

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

AND

**FULCRUM FINANCIAL GROUP INC.,
SECURED LIFE VENTURES INC.,
ZEPHYR ALTERNATIVE POWER INC.,
TROY VAN DYK, WILLIAM L. ROGERS
LESZEK DZIADECKI, WERNER REINDORF
and REINDORF INVESTMENTS INC.**

**SETTLEMENT AGREEMENT
BETWEEN STAFF OF THE COMMISSION and
LESZEK DZIADECKI**

I. INTRODUCTION

1. By Notice of Hearing dated March 1, 2006, the Ontario Securities Commission (the "Commission") announced that it will hold a hearing on March 6, 2006 in respect of a settlement agreement ("Settlement Agreement") between Staff of the Commission and Leszek Dziadecki ("Dziadecki"). At the hearing, the Commission will consider whether, pursuant to section 127 and section 127.1 of the *Securities Act* (the "Act"), it is in the public interest to approve the Settlement Agreement consisting of:

- (a) an Order by the Commission that:
 - (i) pursuant to clause 1 of s. 127(1), that terms and conditions be imposed on Dziadecki's registration requiring close supervision of Dziadecki's trading by his sponsoring dealer for a period of two years and that, within this time period, Dziadecki complete the Conduct and Practices Course;

- (ii) pursuant to clause 6 of s. 127(1), Dziadecki be reprimanded; and
 - (iii) pursuant to s. 127.1, Dziadecki pay to the Commission \$5,000 in costs.
- (b) an undertaking by Dziadecki that:
- (i) Dziadecki will continue to cooperate with Staff in relation to the investigation of this matter and any related enforcement proceedings; and
 - (ii) Dziadecki will make a settlement payment to the Commission of \$28,200 representing the total commissions paid to Dziadecki by Zephyr in respect of his sale of Zephyr convertible debentures and that these funds be designated for the benefit of certain investors, who purchased Zephyr convertible debentures in circumstances contrary to Ontario securities law, in accordance with procedures acceptable to the Commission.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission (the “Staff”) recommend settlement of the proceeding initiated in respect of Dziadecki in accordance with the terms and conditions set out below. Dziadecki consents to the making of an order against it in the form attached as Schedule “A” on the basis of the facts set out below.

III. STATEMENT OF FACTS

Acknowledgement

3. For the purposes of this Settlement Agreement, Dziadecki agrees with the facts set out in Part III.

Agreed Facts

A. Background

4. Zephyr is an Ontario corporation that manufactures wind turbines. The President and CEO of Zephyr is Edward Tsang of King City, Ontario.

5. Since 2002, Zephyr has been in the business of developing and manufacturing electricity-generating small wind turbines. Zephyr has a proprietary wind turbine design and a patent for the technology used in its wind turbines. Zephyr's wind turbines are in the prototype and development stage, and are not yet commercially available.

6. As Zephyr's wind turbines are not yet commercially available, Zephyr does not yet earn any revenue. To fund its operations, Zephyr has raised capital through equity and debt financing, including the issuance of convertible debentures.

B. Convertible Debentures

7. In July 2005, Dziadecki began selling convertible debentures on behalf of Zephyr, relying upon the accredited investor exemption in Rule 45-501. Dziadecki received from Zephyr a sales commission of 20% for each convertible debenture sale.

8. Dziadecki is registered with the Commission as a salesperson and branch manager in the categories of mutual fund dealer, limited market dealer and scholarship plan dealer. Dziadecki's sponsoring firm is Global Maxfin Investments Inc. ("Global"), a member of the Mutual Fund Dealers Association of Canada ("MFDA"). Dziadecki is the branch manager for Global's Mississauga branch.

9. Dziadecki failed to inform Global that he was selling Zephyr convertible debentures, which were sold without Global's knowledge or approval.

10. Between July and October 2005, Dziadecki sold \$171,000 worth of convertible debentures to ten investors and was paid \$28,200 in sales commissions by Zephyr. In October 2005, Dziadecki made two convertible debenture sales totaling \$30,000 which Zephyr had not issued at the time of the Commission cease-trade order of November 3, 2005. These funds, including the \$6,000 sales commission payable to Dziadecki, were deposited in a dedicated bank account and are being held by Zephyr in this account pending an order by the Commission. Dziadecki and Zephyr have agreed that the \$6,000 will not be paid to Dziadecki. The \$6,000 will be paid by Zephyr either to the two investors in accordance with procedures acceptable to the Commission or to the Commission.

