



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

**L. JEFFREY POGACHAR, PAOLA LOMBARDI,
ALAN S. PRICE, NEW LIFE CAPITAL CORP., NEW LIFE CAPITAL INVESTMENTS
INC., NEW LIFE CAPITAL ADVANTAGE INC., NEW LIFE CAPITAL STRATEGIES
INC., 2126375 ONTARIO INC., 2108375 ONTARIO INC., 2126533 ONTARIO INC.,
2152042 ONTARIO INC., 2100228 ONTARIO INC., 2173817 ONTARIO INC., AND
1660690 ONTARIO LTD.,**

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

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

I. OVERVIEW

1. The Respondents, L. Jeffrey Pogachar (“Pogachar”) and Paola Lombardi (“Lombardi”), perpetrated a fraud upon investors. Between 2005 and 2008, they incorporated New Life Capital Corp. (“NLCC”), New Life Capital Investments Inc. (“NLCI”), New Life Capital Advantage Inc. (“NLCA”), New Life Capital Strategies Inc. (“NLCS”), 2126375 Ontario Inc., 2108375 Ontario Inc., 2126533 Ontario Inc., 2152042 Ontario Inc., 2100228 Ontario Inc., and 2173817 Ontario Inc. (“the Numbered Companies”). In July, 2005, Pogachar incorporated 1660690 Ontario Ltd. (“1660690”). These companies (collectively the “corporate Respondents”) were created to carry on business in the life settlements industry. The life settlements industry involves the purchase of life insurance policies from policy holders. Upon the purchase of the policy, the purchaser becomes entitled to the benefits paid under the policy as well as being responsible for the payment of the premiums. The purchaser’s profit equals the amount of the benefit paid under

the policy upon the death of the insured less the amount paid for the life settlement including the amount paid in premiums.

2. From 2006 to 2008, Pogachar and Lombardi caused certain of the corporate Respondents to issue and sell their securities to the public. Approximately \$22 million was raised from the sale of these securities. These funds were to be used in carrying on business including purchasing life settlements and paying premiums on policies.

3. Each of the Respondents engaged in trades or engaged in acts in furtherance of the trades of these securities.

4. In order to entice investors to purchase these securities, Pogachar and Lombardi caused one of the corporate Respondents to pay dividends to investors. These dividends were paid using funds from the sale of securities and not from profits earned from carrying on business.

5. The funds raised from investors were not used exclusively for the purpose of carrying on business. Instead, Pogachar and Lombardi used certain of these funds for their own personal purposes.

6. As directors and officers of the corporate Respondents, Pogachar and Lombardi authorized, permitted or acquiesced in the breaches of Ontario securities law by the corporate Respondents.

7. As a director of NLCI, Alan S. Price ("Price") authorized, permitted or acquiesced in the breach of Ontario securities law by NLCI.

II. THE RESPONDENTS

(a) The individual Respondents

8. Pogachar and Lombardi were and are married to each other. They were directors and officers of the corporate Respondents at all material times. Pogachar and Lombardi were registered with the Commission as the trading officers of NLCC since July 30, 2007. Neither of them has been registered with the Commission with any other entity in any other capacity.

9. Price is a lawyer. He was a director of NLCI from December 22, 2005 until he resigned on November 27, 2008.

(b) The corporate Respondents

10. NLCC is a holding company which owns, directly or indirectly, the other corporate Respondents. NLCC does not carry on any active operations, although from time to time it paid expenses related to its subsidiaries. It was incorporated in Ontario on November 7, 2005. NLCC registered with the Commission as a limited market dealer on July 30, 2007. Investor money flowed to it from NLCI.

11. NLCI issued and sold its securities to the public and purchased life insurance policies from US residents. It was incorporated in Ontario on December 22, 2005. It is a subsidiary of NLCC. NLCI has never been registered with the Commission in any capacity.

12. NLCA and the Numbered Companies issued and sold their securities to the public and purchased life insurance policies from US residents. NLCA was incorporated in Ontario on December 19, 2005. It is a subsidiary of NLCC. The Numbered Companies were incorporated on various dates between 2006 and 2008. NLCA and the Numbered Companies have never been registered with the Commission in any capacity.

13. NLCS sourced life insurance policies through use of US brokerage systems or financial planners. It was incorporated in Ontario on January 4, 2006. It is a subsidiary of NLCC. NLCS has never been registered with the Commission in any capacity. NLCS did not issue and sell its own securities. Investor money, however, flowed to it from NLCI.

14. 1660690 served an administrative purpose in connection with NLCI's insurance policies. Either 1660690 or NLCI purchased the life insurance policies making up NLCI's portfolio of life settlements and made the premium payments on those policies. Generally, 1660690 owns the policies and NLCI is named as beneficiary. 1660690 was incorporated in Ontario on July 29, 2005. It is a subsidiary of NLCI. It has never been registered with the Commission in any capacity. Investor money flowed to it from NLCI.

III. OTHER RELEVANT ENTITY

Lexington Consulting Inc.

