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Securities
Commission

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de l'Ontario

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**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED**

- AND -

**IN THE MATTER OF VICTOR GEORGE DeLAET and
STANLEY KENNETH GITZEL**

**REASONS AND DECISION
(Subsections 127(1) and 127(10) of the Act)**

Decision: February 6, 2014

Panel: James E. A. Turner - Vice-Chair

Counsel: Donna E. Campbell - For Staff of the Commission

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SCHEDULE "A" – FORM OF ORDER

REASONS FOR DECISION

I. OVERVIEW

[1] This was a hearing (the “**Hearing**”) conducted in writing before the Ontario Securities Commission (the “**Commission**”) pursuant to subsections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “**Act**”) to consider whether it is in the public interest to make an order imposing market conduct restrictions against Victor George DeLaet (“**DeLaet**”) and Stanley George Gitzel (“**Gitzel**”) (together, the “**Respondents**”).

[2] A Notice of Hearing in this matter was issued by the Commission on November 12, 2013 and a Statement of Allegations was filed by Staff of the Commission (“**Staff**”) on the same date. Both the Notice of Hearing and the Statement of Allegations were duly served on the Respondents.

[3] On November 27, 2013, the Commission heard an application by Staff to convert this matter to a written hearing in accordance with Rule 11.5 of the Commission’s *Rules of Procedure* (2012), 35 OSCB 10071, and section 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22, as amended. The Respondents were duly served with that application but did not appear at the application hearing or make any submissions.

[4] The Commission granted Staff’s application to proceed by way of written hearing and set a schedule for submission of materials by the parties.

[5] Staff filed written submissions, a hearing brief and a brief of authorities.

[6] Neither DeLaet nor Gitzel filed written submissions. DeLaet sent an e-mail dated December 8, 2013 to the Commission opposing Staff’s proposed sanctions, including the permanent ban from acquiring securities (see paragraphs 25 to 28). Gitzel sent an e-mail dated January 8, 2014 to the Commission indicating that he did not oppose the sanctions requested by Staff.

Facts

[7] The Respondents are subject to an order made by the Alberta Securities Commission (the “**ASC**”) dated May 27, 2013 (the “**ASC Order**”) that imposes sanctions, conditions, restrictions or requirements on them.

[8] In its findings on liability dated February 8, 2013, a panel of the ASC (the “**ASC Panel**”) found that DeLaet and Gitzel each made materially misleading statements to investors, contrary to subsection 92(4.1) of the Alberta *Securities Act*, R.S.A. 2000, c. S-4 (the “**ASA**”). The ASC Panel also found that DeLaet perpetrated a fraud, contrary to subsection 93(b) of the ASA.

[9] The conduct for which the Respondents were sanctioned occurred between approximately May 2007 to February 2008 (the “**Material Time**”).

The Investment Scheme

[10] DeLaet and Gitzel were directors or officers, or both directors and officers, of various issuers comprising the now bankrupt Focused Life Group of Companies (the “**Focused Group**”), a collection of several corporations and limited partnerships purporting to be established to participate in the “life settlement” industry in the United States. Under a life settlement, the future death benefits payable under a life insurance policy are sold to a buyer in exchange for an immediate payment to the person whose life is insured. The buyer expects a profit to the extent that the amount of the death benefits, when paid, exceeds the total of what was paid for the assignment, the cost of premiums to keep the life insurance policy in good standing until the insured person's death, the cost of reinsurance bonding, and transaction costs.

[11] According to the investment scheme, the purchased life insurance policies were to be backed by “reinsurance bonds”. If the death benefits under a purchased policy were not paid within a specified time, the reinsurance bond would entitle the policy buyer to an equivalent payment from the bond issuer.

[12] In reality, only one of 27 life insurance policies sold was covered by a reinsurance bond. During the Material Time, the Focused Group raised approximately \$35 million under four offerings of securities of the Focused Group pursuant to offering memoranda. No returns were ever generated from Focused Group's investment in life settlements.

[13] DeLaet was the controlling mind of each entity within the Focused Group. He bore primary responsibility for the written materials used to sell Focused Group securities. Gitzel was subordinate to DeLaet. Nonetheless, Gitzel had significant responsibilities for Focused Group operations, including the marketing of Focused Group securities to investors.

[14] Gitzel is also involved in an unrelated real estate development project (the “**Sundre Project**”) involving certain land in or near Sundre, Alberta. Money was raised for this project from public investors, many of whom were also Focused Group investors. This project has met with difficulties. With the assistance of an independent developer, Gitzel continues to be involved in the Sundre Project including carrying out activities such as obtaining permits and approvals and selling lots once they are developed.

