

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 9335 / July 11, 2012**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 67406 / July 11, 2012**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3430 / July 11, 2012**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 30135 / July 11, 2012**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-14404**

**In the Matter of**

**Belsen Getty, LLC, Terry M.  
Deru, and Andrew W.  
Limpert,**

**Respondents.**

**ORDER MAKING FINDINGS, AND  
IMPOSING REMEDIAL SANCTIONS AND  
A CEASE-AND-DESIST ORDER  
PURSUANT TO SECTION 8A OF THE  
SECURITIES ACT OF 1933, SECTIONS  
15(b) AND 21C OF THE SECURITIES  
EXCHANGE ACT OF 1934, SECTIONS  
203(f) AND 203(k) OF THE INVESTMENT  
ADVISERS ACT OF 1940, AND SECTION  
9(b) OF THE INVESTMENT COMPANY  
ACT OF 1940 AS TO ANDREW W.  
LIMPERT**

**I.**

On May 31, 2011, the Securities and Exchange Commission (“Commission”) issued an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940 against Belsen Getty, LLC (“Belsen Getty”), Terry M. Deru (“Deru”), and Andrew W. Limpert (“Limpert” or “Resondent”). Respondent has submitted an Offer of Settlement (“Offer”) which the Commission has determined to accept.

## II.

Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940 as to Andrew W. Limpert ("Order") as set forth, below.

## III.

On the basis of this Order and the Offer of Limpert, the Commission finds<sup>1</sup> that:

### Summary

These proceedings arise out of the fraudulent conduct and violations of the Securities Act of 1933 ("Securities Act"), the Securities Exchange Act of 1934 ("Exchange Act") and the Investment Advisers Act of 1940 ("Advisers Act") by (1) a registered investment adviser, Belsen Getty; (2) its owner and managing member, Deru; and, (3) its former principal, Limpert.

In November 2006, Deru and Limpert became involved in founding Nine Mile Software, Inc. ("Nine Mile"), a software company. Deru and Limpert were major shareholders in Nine Mile, and Limpert became Chairman of the Board. Deru and Limpert invested personal monies and also obtained start-up money for Nine Mile by selling restricted Nine Mile stock to Belsen Getty clients and others. Nine Mile, which was not named in this action, commenced an initial public offering of its common stock in November 2007. The vast majority of the offering was sold to Belsen Getty clients, based on advice from Deru or Limpert. In October and November 2008, Belsen Getty used its discretionary trading authority to trade Nine Mile stock on behalf of clients without informing the clients of risk or conflicts. The trades were made to create the illusion of active trading in Nine Mile stock, as Belsen Getty was the only participant in the market at the time and acted on both the buy and sell sides of all transactions.

Belsen Getty, through Deru and Limpert, also recommended to its clients other high-risk investments in which Deru and Limpert had a financial interest. In recommending these investments, there were numerous instances of failure to disclose conflicts, breaches of fiduciary duty, and misrepresentations or omissions to clients.

### A. RESPONDENT

1. Limpert was a former member, direct owner and control person of Belsen Getty from 2004 until December 2008, at which time he sold his interest in Belsen Getty. He was an investment adviser representative. Limpert was the Chairman of the Board of Nine Mile until May

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

6, 2011 and is the CFO and director of ProFire Energy, Inc. (“ProFire”), both publicly traded companies. Limpert was an officer and director of Prime Resource, Inc. (“Prime Resource”), an entity formerly owned by Deru and his brother, Scott Deru, when it was a public company during approximately 2002 to 2007. Limpert, 41 years old, is a resident of American Fork, Utah. Limpert participated in an offering of Nine Mile stock, which is a penny stock.

