the Supplier not adhering to all-in pricing, and in general found issues regarding creating and maintain accurate business records. A second AMVIC industry standards inspection was completed on May 8, 2018. A Findings Letter outlining the inspection findings was sent to the Supplier on May 16, 2018. The inspection completed in 2018 found legislative breaches consistent with those that had been previously identified in the initial inspection including not adhering to all-in pricing, and issues relating to creating and maintaining accurate business records.

On Jan. 24, 2023 a followup AMVIC industry standards inspection was completed on the Supplier. This inspection focused solely on the Supplier's advertising and compliance with all-in pricing legislation. The inspection conducted on Jan. 24, 2023 was therefore not comprehensive in nature and as such, not all documentation or business practices were reviewed in comparison to the two previous comprehensive inspections conducted in 2017 and 2018. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on Jan. 31, 2023. The ISO identified that the Supplier has continued to sell vehicles over the advertised price contrary to Section 11(2)(l) of the ABR. Based on the facts outlined by in the Application Report and supporting documents (see Schedule "A"), I will only be considering the breaches from the 2023 AMVIC industry standards inspection.

A. Selling Above Advertised Price (11(2)(l) ABR)

During each inspection it was identified that the Supplier was not complying with Section 11(2)(l) of the ABR by selling vehicles over the advertised price. After each inspection the Supplier was provided with information and education regarding the legislative requirement of adhering to the advertised price when selling vehicles as per Section 11(2)(l) of the ABR.

Prices advertised must include all fees the seller intends to charge. The only fee that can be added to the advertised price is the goods and services tax ("GST") and costs associated with financing as per Section 11(2)(l) of the ABR. Pre-installed products such as batteries and anti-theft must be included in the advertised price. Destination fees, documentation fees, finance contract costs, AMVIC levy and tire recycling levy must be included in the advertised price. During the Jan. 24, 2023 inspection, according to the Application Report, the ISO reviewed 14 deal jackets and found seven vehicles sold above the advertised price. However, after reviewing the written representations of the Supplier (see Schedule "C"), the Supplier sold five vehicles above the advertised price. In these five consumer transactions the Supplier derived an economic benefit of **\$3,020.25** at the cost of the consumers.

- Stock No. P22959 was sold over the advertised price by \$1,024.25;
- Stock No. P22977 was sold over the advertised price by \$824.25;
- Stock No. P22976 was sold over the advertised price by \$341.25;
- Stock No. P23005 was sold over the advertised price by \$625.25; and

- Stock No. 20001 was sold over the advertised price by \$205.25.

The Supplier provided written representations on March 14, 2023 in response to the Proposed Administrative Penalty (see Schedule “C”). In the written representations, the Supplier addressed each vehicle that was alleged to be sold over the advertised price during the 2023 AMVIC industry standards inspection. In order to fulsomely address the written representations, the Director will also address each vehicle in detail.

Stock No. P22959

In the Application Report and Proposed Administrative Penalty it was alleged Stock No. P22959 was sold over the advertised price by \$1,024.25. In their written representations, the Supplier indicated they disagree, stating the consumer paid \$632.75 below the advertised price because AMVIC did not factor in the cost of the “Alberta Roads Package” (\$944) and winter tires (\$713) into the selling price of the vehicle (\$27,175.25) in determining the amount the vehicle was sold for. In review of the documentation before me, the Supplier’s assessment of the “Alberta Roads Package” and winter tires being included in the calculation of the price of the vehicle is incorrect, these options are itemized as separate options, as they are required to be, and therefore are not part of the calculation in determining that Stock No. P22959 was sold over the advertised price. The price breakdown used to determine the sale over the advertised price is as follows:

| | | | |
|-----------------------|---|-------------------|--|
| Basic Vehicle | | \$24,399.00 | |
| PDI | + | 499.00 | |
| Finance Displacement | + | 399.00 | |
| Freight | + | 1,752.00 | |
| Excise Tax | + | 100.00 | |
| AMVIC Levy | + | 6.25 | |
| Tire Levy | + | <u>20.00</u> | |
| Sale Price | | \$27,175.25 | (not including “Alberta Roads Package” and winter tires) |
| Advertised Price | - | <u>26,151.00</u> | |
| Over Advertised Price | | \$1,024.25 | |

Based on the documentation before me, I find that Stock No. P22959 was sold over the advertised price by \$1,024.25.

