Ontario Securities Commission
Commission des valeurs mobilières de l'Ontario
P.O. Box 55, 19th Floor 20 Queen Street West Toronto ON M5H 3S8
CP 55, 19e étage 20, rue queen ouest Toronto ON M5H 3S8

**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., 1660690 ONTARIO LTD., 2126375 ONTARIO INC., 2108375 ONTARIO INC., 2126533 ONTARIO INC., 2152042 ONTARIO INC., 2100228 ONTARIO INC., AND 2173817 ONTARIO INC.

**REASONS FOR DECISION ON SANCTIONS AND COSTS
(Sections 127 and 127.1 of the Act)**

Sanctions and Costs Hearing:	May 11, 2012	
Order Issued:	May 17, 2012	
Decision:	July 6, 2012	
Panel:	Edward P. Kerwin	- Commissioner and Chair of the Panel
	Paulette L. Kennedy	- Commissioner
Appearances:	Matthew Britton	- For Staff of the Commission
	No one appeared for the Respondents:	- Jeffrey Pogachar - Paola Lombardi

TABLE OF CONTENTS

REASONS FOR DECISION

I. INTRODUCTION

[1] This was a hearing before the Ontario Securities Commission (the "**Commission**") pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c., S.5, as amended (the "**Act**") to consider whether it was in the public interest to make an order with respect to sanctions and costs against the respondents, L. Jeffrey Pogachar ("**Pogachar**") and Paola Lombardi ("**Lombardi**") (collectively, the "**Individual Respondents**").

[2] The hearing on the merits was heard over 6 days from December 5, 2011 to January 20, 2012, and the decision on the merits was rendered after closing submissions on January 20, 2012 with reasons for decision issued on March 28, 2012 at *Re L. Jeffrey Pogachar et al.* (2012), 35 OSCB 3389 (the "**Merits Decision**").

[3] After the release of the Merits Decision, a separate hearing was held on May 11, 2012 to consider submissions from Enforcement Staff of the Commission ("**Staff**") and the Individual Respondents regarding sanctions and costs (the "**Sanctions and Costs Hearing**"). The Individual Respondents, who chose not to attend the Merits Hearing, also chose not to attend the Sanctions and Costs Hearing. The panel is satisfied that the Individual Respondents received notice of the Sanctions and Costs Hearing and accordingly the panel is satisfied that it was entitled to proceed in their absence pursuant to section 7(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22. This panel rendered its decision with respect to sanctions and costs at the close of submissions at the Sanctions and Costs Hearing on May 11, 2012 and issued an order in respect thereof on May 17, 2012 at (2012), 35 OSCB 4849 (the "**Sanctions Order**") with reasons to follow.

[4] These are our reasons. A copy of our Sanctions Order is attached as Schedule "A" to these reasons. Capitalized terms that are not defined in these reasons are used as defined in the Merits Decision and Sanctions Order.

II. THE MERITS DECISION

[5] In the Merits Decision, the panel held that the Individual Respondents acted contrary to the public interest and contravened Ontario securities law through the following breaches of the Act:

a) The Individual Respondents traded in securities of NLCI, NLCA and the Numbered Companies without being registered to trade in securities in accordance with Ontario securities law, contrary to section 25(1)(a) of the Act;

b) The Individual Respondents engaged in acts relating to securities that they knew or reasonably ought to have known perpetrated a fraud on investors contrary to section 126.1(b) of the Act; and

c) The Individual Respondents, in their capacity as directors and officers of New Life, authorized, permitted and acquiesced in New Life's non-compliance with Ontario securities law contrary to section 129.2 of the Act.

[6] The panel found that neither Pogachar nor Lombardi was registered as a trading officer of NLCI, NLCA, or the Numbered Companies at any time according to the section 139 certificates, and that the Individual Respondents engaged in activities with respect to NLCI, NLCA, and the Numbered Companies, which constitute acts in furtherance of a trade. The panel determined that the Individual Respondents had sole control over the New Life TD Accounts and that they accepted investors' funds in the total amount of approximately CAD $22,508,607: Merits Decision, *supra* at paras. 83-85.

