

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71713 / March 13, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3792 / March 13, 2014

INVESTMENT COMPANY ACT OF 1940
Release No. 30980 / March 13, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15788

In the Matter of

HOWARD FEDER
and BDL MANAGER LLC,

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
SECTION 203(f) OF THE INVESTMENT
ADVISERS ACT OF 1940, AND SECTION
9(b) OF THE INVESTMENT COMPANY ACT
OF 1940, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Howard Feder (“Feder”) and BDL Manager LLC (“BDL Manager”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) which the Commission has determined to accept. 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 them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Section 203(f) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

On the basis of this Order and Respondents' Offers, the Commission finds¹ that

SUMMARY

1. These proceedings arise from a fraudulent scheme to profit from the imminent deaths of terminally ill hospice and nursing home patients through the purchase and sale of deferred variable annuities ("variable annuities"). Between November 2007 and February 2008, BDL Group, a pooled investment vehicle, purchased more than \$56 million of the variable annuities through nominees. Respondents Feder and BDL Manager, the investment adviser to BDL Group, provided material false information to the registered representatives who sold the annuities, and participated in a fraudulent scheme to secure broker-dealer approvals of the annuities sales.

RESPONDENTS

2. **Howard A. Feder**, age 43, resides in Woodmere, New York. Since November 2007, Feder has been the sole Member of BDL Manager LLC and the sole principal and employee of BDL Group. Feder has no ownership interest in BDL Group. From 2002 through at least May 2011, Feder periodically worked as a commodities trader.

3. **BDL Manager LLC** is a Delaware limited liability company with its principal place of business in Woodmere, New York. BDL Manager is the investment adviser to BDL Group. BDL Manager has never been registered with the Commission.

OTHER RELEVANT INDIVIDUALS AND ENTITIES

4. **BDL Group LLC** is a Delaware limited liability company with its principal place of business in Woodmere, New York. BDL Group was created on or about November 7, 2007 to facilitate institutional investment in variable annuities through the use of nominees.

¹ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

5. **Michael Horowitz**, the scheme architect, was employed as a registered representative of a large, wire-house broker-dealer firm (“Broker-Dealer 1”) during part of the relevant time period.

6. **Broker-Dealer 1** is a broker-dealer and investment adviser registered with the Commission and headquartered in New York, New York.

7. **Broker-Dealer 2** is a broker-dealer and investment adviser registered with the Commission and headquartered in New York, New York.

8. **Broker-Dealer 3** is a broker-dealer and investment adviser registered with the Commission and headquartered in Oakdale, Minnesota.

THE SCHEME

9. In or about May 2007, Michael Horowitz (“Horowitz”) devised a scheme to exploit the death benefit and “bonus credit” components of the variable annuity contracts he subsequently sold by designating terminally ill hospice and nursing home patients as the contract annuitants.

10. Variable annuities are designed to serve as long term investment vehicles, typically to provide income at retirement. Although variable annuities offer investment features similar in many respects to mutual funds, a typical variable annuity offers certain features not commonly found in mutual funds, including death benefits² and/or bonus credits.³ Horowitz solicited wealthy individual and institutional investors to make large investments in variable annuities that offered these benefits.

11. In each of these contracts, a terminally ill hospice or nursing home patient was designated as the contract annuitant. At least 16 terminally ill hospice patients were designated as annuitants in more than 50 variable annuities sold by Horowitz and the other registered representatives that he recruited to the scheme (collectively, the “Registered Representatives”). All of the hospice patients were residents of southern California or Chicago, Illinois.

² The typical variable annuity death benefit provides for a payment to the beneficiary at the contract annuitant’s death equal to either the value of the underlying investment portfolio or the purchase price of the annuity less any withdrawals, whichever is greater. This death benefit option allows an investor to profit from positive investment performance as part of the death benefit while providing a hedge against losses in the portfolio’s value by providing for a payout equal to at least the amount invested in the annuity less any withdrawals. In the typical variable annuity, the contract owner is also the contract “annuitant.” However, in the scheme described herein, hospice and nursing home patients unrelated to the contract owners were designated as the annuitants.

³ A bonus credit is a sum of money immediately credited to the contract owner’s investment account by the annuity issuer (typically a percentage of the premiums being invested in the annuity contract). For example, certain investors that purchased variable annuities through Horowitz made an initial investment of \$1 million and received “bonus credits” that increased the value of their annuity by 5% (\$50,000) to \$1,050,000.

12. The hospice patients designated as annuitants had no familial or business relationship with the investors who purchased the annuities. Instead, they were selected based on their terminal illnesses and the likelihood that they would die soon, and thereby trigger death benefit payouts in variable annuity contracts in the very near term. As part of his pitch to investors, Horowitz told them that he would supply the annuitants, with investors needing to furnish only their funds.

