

**IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, C. S.5, as amended**

- and -

**IN THE MATTER OF
ANDREW KEITH LECH**

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

Staff of the Ontario Securities Commission make the following allegations:

Background

1. Andrew Keith Lech (“Lech”) is an individual residing in Toronto, Ontario.
2. Lech was registered with the Ontario Securities Commission (the “Commission”) between April 10, 1987 and June 15, 1987 as a salesperson with B.M. Young & Partners Securities Inc. His registration was restricted to soliciting expressions of interest only from prospective clients to receive company advertising.
3. Lech has never been registered with the Commission in any other capacity at any other time.

Lech's Guilty Plea and Sentence

4. On October 18, 2007, Lech pled Guilty in the Ontario Superior Court of Justice to a single count of fraud over \$5000, which took place between January 1, 2001, and May 1, 2003.
5. For the fraud to which he pled guilty, Lech was sentenced to 6 years in the penitentiary. In rendering sentence, Madam Justice Templeton noted that the sentence was in the appropriate range because it was to be served in addition to the 40 months Lech had already served on a related civil contempt matter for an effective total period of detention of nine years.

Agreed Facts Supporting the Guilty Plea

6. As part of his plea of guilt, Lech admitted the truth an Agreed Statement of Facts (the "Agreed Facts") that was filed as an exhibit in that proceeding. The Agreed Facts described how Lech opened what is commonly referred to as a "Ponzi" scheme of enormous proportions. In short, Lech admitted to having accepted millions of dollars from investors on the basis of a promise that he would invest it on their behalf, guarantee the return of the capital and provide extremely high rates of return. At different times he offered investors rates of interest ranging from 15% annually to 40% on 10 week investment contracts. Lech admitted that he invested almost none of the money and the returns he delivered to earlier investors were redistributions of deposits from later investors.
7. In the Agreed Facts, Lech acknowledged the results of a forensic audit conducted as part of the criminal investigation. That audit revealed that over 95% of the monies he accepted from investors was never invested and showed that between January 2001 and September 2003 Lech took in investments of at least \$35,900,000 CDN and \$10,000,000 USD.
8. The Agreed Facts detail how Lech, with the assistance of several intermediaries, posed as a sophisticated and highly skilled futures and options trader who had enjoyed great success managing his own massive family fortune. Lech acknowledged that in recruiting investors,

he and his intermediaries traded on his association with the Baptist Church community in Oshawa, the church communities of his intermediaries, his false claims that he was a member of an extremely wealthy family who had founded a well-known securities brokerage, his relationships with members of the minor league hockey community in which his children played and the word of mouth generated by the high returns he delivered to investors.

9. As part of his plea of guilt, Lech also acknowledged the following in the Agreed Facts:
- (a) Lech was born and raised in Peterborough, Ontario;
 - (b) He has four children with his former wife;
 - (c) He was raised in a family of modest means;
 - (d) He attended night classes at York University in Toronto and then worked with a brokerage company through a co-op program;
 - (e) Lech was not known to have worked in 15-18 years prior to 2003, but his family believed he worked as an investor in the stock market;
 - (f) His family had been investing with him for 20 years prior to 2003;
 - (g) Lech met members of the Calvary Baptist Church in Oshawa, Ontario, while working at their summer sports camp and several years later began passing himself off to the members of the church as an “investment guru” who had an uncanny ability to generate large returns in the options and futures markets;
 - (h) Lech also passed himself off as a member of a long-established and very wealthy Canadian family and claimed to be managing investors’ funds as part of the process of managing his large family fortune;
 - (i) Lech claimed to have been taught to trade by his grandmother, whom he said had been the part owner of Richardson Greenshields, then a well-known national Securities brokerage;
 - (j) Lech took on numerous investors through “word of mouth” publicity in the Baptist church community;

- (k) Lech encouraged members of the Baptist church to believe that he was allowing fellow Baptists to invest with him as a service to his fellow Christians and offered preferential rates of return to members of the clergy in the Baptist church;
- (l) Lech associated himself with Gary McNaughton (“McNaughton”), Dennis Yacnowiec (“Yacnowiec”), Dan Shuttleworth (“Shuttleworth”) and Joseph Vandervelden (“Vandervelden”) (collectively, the “intermediaries”) to assist him in operating his investment scheme;
- (m) The intermediaries took over the bulk of the recruiting of investors for Lech, managed the relationships with most of the investors and expanded the operation of the scheme into other areas of the province and into the State of Ohio;
- (n) For their services in recruiting and managing investors, Lech paid the intermediaries higher rates of interest on their own investments and gave them additional monthly payments;
- (o) As part of their recruitment of new investors, the intermediaries repeated Lech’s claims of financial expertise, his assertions of massive family wealth, his associations with the Baptist church and his guarantees of unrealistic returns;
- (p) Each of the intermediaries collected money on Lech’s behalf and each month distributed money he provided to them as “interest” to the investors they managed;
- (q) Neither Lech nor the intermediaries provided any documentation to investors with any details of the nature of his investments on their behalf or the level of risk associated with those investments;
- (r) The intermediaries provided investors with simple promissory notes for the amounts they deposited;
- (s) Lech paid higher rates of return to investors who deposited more money with him, initially paying up to 20% annual returns for deposits of over \$100,000;
- (t) In the latter months of the investment scheme, Lech guaranteed investors a 40% return on ten week and three month investment contracts;
- (u) In response to inquiries about the income tax implications of the “investment”, Lech informed his clients that their returns were tax free because he had already paid the