[7] The panel's conclusions with respect to the Individual Respondents' fraudulent activities were as follows:

> The Respondents knew their actions to be false when they transferred New Life funds to the Lexington and Amarcord accounts in the Bahamas and used such funds for personal purchases. The Respondents knew that their actions were depriving investors of something they thought they had – security in New Life's ownership of life insurance policies. Although it appears that New Life did purchase some life insurance policies, it is clear that the proportion of investors' funds used to purchase policies fell significantly short of the 80% to 85% as represented in the NLCI offering memorandum. Instead, the Respondents, as the sole signatories on the New Life, Lexington and Amarcord bank accounts, knowingly transferred investor funds into their hands for personal gain. The Respondents knew that they were placing investor funds at risk.
>
> We find that the Respondents deliberately lied to investors by means of written misrepresentations with respect to the use of proceeds in the NLCI Offering Memorandum. They further misrepresented the profitability of New Life by purporting to pay dividends when in fact these amounts were paid from investors' funds. The Respondents' lies were told to induce potential investors to purchase securities of New Life. We find that the Respondents knew at the time they made these misrepresentations that investors' funds were not being used for the purposes as set out in the Offering Memorandum and that the information disseminated about the declaration and payment of dividends including the DRIP was entirely a falsehood as no profits had been earned that would have permitted such dividends. (Merits Decision, *supra* at paras. 99 and 100)

[8] The panel concluded that the Individual Respondents were involved in all aspects of the New Life companies:

> It is difficult to conclude anything other than that the Respondents authorized, permitted, and acquiesced in all aspects of the New Life business. (Merits, *supra* at para. 104)

[9] The New Life investors have not been repaid. The Receiver is using its best efforts to recover and put such funds back into investors' hands. The Individual Respondents' egregious behaviour warrants sanctions for the purpose of both specific and general deterrence in order to protect investors from unfair, improper and fraudulent practices and to foster confidence in capital markets.

III. SANCTIONS

A. Sanctions Requested by Staff

[10] Staff seek the following sanctions against the Individual Respondents:

a) An order that trading in any securities by the Individual Respondents cease permanently or for such period as is specified by the Commission;

b) An order that the acquisition of any securities by the Individual Respondents shall be prohibited permanently or for such period as is specified by the Commission;

c) An order that any exemptions contained in Ontario securities law do not apply to the Individual Respondents permanently or for such period as is specified by the Commission;

d) An order that the Individual Respondents disgorge to the Commission $21,908,607.00 being the difference between the amount that was obtained from investors as a result of non-compliance with the Act less the amount paid to investors in dividends;

e) An order that the Individual Respondents be reprimanded;

f) An order that the Individual Respondents resign as directors and/or officers of any issuer or registrant;

g) An order that the Individual Respondents be prohibited from becoming or acting as a director or officer of any issuer or registrant;

h) An order that the Individual Respondents each pay an administrative penalty in the range of $500,000 to $1,000,000 for failing to comply with Ontario securities law; and

i) An order that the Individual Respondents pay jointly and severally the costs of the Commission investigation and hearing in the amount of $257,756.32.

B. The Law on Sanctions

[11] The Supreme Court of Canada has held that the legislature intended for the Commission to have very wide discretion when intervening in activities related to the Ontario capital markets pursuant to section 127(1) of the Act when it is in the public interest to do so (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 at para. 39 ("***Asbestos***")). The Commission's public interest jurisdiction is guided by section 1.1 of the Act, which provides as follows:

> 1.1 The purposes of this Act are,
>
> (a) to provide protection to investors from unfair, improper or fraudulent practices; and
>
> (b) to foster fair and efficient capital markets and confidence in capital markets.

[12] It is imperative that this Commission not only focus on the fair treatment of investors but also the effect that an order made in the public interest will have on capital market efficiencies and public confidence.

[13] It is also important to note that the Commission is a regulatory body with a focus on the protection of societal interests and not punishment of an individual's moral faults. The purpose of an order under section 127 of the Act is "to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets" and the role of the Commission under section 127 of the Act is "to protect the public by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets": *Asbestos*, *supra* at para. 43.

