



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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March 27, 2002

The Honorable Sue W. Kelly
Chair
Oversight and Investigations Subcommittee
2129 RHOB
Washington, D. C. 20515

Dear Chairwoman Kelly:

I want to reiterate NASAA's support to you for chairing the hearing to uncover the risks of fraud in the viatical settlement industry. Since 1999, state securities regulators have identified viatical settlement transactions as one of the country's top ten financial scams. In the late 90s, NASAA formed a project group to study these issues, and make recommendations to our Board of Directors.

As mentioned in NASAA's recent letter to you, the membership of NASAA is troubled about the "State Viatical Laws" chart that was released at your hearing. We felt the chart was misleading because it leaves one with the impression that the letter grade assigned to each state is based on adoption of insurance *and* securities laws and regulations. In addition, an incorrect evaluation was made for seven states, and we discovered the state of Idaho was left off the chart.

Regulation of viaticals is a complex matter, and we want to ensure the Subcommittee has the most current information available. The Chair of the NASAA Viaticals Project Group just completed a survey of the states securities regulatory positions on viatical investments. We respectfully request this chart be included in the official hearing record.

We look forward to continuing to work with you to explore ways to reduce the amount of fraud and misrepresentation in the viaticals industry. State securities regulators are prepared to complement your effort on this and other issues impacting the financial services industry. If you have questions about the chart, please contact Deborah Fischione House at 202-737-0900, or Scott Lane at 412-565-5083.

Sincerely,

Joseph P. Borg
NASAA President
Alabama Securities Director

cc: Oversight and Investigations Subcommittee

**STATE SECURITIES ADMINISTRATORS'
REGULATORY POSITIONS ON VIATICAL INVESTMENTS**

<u>Jurisdiction</u>	<u>Treats as Securities</u>	<u>Regulatory Position (definitions follow)</u>
Alabama	Yes	Statement of Policy
Alaska	Yes	Statement of Policy
Arizona	Yes	Statutory Language plus Exemption
Arkansas	Yes	Statutory Language
California	Yes	Statutory Language plus Exemption
Colorado	Yes	Investment Contract Analysis
Connecticut	No	Regulated by Insurance Department
Delaware	Yes	Investment Contract Analysis
District of Columbia		Considering Legislation
Florida	Yes	Investment Contract Analysis
Georgia	Yes	Investment Contract Analysis - Legislation Pending
Hawaii	Yes	Investment Contract Analysis
Idaho	Yes	Investment Contract Analysis
Illinois	Yes	Investment Contract Analysis
Indiana	Yes	Investment Contract Analysis
Iowa	Yes	Statutory Language plus Exemption
Kansas	Yes	Investment Contract Analysis
Kentucky	Yes	Statement of Policy - Viatical Investments are Securities
Louisiana	Yes	Investment Contract Analysis
Maine	Yes	Statutory Language plus Exemption
Maryland	Yes	Investment Contract Analysis
Massachusetts	Yes	Investment Contract Analysis
Michigan	Yes	Investment Contract Analysis
Minnesota	Yes	Investment Contract Analysis
Mississippi	Yes	Statutory Language

<u>Jurisdiction</u>	<u>Treats as Securities</u>	<u>Regulatory Position (definitions follow)</u>
Missouri	Yes	Investment Contract Analysis
Montana	Yes	Investment Contract Analysis
Nebraska	Yes	Statutory Language plus Exemption
Nevada	No	No regulation
New Hampshire	Yes	Investment Contract Analysis
New Jersey	Yes	Investment Contract Analysis
New Mexico	Yes	Investment Contract Analysis
New York	Yes	Investment Contract Analysis
North Carolina	Yes	Statutory Language - Effective 4/2/02
North Dakota	Yes	Statutory Language
Ohio	Yes	Statutory Language
Oklahoma	Yes	Investment Contract Analysis
Oregon	Yes	Investment Contract Analysis
Pennsylvania	Yes	Statement of Policy - Viatical Investments are Investment Contracts
Rhode Island	Yes	Policy Statement - Viatical Investments are Securities
South Carolina	Yes	Investment Contract Analysis
South Dakota	Yes	Statutory Language
Tennessee	Yes	Statutory Language
Texas	Yes	Investment Contract Analysis
Utah	Yes	Investment Contract Analysis
Vermont	Yes	Investment Contract Analysis
Virginia	Yes	Investment Contract Analysis
Washington	Yes	Investment Contract Analysis
West Virginia	Yes	Statutory Language
Wisconsin	Yes	Investment Contract Analysis
Wyoming	No	Regulated by Insurance Department

Definitions:

- Viatical Investment - “VIATICAL INVESTMENT” means the contractual right to receive the death benefit or ownership, or any portion of the death benefit or ownership, of a life insurance policy or certificate, for consideration that is less than the expected death benefit of the life insurance policy or certificate.
- VIATICAL INVESTMENT does not include:
- a. Any transaction between a viator and a viatical settlement provider as defined by [reference to state statute or National Association of Insurance Commissioners (“NAIC”) Model Viatical Settlement Act];
 - b. The assignment of a life insurance policy to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan;
 - c. The exercise of accelerated benefits pursuant to the terms of a life insurance policy issued in accordance with the insurance laws of this state.
- Statutory Language - The jurisdiction’s legislature has adopted statutory language defining viatical investments as securities.
- Statutory Language plus Exemption - The jurisdiction’s legislature has adopted statutory language defining viatical investments as securities. The legislature, or the agency by rule or order, has also adopted an exemption from registration.
- Investment Contract Analysis - State securities laws include “investment contracts,” in the definition of “security.” Generally, an investment contract is 1) an investment of money; 2) in a common enterprise; 3) with the expectation of profit; 4) to be derived primarily from the efforts of others.
- State of Policy The jurisdiction has made a public pronouncement, either in a rule or other guidance, that it considers viatical investments to be securities.

COMPILED BY SCOTT A. LANE
PENNSYLVANIA SECURITIES COMMISSION
CHAIR, NASAA VIATICALS PROJECT GROUP
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