[15] Staff relies on subsection 127(10)4 of the Act, which permits the Commission to make an order under subsections 127(1) or 127(5) of the Act in respect of a person or company who is subject to an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on the person or company (see paragraph 44 of these reasons).

[16] These are my reasons for the market conduct restrictions I impose pursuant to subsections 127(1) of the Act in reliance on subsection 127(10) of the Act.

II. FINDINGS OF THE ALBERTA SECURITIES COMMISSION

[17] In its reasons, the ASC Panel found that:

- (a) DeLaet and Gitzel each made direct misrepresentations in connection with the sale of Focused Group securities, contrary to section 92(4.1) of the ASA; and
- (b) DeLaet engaged in a course of conduct that he knew would perpetrate a fraud, contrary to subsection 93(b) of the ASA.

The ASC Order

[18] The ASC Order imposed the following sanctions, conditions, restrictions or requirements on the Respondents:

- (a) against DeLaet:
 - (i) under subsections 198(1)(b) and (c) of the ASA, DeLaet must cease trading in or purchasing any securities or exchange contracts, and all of the exemptions contained in Alberta securities laws do not apply to him, permanently;
 - (ii) under subsections 198(1)(d) and (e) of the ASA, DeLaet must resign any position that he currently holds as a director or officer of any issuer, and he is prohibited from becoming or acting as a director or officer (or both) of any issuer, permanently;
 - (iii) under section 199 of the ASA, DeLaet must pay an administrative penalty of \$1.5 million; and
 - (iv) under section 202 of the ASA, DeLaet must pay \$40,000 of the costs of the ASC's investigation and hearing;
- (b) against Gitzel:
 - (i) under subsection 198(1)(b) of the ASA, Gitzel must cease trading in or purchasing any securities or exchange contracts for 5 years, except that the ASC Order does not preclude him from trading in or purchasing securities or exchange contracts through a registrant (who has first been given a copy of the ASC Order) in RRSPs and RESPs for the benefit of one or more of himself, his spouse and dependent children;
 - (ii) under subsection 198(1)(c) of the ASA, all of the exemptions contained in Alberta securities laws do not apply to Gitzel for 10 years, except that the ASC Order does not preclude him from trading in or purchasing securities or exchange contracts through a registrant (who has first been given a copy of the ASC Order) in RRSPs and RESPs for the benefit of one or more of himself, his spouse and dependent children;
 - (iii) under subsections 198(1)(d) and (e) of the ASA, Gitzel must resign any position that he currently holds as a director or officer of any issuer, and he is prohibited from becoming or acting as a director or officer (or both) of any

issuer for 10 years, except that the ASC Order does not preclude him from acting as a director or officer (or both) of 1290569 Alberta Inc. and 1531663 Alberta Inc. (or both) for the purpose of moving the Sundre Project forward so as to generate funds for the benefit of public investors in that project, provided that such efforts do not involve trading in securities or raising money from the investing public;

(iv) under section 199 of the ASA, Gitzel must pay an administrative penalty of \$75,000; and

(v) under section 202 of the ASA, Gitzel must pay \$5,000 of the costs of the ASC's investigation and hearing.

III. SUBMISSIONS

A. SUBMISSIONS OF STAFF

[19] Staff submits that in order to protect Ontario investors and the integrity of Ontario capital markets it is in the public interest for the Commission to impose market conduct restrictions on the Respondents consistent with the sanctions imposed by the ASC pursuant to the ASC Order.

[20] Staff requests the following market conduct restrictions against DeLaet:

- (a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by DeLaet cease permanently;
- (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by DeLaet cease permanently;
- (c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to DeLaet permanently;
- (d) pursuant to paragraph 7 of subsection 127(1) of the Act, DeLaet resign any positions that he holds as a director or officer of any issuer; and
- (e) pursuant to paragraph 8 of subsection 127(1) of the Act, DeLaet be prohibited permanently from becoming or acting as an officer or director of any issuer.

