

**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
ZEPHYR ALTERNATIVE POWER INC.**

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 Zephyr Alternative Power Inc. ("Zephyr"). At the hearing, the Commission will consider whether, pursuant to section 127 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 4 of s.127(1), Zephyr immediately institute the program prescribed by Schedule 1 to the Settlement Agreement to confirm that future exempt sales of securities by Zephyr are in compliance with Ontario securities law;

- (ii) pursuant to clause 6 of s.127(1), Zephyr be reprimanded; and
 - (iii) pursuant to clause 2 of s.127(1) and section 144, the temporary order made on November 3, 2005 and continued until April 11, 2006 by order of the Commission, shall cease to apply to Zephyr.
- (b) an undertaking by Zephyr that:
- (i) Zephyr will continue to cooperate with Staff in relation to the investigation of this matter and any related enforcement proceedings; and
 - (ii) Zephyr will, in accordance with procedures acceptable to the Commission, make a rescission offer to any Zephyr convertible debenture holder who:
 - (i) was not an accredited investor at the time of purchase; or
 - (ii) received a Subscription Agreement referencing a 10% sales commission and, at the time of purchase, did not understand and would not have purchased a convertible debenture if he or she had understood that Zephyr would pay a 20% sales commission; or
 - (iii) was induced to purchase by a salesperson making misleading misrepresentations regarding the nature or level of risk regarding the convertible debenture and would otherwise not have purchased the convertible debenture.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission (the “Staff”) recommend settlement of the proceeding initiated in respect of Zephyr in accordance with the terms and conditions set out below. Zephyr 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, Zephyr 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 May 2005, Zephyr began to raise capital in Ontario, relying upon the accredited investor exemption in Rule 45-501. With the assistance of limited market dealers, Leszek Dziadecki of Mississauga, Ontario and Werner Reindorf of London, Ontario (the "LMDs"), Zephyr issued convertible debentures. The LMDs earned a sales commission of 20% for each convertible debenture sale.

8. Zephyr understood that the convertible debentures could only be sold to accredited investors who met the income or financial asset minimums prescribed by Rule

45-501. Between May and October 2005, Zephyr received proceeds of \$476,000 from the sale of convertible debentures to sixteen investors and paid \$95,200 in sales commissions, as summarized in the table below.

Zephyr Convertible Debentures: Total Sales

Limited Market Dealer	Sales	Purchasers	Commission (20%)
Werner Reindorf	\$305,000	6	\$61,000
Leszek Dziadecki	\$171,000	10	\$34,200 ¹
Total	\$476,000	16	\$95,200

9. The convertible debentures have a maturity date of March 31, 2009 and pay interest at 10.25% per annum, payable quarterly. Zephyr has made quarterly interest payments to convertible debenture holders as they have come due.

C. Sales Process

(a) Subscription Agreement

10. The sales process for Zephyr convertible debentures involved Zephyr and the LMDs.

11. Zephyr provided the LMDs 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

¹ 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

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.

12. If a prospective investor wished to purchase a convertible debenture, the LMD would provide the investor with a Subscription Agreement. The investor was required to sign the Subscription Agreement and to complete Schedule “B”, certifying the investor's accredited investor status. Specifically, the investor was required to check the appropriate box on Schedule B, indicating which of the accredited investor income or financial asset qualification criteria applied to the investor.

13. After a Subscription Agreement was signed by a prospective investor, the LMD 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 \$100,000. 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.

14. Zephyr believed that all sales of its convertible debentures were in compliance with Ontario securities law.

(b) Problems with the Subscription Agreements

(i) Schedule “B” : Incomplete Accredited Investor Certification

15. As described above, the Subscription Agreement included a Schedule “B” which a prospective investor was required to complete in order to certify his or her accredited investor status.

16. Four of the sixteen Subscription Agreements signed by prospective investors and provided by Reindorf to Zephyr contained a Schedule “B” that was not completed and thus did not certify that the prospective investor was accredited. Zephyr did not notice that these Schedule “B”s were not completed. Zephyr countersigned the Subscription Agreements and issued the convertible debentures in respect of the four investors for proceeds of \$200,000, of which \$40,000 was paid by Zephyr to Reindorf in sales commissions.

(ii) Schedule “C”: Inaccurate Commission Information

17. 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"

18. Some of the Subscription Agreements provided to Zephyr by the LMDs, and in turn by Zephyr to investors who purchased convertible debentures, contained an early draft of Schedule “C” which said that *"commissions of ten percent (10%)"* would be paid by Zephyr, instead of the 20% which Zephyr paid to the LMDs .

19. Nine of the sixteen Subscription Agreements signed by investors and sent to Zephyr by the LMDs, including the four Subscription Agreements referred to in paragraph 16, contained a Schedule “C” referencing a 10% sales commission. Zephyr did not notice these errors. Zephyr countersigned the Subscription Agreements and issued the convertible debentures in respect of the nine investors for proceeds of \$361,000, of which \$72,200 was payable by Zephyr in sales commission.