[14] When determining what sanctions are appropriate to impose in this case, we considered some of the relevant factors identified by this Commission in the past, which include:

a) The seriousness of the misconduct and the breaches of the Act;

b) The Individual Respondents' experience in the marketplace;

c) The level of the Individual Respondents' activity in the marketplace;

d) Whether or not there has been any recognition by the Individual Respondents of the seriousness of the improprieties;

e) Whether or not the sanctions imposed may serve to deter not only those involved in the matter being considered, but any like-minded people, from engaging in similar abuse of the capital markets;

f) The size of any profit obtained or loss avoided from the illegal conduct;

g) The size of any financial sanction or voluntary payment;

h) The effect any sanctions may have on the livelihood of the Individual Respondents;

i) The effect any sanctions may have on the ability of the Individual Respondents to participate without check in the capital markets;

j) The reputation and prestige of the Individual Respondents;

k) The remorse of the Individual Respondents;

l) The shame or financial pain that any sanction would reasonably cause to the Individual Respondents;

m) The particular facts of this case and proportionality; and

n) Any mitigating factors.

(*Re M.C.J.C. Holdings Inc.* (2002), 25 OSCB 1133 at para. 26 and *Re Belteco Holdings Inc.* (1998), 21 OSCB 7743 at p. 7746-7747)

[15] Further, we are mindful that this Commission has stipulated that there must be a relationship between the seriousness of the violation and the sanctions selected to achieve compliance with the law:

> Sanctions should invariably be fair, proportioned to the degree of participation and should have regard to any mitigating factors which may be present. In this sense, sanctions are custom-made to fit the circumstances of the particular case or to sanction a precise problem or breach. (*Re M.C.J.C. Holdings Inc.*, *supra* at para 56)

[16] We note that a number of the factors enumerated above relate to information that can only be obtained from the Individual Respondents themselves. Since the Individual Respondents chose not to participate in this hearing, we were unable to assess their remorse, shame or to determine the effect that any sanction may have on their livelihood. We have looked to the evidence submitted at the Merits Hearing for any mitigating factors.

C. Analysis of the Sanction Factors Applicable in this Case

(a) Seriousness of Misconduct and Harm Done

[17] The Individual Respondents were found to have breached sections 25(1)(a), 126.1(b) and 129.2 of the Act. They perpetrated a fraud on the New Life investors with misleading information and apparent greedy motivation. This panel believes that an act of fraud is one of the most serious securities regulatory violations. The evidence at the Merits Hearing showed that the Individual Respondents were able to solicit investor funds by intentionally misrepresenting the success of New Life and then used those funds for their own benefit at the risk and ultimately the expense of these investors. This misconduct by the Individual Respondents is extremely serious and, as a result, significant financial harm came to the investors in the amount of approximately $22 million.

(b) Level of the Individual Respondents' Activity in the Marketplace

[18] The Individual Respondents sold securities in New Life to approximately 600 investors in Canada for a total amount of approximately $22,508,607 raised between 2006 and 2008. In doing so, the Individual Respondents have demonstrated their ability to act quickly and efficiently in soliciting market participants. In our opinion, this is very aggressive activity in the marketplace, particularly with the hindsight evidence that these funds were primarily being used for personal benefits and luxuries. The Individual Respondents fraudulently enticed investors by causing NLCI to declare and pay dividends at a time when NLCI was not profitable, paying the dividends from investor funds. The Individual Respondents further defrauded the investors by using investor funds for personal purposes, contrary to the representations made to the New Life investors

(c) Specific and General Deterrence

[19] The Individual Respondents had an opportunity to participate in the marketplace in a legal and profitable manner based on sound business principles. Instead, they chose to take advantage of market participants by inducing them to invest with New Life based on false representations about the use of proceeds of the invested funds and the profitability of the company in order that they could divert the funds to their personal use and benefit and live a luxurious lifestyle at the expense of those investors. In our opinion, the Individual Respondents have demonstrated a blatant disregard for Ontario's securities laws and the reasons that such laws are in place. As a result, we believe that they have lost their privilege to participate in the Ontario capital markets. They have shown themselves to be a potential risk for causing further harm to investors in the future and as such there is clearly a need for specific deterrence in this matter in order to protect the public interest.