C. Sales Process

(a) Subscription Agreement

11. The sales process for Zephyr convertible debentures involved Zephyr and Dziadecki.

12. Zephyr provided Dziadecki with a Subscription Agreement for the convertible debentures. The Subscription Agreement included four schedules: Schedule "A" contained the definition of "accredited investor" from Rule 45-501; Schedule "B" was a form requiring a purchaser of a convertible debenture to certify that the purchaser was an accredited investor by checking a box for the category that qualified him or her as an accredited investor; Schedule "C" contained information about Zephyr, including information about the commission to be paid by Zephyr in connection with the sale of the convertible debenture; and Schedule "D" was the convertible debenture.

13. If a prospective investor wished to purchase a convertible debenture, Dziadecki would provide the investor with a Subscription Agreement.

14. After a Subscription Agreement was signed by a prospective investor, Dziadecki sent Zephyr the Subscription Agreement, along with the investor's cheque for the amount

of the proposed convertible debenture purchase, ranging from \$5,000 to \$26,000. Zephyr deposited the investor's cheque, had Mr. Tsang countersign the Subscription Agreement on behalf of Zephyr, and issued the convertible debenture. Zephyr would then send a copy of the countersigned Subscription Agreement to the investor, including a copy of the convertible debenture in the amount purchased by the investor.

(b) Problems with the Subscription Agreement: Inaccurate Commission Information

15. The information contained in Schedule "C" to the Subscription Agreement regarding sales commissions to be paid by Zephyr (specifically, clause (d) of Schedule "C") states:

"Additionally, the Corporation expects to pay commissions of twenty percent (20%) of the gross proceeds of the issuance of the convertible debentures"

16. Three of the Subscription Agreements provided by Dziadecki to investors who purchased convertible debentures contained an early draft of Schedule "C" which stated that "*commissions of ten percent (10%)*" would be paid to Dziadecki instead of the 20% which Zephyr paid to Dziadecki. Dziadecki did not notice these errors. Zephyr countersigned the Subscription Agreements in respect of the three investors for proceeds of \$56,000, of which \$11,200 was payable to Dziadecki in sales commission.

D. Conduct Contrary to the Public Interest

17. Dziadecki sold Zephyr convertible debentures in a manner contrary to the public interest, as follows:

- (i) Dziadecki sold Zephyr securities and accepted commission payments from Zephyr without the knowledge or approval of his sponsoring dealer contrary to MFDA rule 1.1.5(g) and (h). By doing so, Dziadecki prevented Global from fulfilling its duties of supervision in respect of Dziadecki's sales of convertible debentures and its duty to provide to purchasers written confirmation of their trades as required by s.36 of the Act; and
- (ii) In respect of the three sales of Zephyr convertible debentures described in paragraph 16, Dziadecki failed to identify or correct

erroneous information in the Subscription Agreement which indicated that Dziadecki would be paid a commission of 10% instead of 20%.

E. Co-operation with Staff

18. Dziadecki has cooperated fully with Staff in relation to the investigation of this matter.

IV. TERMS OF SETTLEMENT

19. Dziadecki agrees to a settlement the terms of which include:

- (a) an Order by the Commission that:
 - (i) pursuant to clause 1, of s. 127(1), that terms and conditions be imposed on Dziadecki's registration requiring close supervision of Dziadecki's trading by his sponsoring dealer for a period of two years and that, within this time period, Dziadecki complete the Conduct and Practices Course;
 - (ii) pursuant to clause 6 of s. 127(1), Dziadecki be reprimanded; and
 - (iii) pursuant to s. 127.1, Dziadecki pay to the Commission \$5,000 in costs.
- (b) an undertaking by Dziadecki that:
 - (i) Dziadecki will continue to cooperate with Staff in relation to the investigation of this matter and any related enforcement proceedings; and
 - (ii) Dziadecki will make a settlement payment to the Commission of \$28,200 representing the total commissions paid to Dziadecki in respect of his sale of Zephyr convertible debentures and that these funds be designated for the benefit of certain investors, who purchased Zephyr convertible debentures in circumstances contrary to Ontario securities law, in accordance with procedures acceptable to the Commission.