D. Conduct Contrary to the Public Interest

20. In respect of certain sales of its convertible debentures, Zephyr:

- i. In respect of the sales to the four investors described in paragraph 16, Zephyr failed to take steps to ensure that a prospectus exemption was available, contrary to its responsibilities as described in s. 3.3 of the Companion Policy to OSC Rule 45-501;
- ii. In respect of the sales to the nine investors described in paragraph 19, Zephyr failed to ensure that the information contained in the Subscription Agreements regarding the amount of sales commissions to be paid to persons selling Zephyr convertible debentures was correct.

E. Co-Operation with Staff

21. Zephyr has cooperated with Staff in relation to the investigation of this matter.

IV. TERMS OF SETTLEMENT

22. Zephyr agrees to a settlement the terms of which include:

- (a) an Order by the Commission that:
 - (i) pursuant to clause 4 of s.127(1), Zephyr immediately institute the program prescribed by Schedule 1 to the Settlement Agreement to ensure that future exempt sales of securities by Zephyr are in compliance with Ontario securities law; and
 - (ii) pursuant to clause 6 of s.127(1), Zephyr be reprimanded; and
 - (iii) pursuant to clause 2 of s.127(1) and section 144, the temporary order made on November 3, 2005 and continued until April 11, 2006 by order of the Commission, shall cease to apply to Zephyr; and
- (b) an undertaking by Zephyr that:
 - (i) Zephyr will continue to cooperate with Staff in relation to the investigation of this matter and any related enforcement proceedings; and

- (ii) Zephyr will, in accordance with procedures acceptable to the Commission, make a rescission offer to any Zephyr convertible debenture holder who:
 - (i) was not an accredited investor at the time of purchase; or
 - (ii) received a Subscription Agreement referencing a 10% sales commission and, at the time of purchase, did not understand and would not have purchased a convertible debenture if he or she had understood that Zephyr would pay a 20% sales commission; or
 - (iii) was induced to purchase by a salesperson making misleading misrepresentations regarding the nature or level of risk regarding the Zephyr convertible debenture and would otherwise not have purchased the convertible debenture.

V. STAFF COMMITMENT

23. If this Settlement Agreement is approved by the Commission, Staff will not initiate any proceeding under Ontario securities law against Zephyr or any of its directors or officers in respect of any conduct or alleged conduct of Zephyr in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 27 below.

VI. PROCEDURE FOR APPROVAL OF SETTLEMENT

24. 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 Zephyr in accordance with the procedures described in this Settlement Agreement.

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

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

27. If Zephyr fails to honour the agreement contained in paragraph 26 of this Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against Zephyr based on the facts set out in Part III of this Settlement Agreement or based on the breach of this Settlement Agreement.

28. 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 Zephyr 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.

29. Whether or not this Settlement Agreement is approved by the Commission, Zephyr 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

30. The terms of this Settlement Agreement will be treated as confidential by Zephyr and Staff 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 Zephyr and Staff or as may be required by law.

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

VIII. EXECUTION OF AGREEMENT

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

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

Dated this 1st day of March, 2006

ZEPHYR ALTERNATIVE POWER
INC.

"Philip Anisman"

Per: _____
"Edward Tsang"
Edward Tsang
President and CEO

Dated this 2 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*
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**ORDER
(Section 127)**

WHEREAS on March 1, 2006, the Ontario Securities Commission issued a Notice of Hearing pursuant to section 127 of the *Securities Act* (the "Act") in respect of Zephyr Alternative Power Inc. ("Zephyr");

AND WHEREAS Zephyr 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 Zephyr 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 Statement of Allegations of Staff of the Commission, and upon hearing submissions from counsel for Zephyr and from Staff of the Commission;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED THAT

- (a) pursuant to clause 4 of s.127(1), Zephyr will immediately institute the program prescribed by Schedule 1 to the Settlement Agreement to ensure that future exempt sales of securities by Zephyr are in compliance with Ontario securities law; and
- (b) pursuant to clause 6 of s.127(1), Zephyr is reprimanded; and
- (c) pursuant to clause 2 of s.127(1) and s. 144, the temporary order made on November 3, 2005 and continued until April 11, 2006 by order of the Commission, shall cease to apply to Zephyr as of this date.

DATED at Toronto this day of March, 2006

SCHEDULE “1”

Upon approval by the Commission of the settlement agreement between Staff of the Commission and Zephyr Alternative Power Inc. (“Zephyr”) dated March 1, 2006 Zephyr will implement a compliance program, for a period of one year, pursuant to which compliance counsel will oversee prospectus-exempt and registration-exempt sales of securities by Zephyr to confirm Zephyr’s compliance with Ontario securities law and in particular National Instrument 45-106. Specifically, compliance counsel will, in accordance with procedures accepted by the Commission:

- (i) confirm the registration status of any person engaged by Zephyr to sell securities of Zephyr; and
- (ii) review and verify the accuracy of all documentation provided by Zephyr to investors in connection with a prospectus-exempt or registration-exempt offering of its securities; and
- (iii) ensure that appropriate steps are taken by or on behalf of Zephyr to confirm the availability of a prospectus exemption, including a proposed sale of Zephyr securities to an accredited investor; and
- (iv) prepare a written policy to be adopted by Zephyr specifying procedures to be followed by Zephyr in connection with exempt offerings of its securities.