[21] Staff requests the following market conduct restrictions against Gitzel:

- (a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Gitzel cease until May 27, 2018, except that this order does not preclude him from trading in securities through a registrant (who has first been given a copy of the ASC Order and the Order of the Commission in this proceeding) in RRSPs and RESPs for the benefit of one or more of Gitzel, his spouse and dependent children;
- (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Gitzel be prohibited until May 27, 2018, except that this order does not

preclude him from purchasing securities through a registrant (who has first been given a copy of the ASC Order and the Order of the Commission in this proceeding) in RRSPs and RESPs for the benefit of one or more of Gitzel, his spouse and dependent children;

- (c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Gitzel until May 27, 2023, except that this order does not preclude him from trading in or purchasing securities through a registrant (who has first been given a copy of the ASC Order and the Order of the Commission in this proceeding) in RRSPs and RESPs for the benefit of one or more of Gitzel, his spouse and dependent children;
- (d) pursuant to paragraph 7 of subsection 127(1) of the Act, Gitzel resign any positions that he holds as director or officer of any issuer; and
- (e) pursuant to paragraph 8 of subsection 127(1) of the Act, Gitzel be prohibited until May 27, 2023 from becoming or acting as a director or officer of any issuer, except that this order does not preclude him from acting as a director or officer (or both) of 1290569 Alberta Inc. and 1531663 Alberta Inc., for the purpose of moving forward the Sundre Project, so as to generate funds for the benefit of public investors in that project, provided that such efforts do not involve trading in securities or raising money from the investing public.

[22] Staff does not request the imposition of administrative penalties against the Respondents.

[23] Staff submits that I am entitled to issue an order imposing those market conduct restrictions based on the evidence before me, which consists solely of the ASC Order and the ASC Panel's reasons for issuing the ASC Order.

B. SUBMISSIONS OF THE RESPONDENTS

DeLaet

[24] DeLaet did not appear at the hearing and, except as noted below, did not make written submissions.

[25] DeLaet made submissions via an e-mail to the Commission dated December 8, 2013. In his e-mail, he submits that the Commission has no reason to impose any sanctions on him because there is no evidence of any impending or future threat to the public. DeLaet also specifically opposes Staff's request for a permanent ban from acquiring any securities.

[26] DeLaet submits the proposed acquisition ban causes harm to his ability to retire and invest his retirement savings in shares of public or private companies. DeLaet submits that the proposed ban is a direct violation of his individual rights and freedoms under the *Canadian Charter of Rights and Freedoms* (the "**Charter**").

[27] DeLaet submits that the proposed market conduct restrictions are unnecessarily punitive. He further submits that there should be a separate hearing to prove that sanctions in Ontario are

warranted and that investors in Ontario have been harmed. (I note, in this respect, that this written hearing constitutes a separate hearing to determine whether market conduct restrictions should be imposed upon DeLaet under the Act.)

[28] DeLaet submits that by granting the proposed ban in Ontario, the Commission will deny him his right under the *Charter* to make a proper living. Further, he cites the *Canadian Human Rights Act* (the “*Human Rights Act*”) and submits that the sanctions proposed by Staff violate his right to invest in his retirement fund.

Gitzel

[29] Gitzel did not appear at the hearing and did not file written submissions.

[30] Gitzel sent an e-mail to the Commission dated January 8, 2014, indicating that he did not contest the sanctions requested by Staff.

C. STAFF REPLY SUBMISSIONS

[31] Staff submits that DeLaet’s submissions raise three novel issues not addressed in Staff’s original submissions:

- (a) whether Staff’s request that DeLaet be permanently prohibited from acquiring any securities pursuant to paragraph 2.1 of subsection 127(1) of the Act imposes sanctions upon DeLaet that are not substantially identical to those ordered by the ASC;
- (b) whether the sanctions requested by Staff violate DeLaet's rights under sections 6 or 7 of the Charter; and
- (c) whether the sanctions requested by Staff are discriminatory against DeLaet pursuant to the *Human Rights Act*.

Staff submits that all three of these submissions should be dismissed.

(a) *Permanent Prohibition*

[32] Staff submits that the order requested by Staff does not impose any sanctions upon DeLaet that are not substantially identical to those previously ordered by the ASC under the ASC Order. The order requested by Staff seeks to mirror the ASC Order, to the extent possible, given the slightly different statutory provisions in the ASA and the Act.

[33] Staff submits that any reciprocal order issued by the Commission in reliance on subsection 127(10) of the Act should be substantially identical to the order issued by the originating jurisdiction. For instance, given that the ASC Order permanently prohibits DeLaet from purchasing any securities, a permanent acquisition ban in Ontario would put in place a substantially identical market conduct restriction. Staff relies in this respect on the recent decision in *McLean v. British Columbia (Securities Commission)* 2013 SCC 67 (“*McLean*”).

