



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

- AND -

**IN THE MATTER OF NEW LIFE CAPITAL CORP.,
NEW LIFE CAPITAL INVESTMENTS INC., NEW LIFE CAPITAL
ADVANTAGE INC., NEW LIFE CAPITAL STRATEGIES INC.,
1660690 ONTARIO LTD., L. JEFFREY POGACHAR,
PAOLA LOMBARDI AND ALAN S. PRICE**

**STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission (the "Commission") make the following allegations:

New Life

1. The corporate respondents, together, make up New Life. New Life consists of New Life Capital Corp. ("NLC"), New Life Capital Investments Inc. ("NLI"), New Life Capital Advantage Inc. ("NLA") (and its private Ontario corporation subsidiaries), New Life Capital Strategies Inc. ("NLS") and 1660690 Ontario Inc. ("1660690").
2. New Life has divided responsibility among its various corporate entities: NLC is a holding company which owns the other corporate entities; NLI sells shares and holds a pool of life settlements; NLA sells shares and has a number of subsidiaries which each hold one or more specific life settlements; NLS "sources" or finds life settlements for investment; and 1660690 serves an administrative purpose in connection with NLI's life settlements.

Principals

3. New Life has three principals: L. Jeffrey Pogachar ("Pogachar"), Paola Lombardi ("Lombardi") and Alan S. Price ("Price"). Pogachar and Lombardi are married to each other.

4. Pogachar is registered with the Commission as a trading officer for NLC. NLC has designated Pogachar its compliance officer. Pogachar is not registered with the Commission in any other capacity or with any other corporate entity.
5. Lombardi is registered with the Commission as a trading officer for NLC. Lombardi is not registered with the Commission in any other capacity or with any other corporate entity.
6. Price is not registered with the Commission in any capacity.

Corporate Entities

7. NLC was incorporated in Ontario on November 7, 2005. Its directors are Pogachar and Lombardi. NLC registered with the Commission as a limited market dealer ("LMD") on July 30, 2007. NLC has never sold a security and does not carry on any active operations, although from time to time it pays expenses related to its subsidiaries.
8. NLI was incorporated in Ontario on December 22, 2005. NLI is not registered with the Commission in any capacity. NLI's directors are Pogachar, Lombardi and Price. NLI is a subsidiary of NLC. NLI sells its class A common shares to investors by way of an Offering Memorandum. Its business activities consist of raising capital and investing in life settlements sold by U.S. residents.
9. NLA was incorporated in Ontario on December 19, 2005. It is a subsidiary of NLC. NLA is not registered with the Commission in any capacity. Its directors are Pogachar and Lombardi. Its business activities consist of raising capital through newly formed subsidiary private Ontario corporations and investing in life settlements sold by U.S. residents through those subsidiaries.
10. NLS was incorporated in Ontario on January 4, 2006. NLS is not registered with the Commission in any capacity. NLS's directors are Pogachar and Lombardi. NLS is a subsidiary of NLC. Its business activities consist of "sourcing" life insurance policies suitable for investment through use of U.S. brokerage systems or financial planners, and by soliciting sales directly from seniors.
11. 1660690 was incorporated in Ontario on July 29, 2005. It is a subsidiary of NLI. It is not registered with the Commission in any capacity. Its directors are Pogachar and Lombardi. 1660690 purchases the life insurance policies making up NLI's portfolio of life settlements and makes the premium payments on those policies. Generally, 1660690 owns the policies and NLI is named as beneficiary.

Course of Conduct Perpetrating a Fraud

12. New Life and its officers and directors have engaged or participated in acts, practices or courses of conduct relating to securities that they knew or reasonably ought to have

known perpetrated a fraud on investors, contrary to section 126.1 of the *Securities Act*, R.S.O. 1990, C. s.5, as amended (the “Act”) by:

- (a) declaring and paying amounts purporting to be dividends in the absence of any profit or retained earnings, thereby in fact returning capital to investors on an undisclosed basis;
- (b) failing to disclose to investors that payments purporting to be dividends are actually returns of capital, and that their invested funds may be used for the purpose of making purported dividend payments; and
- (c) failing to disclose to investors the use of investors' funds for personal rather than business purposes.