[20] Unfortunately, the Individual Respondents' egregious behaviour is not the first of its kind. The Supreme Court of Canada has recognized that this Commission should exercise its sanctioning powers for the purpose of general deterrence in order to protect the public interest:

> In my view, nothing inherent in the Commission's public interest jurisdiction, as it was considered by this Court in *Asbestos, supra*, prevents the Commission from considering general deterrence in making an order. To the contrary, it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative. Ryan J.A. recognized this in her dissent: "The notion of general deterrence is neither punitive nor remedial. A penalty that is meant to generally deter is a penalty designed to discourage or hinder like behaviour in others" (para. 125)…
>
> …
>
> It may well be that the regulation of market behaviour only works effectively when securities commissions impose *ex post* sanctions that deter forward-looking market participants from engaging in similar wrongdoing. That is a matter that falls squarely within the expertise of securities commissions, which have a special responsibility in protecting the public from being defrauded and preserving confidence in our capital markets. (*Re Cartaway Resources Corp.*, 2004 SCC 26 at paras. 60 and 62)

[21] In light of the specific facts of this case, and the view of the Supreme Court of Canada with respect to general deterrence, this panel believes that both specific and general deterrence are warranted.

(d) Profit from Illegal Conduct

[22] In the Merits Decision, we found that approximately USD $7,092,597 of the investors' funds were transferred from the TD Accounts to the Lexington Account. Of that amount, approximately USD $6,872,752 was transferred to the Amarcord Account, which amount was almost entirely spent on personal luxury goods and expenses for the benefit of the Individual Respondents, including jewellery, Bahamian government bonds, Ferraris, property in Fort Erie,

Ontario, property in the Bahamas, personal cash advances, and personal credit card payments. In addition to the use of funds from the Amarcord Account, the Individual Respondents took personal cash advances from the New Life TD Accounts in the amount of approximately CAD $1,094,463 and USD $43,500. While these advances were characterized as shareholder loans, this panel found there was no evidence of such loans. As well, the Individual Respondents applied an additional CAD $1,238,736.33 of the New Life investor funds to pay their personal credit cards, which were used for both business and personal expenses (Merits, *supra* at paras. 68-72).

[23] The evidence of personal profit at the expense of New Life investors was described in detail in the Merits Decision and was overwhelmingly palpable.

(e) Proportionality and Mitigation

[24] The panel reviewed the evidence submitted at the Merits Hearing and failed to find significant mitigating factors in this case. We note that a limited amount of the funds raised were returned to investors in the guise of dividend payments:

> The corporate records of NLCI contain resolutions declaring dividends on a quarterly basis from July 2006 until July 2008 for a total sum of approximately CAD $1,106,660.61 notwithstanding that, as noted above, none of the policies had matured and as such New Life had not made any profit during that time. Of that amount, Collins testified that she was able to determine that approximately CAD $600,000 in dividend payments was paid to investors in cash and concluded that the balance of the dividend payments were likely intended to have been directed to the proposed issuance of shares through the DRIP. (Merits, *supra*, at para. 62)

[25] We are satisfied that this small portion of the investor funds in the amount of approximately CAD $600,000 was returned to investors and we have taken this into consideration in determining the sum ordered to be disgorged by the Individual Respondents to the Commission.

[26] We are also mindful of the significant amount of funds that were raised by the Individual Respondents from a large number of investors in a relatively short period of time. We took these proportions into consideration in determining appropriate sanctions.

D. Sanctions Imposed

(a) Prohibitions on Participation in Capital Markets

[27] Staff took the position that it is appropriate to order that the Individual Respondents cease trading and acquiring securities permanently and that they are permanently prohibited from claiming exemptions in Ontario securities law. Staff further submitted that the Individual Respondents be reprimanded, resign any positions they hold as director or officer of any issuer or registrant, and be prohibited from become or acting as a director or officer of any issuer or registrant.

[28] In light of all of the considerations enumerated above, we found it appropriate to order that the Individual Respondents cease trading and acquiring securities permanently and that any

exemptions in Ontario securities law are permanently unavailable. We believe that a permanent ban on the Individual Respondents is necessary given that they were the directing minds of New Life and therefore the masterminds behind New Life's activities.

[29] We further agreed that the Individual Respondents be reprimanded, that they resign any positions that they hold as director or officer of any issuer or registrant, and that they be prohibited from becoming or acting as a director or officer of any issuer or registrant in the future.