**B. OTHER RELEVANT ENTITIES AND INDIVIDUALS**

2. Belsen Getty, incorporated in Nevada in 1982, has been an investment adviser registered with the Commission since September 1, 1982. Belsen Getty was reorganized as a Utah limited liability company in 1998 and was headquartered in Bountiful, Utah. From approximately 2002 to 2007, Belsen Getty was owned and controlled by Prime Resource, Inc. (“Prime Resource”), a public company. Prime Resource later transferred all of its substantial assets to a private entity, Prime Advisors, LLC (“Prime Advisors”), a holding company that was owned by Deru and his brother, Scott Deru. As of November 19, 2008, Belsen Getty managed approximately 950 client accounts and approximately \$65,000,000 in assets. As of December 31, 2010, Belsen Getty managed \$47,662,998 in assets in 557 client accounts. Belsen Getty exercised discretionary trading authority over its client accounts. On September 26, 2011, Belsen Getty closed operations and terminated its advisory relationship with its clients.

3. Deru was the managing member and Chief Compliance Officer of Belsen Getty. He was an investment adviser representative, and a direct owner and control person of Belsen Getty. Deru was an officer and director of Prime Resource when it was a public company during approximately 2002 to 2007. Deru, 57 years old, is a resident of Layton, Utah. Deru participated in an offering of Nine Mile stock, which is a penny stock.

4. Nine Mile, incorporated in Nevada on November 30, 2006, was engaged in the business of developing and marketing specialized software for the financial and brokerage industry. Nine Mile was headquartered in Layton, Utah. It had a reporting obligation pursuant to Section 15(d) of the Exchange Act. Nine Mile stock was a penny stock: it did not fit within any of the exceptions from the definition of a penny stock established by Section 3(a)(51) of the Exchange Act and Rule 3a51-1 thereunder. In particular, Nine Mile was not a Regulation NMS stock and traded below five dollars per share during the relevant period. In addition, at all relevant times Nine Mile had net tangible assets of less than \$2 million and average revenue of less than \$6 million per year during the relevant period and to date. According to an 8-K filed in August 2011, Nine Mile entered into a reverse merger with SaveDaily, Inc. and changed its business and name to SaveDaily, Inc. on August 23, 2011.

5. Damon Deru was the CEO and a Director of Nine Mile until Nine Mile entered into a reverse merger with SaveDaily, Inc. on August 23, 2011. Damon Deru was associated with Belsen Getty as an investment adviser representative until March 5, 2008. Damon Deru is Deru’s son and worked at Belsen Getty from 2000 until December 2008.

## C. BACKGROUND

6. In 2006, while employed by Belsen Getty, Deru, Limpert, and Damon Deru founded Nine Mile. In August 2007, Nine Mile issued 1,882,000 shares of restricted stock in an unregistered private offering, relying on the registration exemption pursuant to Rule 504 of Regulation D. Deru and Limpert each owned 31.9% (600,000 shares) of the total, and Damon Deru owned 10.6% (200,000 shares). Damon Deru became the CEO and Director, and Limpert became the Chairman of the Board of Directors.

7. In November 2007, Nine Mile commenced an initial public offering (“IPO”) of stock. Belsen Getty, through Deru and Limpert, recommended Nine Mile to its clients. By September 30, 2008, Nine Mile had raised \$499,991 and issued a total of 714,288 shares at \$0.70 per share. The vast majority of IPO shares were sold to Belsen Getty clients. In recommending Nine Mile stock to clients, Belsen Getty, through Deru and Limpert, failed to disclose that Belsen Getty exercised discretionary trading authority over, and thus controlled, the majority of the outstanding non-restricted Nine Mile stock. Deru and Limpert knew or were reckless in not knowing that Belsen Getty’s control of the stock was a material fact that investors would want to know before investing.

8. In January 2005, Deru, Limpert, and Damon Deru formed Axxess Funding Group, LLC (“Axxess”), to engage in the business of secured real estate lending. Deru is the managing member and, at the time it was formed, was the majority owner with sixty percent ownership interest. Limpert and Damon Deru were the only other managing members, each with a twenty percent ownership interest.

9. Belsen Getty, through Deru, recommended Axxess to Belsen Getty clients and raised \$4,070,694 from approximately 88 investors (all Belsen Getty clients) through two private offerings, one in 2005 and one in 2007-08. Limpert recommended Axxess to at least one client.

