

ALBERTA SECURITIES COMMISSION

NOTICE OF HEARING

Citation: DeLaet, Re, 2011 ABASC 632

**Date: 20111216
Docket: ENF-005488**

Securities Act, R.S.A. 2000, c. S-4, as amended (Act)

To: Victor George DeLaet and Stanley Kenneth Gitzel (the Respondents)

Notice: The Alberta Securities Commission (**Commission**) will convene at 2:00pm on Wednesday, the 11th day of January 2012, at Calgary, or elsewhere, in Alberta, to deal with any preliminary matters, and to set a date for a hearing regarding the allegations in this Notice. At the hearing, the Commission will consider whether it is in the public interest to order:

- (i) Under subsection 198(1)(a) of the *Act*, that trading in or purchasing cease in respect of specified securities;
- (ii) Under subsection 198(1)(b) of the *Act*, that you cease trading in or purchasing securities, exchange contracts, or both;
- (iii) Under subsection 198(1)(b.2) of the *Act*, that you be reprimanded;
- (iv) Under subsection 198(1)(c) of the *Act*, that any or all of the exemptions contained in Alberta securities laws do not apply to you;
- (v) Under subsection 198(1)(d) and (e) of the *Act*, that you resign any positions that you hold as a director or officer of an issuer, registrant or investment fund manager and that you be prohibited from becoming or acting as a director or officer or as both a director and officer of any issuer, registrant, or investment fund manager;
- (vi) Under subsection 198(1)(e.3) of the *Act*, that you be prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
- (vii) Under subsection 198(1)(i) of the *Act*, that you pay to the Commission any amounts obtained or payments or losses avoided as a result of non-compliance with Alberta securities laws;
- (viii) Under subsection 199 of the *Act*, that you each pay an administrative penalty;

(ix) Under subsections 202(1) and (2) of the *Act*, that you pay the costs of the investigation and hearing; and

(x) Such further and other order under Section 198 as the Commission deems appropriate.

Location: Alberta Securities Commission, 5th Floor, 250 – 5th Street SW, Calgary, Alberta.

Procedure: 1. You may obtain disclosure related to the allegations in this Notice from Richard J. Finn, c/o Alberta Securities Commission, 600, 250 – 5 Street SW, Calgary, Alberta, T2P 0R4, telephone 403.297.6454

2. You may be represented by legal counsel and you or your counsel may make representations and introduce relevant evidence.

3. If you or your counsel fails to attend on Wednesday, January 11, 2012, at 2:00pm, or as directed, the hearing may proceed in your absence and an order may be made against you without further notice.

See also section 29 of the Act and Commission Rule 15-501 – Rules of Practice and Procedure for Commission Proceedings.

Allegations

Summary of Breaches

- 1 Staff of the Commission (**Staff**) allege that each of Victor George DeLaet (**DeLaet**) and Stanley Kenneth Gitzel (**Gitzel**) (collectively, the **Respondents**) contravened section 92(4.1) of the *Act* by making, or authorising, permitting or acquiescing to the making of statements that they knew or reasonably ought to have known were, in material respects and at the time and in light of the circumstances that they were made, misleading or untrue, or did not state a fact that was required to be stated or was necessary to make the statements not misleading. Staff also allege that the alleged statements were of such a nature that they would reasonably have been expected to have a significant effect on the market price or value of a security.
- 2 Staff allege that each of the Respondents contravened section 222.1 of the *Act* by making a statement in a document provided to the Commission that was misleading or untrue in a material respect at the time and in light of the circumstances under which it was made.
- 3 Staff allege that each of the Respondents contravened section 93(b) of the *Act* by directly or indirectly engaging or participating in acts, practices or courses of conduct relating to securities that they knew or reasonably ought to have known would perpetrate a fraud on investors.
- 4 Staff allege that each of the Respondents acted contrary to the public interest.

The Respondents

- 5 Victor George DeLaet (**DeLaet**) is a Calgary-based businessman.
- 6 Stanley Kenneth Gitzel (**Gitzel**) is a Calgary-based businessman.
- 7 At all material times, DeLaet and Gitzel were directors, officers, or both officers and directors of issuers comprising the now defunct “Focused Life Group of Companies”, described herein.