Stock No. P22994

In the Application Report and Proposed Administrative Penalty it was alleged Stock No. P22994 was sold over the advertised price by \$824.25. In their written representations, the Supplier indicated this vehicle was ordered by a consumer on September 24, 2022 and was only advertised on their website due to their computer system automatically advertising vehicles that are noted as in stock. The Supplier is responsible and must adhere to all-in pricing regardless whether or not their automated computer

system incorrectly advertised a vehicle. In review of the evidence before me, there is a document dated Sept. 24, 2022 contained in the Application Report (see Schedule "A"; Exhibit 6), with the consumers name and signature, including an agreed upon price for the vehicle. Given this document is signed by the same consumer who purchased the vehicle once it arrived in January 2023, with an agreed upon price months before the advertisement was captured for the purposes of the 2023 AMVIC industry standards inspection, I accept when this vehicle was ordered by the consumer a price was agreed upon at the time and there is no evidence before me that in September 2022 there was an advertisement for the vehicle listing an advertised price to the general public.

Based on the evidence in relation to this deal jacket, I find that Stock No. P22994 was not sold over the advertised price.

Stock No. P22977

In the Application Report and Proposed Administrative Penalty it was alleged Stock No. P22977 was sold over the advertised price by \$824.25. In their written representations, the Supplier acknowledges this vehicle was sold over advertised price due to an oversight by an employee.

Based on the documentation before me, I find that Stock No. P22977 was sold over the advertised price by \$824.25.

Stock No. P22976

In the Application Report and Proposed Administrative Penalty it was alleged Stock No. P22976 was sold over the advertised price by \$341.25. The advertisement (see Schedule "A"; Exhibit 8) indicated that the "Alberta Roads Package" (\$944) and "3M package" (\$899) is included in the advertised price. In reviewing the BOS, the basic selling price is lower than the advertised price, the Supplier has itemized the additional items below the basic selling price; this practice is the best way for the Supplier to be transparent with the consumer about the costs being paid for all items, which is required by Section 31.2 of the ABR. However, the Supplier added additional fees and charges that exceeded the advertised price of the vehicle. In their written representations, the Supplier stated that the advertised price was a cash price and therefore the \$804 "Finance Displacement" should not be factored into the selling price of the vehicle, subsequently the consumer would have paid \$462.75 below the advertised price.

The Director notes the advertisement captured by the ISO for the purpose of the 2023 AMVIC industry standard inspection indicates the advertised price does specify it is a cash price. However, the Supplier's documentation is ambiguous. While yes, the BOS names the \$804 charge as a "Finance Displacement", the Supplier has provided no evidence to what this "Finance Displacement" cost is associated to, to determine if it was in fact a cost associated with financing the vehicle. The "Deal Summary" (see Schedule "A"; Exhibit 8) lists this \$804 charge as "Protections" in the "Deal Summary" section, then changes the name to "Finance Displacement" in the "F&I Gross" section which shows that the \$804 charged to the consumer was complete profit to the Supplier. Additionally, there is no mention of an \$804 cost associated with the financing in the itemized "COST OF FINANCING THE PURCHASE OF THE

GOODS list in the actual financing documents. Based on the written representations, the Supplier has not provided adequate evidence to demonstrate the \$804 was a cost associated with financing and the true nature of this fee is ambiguous. A Supplier cannot charge a consumer a fee, name that fee to make it appear to be a cost associated with financing, which is the only allowable fee, other than GST, that can be added to the advertised price without documentation supporting how that fee is a cost associated with the financing. The financing documents do not list such a fee, and the *Deal Summary* uses two different names for the same fee, depending on what section you look at.

Due to the ambiguity of this fee, Section 4 of the CPA states the provision must be interpreted against the Supplier. Therefore, on a balance of probabilities, I find that Stock No. P22976 was sold over the advertised price by \$341.25.

Stock No. 19961

In the Application Report and Proposed Administrative Penalty it was alleged Stock No. 19961 was sold over the advertised price by \$2,511. In their written representations, the Supplier stated a \$1,000 referral bonus was not properly recorded on their BOS and also provided a transport invoice to ship the vehicle to Quebec at the consumer's expense. Additionally, the Supplier provided a *Deal Summary* which is different than the one provided to the ISO during the 2023 inspection. The *Deal Summary* provided to the ISO during the inspection indicates the consumer received \$4,000 *CASHBACK* and there is no transportation costs indicated, while the *Deal Summary* provided in their written representations indicates \$5,000 for *CASHBACK/REFERRAL* and includes the cost of the transportation of the vehicle to Quebec. The BOS does not itemize or mention the consumer received cash back, a referral amount or the cost associated with the transportation of the vehicle to Quebec. Failing to create accurate records and properly itemize all relevant information on the BOS is contrary to other legislative requirements that the Supplier is required to comply with.