10. The Private Placement Memoranda (“PPMs”) for both offerings represented that Deru, Limpert, and Damon Deru would manage the company, vote on decisions, that each of them had extensive education and experience qualifying them for managing the company, and that they would be compensated for their work by charging Axxess a management fee of 2% of gross revenues as well as a share of profits. Deru controlled 60% of the voting shares of the company and managed the company and used investor funds with little input from Limpert and Damon Deru. Instead, Deru hired his son to perform many of the functions that were supposed to be performed by the members and for which the members received compensation. Limpert failed to conduct due diligence or vote on investment decisions, as represented by the PPMs. Deru and Limpert knew or were reckless in not knowing these material facts and failed to disclose them to investors.

11. During 2007 and 2008, Deru arranged for Axxess to pay his son undisclosed fees (close to \$300,000, almost ten percent of the money raised in the two offerings) for what appeared to be very little work and for work that should have been completed by the member managers and compensated by the management fee and profits.

12. In addition, Deru used investor funds to loan himself and his personal entity, Northpark Development, LLC, over \$500,000 for his personal benefit. Although Axxess' Operating Agreement allowed it to make loans to members, the Operating Agreement required unanimous consent of all members prior to a loan. Deru did not inform members of either of the two loans and did not obtain consent from any members. To date, these loan amounts remain outstanding. Limpert knew or was reckless in not knowing these material facts, as he was supposed to participate in management and loan decisions, according to the PPMs.

13. Belsen Getty, through Deru and Limpert, failed to disclose these material facts about Axxess to investors.

14. In or around early 2008, Deru and Limpert purchased, in a private sale, restricted stock in Flooring Zone, Inc., a public shell company. Deru and Limpert set up a reverse merger with a private entity, and renamed the public company ProFire. Limpert has been Chief Financial Officer of ProFire since the merger.

15. In Forms ADV signed and filed by Deru on behalf of Belsen Getty, Deru omitted to state material facts required to be stated on Schedule B to Part IA. Specifically, Deru failed to disclose that he and Limpert were the owners of Prime Advisors, the parent company to Belsen Getty, as required by Item 2(d). In addition, in its Form ADV Part II, Item 9.D, Deru disclosed that Belsen Getty or related persons recommend to clients securities or investments in which Belsen Getty or related persons have financial interest, but failed to describe in Schedule F, as required, when it or a related person engages in such transactions and what restrictions, internal procedures, or disclosures are used for conflicts of interest in those transactions. Even after being informed of these failures by Commission staff, Deru failed to update or amend the Forms ADV to include correct information. The Form ADV also failed to disclose in Part II, Item 9.A or Schedule F, as required, that Belsen Getty or its related persons bought or sold personal securities to clients.<sup>2</sup>

16. Belsen Getty, through Deru as Chief Compliance Officer and Limpert, failed to maintain records of the recommendation and purchase of Nine Mile stock for clients. The only documentation showing that clients had invested in Nine Mile was the transaction detail when the client sold the security in the open market. Deru and Limpert knew or were reckless in not knowing that their acts and omissions contributed to Belsen Getty's failure to maintain the required records.

17. Belsen Getty, through Deru, used a template from a compliance service provider to draft its Code of Ethics and Policies and Procedures Manual. Deru, as Chief Compliance Officer, was directly responsible for writing, updating, and enforcing Belsen Getty's written policies and procedures.

18. Deru failed to adapt the template to Belsen Getty's specific practices and failed to adopt policies to address conflicts of interest associated with recommending investments in which its associated persons have a financial interest. Even after being informed by Commission staff of

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<sup>2</sup> Item numbers are to the Form ADV prior to Part II's amendment effective October 12, 2010.

this failure, Belsen Getty, through Deru, failed to adapt or revise its policies. Limpert failed to ensure written policies and procedures were adequate and enforced, even though he read and reviewed the policies and procedures.

19. Belsen Getty, through Deru and Limpert, failed to follow or enforce its own policies and procedures to prevent insider trading. Belsen Getty's Code of Ethics states it will place a company's securities on a "restricted list" or "watch list" when employees possess material, non-public information about the company. In addition, the Code of Ethics states that where its employees serve on the board of directors of a public company, Belsen Getty will implement an appropriate procedure to isolate such person from making decisions relating to the company's securities.