Circumstances

The Business of the Focused Life Group of Companies

- 8 The Focused Life Group of Companies was created to participate in the U.S.-based “Life Settlements” industry, which purports to generate income opportunities for investors through the acquisition and maintenance of life settlement portfolios.
- 9 Life settlements are insurance-based investment products that are created when an insured person accepts a cash payment in exchange for an assignment of death benefits payable under an existing life insurance policy. In the normal course, the insured person is paid a percentage of

the “face value” of the policy, and the party taking the assignment of benefits assumes responsibility for the ongoing payment of premiums. When the insured person dies, the party that purchased the life settlement is paid the death benefit.

10 The Focused Life Group of Companies sought to generate revenue from life settlement portfolios by either collecting benefits realised on the death of insured individuals or selling previously acquired life settlements at a profit.

11 The Focused Life Group of Companies also purported to use what it termed a “Bonded Life Settlement” (**BLS**) process as a means of guaranteeing that life settlements acquired by its members generated revenue. According to information contained in offering documents and promotional materials produced and disseminated by members of the Focused Life Group of Companies, the BLS process involves purchasing bond products on acquired life settlements that provide for the payment of amounts equivalent to the stated death benefit in the event that the particular insured does not die within a pre-determined time period.

Issuers Comprising the Focused Life Group of Companies

12 The Focused Life Group of Companies was comprised of a number of individual issuers including, but not limited to:

- 12.1 Focused Life Capital Ltd. (**FLC**), a body corporate, duly constituted under the laws of the Province of Alberta, having its head office located in the City of Calgary. On August 2, 2011, FLC made an involuntary assignment in bankruptcy under the provisions of the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3, as amended (**BIA**).
- 12.2 Focused Life Investments Ltd. (**FLI**), a body corporate, duly constituted under the laws of the Province of Alberta, having its head office located in the City of Calgary. On August 2, 2011, FLI made an involuntary assignment in bankruptcy under the provisions of the **BIA**.
- 12.3 Focused Life Investments 2 Ltd. (**FLI2**), a body corporate, duly constituted under the laws of the Province of Alberta, having its head office located in the City of Calgary. On August 2, 2011, FLI2 made an involuntary assignment in bankruptcy under the provisions of the **BIA**.
- 12.4 Focused Life Settlements No. 2 Limited Partnership (**FLS2-LP**), a limited partnership, duly constituted under the laws of the Province of Alberta, having its head office located in the City of Calgary. On August 2, 2011, FLS2-LP made an involuntary assignment in bankruptcy under the provisions of the **BIA**.
- 12.5 1323545 Alberta Inc. (**132 Alta. Inc.**) a body corporate, duly constituted under the laws of the Province of Alberta, having its head office located in the City of Calgary. 132 Alta. Inc. is the former general partner of FLS2-LP. On August 2, 2011, 132 Alta. Inc. made an involuntary assignment in bankruptcy under the provisions of the **BIA**.

- 12.6 Focused Money Solutions Inc. (**FMSI**), a body corporate, duly constituted under the laws of Canada, having its head office located in the City of Calgary. On August 2, 2011, FMSI made an involuntary assignment in bankruptcy under the provisions of the *BIA*.
- 12.7 Focused Money Capital Ltd. (**FMCL**), a body corporate, duly constituted under the laws of Alberta, having its head office located in the City of Calgary. On August 2, 2011, FMCL made an involuntary assignment in bankruptcy under the provisions of the *BIA*.

Capital Raising Activities

13 Capital used to fund this venture was raised by the constituent members of the Focused Life Group of Companies, each of which, with the exception of 132 Alta. Inc., issued a variety of securities between 2006 and 2009 (the **Material Time**). The aggregate amount raised by the identified members of the Focused Life Group of Companies during the Material Time is estimated to be in excess of \$54Million. Each of the Respondents held senior management posts, director's positions, or both, with the constituent members of the Focused Life Group of Companies during the Material Time.

Focused Life Capital Ltd.