- tax through his own investment company, since their funds were commingled with his family portfolio;
- (v) McNaughton moved with his family to Elyria, Ohio, in 1996, to join The Church of the Open Door, and as of 1999 began recruiting investors through his church and the religious school his children attended;
 - (w) Lech travelled to Elyria, Ohio, and made a presentation to potential investors at the Church of the Open Door;
 - (x) McNaughton was investigated by the United States Securities and Exchange Commission (the “SEC”) and the US Postal Inspection Service, and plead guilty to securities fraud, unlawful sale of unregistered securities, mail fraud and attempted income tax evasion, and in May 2007 was sentenced to 5¼ years in prison without parole for his involvement in Lech’s investment scheme;
 - (y) Yacowiec recruited and managed a group of investors in the Oshawa area, which grew to 28 people;
 - (z) Shuttleworth initially worked with McNaughton, but in 2002 began recruiting and managing his own group of investors, which grew to 75 people at the peak of the scheme;
 - (aa) In 1998, Shuttleworth had business cards printed stating “Secure Investments Guaranteed High Rates of Return”, which he distributed among friends and family;
 - (bb) Shuttleworth distributed money to his investors through electronic transfers he effected through the Canadian Imperial Bank of Commerce (“CIBC”);
 - (cc) In 2002, CIBC began investigating Shuttleworth’s accounts and met with Shuttleworth, McNaughton and Lech;
 - (dd) Following their investigation, CIBC formed the opinion that a Ponzi scheme was being operated and contacted the Commission;
 - (ee) In response to the actions of CIBC, Shuttleworth and Lech walked away from an account containing over \$200,000 and set up their banking at another institution;
 - (ff) Vandervelden was formerly a licensed mutual fund dealer and the branch manager of Cartier Partners, an investment firm in London, Ontario;

- (gg) Vandervelden began by investing his own money in Lech's scheme in 2001 and by 2003 was brokering deals between Lech and his own customers at Cartier Partners, using the offices and employees of his investment firm to effect the transactions and accepted investments from at least 54 people;
- (hh) Lech maintained his own stable of investors consisting of high net worth individuals and the parents he met through attending the minor league hockey games of his two sons;
- (ii) Lech's sons played for the Wexford Raiders hockey team, based in Scarborough, Ontario, and Lech's alleged investing prowess spread by word of mouth through the parents involved in that organization with the result that a number of people invested in the scheme;
- (jj) Lech also dealt with larger investors on a personal basis and met with them individually at hotels in the Toronto area to solicit their investments in his scheme;
- (kk) A forensic audit covering the period between January 2001 and September 2003 revealed that Lech received at least \$35,900,000 CDN and \$10,000,000 USD during that period from investors managed by Lech and his intermediaries;
- (ll) The forensic audit further revealed that over 95% of the funds received were never invested.

Reasons for Sentence

10. After accepting Lech's plea of guilty to the charge of fraud over \$5000 on October 18, 2007, Madam Justice Templeton sentenced him to six years incarceration. In passing sentence, Her Honour made the following remarks:

There is absolutely no doubt I have that the activities of Mr. Lech – your activities, sir – and the activities of the intermediaries have devastated people beyond imagining financially and emotionally. . . . [I]nvestor after investor . . . took savings, insurance money, life investments, and handed it over on the basis of trust that you would act as you had promised you would, as you would tell them you would. Not only have their

lives been devastated financially, as I have indicated, they have been devastated emotionally and there will be no recovery.

You have spent [40 months in custody] on a civil contempt matter. I am obliged to take that into account in my view, and ought to take that into account by virtue of the fact that it arises from these same transactions that are now before the Court and also resulted in a deprivation of your liberty. . . . Therefore I am willing to accept the six year joint submission recommendation of counsel because in effect, as a result of your activities and the consequences thereof, it deprives your liberty and places you behind bars for a period of nine years, which is in the range for this kind of massive, massive fraud.

11. Staff pleads and relies upon all the facts admitted in the Agreed Facts as part of the guilty plea and all of Madam Justice Templeton's reasons for sentence.

Violations of the *Securities Act*

12. Lech's conduct, as described above, constitutes trading in securities without registration, contrary to section 25 of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the "Act").
13. Lech's conduct, as described above, constitutes advising in securities without registration, contrary to section 25 of the Act.
14. Lech's conduct, as described above, constitutes making representations concerning the future value of securities with the intention of effecting trades in such securities, contrary to section 38(2) of the Act.
15. Lech's conduct, as described above, constitutes a distribution of securities conducted without a prospectus, contrary to section 53 of the Act.

16. Lech's conduct, described above, constitutes a fraud related to securities, contrary to s. 126.1 of the Act.

Conduct Contrary to the Public Interest

17. Lech's conduct, as described above, is contrary to the public interest.

18. Lech failed to provide adequate disclosure to his investors concerning his investment activities, including failing to specify how and where their funds are invested, and any risks associated with their investments.

19. Lech failed to deal fairly, honestly and in good faith with his investors.

20. Such additional allegations as Staff may advise and the Commission may permit.

21. Pursuant to s. 127(10)1 and 127(10)2 of the Act, the October 18, 2007, conviction of Lech for a criminal offence related to securities may form the basis of an order in the public interest in Ontario under s. 127(1).

DATED at Toronto, this 20th day of March, 2009.