13. These “stranger annuitants” likewise had no contractual right to any portion of the death benefits paid out under the terms of the variable annuities sold during the scheme. Instead, each of the contracts directed these benefits be paid to one of the investor’s family members or relatives, or to a family trust created by the investor.

14. Anticipating that the annuitants would soon die, triggering death benefit payout elections in the annuity contracts, Horowitz advised his customers to invest their premiums aggressively because if the value of their portfolio increased, they would receive the portfolio value as the death-benefit payout. If the value of their portfolio decreased, the death benefit nonetheless guaranteed them a payout equal to the value of their premiums paid minus any withdrawals. Horowitz also advised his customers to invest large sums of money in each annuity they purchased to maximize their “bonus credit.”

15. The Registered Representatives obtained their firms’ approval of the variable annuity sales by making material misrepresentations and omissions on new account and point-of-sale forms, which the broker-dealer principals used to conduct investment suitability reviews.

BDL Group Invests in Stranger-Owned Annuities through Nominees

16. By early Fall 2007, Horowitz had sold more than \$27 million of the stranger-owned variable annuities to individual investors but desired to generate greater capital into the scheme. Searching for a large source of financing, Horowitz began pitching his scheme to institutional investors.

17. On or about October 25, 2007, Horowitz met with the principals of two affiliated hedge funds in New York City. As a result of the meeting, the principals decided to establish an affiliated entity, named BDL Group LLC, advised by BDL Manager LLC, to facilitate the funds’ joint investment in Horowitz’s annuity scheme.

18. In late October 2007, the hedge fund principals retained Feder, a commodities trader, to operate BDL Manager and BDL Group as each entity’s sole principal and employee. From the outset, Feder understood the key components of the investment strategy, including that it entailed: (i) exploiting the bonus credit and enhanced death benefit provisions of the annuities contracts for “guaranteed” short-term gains; (ii) designating terminally ill hospice and nursing home patients as the annuitants in the expectation that BDL Group would receive death benefit payouts within a few months; (iii) allocating the annuity premiums to aggressive equity sub-

accounts with the assurance that, because of the death benefit provisions, BDL Group could gain on market upside, but not lose on market downside; and (iv) rolling the death benefit proceeds, as the annuitants died, into new stranger-owned annuity transactions to generate additional profits for BDL Group and commissions for the brokers.

19. BDL Manager, BDL Group, the fund principals, and Horowitz agreed that: (i) Horowitz and his associates would bear sole responsibility for identifying and communicating with the terminally ill annuitants; and (ii) BDL Group would invest in the annuities through nominees enlisted by the hedge funds.

20. BDL Group's Certificate of Formation, issued by the State of Delaware on November 7, 2007, stated that the company's business consisted solely of investing and reinvesting in variable annuities through nominees.

21. By November 14, 2007, several of the nominees had signed "Nominee Agreements" with BDL Group providing that: (i) BDL Group would deposit funds to purchase the annuities in a brokerage account to be opened by the nominee; (ii) BDL Group would have complete discretion with respect to investing the funds and would be "entitled to all earnings, proceeds, or other profits earned" from the annuities; and (iii) BDL Group would compensate the nominee in an amount equal to \$20,000 on an annualized basis. Feder executed the "Nominee Agreements" as the principal of BDL Manager, on behalf of BDL Group.

22. Between November 2007 and February 2008, BDL Group invested more than \$56 million in 36 variable annuity contracts issued by 8 insurance companies. The annuities were sold either through Broker-Dealer 2 or Broker-Dealer 3. BDL Group purchased 8 of the contracts through individual nominees, and the remaining contracts were purchased through family trusts that Feder arranged to have established for several of the nominees. The family trusts functioned in the same manner as the individual nominees – that is, as mere conduits for BDL Group's funding of, and receipt of proceeds from, the variable annuities. None of the trusts had an independent trust *res*, or any assets not belonging to BDL Group.

23. Each of the BDL Group-funded contracts purchased through a nominee designated a terminally ill hospice or nursing home patient as the annuitant.

False Financial Profile Information is Provided for BDL Group's Nominees

24. Feder was aware that the broker-dealers that sold annuities to BDL Group's nominees reviewed each proposed sale to ensure that it was suitable. Broker-Dealer 2 and Broker-Dealer 3 required their registered representatives to complete new account or point-of-sale forms for each proposed annuity sale that disclosed certain financial profile information and stated when the customer anticipated accessing its investment. The representatives submitted the forms to principals at their firms who were responsible for conducting the suitability reviews.

25. Feder knew, or was reckless in not knowing, that the financial profile information requested on the new account and point-of-sale forms was used for suitability purposes, and that high net-worth individuals would more readily secure approvals.

26. In December 2007, Feder knowingly or recklessly handwrote false financial information on a nominee's new account form for Broker-Dealer 2, after first instructing the nominee to sign the form in blank. Feder then provided the form for submission through Broker-Dealer 2, without ever furnishing the completed form to the nominee for review. Feder stated that the nominee had (i) an estimated net worth in excess of \$10 million, excluding the nominee's home, (ii) liquid assets consisting of cash or cash equivalents in excess of \$3 million, and (iii) an estimated annual income in excess of \$1 million.