Based on the evidence in relation to this deal jacket, I find that Stock No. P19661 was not sold over the advertised price.

Stock No. P23005

In the Application Report and Proposed Administrative Penalty it was alleged Stock No. P23005 was sold over the advertised price by \$625.25. In their written representations, the Supplier advised this vehicle was a *SOLD order* but the original deal fell through and therefore had been returned to in stock status. The Supplier stated the advertisement was only advertised on their website due to their computer system automatically advertising vehicles that are noted as in stock but due to limited inventory the vehicle had already been sold to another customer and was never available to the general public.

While Stock No. P22994 dealt with a similar issue, where the Supplier's computer system automatically generated an advertisement because the vehicle was considered in stock, this deal jacket has one key difference. The date the consumer agreed to purchase the vehicle is within one day of the date the ISO captured the advertisement on the Supplier's website for the purposes of the 2023 AMVIC industry

standards inspection. While the Supplier indicated there was an issue with their system automatically advertising vehicles with an in stock status, they are still required by the legislation to adhere to any advertising they post, whether it be an automated computer system or posted manually by an employee. The timeframe in this deal jacket, wherein the consumer agreed to purchase the vehicle on Jan. 16, 2023, the advertisement was on the Supplier's website on Jan. 17, 2023, and the BOS is dated Jan. 20, 2023 (see Schedule "A"; Exhibit 10). On a balance of probabilities, the Director finds the advertisement of Stock No. P23005 would have been on the Supplier's website at the time the consumer agreed to purchase the vehicle and therefore the Supplier must adhere to the advertised all-in price.

Based on the evidence in relation to this deal jacket, I find that Stock No. P23005 was sold over the advertised price by \$625.25.

Stock No. 20001

In the Application Report and Proposed Administrative Penalty it was alleged Stock No. 20001 was sold over the advertised price by \$205.25. In their written representations, the Supplier stated that the advertised price was a cash price and therefore the \$199 "*Finance Displacement*" should not be factored into the selling price of the vehicle and therefore, the Supplier only sold the vehicle over the advertised price by \$6.25.

The Director notes the advertisement captured by the ISO for the purpose of the 2023 AMVIC industry standard inspection does not state the advertised price is a cash price. Similar to Stock No. P22976, the Supplier's documentation is ambiguous in regards to the "*Finance Displacement*". The BOS names the \$199 charge as a "*Finance Displacement*", the Supplier has provided no evidence to what this "*Finance Displacement*" cost is associated to, to determine it was in fact a cost associated with financing the vehicle. The "*Deal Summary*" (see Schedule "A"; Exhibit 11) lists this \$199 charge as "*Protections*" in the "*Deal Summary*" section, then changes the name to "*Finance Displacement*" in the "*F&I Gross*" section which shows that the \$199 charged to the consumer was complete profit to the Supplier. Based on the written representations, the Supplier has not provided adequate evidence to demonstrate the \$199 was a cost associated with financing and the true nature of this fee is ambiguous. The "*Deal Summary*" uses two different names for the same fee, depending on what section you look at. Furthermore, the advertisement does not state the advertised price is a cash price.

Due to the ambiguity of this fee, Section 4 of the CPA states the provision must be interpreted against the Supplier. Therefore, on a balance of probabilities, I find that Stock No. 20001 was sold over the advertised price by \$205.25.

In 2022, the Supplier submitted sales levies to AMVIC showing they sold 670 vehicles over the course of the year. Based on the sample size of 14 deal jackets reviewed by the ISO and before me as evidence, the Supplier has derived economic benefit by charging consumers over the advertised price. This is concerning as the Supplier has been provided the opportunity and education to rectify this business practice. The Supplier stated in their written representations that they "*took quick and decisive*

corrective action to address the findings in the 2017 and 2018” inspection. While the Supplier may have done so, based on the evidence before me, the Supplier has continued to engage in the business practice of selling vehicles over the advertised price despite the education provided after each of the previous inspections and has continued to derive an economic benefit at the cost of consumers.

In their written representations, the Supplier stated the findings of the 2017 and 2018 AMVIC industry standards inspections were fundamentally different for two reasons, firstly that the previous inspections were focused on pre-owned vehicles and the 2023 inspection focused on advertised prices of new vehicles and secondly that the Supplier has a different “*Dealer Management System*” then they did at the time of the 2017 and 2018 inspections.