[30] This panel believes that these sanctions of reprimand, trading bans, and prohibitions on acting as a director or officer of any issuer or registrant provide both general and specific deterrence to ensure similar conduct does not take place in the future.

(b) Disgorgement

[31] Staff submitted that the Individual Respondents should be ordered to jointly disgorge to the Commission $21,908,607.00 being the difference between the amount that was obtained from investors in non-compliance with Ontario securities law of $22,508,607 less the amount paid to investors in dividends of $600,000.

[32] We note that the Corporate Respondents are subject to a disgorgement order in this proceeding as a result of a settlement agreement entered into by and through the Receiver of New Life with Staff, which was approved by the Commission on January 25, 2011 at (2011), 34 OSCB 1048 (the "**Corporate Respondents' Disgorgement Order**"). The Corporate Respondents' Disgorgement Order provides, in part, as follows:

> 4. the Corporate Respondents shall disgorge to the Commission the amount of $22,508,784.50 (the "Disgorged Amount") being the amount of monies raised from investors by the sale of shares of New Life entities contrary to Ontario securities law to be allocated, subject to the approval of the Commission, under s. 3.4(2)(b) of the Act…

[33] No motion for variation was brought in respect of the New Life Disgorgement Order and this Commission is loath to make two isolated orders for disgorgement in respect of the same funds. In this case, however, the evidence in the Merits Hearing demonstrates a clear connection between the Individual Respondents and the funds that are the subject of the New Life Disgorgement Order, and we believe it would be an unfair result not to obligate the Individual Respondents to disgorge any financial benefits they have received from their breaches of the Act.

[34] In making the order for disgorgement, we were mindful of paragraph 10 of section 127(1) of the Act, which provides that the Commission may make an order requiring the Individual Respondents to disgorge to the Commission *any amounts obtained* as a result of their non-compliance with the Act. This Commission has described the purpose of the disgorgement remedy as follows:

> …[T]he objective of the disgorgement remedy is to deprive a wrongdoer of ill-gotten gains, reflecting the view that it would be inappropriate for those who

> contravene Ontario securities law to be able to retain any illegally obtained profits...
>
> …
>
> …[T]he legal question is not whether a respondent "profited" from the illegal activity but whether the respondent "obtained amounts" as a result of that activity. In our view, this distinction is made in the Act to make clear that all money illegally obtained from investors can be ordered to be disgorged, not just the "profit" made as a result of the activity. (*Re Limelight Entertainment Inc. et al*, (2008), 31 OSCB 12030 at paras. 47 and 49 ("***Limelight***"))

[35] We took this description of the purpose of the disgorgement remedy into consideration when we turned our minds to the precise wording of the Sanctions Order.

[36] We also took into consideration the factors set out in *Limelight* in reaching our decision and found that the sum of $22,508,607 was taken from investors by the Individual Respondents jointly with the Corporate Respondents as a result of non-compliance with the Act. This amount was ascertainable based on the banking records described in detail in the Merits Decision. The Individual Respondents' misconduct was egregious and has resulted in the loss of investment funds for approximately 600 investors in Canada. In reaching our decision, we have acknowledged the mitigating factor that $600,000 was returned to investors in the guise of dividend payments. Overall, we believe that a joint and several disgorgement order for the balance of the funds is an effective specific and general deterrent. Accordingly, this panel ordered that the Individual Respondents disgorge $21,908,607 to the Commission jointly and severally with, and not in addition to, the disgorgement funds that are the subject of the Corporate Respondents' Disgorgement Order.

(c) Administrative Penalties

[37] We believe that it is in the public interest to impose a $750,000 administrative penalty on each of the Individual Respondents to be allocated to or for the benefit of third parties pursuant to section 3.4(2)(b) of the Act for the following reasons:

a) The Individual Respondents were the directors, officers, and controlling minds of New Life and as such they authorized, permitted and acquiesced in the contravention of Ontario securities law by New Life;

b) The Individual Respondents were the sole signatories on the TD Accounts, Lexington Account, and Amarcord Account, and as such had full control over the deposit and application of New Life investor funds. They used a significant portion of those funds for their benefit, including personal luxury expenses, which they knew did not have legitimate business purposes;

c) The Individual Respondents' acts deprived investors of funds and induced investors by deceit;

d) The Individual Respondents' conduct breached sections 25(1)(a), 126.1(b), and 129.2 and was conduct contrary to the public interest.