[34] Staff disagrees with DeLaet's submissions that the order requested by Staff has no bearing on the public interest and is unnecessarily punitive. The role of the Commission under section 127 of the Act is to protect the public interest including by removing from Ontario capital markets those whose past conduct is such as to warrant apprehension of future conduct detrimental to Ontario investors or the integrity of the Ontario capital markets.

[35] Staff submits that subsection 127(10) of the Act allows the Commission to consider any convictions of, or orders made against, an individual in other jurisdictions when deciding whether or not to make an order under subsection 127(1) of the Act in the public interest (*Euston Capital, supra*, at paras. 56 to 57). There is no requirement that the previous conduct have a direct nexus or connection to Ontario.

(b) Violation of the Charter

[36] DeLaet submits that the order requested by Staff violates his rights under sections 6 and 7 of the *Charter*. Staff disagrees with that submission.

[37] Section 6(2) of the *Charter* states:

Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right

- (a) to move to and take up residence in any province; and
- (b) to pursue the gaining of a livelihood in any province.

(*The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11, Part I *Canadian Charter of Rights and Freedoms* at section 6(2))

[38] Staff submit that the right to gain a livelihood is not absolute. Section 6(2) of the *Charter* must be read in conjunction with subsection 6(3), which limits that right:

- (3) The rights specified in subsection (2) are subject to
 - (a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and
 - (b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

(*Charter, supra*, at section 6(3))

[39] Staff submits that the order requested, and any corresponding difficulty that DeLaet may experience in his ability to generate retirement income, is not discriminatory within the meaning of section 6(2) of the *Charter*.

[40] Section 7 of the *Charter* states that “[e]veryone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice”.

[41] Staff submits that DeLaet's rights under section 7 of the *Charter* are not engaged by the order requested by Staff.

[42] Staff also disagrees with DeLaet's submission that the principles of fundamental justice have not been followed in this proceeding. DeLaet was served with copies of the Notice of Hearing, the Statement of Allegations and Staff's submissions. DeLaet had notice of this written hearing and of the case he had to meet, and he had an opportunity to respond to that case by making submissions, which he has done. Accordingly, Staff submits that there has been compliance with the principles of fundamental justice in this proceeding.

(c) The Canadian Human Rights Act

[43] Staff submits that the Commission has no authority to hear or decide issues under the *Human Rights Act*.

IV. ANALYSIS

(a) Subsection 127(10) of the Act

[44] Subsection 127(10) of the Act provides as follows:

127 (10) Inter-jurisdictional enforcement – Without limiting the generality of subsections (1) and (5), an order may be made under subsection (1) or (5) in respect of a person or company if any of the following circumstances exist:

...

4. The person or company is subject to an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on the person or company.

[45] The ASC Order makes the Respondents subject to an order of the ASC that imposes sanctions, conditions, restrictions or requirements on them, within the meaning of paragraph 4 of subsection 127(10) of the Act.

[46] In *Re Euston Capital Corp.* (2009), 32 OSCB 6313 (“*Euston Capital*”), the Commission concluded that subsection 127(10) can be the grounds for an order in the public interest under subsection 127(1) of the Act, based on a decision and order made in another jurisdiction:

... we conclude that we can make an order against the Respondents pursuant to our public interest jurisdiction under section 127 of the Act on the basis of decisions and orders made in other jurisdictions, if we find it necessary in order to protect investors in Ontario and the integrity of Ontario's capital markets.

(*Euston Capital, supra*, at para. 26)

[47] I therefore find that I have the authority to make a public interest order against the Respondents under subsection 127(1) of the Act, in reliance on subsection 127(10) of the Act, based on the ASC Order. To do so, I must conclude that such an order is in the public interest because it is necessary to protect Ontario investors or the integrity of Ontario capital markets. An important consideration is that the Respondents' conduct would have constituted a breach of the Act and/or would have been considered to be contrary to the public interest if that conduct had occurred in Ontario (*JV Raleigh Superior Holdings Inc., Re* (2013), 36 OSCB 4639 at para. 16 ("*JV Raleigh*")).

[48] I must also determine whether, based on the ASC Order, the market conduct restrictions proposed by Staff are appropriate in the circumstances.

(b) Exercising the Commission's Public Interest Discretion in Reliance on the ASC Order

[49] The ASC Panel imposed permanent market conduct sanctions against DeLaet based on its findings that DeLaet breached the ASA and engaged in a course of conduct that he knew would perpetrate a fraud. The Commission has consistently held that an act of fraud in connection with the issue of or trading in securities is one of the most serious securities violations. Staff submit that in order to prevent possible future harm to Ontario investors and to protect the integrity of Ontario capital markets, the Commission should exercise its jurisdiction to impose market conduct restrictions in the public interest that are substantially identical to the ASC Order.