Dividends

- 13. During the period from January 1, 2007 to January 31, 2008 (the “Review Period”), New Life paid NLI shareholders an amount purported to be an 8% annual dividend, at a rate of 2% per quarter. In particular, NLI's directors (Pogachar, Lombardi and Price) declared dividends for class A common shares in the amount of at least \$280,330.60 and paid \$197,570.60 in respect of those dividends.
- 14. NLI did not earn any profit or have any retained earnings over the Review Period. The only funds received by NLI during that period were those paid by investors for the purchase of their shares. More generally, NLI has not to date earned any profit whatsoever. The earliest date on which one of NLI's life settlements is expected to mature, and that NLI might therefore realize any profit based on business operations as they currently stand, is sometime in 2012.
- 15. Without any profit or retained earnings, it was not possible for NLI to declare or pay a legitimate dividend. Payments to shareholders have been, instead, an undisclosed return of capital.
- 16. New Life has not disclosed to investors that the payments purporting to be dividends were in fact drawn from investors' own capital, or that their invested funds would be used for that purpose.

Use of Funds for Personal Purposes

- 17. Over the review period, nearly \$700,000 of New Life funds collected from investors was disbursed in the form of shareholder loans (to Pogachar and Lombardi).
- 18. In addition to the shareholder loans, Pogachar and Lombardi charged over CAD 900,000 to their VISA credit cards. During the Review Period, New Life made payments in the

total amount of CAD 714,146.50 against that credit card debt. Pogachar and Lombardi, however, admitted that only approximately CAD 300,000 of the total CAD 900,000 was spent for business purposes.

19. No documents or directors' authorizations exist in respect of the shareholder loans or credit card debt, nor is there any evidence of security for the payments.

Misleading or Untrue Statements

20. New Life and its officers and directors have made statements that they know or reasonably ought to know were in a material respect misleading or untrue and would reasonably be expected to have a significant effect on the value of a security, being shares in New Life and/or its subsidiaries.
21. The NLI Offering Memoranda include references to past dividends, despite the fact that any such payments were not legitimate dividends. In addition, New Life marketing materials promise that yearly dividends attach to NLI shares, despite NLI not having any profit nor anticipation of profit for some years to come.
22. Such representations constitute misleading and/or untrue statements and make NLI shares more valuable.

Trading Without Registration or Prospectus - Shares of Issuer

23. Although NLC is registered with the Commission as an LMD, there is no evidence that NLC has ever traded in securities.
24. NLI sells shares of its own issue. It markets those shares publicly and sells them to investors in Ontario and elsewhere in Canada. More than 220 investors bought units pursuant to NLI's Offering Memorandum between 2006 and early 2008, at least 17 of whom are residents of Ontario. NLI is not registered under the Act to trade in securities and has never filed a prospectus with the Commission.
25. NLA sells shares of its newly formed subsidiary private Ontario corporations. It markets those shares publicly and sells them to investors on incorporation of each new subsidiary. A new subsidiary is incorporated for each unique investment, to hold a specific life settlement (as opposed to the pooled life settlements held by NLI). NLA is not registered under the Act to trade in securities and has never filed a prospectus with the Commission.
26. NLI and NLA purport to rely on the accredited investor and minimum amount investment exemptions for the purpose of selling without registration or a prospectus. There are investors in NLI who do not qualify for the exemption requirements and there is insufficient evidence to confirm whether any or all of NLA's investors properly qualify.

Advising Without Registration - Investor Funds

27. NLS and Pogachar (as NLS's representative) provide portfolio management and investment advice services to NLI and NLA in respect of their portfolios of life settlements purchased with investor funds. NLS "sources" or finds insurance policies that will be suitable for investment by NLI and NLA, makes decisions about when to purchase the policies and advises on how to maintain them once purchased.
28. NLS and Pogachar are "market intermediaries" and the activities of NLS and Pogachar are "in the business of advising". As such, they require registration in the categories of investment counsellor and portfolio manager for the purpose of managing the portfolio of life settlement investments.

Conduct Contrary to the Public Interest

29. The activities of the respondents, as the respondents knew or reasonably ought to have known, perpetrated a fraud on investors, contrary to section 126.1 of the Act.
30. Statements made by the respondents were misleading or untrue and would reasonably be expected to have a significant effect on the value of a security, contrary to section 126.2 of the Act.
31. The activities of the respondents constituted trading in securities without registration in respect of which no exemption was available, contrary to section 25 of the Act.
32. The activities of the respondents constituted distributions of securities for which no preliminary prospectus and prospectus were issued or received by the Director, contrary to section 53 of the Act.
33. The respondents' conduct was contrary to the public interest and harmful to the integrity of the Ontario capital markets.

Dated at Toronto this 7th day of August, 2008.