15. In August 2005, Pogachar and Lombardi incorporated Lexington Consulting Inc. (“Lexington”) in Nassau in the Commonwealth of the Bahamas. Pogachar and Lombardi are Lexington’s sole shareholders and are the only authorized signatories to Lexington’s bank account at FirstCaribbean International Bank (Bahamas) Ltd. (“FirstCaribbean”) in the Bahamas. The stated purpose for Lexington was to facilitate personal wealth building for Pogachar and Lombardi.

IV. THE ALLEGATIONS

16. Staff specifically allege that:

- (a) The Respondents, Pogachar and Lombardi, perpetrated a fraud on investors by using funds raised from the sale of securities for their own personal purposes contrary to section 126.1(1)(b) of the *Securities Act*, R.S.O. 1990, c. S.5 as amended (the “Act”);
- (b) Each of the Respondents traded securities without being registered to trade securities in accordance with Ontario securities law contrary to section 25(1)(a) of the Act;
- (c) The Respondents, Pogachar and Lombardi, being officers and directors of the corporate Respondents, authorized, permitted or acquiesced in the breaches of Ontario securities law by the corporate Respondents contrary to section 129. 2 of the Act; and,
- (d) The Respondent Price, being a director of NLCI, authorized, permitted or acquiesced in the breach of Ontario securities law by NLCI contrary to section 129.2 of the Act.

V. PARTICULARS

Pogachar and Lombardi perpetrated fraud on investors

17. Pogachar and Lombardi had sole signing authority over the bank accounts of the corporate Respondents. Pogachar and Lombardi used the money in these bank accounts which had been raised from investors from the sale of securities for their own personal purposes.

(a) Pogachar and Lombardi transfer funds to Lexington

18. Between October 2007 and July 2008, Pogachar and Lombardi caused over US\$6.5 million to be transferred from bank accounts of the corporate Respondents in Toronto to Lexington's bank account at FirstCaribbean in the Bahamas.

19. Pogachar and Lombardi used these funds for personal purposes, including transferring the funds to a second holding company and purchasing luxury cars, real estate in the Caribbean and Ontario and various personal effects.

(b) Shareholder Loans to Pogachar and Lombardi

20. The amounts of approximately CAD 1.1 million and USD 43,500 were paid to Pogachar and Lombardi, together, in the form of shareholder loans.

21. These shareholder loans were never repaid.

(c) Payment of Pogachar and Lombardi Credit Card Debt

22. NLCC and NLCI, together, paid \$1.1 million of credit card debt on personal Royal Bank of Canada VISA credit cards held by Pogachar and Lombardi.

Trading without registration

23. In February 2006, NLCI began issuing class A common shares to investors by way of an Offering Memorandum. NLCI continued selling shares until August 6, 2008.

24. NLCI marketed its shares publicly and sold them to investors in Ontario and elsewhere in Canada. Through the sale and distribution of its shares, NLCI raised more than \$21 million from approximately 600 investors in Canada.

25. NLCA and the Numbered Companies sold shares of the Numbered Companies from at least as early as April, 2006, until August 6, 2008. They marketed those shares publicly and sold them to investors on incorporation of each new subsidiary. A new subsidiary was incorporated for each unique insurance policy to hold a specific policy (as opposed to the pooled life settlements held by NLCI). NLCA and the Numbered Companies raised over \$600,000 from approximately ten investors in Canada.

26. NLCI, NLCA and the Numbered Companies were market intermediaries as defined in section 204(1) of the Regulation to the Act, as it was in force from 2006 to 2008. Exemptions from registration requirements were not available to market intermediaries. As such, NLCI, NLCA and the Numbered Companies were required to be registered to trade in securities.

27. Pogachar and Lombardi engaged in acts in furtherance of trades of securities of NLCI, NLCA and the Numbered Companies and Price engaged in acts in furtherance of trades of NLCI, and, as a result, were required to be registered in accordance with Ontario securities law to trade in those securities.

28. Through their actions, all of the corporate Respondents engaged in trades or in acts in furtherance of trades in the securities of NLCI and the Numbered Companies.

Declaration of Dividends without Earnings

29. Despite having no profit or retained earnings, NLCI's directors (Pogachar, Lombardi and Price) declared dividends for NLCI's class A common shares in the amount of at least \$1,106,660.61 and paid out at least \$670,000 in respect of those dividends.

30. Without any profit or retained earnings, NLCI did not have any funds other than its stated capital and any amounts declared as dividends were in fact paid out of that stated capital.

Pogachar, Lombardi and Price liable as directors and officers

31. At all material times, Pogachar and Lombardi were directors and officers of the corporate Respondents. They authorized, permitted or acquiesced in the breaches of Ontario securities law by the corporate Respondents. At all material times, Price was a director of NLCI. He authorized, permitted or acquiesced in the breach of Ontario securities law by NLCI.

Conduct Contrary to Ontario Securities Law and the Public Interest

32. By their actions, the Respondents breached Ontario securities law and acted contrary to the public interest.

Dated at Toronto this 23rd day of June, 2010.