[50] In *McLean*, the Supreme Court of Canada held that, given the reality of inter-provincial capital markets, there can be no disputing the indispensable nature of inter-jurisdictional co-operation among securities regulators in Canada. The Supreme Court observed in *McLean* that as a consequence of the "twin orders" of the Ontario and British Columbia Securities Commissions, the appellant in question was prohibited from engaging in "substantially identical conduct" in both Ontario and British Columbia for identical periods of time (*McLean, supra*, at paras. 15, 51 and 67). Accordingly, the Court upheld the issue of the reciprocal order by the British Columbia Securities Commission.

[51] The Commission has held that a transactional nexus to Ontario is not a necessary precondition to the exercise of the Commission's public interest jurisdiction. Rather, a connection to Ontario is only one of a number of factors to be considered in the exercise of the Commission's public interest discretion under section 127 of the Act (*Euston Capital, supra*, at para. 42). Further, Staff is not required in this proceeding to establish that investors in Ontario were harmed by DeLaet's previous conduct. The question is whether Ontario market conduct restrictions should be imposed on DeLaet to prevent possible future harm to Ontario investors or Ontario capital markets. The only evidence of the possibility of such harm is the ASC Order and the reasons of the ASC Panel sanctioning DeLaet for his past conduct in Alberta. We reject DeLaet's submission that Staff's requested market conduct restrictions are unnecessarily punitive.

(c) Violation of the Charter

[52] The Supreme Court of Canada held in *Canadian Egg Marketing Agency v. Richardson* [1998] 3 SCR 157 ("*Canadian Egg*") that section 6 of the *Charter* does not protect an

individual's right to engage in any specific type of economic activity. Rather, section 6 of the *Charter* guarantees that mobility in pursuit of livelihood will not be prevented by means of unequal treatment on the basis of residence:

The objective of s. 6 should not be interpreted in terms of a right to engage in any specific type of economic activity. Entrenching mobility with regard to specified factors of economic production was proposed and roundly rejected. By contrast, the inclusion of s. 6 in the Charter reflects a human rights objective: to ensure mobility of persons, and to that end, the pursuit of a livelihood on an equal footing with others regardless of residence. It guarantees the mobility of persons, not as a feature of the economic unity of the country, but in order to further a human rights purpose. It is centered on the individual. Section 6 neither categorically guarantees nor excludes the right of an individual to move goods, services, or capital into a province without regulation operating to interfere with that movement. Rather, s. 6 relates to an essential attribute of personhood, and guarantees that mobility in the pursuit of a livelihood will not be prevented by means of unequal treatment based on residence by the laws in force in the jurisdiction in which that livelihood is pursued.

Given these purposes, the focus of the analysis in s. 6 is not the type of economic activity involved, but rather the purpose and effect of the particular regulation, and whether that purpose and effect infringes the right to be free from discrimination on the basis of residence in the pursuit of a livelihood.

(*Canadian Egg*, at paras. 66 to 67)

[53] Accordingly, section 6 of the *Charter* does not affect the Commission's ability to impose market conduct restrictions on the Respondents in these circumstances.

[54] With respect to section 7 of the *Charter*, the Commission has held that an order prohibiting an individual from trading in shares does not violate that section. In *Glendale Securities Inc.*, (1996), 19 OSCB 6273 at page 26, and *Marchmont & MacKay Ltd (Re)*, 19 OSCB 6637 at page 40, the Commission held that the ability to trade in securities is not a liberty interest protected by the *Charter*. The Commission noted the Divisional Court's decision in *Kopyto v. Law Society of Upper Canada*, in which the Court held "in our view, section 7 of the Charter does not guarantee a right to a particular livelihood or professional membership". Based on the Divisional Court's finding in *Kopyto*, the Commission concluded that section 7 of the *Charter* does not protect economic, commercial or property rights.

[55] Accordingly, I dismiss DeLaet's submissions with respect to sections 6 and 7 of the *Charter*.

