

STATE OF MAINE
OFFICE OF SECURITIES
121 STATE HOUSE STATION
AUGUSTA, ME 04333

IN RE:

New Life Corporation of America
d/b/a National Community Foundation
and Paul E. Richard

SUMMARY ORDER TO
CEASE AND DESIST

No. 03-066

ALLEGATIONS, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

Pursuant to 32 M.R.S.A. §§ 10602(1)(A) and 10708, the Securities Administrator reasonably believes that Respondents have been engaging in acts or practices constituting violations of the Revised Maine Securities Act, and therefore orders as follows:

1. New Life Corporation of America ("New Life") is a foreign business entity with a last known business address of 101 Westpark Drive, Suite 160, Brentwood, Tennessee 37027. New Life was incorporated in Tennessee in 1979 as a nonprofit entity and has been purportedly in the business of nationwide solicitations of charitable donations from the public, in part through an unincorporated division, National Community Foundation. In 2001 the Maine Secretary of State processed New Life's Application for Authority to Carry on Activities in Maine as a foreign nonprofit corporation. In 2002 the Maine Office of Licensing and Registration processed New Life's application to solicit donations in Maine as a charitable organization.
2. Paul E. Richard is an individual who at all times relevant to this matter acted as a broker-dealer or sales representative for New Life in Maine. Richard does business as Elder Planning Associates and his last known residential and business address is 11 Roseanne Avenue, Augusta, Maine 04330. He is licensed in Maine to sell insurance but not securities.
3. According to information received by the Office of Securities, other persons besides Richard have acted as broker-dealers or sales representatives for New Life in Maine. The identity of these persons is currently unknown to the Office of Securities, as New Life has refused to provide that information voluntarily.
4. New Life has solicited and offered to individuals in Maine and elsewhere an investment opportunity that New Life refers to as a charitable gift annuity ("CGA"). The identity of

many of these persons is currently unknown to the Office of Securities, as New Life has refused to provide that information voluntarily.

5. New Life has agreed with Richard and other persons to pay commissions in exchange for their efforts on New Life's behalf to effect CGA transactions with Maine residents. In particular, Richard was promised a commission of 6% of the value of the CGA.
6. CGAs are commonly defined as contracts under which a charity, in return for a transfer of cash, securities, or other property, agrees to pay a sum of money in fixed installments over a period measured by either one or two lives. The fixed payments that a particular annuitant receives over time are referred to as an "annuity rate" and are determined according to actuarial tables.
7. New Life has marketed their CGAs as agreements whereby New Life receives money or other property from an individual in exchange for "a guaranteed fixed lifetime income for the rest of your life and the life of a loved one, with no market risks." New Life tells consumers that CGAs have a "high rate of return" and are "the perfect tool for seniors who are planning for retirement or who wish to maximize the return on their investments" with "No Investment Risk." New Life specifically markets its CGAs as having a "much higher rate of return" than if consumers left their money in a "certificate of deposit or money market fund."
8. New Life's "General Information and Disclosure Notice," provided to persons considering CGA transactions, states that CGAs "are considered to be 'exempted securities' under the Securities Act of 1933 and the Securities Exchange Act of 1934." The notice also states that CGAs "are not insurance" and "are not guaranteed" either by an insurance company, a guarantee fund or association, or a governmental agency.
9. New Life has stated that the funds it obtains through CGA transactions are "commingled for purposes of investment" and that separate accounts are generally not established on behalf of individual donors. New Life has also stated that it pools the assets it obtains from CGAs in an "Annuity Reserve Fund," and that it then invests those assets in various securities.
10. New Life's claims that CGAs are "guaranteed" and have "no market risks" are grounded solely on New Life's present ability to meet its annuity obligations from corporate assets.
11. In a letter dated May 8, 1998, New Life asked the United States Securities and Exchange Commission ("SEC") for a formal no-action position relating to New Life's proposal to give commissions to unlicensed financial professionals who solicit its CGAs. For purposes of its request, New Life explicitly assumed that its CGAs were securities but that they were exempt from federal registration. The SEC staff responded to New Life on March 16, 1999, stating that "the staff is unable to assure you that it will not recommend enforcement action to the Commission if New Life and the financial professionals engage in the activities described in your letter, without the financial professionals registering as broker-dealers in accordance with Section 15(b) of the Securities Exchange Act of 1934."