14 FLC is an Alberta corporation that was formed on October 12, 2006. FLC is a special purpose corporation. Its only function is to operate as an "RRSP-eligible" capital raising vehicle for two other entities: Focused Life Investments Ltd. and Focused Life Investments 2 Ltd. DeLaet and Gitzel were directors and officers of FLC during the Material Time.

15 The shareholders of FLC are 1243512 Alta. Inc., a private company controlled by DeLaet, and Eyelogic Systems Inc., an Alberta corporation that holds 60% of the issuer's outstanding stock and facilitated the company's characterisation as a "Deferred Plan" for income tax purposes.

16 FLC raised capital under an offering memorandum dated May 14, 2007. This offering document described a distribution of up to 250,000 "Series A" and "Series B" bonds priced at \$100 per bond with a minimum subscription amount of \$25,000. FLC raised \$11,938,700 in connection with this offering.

17 The FLC bond offering closed on January 31, 2008.

Focused Life Investments Ltd.

18 FLI is an Alberta corporation that was formed on October 12, 2006. DeLaet and Gitzel were both appointed directors of FLI at inception and were officers and directors of FLI during the Material Time. Gitzel resigned his directorship on January 15, 2010.

19 The sole shareholder of FLI is 1243512 Alberta Inc. DeLaet was the sole officer, director and shareholder of 1243512 Alberta Inc. until July 2, 2009, when his daughter, Amanda

Muscoby, was also appointed a director of the company. Records indicate that 1243512 Alberta Inc. was struck from Alberta corporate registries on July 2, 2011.

20 FLI raised capital under an offering memorandum dated May 14, 2007. This offering document described a distribution of up to 250,000 Class 'B' common shares priced at \$0.10 per share with a minimum subscription amount of \$25. FLI raised \$8,726.40 in connection with this offering.

21 The FLI Class 'B' common stock offering closed on January 31, 2008.

Focused Life Investments 2 Ltd.

22 FLI2 is an Alberta corporation that was formed on February 27, 2007. DeLaet and Gitzel were both appointed directors of FLI2 at inception and were officers and directors of FLI2 during the Material Time. Gitzel resigned his directorship on January 15, 2010.

23 The sole shareholder of FLI2 is 1243512 Alberta Inc. DeLaet was the sole officer, director and shareholder of 1243512 Alberta Inc. until July 2, 2009, when his daughter, Amanda Muscoby, was also appointed a director of the company. Records indicate that 1243512 Alberta Inc. was struck from Alberta corporate registries on July 2, 2011.

24 FLI2 raised capital under an offering memorandum dated May 14, 2007. This offering document described a distribution of up to 250,000 Class 'B' common shares priced at \$0.10 per share with a minimum subscription amount of \$25. FLI2 raised \$1,897.80 in connection with this offering.

25 The FLI2 Class 'B' common stock offering closed on January 31, 2008.

Focused Life Settlements No. 2 Limited Partnership

26 FLS2-LP was formed on May 22, 2007. Its general partner from inception was 1323545 Alberta Inc., a private company controlled by the respondent DeLaet. Gitzel also served as a director of 1323545 Alberta Inc. between May 22, 2007 and May 5, 2009.

27 FLS2-LP raised capital under an offering memorandum dated February 27, 2008. This offering document described a distribution of Class "A" and Class "B" limited partnership units being offered for sale at a cost of \$1,000 each. Class "A" units provided for a 12% return compounded annually and payable in full at the end of five years. Class "B" units offered a return of 10% per annum paid monthly for a five year term.

28 FLS2-LP raised a total of \$23,398,800.00 in connection with this offering.

29 The FLS2-LP offering of Class 'A' and Class 'B' limited partnership units closed on February 29, 2008.

Focused Money Solutions Inc.

30 FMSI was formed on February 24, 2006 and was extra-provincially registered to carry on business in the Province of Alberta on the same day. DeLaet has been the president and a

director of FMSI from its inception. Gitzel also served as an officer and director of FMSI from February 24, 2006 to September 25, 2008, inclusive. On September 25, 2008, DeLaet's daughter, Amanda Muscoby, joined FMSI as the company's Secretary/Treasurer and was also appointed to its board of directors; she resigned from both positions on April 5, 2010. FMSI's only other known director is Mr. Peter Scott, who joined the company's board September 25, 2008 and, to the best of Staff's knowledge, still serves the company in that capacity.