(d) *The Canadian Human Rights Act*

[56] Any complaints pursuant to the *Human Rights Act* relating to discriminatory practices must be filed with the Canadian Human Rights Commission and must be heard by the Canadian Human Rights Tribunal. The Commission does not have the legislative authority to hear or decide issues arising under that Act. (*Canadian Human Rights Act*, R.S.O. 1985, c. H6, sections

40 and 48.1; *Tranchemontagne v. Ontario (Director, Disability Support Program)*, [2006] SCJ No. 14 (“*Tranchemontagne*”) at paras. 39 to 40)

[57] In *Tranchemontagne*, the Supreme Court held that the Social Benefits Tribunal's mandate included the Human Rights Code of Ontario (the “**Ontario Code**”) and formed part of its legislative scheme (*Tranchemontagne, supra*, at para. 40). Unlike the legislative scheme in *Tranchemontagne*, the Commission does not have the legislative authority under the Act to apply the *Human Rights Act* to its proceedings.

[58] Further, unlike the *Ontario Code*, the *Human Rights Act* is a federal statute that prohibits discrimination by federally regulated agencies. The Commission, as a provincial administrative tribunal, does not have jurisdiction to hear matters under federal jurisdiction.

[59] Based on the foregoing, I dismiss DeLaet’s submissions with respect to the *Human Rights Act*.

A. SHOULD MARKET CONDUCT RESTRICTIONS BE IMPOSED?

The Commission’s Public Interest Jurisdiction

[60] In exercising the Commission’s public interest jurisdiction under section 127 of the Act, I must consider the purposes of the Act. Those purposes, set out in subsection 1.1 of the Act, are:

- (a) to protect investors from unfair, improper or fraudulent practices; and
- (b) to foster fair and efficient capital markets and confidence in capital markets.

[61] In pursuing these purposes, I must have regard for the fundamental principles described in section 2.1 of the Act. That section provides that one of the primary means for achieving the purposes of the Act are restrictions on fraudulent and unfair market practices and procedures.

[62] Further, the Divisional Court in *Erikson v. Ontario (Securities Commission)* [2003] O.J. No. 593 (Div. Ct.) at para. 55 acknowledged that “participation in the capital markets is a privilege and not a right.”

[63] The Supreme Court of Canada has held that the purpose of the Commission's public interest jurisdiction is neither remedial nor punitive; it is protective and preventative, intended to be exercised to prevent likely future harm to Ontario's capital markets (*Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, [2001] 2 SCR 132 (“*Asbestos*”) at paras. 42 to 43). As stated in *Re Mithras Management Ltd.* (1990), 13 OSCB 1600 at 1610-1611:

... the role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now section 122] of the Act. We are here to

restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In doing so we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all.

[64] Accordingly, the Commission's public interest jurisdiction may be exercised to prevent possible future harm to Ontario investors and capital markets (see *Asbestos, supra*, at para. 41).

[65] While the Commission must make its own determination of what is in the public interest, it is important that the Commission recognize the increasingly complex and cross-jurisdictional nature of securities markets. (See *McLean, supra*, at para. 50 of these reasons, *JV Raleigh, supra*, at paras. 21-26, and *New Futures Trading International Corp.* (2013), 36 OSCB 5713 at paras. 22-27)

Reliance on Subsection 127(10) of the Act

[66] The Commission held in *Elliott, Re* (2009), 23 OSCB 6931 at para. 24 ("***Elliott***") that "subsection 127(10) ... allows the Commission to consider any convictions or orders made against an individual in other jurisdictions, when deciding whether or not to make an order under subsection 127(1) or (5) in the public interest."

[67] While the Commission may rely on the findings in another jurisdiction, it must satisfy itself that any order it makes is in the public interest:

The applicability of subsection 127(10) to the BCSC Order and the Settlement Agreement does not automatically lead to the conclusion that this Panel must make an order similar to that made by the BCSC against Elliott. Rather, we must first consider whether or not sanctions are necessary to protect the public interest, before exercising any powers granted to us under subsections 127(1) and (5), and second, if necessary, consider what the appropriate sanctions should be.

(*Elliott, supra*, at para. 27)

[68] As discussed above at paragraph 51 of these reasons, in issuing a public interest order made in reliance on subsection 127(10), the Commission can rely upon the findings made in other jurisdictions and does not require a direct connection between the misconduct that occurred and Ontario capital markets (*McLean* and *Euston Capital, supra*, *Weeres, Re* (2013), 36 OSCB 3608 and *Shantz (Re)* (2013), 36 OSCB 5993).

Reliance on the ASC Order

[69] In considering the imposition of market conduct restrictions in this matter, I am relying on the ASC Order and the reasons of the ASC Panel. In my view, it is not appropriate in doing so to revisit or second-guess the ASC Panel's findings.