12. The SEC staff's position was based in part on its reading of the portion of the federal Philanthropy Protection Act of 1995 which was codified in Section 3(e) of the Securities Exchange Act of 1934. That section exempted solicitors acting on behalf of charitable organizations from broker-dealer registration requirements, but only if each of those solicitors "is either a volunteer or is engaged in the overall fund raising activities of a charitable organization and receives no commission or other special compensation based on the number or the value of donations collected for the fund."
13. The Philanthropy Protection Act specifically refers to a fund containing assets obtained from the issuance of "charitable gift annuities" as the kind of fund that exempts a company from registration under the Investment Company Act of 1940.
14. The National Association of Securities Dealers ("NASD") issued a Regulatory and Compliance Alert to its members in the summer of 2002 titled "Charitable Gift Annuities." The alert states in part that "[r]epresentatives may be told that CGAs do not require federal or state securities registration or licensing. This is false, however, if representatives will receive a commission."
15. Richard has represented to the Office of Securities that New Life did not advise him that he may need to be licensed as a securities broker-dealer or sales representative in order to legally sell CGAs in Maine.
16. In New Life's home state of Tennessee, CGAs are considered securities that are exempt from registration and licensing. Specifically, Tennessee securities law was amended in 2002 to grant a specific registration exemption for offers or sales of CGAs, and a specific licensing exemption for persons whose actions as broker-dealers, sales agents, or investment advisors are limited to those involving CGAs. See Tenn. Code Ann. §§ 48-2-103(b)(15), 48-2-109(a)(2-3), 48-2-109(c)(4).
17. Unlike in Tennessee, the Act contains no exemptions referring to the licensing of persons who effect CGA transactions in Maine.
18. Under the Maine Insurance Code, all products meeting the definition of "charitable gift annuity agreements" in 24-A M.R.S.A. § 703-A are considered "not insurance" under 24 M.R.S.A. § 703 and are thus not regulated by the Maine Bureau of Insurance. The CGAs that New Life offers in Maine meet the definition of "charitable gift annuity agreements" in 24-A M.R.S.A. §703-A.
19. The American Council on Gift Annuities ("ACGA") and the National Committee on Planned Giving ("NCPG") have jointly and publicly stated their opposition to the commission sales of CGAs. The ACGA is a nonprofit organization formed in 1927 to provide educational and other services to charities. The NCPG is a professional association for people who develop, market, and administer charitable planned gifts. Their opposition stems in part because of the potential application of securities laws and in part because such a practice violates the Model Standards of Practice for the Charitable

Gift Planner, which states that commissions and other fees paid to solicitors in exchange for delivering gifts is "never appropriate."

20. In its initial correspondence with the Office of Securities, New Life did not disclose the existence of its interaction with the SEC, which the Office of Securities learned of on its own. Instead, in a January 31, 2003 letter, New Life stated that the Office of Securities was "breaking new ground in claiming that charitable gift annuities are securities." After being advised of the SEC position, New Life then stated erroneously, in a February 5, 2003, letter, that the Philanthropy Protection Act of 1995 "did not address charitable gift annuities."
21. By an e-mail sent on the morning of January 30, 2003, the Office of Securities notified New Life's corporate counsel that all CGA sales in Maine should cease. By letter dated the same day, and sent via facsimile, the Office of Securities notified New Life's President that solicitations of CGAs in Maine should cease at once.
22. By letter dated January 31, 2003, New Life's corporate counsel stated that it would "refrain from offering charitable gift annuities to residents in the State of Maine until the issues regarding the propriety of NCF's activities are resolved."
23. In an e-mail dated February 3, 2003, and received after business hours, New Life's corporate counsel represented to the Office of Securities that New Life has processed but not finalized two CGA transactions involving Maine residents. (He later indicated that those transactions were solicited by one or more financial professionals who expected to receive commissions.) The e-mail stated that since the "solicitation" portion of those transactions had concluded, New Life would complete the transactions unless the Office of Securities advised otherwise.
24. By letter dated and faxed on February 4, 2003, the Office of Securities advised New Life that the transactions were illegal, that no further action should be taken to finalize them, and that the funds should be returned to the Maine investors. After further correspondence, the Office of Securities sent another fax to New Life on February 5, 2003, seeking confirmation as to whether the two pending transactions would be canceled and the funds returned to the Maine consumers. In a February 12, 2003 letter, New Life stated that in fact only one transaction had been in the process of closing, that the transaction would be unwound, and that documentation would be returned to the donor. New Life also stated that it would "not pursue any further [CGA] transactions with residents in the State of Maine in any case where the financial professional receives any compensation." New Life has nonetheless refused to provide any detailed information about any transaction, including the identity of financial professionals and donors.
25. New Life's corporate counsel has also suggested, in a telephone message on February 6, 2003, and a telephone conversation on February 10, 2003, that if New Life chooses not to pay financial advisors who effect CGA transactions -- despite any prior agreement between New Life and those advisors regarding commissions -- then those persons would become "volunteers" not subject to the securities licensing requirement. On both