[38] Given the Respondents' fraudulent conduct involving approximately 600 investors and their exclusive control and application of the New Life investor funds, we found that an administrative penalty in the amount that we have determined for each of the Individual Respondents is required to protect the public.

IV. COSTS

[39] Pursuant to section 127.1(1) and (2) of the Act, the Commission has the discretion to order the Individual Respondents to pay the costs of an investigation and hearing if it is satisfied that the Individual Respondents have not complied with the Act or acted in the public interest. We are satisfied that these requirements are met. We reviewed Staff's bill of costs and were satisfied that the request for an order that the Individual Respondents pay the costs of the investigation and hearing in this matter is warranted. Accordingly, we found it appropriate to order the Individual Respondents to pay the Commission's costs in respect of the investigation and the hearing in this matter in the amount of $257,756.32.

V. CONCLUSION

[40] We believe that this panel's decision on sanctions and costs is proportionate to the activities of the Individual Respondents in this matter in breach of the Act and contrary to the public interest and will assist in deterring both the Individual Respondents and like-minded people from engaging in future conduct that violates securities laws. Accordingly, we ordered as against the Individual Respondents, pursuant to the Sanctions Order, as follows:

a) Trading in any securities by the Individual Respondents shall cease permanently pursuant to clause 2 of section 127(1) of the Act;

b) The acquisition of any securities by the Individual Respondents is prohibited permanently pursuant to clause 2.1 of section 127(1) of the Act;

c) Any exemptions contained in Ontario securities law shall not apply to the Individual Respondents permanently pursuant to clause 3 of section 127(1) of the Act;

d) The Individual Respondents are reprimanded pursuant to clause 6 of section 127(1) of the Act;

e) The Individual Respondents shall resign any position that he or she holds as a director or officer of any issuer or registrant pursuant to clauses 7 and 8.1 of section 127(1) of the Act;

f) The Individual Respondents are prohibited permanently from becoming or acting as a director or officer of any issuer or registrant pursuant to clauses 8 and 8.2 of section 127(1) of the Act;

g) Having determined that the Individual Respondents have failed to comply with the securities laws of Ontario, each of the Individual Respondents shall pay an administrative penalty of $750,000 each pursuant to clause 9 of section 127(1) of the Act;

h) Having determined that the Individual Respondents have failed to comply with the securities laws of Ontario, the Individual Respondents shall disgorge to the Commission the sum of $21,908,607 on a joint and several basis pursuant to clause 10 of section 127(1) of the Act, which sum shall be paid jointly and severally with, and not in addition to, the disgorgement funds that are the subject of the Corporate Respondents' Disgorgement Order;

i) All amounts received by the Commission in respect of the administrative penalty ordered in paragraph (g) above and the disgorgement amounts ordered in paragraph (h) above are to be applied to or for the benefit of third parties pursuant to section 3.4(2)(b) of the Act as the Commission in its absolute discretion shall decide; and

j) Having determined that the Individual Respondents have failed to comply with the securities laws of Ontario, the Individual Respondents shall pay the costs of the Commission's investigation and hearing in the amount of $257,756.32 on a joint and several basis pursuant to section 127.1 of the Act.

Dated at Toronto this 6th day of July, 2012.

"Edward P. Kerwin"
Edward P. Kerwin

"Paulette L. Kennedy"
Paulette L. Kennedy

SCHEDULE "A"

Ontario Securities Commission | Commission des valeurs mobilières de l'Ontario | P.O. Box 55, 19th Floor, 20 Queen Street West, Toronto ON M5H 3S8 | CP 55, 19e étage, 20, rue queen ouest, Toronto ON M5H 3S8

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.