31 FMSI raised capital by offering a number of different securities for sale to investors in Alberta and elsewhere throughout 2008 and 2009. FMSI's various offerings were described in separate offering memoranda and included:

- 31.1 \$50,050,000-worth of Units comprised of 10 debentures and one warrant for the subsequent purchase of one common share of FMSI at a price of \$3.00 each, priced at \$100.10 per unit (Offering Memorandum dated November 12, 2008; offering closed December 31, 2008);
- 31.2 \$50,000-worth of warrants priced at \$0.10 each for the subsequent purchase of one common share of FMSI at a price of \$3.00 (Offering Memorandum dated February 17, 2009; offering closed March 31, 2009);
- 31.3 \$40,378,137.80-worth of Units comprised of 10 debentures and one warrant for the subsequent purchase of one common share of FMSI at a price of \$5.00 each, priced at \$100.10 per unit (Offering Memorandum dated August 12, 2009; offering closed August 31, 2009);
- 31.4 \$38,403,100.00-worth of debentures priced at \$10.00 each (Offering Memorandum dated October 1, 2009; offering closed October 31, 2009);
- 31.5 \$38,781.60-worth of warrants priced at \$0.10 each for the subsequent purchase of one common share of FMSI at a price of \$5.00 (Offering Memorandum dated October 1, 2009; offering closed October 31, 2009); and

32 The aggregate amount raised by FMSI in connection with the various offerings described above was \$13,206,453.90. At least 187 Alberta investors took part in the various offerings advanced by FMSI during the Material Time.

Focused Money Capital Ltd.

33 FMCL is an Alberta corporation that was formed on January 16, 2009. FMCL is a special purpose corporation, the only purpose of which was to function as an "RRSP-eligible" capital raising vehicle for FMSI by participating in that issuer's autumn 2009 debenture offering. DeLaet was the sole director of FMCL during the Material Time.

34 The shareholders of FMCL included Target Capital Inc. and 1450597 Alta. Ltd, a private company controlled by DeLaet and Muscoby. Target Capital Inc. is an Alberta corporation that held 60% of the outstanding stock of FMCL and facilitated the company's characterisation as a "Deferred Plan" for income tax purposes.

35 FMCL raised capital under an offering memorandum dated March 2, 2009. This offering document described a distribution of up to 500,000 bonds priced at \$100 per bond with a minimum subscription amount of \$25,000. FMCL raised \$5,728,800 in connection with this offering; all of which was subsequently transferred to FMSI in connection with that issuer's 2009 debenture offering.

36 The FMCL bond offering closed on June 1, 2009.

Prohibited Representations

37 The offering memoranda circulated by each of FLC, FLI, FLI2, FLS2-LP, and promotional materials disseminated by FMSI in connection with their respective offerings of securities contained a number of prohibited representations in the form of misleading or untrue statements regarding the nature of the various companies' business models and the safety of the investments being offered.

Offering Memoranda

38 The misleading or untrue representations contained in offering memoranda circulated by FLC, FLI, FLI2 and FLS2-LP included:

- 38.1 That FLI, FLI2 and FLS2-LP, were engaged in what was described as the "Bonded Life Settlement (BLS) process", which involves the purchasing of "Bonded" Life Settlement products through U.S.-based brokers. According to descriptions contained in the various offering documents, the life settlements purchased were to carry "re-insurance bonds" that would pay the issuers the face value of any given life settlement that did not yield a death benefit within a defined period of time. In actuality, only one (1) of the twenty-seven (27) life settlements purchased by issuers comprising the Focused Life Group of Companies were ever covered by a "re-insurance bond" of the kind described in the companies' promotional material; and
- 38.2 That FLI, FLI2 and FLS2-LP, would maintain "premium reserve accounts" to facilitate the management of all premium payments required to maintain their respective life settlement portfolios.