[70] The ASC's findings are set out in paragraph 17 of these reasons. Had the relevant conduct of the Respondents occurred in Ontario, that conduct would have contravened Ontario

securities law and would have been harmful to investors and the Ontario capital markets. DeLaet's conduct involved perpetrating a fraud on investors. Both Respondents by their conduct have demonstrated that they should not be permitted to freely participate in Ontario capital markets. That was the conclusion of the ASC Panel with respect to participation by the Respondents in the Alberta capital markets.

[71] I find that it is necessary and in the public interest to protect Ontario investors and the integrity of Ontario's capital markets to impose market conduct restrictions on the Respondents.

B. THE APPROPRIATE MARKET CONDUCT RESTRICTIONS

[72] Staff submits that the market conduct restrictions imposed in the ASC Order are appropriate to the misconduct of the Respondents and serve as both specific and general deterrence. Staff further submits that a protective order imposing market conduct restrictions on the Respondents, substantially identical to those imposed by the ASC Order, are appropriate to protect Ontario investors and Ontario capital markets from similar misconduct by the Respondents.

[73] In determining the nature and duration of the appropriate market conduct restrictions in these circumstances, I must consider the relevant facts and circumstances before me, including:

- (a) the seriousness of the Respondents' conduct and breaches of the ASC Act;
- (b) the harm to investors in Alberta;
- (c) whether or not the restrictions I impose will serve to deter the Respondents from engaging in similar abuses of Ontario investors and Ontario capital markets; and
- (d) the terms of the ASC Order.

[74] The most compelling facts in these circumstances are that the Respondents were found by the ASC Panel to have breached Alberta securities law and DeLaet was found to have perpetuated a fraud on investors.

[75] The ASC Panel found that DeLaet perpetrated a fraud on investors and stated that:

We further found that DeLaet engaged in a course of conduct that he knew would perpetrate a fraud on investors, "lied and knew he was lying" and engaged in "a clear, continuing and deliberate deceit, its purpose to obtain money from investors."

...

It is clear to us that DeLaet does not "get it." He failed completely to acknowledge his responsibility for the harm done to investors through his deceit. We can only conclude that he does not himself, even now, recognize that harm and his causal role. This factor bolsters the need for significant protective sanctions against DeLaet.

(*ASC Order* at paras. 32 and 40)

[76] In respect of Gitzel, the ASC Panel noted, “we do not consider him currently fit to raise money in the capital market.”

[77] As mitigating considerations, the ASC Panel acknowledged Gitzel's lesser role in the Focused Group investment scheme. The ASC Panel held that Gitzel appreciated the seriousness of his misconduct and the harm done to investors, and the panel accepted as genuine Gitzel's contrition for the resulting harm. As noted above, Gitzel did not oppose the sanctions requested by Staff.

[78] There was an absence of mitigating factors in the case of DeLaet. The ASC Panel found DeLaet's failure to recognize the seriousness of his misconduct to be an aggravating factor, and concluded that DeLaet presented a risk of serious future harm to the capital markets.

[79] Based on the foregoing, I have concluded that it is in the public interest to make an order under subsection 127(1) of the Act imposing on the Respondents the market conduct restrictions set out below. Those market conduct restrictions are substantially identical to those imposed under the ASC Order and are for the same duration.

[80] I therefore impose the following market conduct restrictions on DeLaet:

- (a) trading in any securities by DeLaet shall cease permanently;
- (b) the acquisition of any securities by DeLaet shall cease permanently;
- (c) any exemptions contained in Ontario securities law shall not apply to DeLaet permanently;
- (d) DeLaet shall resign any positions that he holds as a director or officer of any issuer; and
- (e) DeLaet shall be prohibited permanently from becoming or acting as an officer or director of any issuer;

[81] I impose the following market conduct restrictions on Gitzel:

- (a) trading in any securities by Gitzel shall cease until May 27, 2018, except that this Order does not preclude him from trading in securities through a registrant (who has first been given a copy of the ASC Order and this Order) in RRSPs and RESPs for the benefit of one or more of Gitzel, his spouse and dependent children;
- (b) the acquisition of any securities by Gitzel shall be prohibited until May 27, 2018, except that this Order does not preclude him from purchasing securities through a registrant (who has first been given a copy of the ASC Order and this Order) in RRSPs and RESPs for the benefit of one or more of Gitzel, his spouse and dependent children;
- (c) any exemptions contained in Ontario securities law shall not apply to Gitzel until May 27, 2023, except that this Order does not preclude him from trading in or

purchasing securities through a registrant (who has first been given a copy of the ASC Order and this Order) in RRSPs and RESPs for the benefit of one or more of Gitzel, his spouse and dependent children;

- (d) Gitzel shall resign any positions that he holds as director or officer of any issuer other than the issuers referred to in paragraph (e) below; and
- (e) Gitzel shall be prohibited until May 27, 2023 from becoming or acting as a director or officer of any issuer, except that this Order does not preclude him from acting as a director or officer of 1290569 Alberta Inc. and 1531663 Alberta Inc., for the purpose of moving forward the Sundre Project, as provided in the ASC Order, provided that such efforts do not involve trading in securities in Ontario or raising money from the investing public in Ontario.