ORDER
(Sections 127(1) and 127.1 of the *Securities Act*)

WHEREAS on August 7, 2008, the Ontario Securities Commission (the "**Commission**") issued and filed a Notice of Hearing returnable August 21, 2008 to consider the allegations made by Staff of the Commission ("**Staff**") in the Statement of Allegations dated August 7, 2008;

AND WHEREAS on June 30, 2010, the Commission issued an Amended Notice of Hearing returnable September 13, 2010 to consider allegations made by Staff in the Amended Statement of Allegations dated June 23, 2010;

AND WHEREAS on November 10, 2010, the Commission approved a Settlement Agreement between Staff and the Respondent, Alan S. Price;

AND WHEREAS on January 25, 2011, the Commission approved a Settlement Agreement between Staff and 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. (together, the "**Corporate Respondents**" or "**New Life**") by and through KPMG Inc. in its capacity as the Court-appointed Receiver and Manager of the Corporate Respondents (the "**Receiver**"), which provided, in part, that the Corporate Respondents shall disgorge to the Commission the amount of

$22,508,784.50 being the amount of monies raised from investors by the sale of shares of New Life entities contrary to Ontario securities law (the "**Corporate Respondents' Disgorgement Order**");

AND WHEREAS the hearing on the merits with respect to Staff's allegations against the remaining respondents to the proceedings, L. Jeffrey Pogachar and Paola Lombardi (together, the "**Individual Respondents**") commenced on December 5, 2011 and concluded on January 20, 2012 (the "**Merits Hearing**");

AND WHEREAS the Individual Respondents did not attend the Merits Hearing as indicated in their correspondence with Staff and the Commission;

AND WHEREAS the Commission rendered its decision on the merits on January 20, 2012 after the conclusion of the Merits Hearing and issued its Reasons for Decision on the merits on March 28, 2012, finding that the Individual Respondents contravened sections 25(1)(a), 126.1(b), and 129.2 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**");

AND WHEREAS the Commission directed that a sanctions and costs hearing in respect of the Individual Respondents be scheduled for May 11, 2012 (the "**Sanctions Hearing**");

AND WHEREAS Staff and counsel for the Receiver attended the Sanctions Hearing and the Individual Respondents did not attend the Sanctions Hearing;

AND WHEREAS on May 11, 2012, having considered the written and oral submissions of Staff, the Corporate Respondents' Disgorgement Order, and the Receiver's oral evidence called by Staff at the Sanctions Hearing indicating, among other things, the Receiver's consent to the terms of this order, the Commission is of the opinion that it is in the public interest to make the following order with reasons to be issued in due course;

IT IS ORDERED THAT:

1. Trading in any securities by the Individual Respondents shall cease permanently pursuant to clause 2 of section 127(1) of the Act;
2. The acquisition of any securities by the Individual Respondents is prohibited permanently pursuant to clause 2.1 of section 127(1) of the Act;
3. Any exemptions contained in Ontario securities law shall not apply to the Individual Respondents permanently pursuant to clause 3 of section 127(1) of the Act;
4. The Individual Respondents are reprimanded pursuant to clause 6 of section 127(1) of the Act;

5. The Individual Respondents shall resign any position that he or she holds as a director or officer of any issuer or registrant pursuant to clauses 7 and 8.1 of section 127(1) of the Act;
6. The Individual Respondents are prohibited permanently from becoming or acting as a director or officer of any issuer or registrant pursuant to clauses 8 and 8.2 of section 127(1) of the Act;
7. Having determined that the Individual Respondents have failed to comply with the securities laws of Ontario, each of the Individual Respondents shall pay an administrative penalty of $750,000 each pursuant to clause 9 of section 127(1) of the Act;
8. Having determined that the Individual Respondents have failed to comply with the securities laws of Ontario, the Individual Respondents shall disgorge to the Commission the sum of $21,908,607 on a joint and several basis pursuant to clause 10 of section 127(1) of the Act, which sum shall be paid jointly and severally with, and not in addition to, the disgorgement funds that are the subject of the Corporate Respondents' Disgorgement Order;
9. All amounts received by the Commission in respect of the administrative penalty ordered in paragraph 7 above and the disgorgement amounts ordered in paragraph 8 above are to be applied to or for the benefit of third parties pursuant to section 3.4(2)(b) of the Act as the Commission in its absolute discretion shall decide; and
10. Having determined that the Individual Respondents have failed to comply with the securities laws of Ontario, the Individual Respondents shall pay the costs of the Commission's investigation and hearing in the amount of $257,756.32 on a joint and several basis pursuant to section 127.1 of the Act.

DATED at Toronto this 17th day of May, 2012.

"Edward P. Kerwin"
Edward P. Kerwin

"Paulette L. Kennedy"
Paulette L. Kennedy