occasions the corporate counsel was advised that those advisors were not "volunteers" at the time of solicitation and sale and could not be turned into "volunteers" merely by refusing to pay them after the sale had been completed.

26. Separately, Richard has represented to the Office of Securities that recently one of his clients has verbally accepted an offer to enter into a CGA agreement with New Life. In addition, the Office of Securities learned that Richard has taken steps to take control of that client's assets for purposes of funding the CGA agreement.
27. The Office of Securities is unaware of any other organization that solicits CGAs from Maine residents through financial professionals who accept commissions or otherwise receives compensation for effecting such transactions. Further, New Life's corporate counsel stated in his February 5, 2003, letter that its "use of a commission compensation methodology may be unique."
28. The CGA agreement offered by New Life is an "investment contract" as well as "evidence of indebtedness" and is thus a security under 32 M.R.S.A. § 10501(18). The solicitation and sale of CGAs therefore involves the solicitation and sale of securities under the Act.
29. CGAs are exempt from registration as securities under the Philanthropy Protection Act of 1995 and 32 M.R.S.A. § 10502(1)(J).
30. Pursuant to 32 M.R.S.A. § 10301(2), it is unlawful for any issuer of securities to employ or contract with a person as a sales representative in Maine unless the sales representative is licensed or exempt from licensing under the Act. Similarly, pursuant to 32 M.R.S.A. § 10301(1), it is unlawful for any person to transact business in this state as a broker-dealer or sales representative unless licensed or exempt from licensing under the Act.
31. The Act has no licensing exemptions for persons selling CGAs in Maine. Further, section 6 of the Philanthropy Protection Act of 1995 preempts states from regulating a person who acts as a broker-dealer or sales representative in selling a charitable organization's securities only where such person is a "trustee, director, officer, employee, or volunteer of [the] charitable organization." Neither Mr. Richard nor any other person who has solicited New Life's CGAs in Maine with the expectation of commissions or special compensation, based on the number or value of donations collected for New Life, qualifies for this limited federal preemption.
32. For the reasons stated above, the Securities Administrator reasonably believes that respondents have engaged, are engaging, or are about to engage in acts or practices constituting violations of the Act.

ORDER

NOW, THEREFORE, it is ORDERED that New Life and Richard immediately CEASE AND DESIST from violating any provisions of the Revised Maine Securities Act, including the prohibition in 32 M.R.S.A. § 10301 against unlicensed transactions. This prohibition includes any action taken to further or finalize any pending transactions.

Pursuant to 32 M.R.S.A. § 10708, this Order is entered without prior notice or hearing. Any person named in this order has thirty (30) days from the entry of this Order to file a written request for a hearing on the matter with the Securities Administrator. The hearing will be scheduled to commence within fifteen (15) calendar days after the receipt of the written request.

If the Securities Administrator does not receive a written request for a hearing within the time specified, the Order will become permanent and the person(s) named in the Order will be deemed to have waived all rights to a hearing. Pursuant to 32 M.R.S.A. § 10709, a party may obtain judicial review of a final order in Kennebec County Superior Court by filing a petition within thirty (30) calendar days after receipt of the order, in accordance with 5 M.R.S.A. § 11001 et seq. and Rule 80C of the Maine Rules of Civil Procedure.

Date: February 14, 2003

/s/ Christine A. Bruenn
Christine A. Bruenn
Securities Administrator

Reviewed by:

Date: February 14, 2003

/s/ Bonnie E. Russell
Bonnie E. Russell
Supervisor of Enforcement

Presented by:

Date: February 14, 2003

/s/ Michael W. Atleson
Michael W. Atleson
Staff Attorney
(licensed in NY and MA, pending in ME)