20. Belsen Getty principals Deru and Limpert served on the boards or were officers of a number of public companies, including Nine Mile, ProFire, and Prime Resource. Belsen Getty never placed those companies' securities or any others on a restricted list or watch list and never implemented an isolation procedure for any company, although Belsen Getty principals and employees served on the boards of those companies and possessed inside information about the companies. Belsen Getty, through Deru and Limpert, failed to enforce the Code of Ethics, even though they were fully aware of the requirements and were aware that Belsen Getty principals and employees served as directors of public companies and possessed inside information.

21. Belsen Getty did not have adequate policies and procedures in place and, through Deru and Limpert, did not enforce its own policies and procedures. The policies did not adequately address conflicts of interest and did not have procedures in place to inform clients of conflicts. Because these policies were not in place, clients did not receive adequate disclosure about conflicts and whether their investment adviser was providing disinterested investment advisory services. Furthermore, contrary to Belsen Getty's policies and procedures, Belsen Getty, Deru, and Limpert placed their own interests ahead of Belsen Getty clients and failed to disclose the facts giving rise to these conflicts of interest. Deru and Limpert were responsible for complying with the Advisers Act but failed to do so.

22. Deru and Limpert knew or were reckless in not knowing that Belsen Getty's policies and procedures were inadequate and unenforced. Deru and Limpert knew or were reckless in not knowing that their acts or omissions would contribute to Belsen Getty's failure to design, maintain and enforce written insider trading policies, a Code of Ethics, and procedures reasonably designed to prevent violation of the Advisers Act.

#### **D. VIOLATIONS**

23. Based on the above-described conduct:

(a) Respondent Limpert willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities;

(b) Respondent Limpert willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit any investment adviser to employ any device, scheme, or artifice to defraud any client or prospective client or to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client;

(c) Respondent Limpert willfully aided and abetted and caused Belsen Getty's violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder, which require that registered investment advisers adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and the rules thereunder;

(c) Respondent Limpert willfully aided and abetted and caused Belsen Getty's violations of Section 204A of the Advisers Act and Rule 204A-1 promulgated thereunder, which require that investment advisers registered with the Commission adopt and implement written policies and procedures reasonably designed to prevent the misuse of material non-public information by the investment adviser and associated persons; and,

(d) Respondent Limpert willfully aided and abetted and caused Belsen Getty's violations of Section 204(a) of the Advisers Act and Rule 204-2(a)(7) promulgated thereunder, which require registered investment advisers to maintain and preserve certain books and records, including written communications related to "any recommendation made or proposed to be made and any advice given or proposed to be given" and "any receipt, disbursement or delivery of funds or securities."

#### IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in the Respondent's Offer.

Accordingly, pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act of 1940, it is hereby ORDERED that:

1. Respondent Limpert shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Sections 206(1), 206(2), 204(a), 204A and 206(4) of the Advisers Act and Rules 204-2(a)(7), 204A-1 and 206(4)-7 promulgated thereunder.

2. Respondent Limpert be, and hereby is:

(a) barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

(b) prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for,

a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and,

(c) barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

3. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

4. Respondent shall pay disgorgement of \$51,255.80, prejudgment interest of \$10,445.18 and civil penalties of \$51,255.80, for a total amount of \$112,956.78, to the Securities and Exchange Commission. Payment shall be made in the following installments: (1) \$28,239.21 upon entry of the Order; (2) \$28,239.19 on or before 180 days from the entry of the Order; (3) \$28,239.19 on or before 270 days from the entry of the Order; and, (4) \$28,239.19 on or before 360 days from the entry of the Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued shall be due and payable immediately, without further application. If timely payment of disgorgement is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. If payment of a civil penalty is not timely made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payments shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Andrew W. Limpert as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Daniel J. Wadley, Trial Counsel, Securities and Exchange Commission, Salt Lake Regional Office, 15 West South Temple Street, Suite 1800, Salt Lake City, Utah 84101.

5. Such civil money penalty may be distributed pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended ("Fair Fund distribution"). Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's



payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Elizabeth M. Murphy  
Secretary