V. STAFF COMMITMENT

20. If this Settlement Agreement is approved by the Commission, Staff will not initiate any proceeding under Ontario securities law in respect of any conduct or alleged conduct of Dziadecki in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 24 below.

VI. PROCEDURE FOR APPROVAL OF SETTLEMENT

21. Approval of this Settlement Agreement shall be sought at the public hearing of the Commission scheduled for March 6, 2006, or such other date as may be agreed to by Staff and Dziadecki in accordance with the procedures described in this Settlement Agreement.

22. Staff and Dziadecki agree that if this Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted respecting Dziadecki in this matter, and Dziadecki agrees to waive its rights to a full hearing, judicial review or appeal of the matter under the *Act*.

23. Staff and Dziadecki agree that if this Settlement Agreement is approved by the Commission, neither Staff nor Dziadecki will make any public statement inconsistent with this Settlement Agreement.

24. If Dziadecki fails to honour the agreement contained in paragraph 23 of this Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against Dziadecki based on the facts set out in Part III of this Settlement Agreement or based on the breach of this Settlement Agreement.

25. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or an order in the form attached as Schedule "A" is not made by the Commission, each of Staff and Dziadecki will be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations in the Notice of Hearing and Statement of Allegations, unaffected by this Settlement Agreement or the settlement negotiations.

26. Whether or not this Settlement Agreement is approved by the Commission, Dziadecki agrees that it will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

VII. DISCLOSURE OF AGREEMENT

27. The terms of this Settlement Agreement will be treated as confidential by all parties hereto until approved by the Commission and, forever, if for any reason whatsoever, this Settlement Agreement is not approved by the Commission, except with the consent of both Dziadecki and Staff or as may be required by law.

28. Any obligations of confidentiality shall terminate upon approval of this Settlement Agreement by the Commission.

VIII. EXECUTION OF AGREEMENT

29. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

30. A facsimile copy of any signature shall be effective as an original signature.

Dated this 1st day of March, 2006

"Beata Marliniak"
Witness

"Leszek Dziadecki"
Leszek Dziadecki

Dated this 2nd day of March, 2006

STAFF OF THE ONTARIO
SECURITIES COMMISSION

"Michael Watson"
Michael Watson
Director, Enforcement Branch

SCHEDULE "A"

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

AND

FULCRUM FINANCIAL GROUP INC.,
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ZEPHYR ALTERNATIVE POWER INC.,
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LESZEK DZIADECKI, WERNER REINDORF
and REINDORF INVESTMENTS INC.

ORDER
(Sections 127)

WHEREAS on March 1, 2006, the Ontario Securities Commission issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act* (the "Act") in respect of Leszek Dziadecki ("Dziadecki");

AND WHEREAS Dziadecki entered into a Settlement Agreement with Staff of the Commission dated March 1, 2006 (the "Settlement Agreement") in which it agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing, subject to the approval of the Commission;

AND WHEREAS Dziadecki has made undertakings to Staff of the Commission as described in the Settlement Agreement;

AND UPON reviewing the Settlement Agreement and the Notice of Hearing and Amended Statement of Allegations of Staff of the Commission, and upon hearing submissions from counsel for Dziadecki and from Staff of the Commission;

AND WHEREAS the Commission is of the opinion that it is in the public interest to approve the Settlement Agreement, attached hereto as Schedule “1”;

IT IS HEREBY ORDERED THAT

- (a) pursuant to clause 1 of s. 127(1), that terms and conditions be imposed on Dziadecki’s registration requiring close supervision of Dziadecki’s trading by his sponsoring dealer for a period of two years and that, within this time period, Dziadecki complete the Conduct and Practices Course;
- (b) pursuant to clause 6, of s. 127(1), Dziadecki be reprimanded; and
- (c) pursuant to s. 127.1, Dziadecki pay to the Commission \$5,000 in costs.

DATED at Toronto this day of March, 2006