V. CONCLUSION

[82] Accordingly, I find that it is in the public interest to issue an order in the form attached as Schedule “A” hereto.

DATED at Toronto this 6th day of February, 2014.

James E. A. Turner

Schedule "A"



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22 étage
20, rue queen ouest
Toronto ON M5H 3S8

IN THE MATTER OF THE *SECURITIES ACT*, R.S.O. 1990, c. S.5, AS AMENDED

-AND -

IN THE MATTER OF VICTOR GEORGE DeLAET and STANLEY KENNETH GITZEL

ORDER (Subsections 127(1) and 127(10))

WHEREAS on November 12, 2013, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing in this matter pursuant to subsections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in respect of Victor George DeLaet ("DeLaet") and Stanley Kenneth Gitzel ("Gitzel") (together, the "Respondents");

AND WHEREAS on November 12, 2013, Staff of the Commission ("Staff") filed a Statement of Allegations in this matter;

AND WHEREAS the Respondents are subject to an order dated May 27, 2013 made by the Alberta Securities Commission (the "ASC") that imposes sanctions, conditions, restrictions or requirements upon them within the meaning of paragraph 4 of subsection 127(10) of the Act (the "ASC Order");

AND WHEREAS on November 27, 2013, the Commission granted Staff's application to convert this matter to a written hearing in accordance with Rule 11.5 of Commission's *Rules of Procedure* (2012), 35 OSCB 10071 and section 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended;

AND WHEREAS Staff filed written submissions, a hearing brief and a brief of authorities;

AND WHEREAS DeLaet made written submissions by means of an e-mail to the Commission dated December 8, 2013, and Gitzel confirmed by e-mail dated January 8, 2014 that he did not oppose the requested sanctions by Staff;

AND WHEREAS I have found that it is in the public interest to issue this Order pursuant to subsection 127(1) of the Act in reliance upon subsection 127(10) of the Act;

IT IS HEREBY ORDERED THAT:

- (a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by DeLaet shall cease permanently;
- (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by DeLaet shall cease permanently;
- (c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to DeLaet permanently;
- (d) pursuant to paragraph 7 of subsection 127(1) of the Act, DeLaet shall resign any positions that he holds as a director or officer of any issuer;
- (e) pursuant to paragraph 8 of subsection 127(1) of the Act, DeLaet be prohibited permanently from becoming or acting as an officer or director of any issuer;
- (f) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Gitzel shall cease until May 27, 2018, except that this Order does not preclude him from trading in securities through a registrant (who has first been given a copy of the ASC Order and this Order) in RRSPs and RESPs for the benefit of one or more of Gitzel, his spouse and dependent children;
- (g) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Gitzel shall be prohibited until May 27, 2018, except that this Order does not preclude him from purchasing securities through a registrant (who has first been given a copy of the ASC Order and this Order) in RRSPs and RESPs for the benefit of one or more of Gitzel, his spouse and dependent children;
- (h) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to Gitzel until May 27, 2023, except that this Order does not preclude him from trading in or purchasing securities through a registrant (who has first been given a copy of the ASC Order and this Order) in RRSPs and RESPs for the benefit of one or more of Gitzel, his spouse and dependent children;
- (i) pursuant to paragraph 7 of subsection 127(1) of the Act, Gitzel shall resign any positions that he holds as director or officer of any issuer other than the issuers referred to in paragraph (j) below; and

- (j) pursuant to paragraph 8 of subsection 127(1) of the Act, Gitzel shall be prohibited until May 27, 2023 from becoming or acting as a director or officer of any issuer, except that this Order does not preclude him from acting as a director or officer of 1290569 Alberta Inc. and 1531663 Alberta Inc., for the purpose of moving forward the Sundre Project as provided in the ASC Order; provided that such activities do not involve trading in securities in Ontario or raising money from the investing public in Ontario.

DATED at Toronto this 6th day of February, 2014.

James E. A. Turner