Section 11(2)(l) of the ABR does not differentiate between the sale of pre-owned vehicles and new vehicles. An advertisement of either a new or used vehicle must advertise the all-in price as required by the legislation, regardless whether the vehicle is new or used. Furthermore, if an advertisement is posted for a vehicle, the Supplier must adhere to the advertised all-in price regardless if the computer system automatically generated the advertisement or it was advertised manually. While the Director understands that errors can occur due to changing to a new computer system, the Supplier is responsible for the advertisements made on behalf of their business.

The Director finds that on a balance of probabilities, the Supplier has breached Section 11(2)(l) of the ABR in five consumer transactions.

B. Maintain Accurate Records (132 CPA and 9 ABR)

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.

In reviewing the supporting documentation provided with the Application Report and the written representations provided by the Supplier (see Schedule “C”), the deal jacket reviewed regarding Stock No. 19961 included the “Deal Summary” provided to the ISO during the inspection which indicated there was \$4,000 cash back given to the consumer. The “Deal Summary” provided in the written representations of the Supplier show a “CASHBACK/REFERRAL” of \$5,000 and a transportation cost. The Supplier stated there was an additional \$1,000 referral paid on the file to the consumer. However the cash back, referral, and transportation cost to ship the vehicle to Quebec for the consumer is not itemized on the BOS. It is imperative that the Supplier ensure their BOS accurately reflects the true and complete nature of the transaction.

The legislation demonstrates the importance of creating and maintaining **accurate** records because not only is it an offence under the CPA and ABR but in addition, the legislation states that if any 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 under Section 166 of the CPA.

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 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.

C. Other Considerations

In addition to the individual education AMVIC provided the Supplier in the form of the Findings Letters provided after each AMVIC industry standards inspection, AMVIC has issued 18 industry bulletins and newsletters over the past two years explaining all-in pricing and advertising regulations, educating the automotive industry as a whole. As a licensed member of the automotive industry, the Supplier would have received the AMVIC industry bulletins and newsletters and in the opinion of the Director, is expected to have reviewed these education bulletins and newsletters to ensure their business practices are in compliance.

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."

It concerns the Director that the Supplier has continued to breach rather straightforward legislation, to the financial detriment of consumers, despite the education provided by AMVIC.

The Supplier indicated that they are not a business who would engage in behaviours such as intentionally misleading or defrauding consumers. The Director does not allege the Supplier is engaging in such business practices. The Administrative Penalty is based on the Supplier selling vehicles over the advertised all-in price, contrary to Section 11(2)(l) of the ABR as a result of the findings of the 2023 AMVIC industry standards inspection.

The Supplier noted in their written representations that there have been no consumer complaints lodged against their business. There is no evidence before the Director in relation to consumer complaints AMVIC has received against the Supplier and therefore the Director will not be taking consumer complaints into consideration in determining the amount of the Administrative Penalty.

Further the Supplier stated *"We find this to be an unwarranted inspection and believe it to be prejudicial and defamatory to our business"* in their written representations. As a regulatory body, AMVIC has the authority to inspect a licensee at any time to ensure compliance with the legislation.

Consumer Protection Act
Inspection
Section 145

(1) An inspector may enter the business premises of a regulated person at any reasonable time to conduct an inspection to determine if there is compliance with this Act and the regulations.

The aggravating factors in this matter include the resulting financial impact adversely affecting consumers due to paying over the advertised price, in five transactions the Supplier derived an economic benefit of **\$3,020.25**, and continued non-compliance with the rather straightforward requirements of the legislation despite education provided to the Supplier. The Supplier taking the action to fix their computer system to no longer automatically advertise in stock vehicles is a mitigating factor.

This Administrative Penalty is taking into account the number and seriousness of the contraventions of the legislation found during the Jan. 24, 2023 inspection; the aggravating and mitigating 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 Precision Motors Ltd. operating as Precision Hyundai pay an Administrative Penalty. This is based on my opinion that Precision Motors Ltd. operating as Precision Hyundai contravened Sections 9 and 11(2)(l) of the ABR and Section 132 of the CPA.

Taking into consideration all the representations made by the Supplier and the representations made by AMVIC's industry standards department, the amount of the Administrative Penalty is **\$6,000**.

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 person adversely affected by the contraventions or failure to comply;
2. The seriousness of the contraventions or failure to comply;
3. The economic benefit derived from the contraventions or failure to comply;
4. The degree of willfulness or negligence in the contravention or failure to comply;
5. The Administrative Penalties issued in similar circumstances;
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 \$6,000.

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)

GG/kl
Encl.

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