Promotional Material

39 Prohibited representations contained in promotional materials disseminated or otherwise publicised by FMSI included the following:

- 39.1 "Investors [in Life Settlements] Receive a Great Return.";
- 39.2 That since Life Settlements are "bound by the Life Insurance contract" they offer a "Secured Investment" with "Predictable & Repeatable Returns";

- 39.3 That Life Settlements appreciate over time;
- 39.4 That “Benefits to Investors” included the provision of “absolute returns”;
- 39.5 Graphical representations suggesting that Life Settlements offered a high “% Return” while possessing a risk profile similar to those found “Treasures, GICs/Money Market” and “Bond” investment products;
- 39.6 Life Settlements offer Investors: “Safe & Secure investment”; “Predictable & Repeatable returns”; and “An investment that gets more valuable over time”; and
- 39.7 Purchasing FMSI securities would allow investors to “Retire with Peace of Mind” and “Build a **Worry-Free Retirement** with assured & predictable returns and no market volatility” [emphasis in original]

Prohibited Representations Re: Listing on an Exchange

40 Staff allege that FMSI made prohibited representations to investors in the form of statements regarding the future listing of its securities on an exchange without the written permission of the Executive Director of the Commission and with the intention of effecting trades of its securities.

41 The representations complained of by Staff in this instance were contained in “PowerPoint” presentations used in the promotion of FMSI’s debenture and warrant offerings, which indicated that “Focused Money [is] going public in 2009”.

Representations Made to Individual Investors

42 Staff allege that the following representations were made to investors by agents of the various issuers comprising the Focused Group of Companies:

- 42.1 That the investments offered by the Focused Group of Companies were more secure than Guaranteed Income Certificates (**GICs**);
- 42.2 That the investments offered by the Focused Group of Companies were “tax-free”; and
- 42.3 That the Life Settlements purchased by the Focused Group of Companies would be protected by “reinsurance bonds”.

43 Staff allege that DeLaet and Gitzel authorised, permitted or acquiesced in the making of the representations described above and, in doing so, acted in a manner that was contrary to the public interest.

Provision of Misleading Information

44 Staff allege that the Respondents filed offering memoranda with the Commission that contained a statement that was misleading or untrue and did not state a fact that was required to be stated to make the statement not misleading.

45 Specifically, Staff allege that DeLaet and Gitzel filed offering memoranda in connection with offerings of securities extended by FLC, FLI, FLI2, and FLS2-LP, which, in each case, contained the assertion that no director, officer or control person of the issuer in question had made a declaration of, voluntary assignment in, or proposal under, bankruptcy or insolvency legislation within 10 years preceding the date of the offering memorandum when, in fact, Gitzel had made a voluntary assignment in bankruptcy under the *BIA* on November 10, 1999.

46 Each of the offering memoranda in question contained a written certification, signed by each of the Respondents claiming “This Offering Memorandum does not contain a misrepresentation”.

Prohibited Transactions

47 Staff allege that the Respondents directly or indirectly engaged in acts, practices and courses of conduct that relating to the securities that they knew or ought to have known would perpetrate a fraud on investors contrary to section 93(b) of the *Act*.

48 Staff allege that the impugned conduct in this instance included exposing investor funds to undisclosed risk, and operating a “Ponzi” scheme in order to facilitate payment of promised returns to investors.

Exposure of Investor Funds to Undisclosed Risk

49 The Respondents each authorised, permitted, or acquiesced to the raising of funds from investors in Alberta and elsewhere on the pretence that the various constituent members of the Focused Life Group of Companies would be participating in the “Bonded Life Settlement Process”, when in actuality only one (1) of the twenty-seven (27) Life Settlements owned by the entities ever had the purported benefit of a “re-insurance bond”; and

50 The Respondents each authorised, permitted or acquiesced to the raising funds from investors in Alberta and elsewhere on the pretence that the various constituent members of the Focused Life Group of Companies would be creating reserve accounts for each purchased life settlement to ensure that premium payments and other administration costs were fully funded for the duration of the applicable “Life Expectancy”, when, in fact no such reserves were ever created or maintained.

Improper Payment of “Returns”

51 None of the issuers in the Focused Life Group of Companies generated business revenue during the Material Time, either as a result of having obtained proceeds from the “maturation” of purchased life settlements, or in connection with the sale of part or all of their respectively acquired life settlement portfolios.