27. In fact, at the time the nominee signed the new account form for Broker-Dealer 2, the nominee did not have a net worth, liquid assets, or an annual income even approaching the figures written by Feder on the form.

28. On January 16, 2008, Feder sent emails to Horowitz, and one of Horowitz's associates, in which he knowingly or recklessly repeated the same false financial information that he had handwritten on the nominee's Broker-Dealer 2 form.

29. In his January 16, 2008 emails, Feder described a second nominee as also having an estimated net worth in excess of \$10 million and an estimated annual income in excess of \$1 million. At Feder's behest, in November 2007, this nominee had signed in blank a Broker-Dealer 2 new account form that one of the registered representatives subsequently filled in with information indicating that the nominee had an estimated net worth of only \$5 million and estimated annual income of only \$600,000.

30. Several of the Broker-Dealer 3 point-of-sale forms that Feder directed the family trust nominees to sign in blank were subsequently filled out by the Registered Representatives with false financial profile information. Each of the point-of-sale forms signed by the family trust nominees stated that the trust had cash and an estimated net worth in excess of \$18 to \$20 million, as well as an approximate annual income in excess of \$1 to \$1.2 million.

31. In reality, as Feder knew, or was reckless in not knowing, none of the trusts had any independent trust *res*, net worth, or annual income. Instead, each trust functioned as a kind of pass-through entity for BDL Group. As soon as Feder wired funds from BDL Group into a trust bank account, the trustee wired out the funds again to purchase the annuities. On receipt of death benefit proceeds from the annuity issuers, the trustee wired the proceeds back to BDL Group. Rather than noting the trusts' lack of independent funds, Feder and the nominees left the forms blank to be completed by the Registered Representatives.

32. To secure approvals for variable annuity sales from the broker-dealers, Feder instructed the nominees to sign only blank copies of the new account and point-of-sale forms, and he never provided the nominees with the completed forms. In addition to the false information that

Feder directly supplied, he also permitted the Registered Representatives to complete the blank, signed new account and point-of-sale forms and submit them to the broker-dealers. In doing so, Feder knew, or was reckless in not knowing, that the representatives would make false statements on the forms, and that the broker-dealers would rely on them.

33. The false financial profile information was material because it was relevant to the broker-dealers' suitability determinations and approval of the annuities sales.

False Investment Access Information Is Provided for BDL Group's Nominees

34. Feder understood the meaning of the term "time horizon" in connection with the annuities investments, and that information concerning when the customer anticipated accessing the investment was requested for suitability and approval purposes.

35. Feder was well aware that the purpose of Horowitz's scheme was to designate terminally ill patients as annuitants in the expectation that their deaths would result in lucrative payouts for BDL Group within a few months and certainly less than a year.

36. Feder instructed the nominees to sign in blank each of the new account and point-of-sale forms, and the Registered Representatives filled them in with false "time horizons" and investment access information before submitting the forms to the broker-dealers for principal review. The forms for Broker-Dealer 2 falsely stated that the nominees' "time horizons" were anywhere between "9" and "45" years, and for Broker-Dealer 3, that they intended to access their investments in "eleven to fifteen years."

37. Feder knew, or was reckless in not knowing, that the Registered Representatives would provide false "time horizons" on the Broker-Dealer 2 new account forms and false investment access information on the Broker-Dealer 3 point-of-sale forms.

38. The false "time horizons" and investment access periods were material because, had accurate information been provided, the broker-dealers would have rejected the annuity sales or, at the very least, subjected them to heightened scrutiny.

Ill-gotten Gains

39. BDL Group received at least \$1,550,565.55 in proceeds from its investment in the annuities.

VIOLATIONS

40. As a result of the conduct described above, Respondents Feder and BDL Manager willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

III.

In view of the foregoing, the Commission deems it appropriate, in the public interest, and for the protection of investors to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 21C of the Exchange Act, Section 203(f) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

Respondent Feder

A. Respondent Feder cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent Feder be, and hereby is:

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

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.

C. Any reapplication for association by Respondent Feder 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 Respondent Feder, 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.

Respondent Feder shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$130,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (2) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Howard Feder as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Julie M. Riewe, Co-Chief, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

Respondent BDL Manager

A. Respondent BDL Manager cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent BDL Manager shall, within ten (10) days of the entry of this Order, pay disgorgement of \$1,550,565.55 and prejudgment interest of \$196,608.97, and a civil penalty of \$1,550,565.55, for a total payment of \$3,297,740.07, to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying BDL Manager LLC as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Julie M. Riewe, Co-Chief, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549 .

By the Commission.

Jill M. Peterson
Assistant Secretary