

LIFE INSURANCE AND ANNUITIES (A) COMMITTEE

Reference:

1998 Proc. 4th Qtr. 607
1998 Proc. 3rd Qtr. 516

Terri Vaughan, Chair—Iowa
Diane Koken, Vice Chair—Pa.

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MINUTES

The Life Insurance and Annuities (A) Committee met in the Grand Hyatt Hotel in Washington, D.C., at 11:30 a.m. on March 10, 1999. A quorum was present and Terri Vaughan (Iowa) chaired the meeting. The following committee members or their representatives were present: Diane Koken, Vice Chair (Pa.); Lester Dunlap representing James H. Brown (La.); Linda Ruthardt (Mass.); Michael Batte (N.M.); Tom Foley representing Glenn Pomeroy (N.D.); and Dalora Schafer representing Carroll Fisher (Okla.).

1. Ratification of Appointment of Working Groups

Commissioner Diane Koken (Pa.) moved and Commissioner Linda Ruthardt (Mass.) seconded a motion to ratify the appointment of the working groups. Commissioner Terri Vaughan (Iowa) said she had received requests to make several additions to the list. Iowa and Pennsylvania will be added to the Viatical Settlements Working Group and Pennsylvania will be added to the Suitability Working Group. With those alterations, the motion to ratify the appointment of the working groups passed (Attachment One).

2. Report of Viatical Settlements Working Group

Lester Dunlap (La.) said the working group received a charge two years ago to amend the Viatical Settlements Model Act and Regulation. The amendments to the model act were adopted last year and the working group has completed work on the Viatical Settlements Model Regulation. Mr. Dunlap said the working group encountered serious issues, which were extensively debated. The revisions being recommended by the working group accomplish several goals: 1) the definition of viator has been expanded to include the chronically ill; 2) the licensing requirements have been strengthened, updated and consolidated; 3) the model regulation now contains two alternative methods of determining whether payments are reasonable and just. In conjunction with the second alternative, Section 6 was amended to provide for further reporting of information needed to help the insurance department evaluate whether the payment made has been reasonable and just and to reduce the incidence of “gaming”; 4) the working group discussed the issue of privacy to a considerable length. The working group recognizes the need to restrict access to information but is also cognizant of the need to make that information available to those providing funding for viatical settlements. The solution agreed upon by the working group is to make the viator’s personal information available only with his express consent; 5) the disclosure requirements have been expanded; and 6) a new Section 10 has been added to respond to concerns of insurers and viatical settlement providers to standardize their interaction.

Mr. Dunlap said the revisions improve upon the previous product by expanding the protections and safeguards, expanding the tools available to states to evaluate the transactions, and strengthening the standards for business conduct. Mr. Dunlap emphasized that a great deal of hard work has been done by the working group, the viatical settlements industry and the insurance industry. The working group intends to create three appendices to add to the model regulation at a future time. One will be an informational brochure that insurance departments and others can use to educate individuals. Appendices B and C will be standardized forms for insurers and viatical settlement providers to use. These documents still need further work and may be available for adoption at the next NAIC meeting.

Mr. Dunlap said another project the working group discussed is an "Alert" package that is designed to provide information to interested parties and others about viatical settlements. Mr. Dunlap said a draft has been provided by the viatical industry that contains background information. Additional suggestions have been received for a bullet format that can be used to draw attention to the major issues. This project will be a major topic of an interim working group meeting, hopefully to be scheduled for April 26. Mr. Dunlap moved and Acting Superintendent Michael Batte (N.M.) seconded a motion to adopt the report of the Viatical Settlements Working Group.

Commissioner Vaughan said the Alert package is an excellent idea and will be important to help educate people on the pitfalls of viatical settlements. She said the NAIC has another Alert project for streamlining company admissions and expressed concern that these two projects would become confused. She asked the working group to think creatively of a new title for its project. Commissioner Vaughan asked what the term "gaming" of viatical settlements means. Tom Foley (N.D.) said that the model contains a payment table that provides for lower minimum payouts with longer expectation of life. North Dakota continues to have significant problems with this concept because there is nothing that would prevent a company from saying someone has a longer life expectancy than the medical records would support so that the company can make a lower payment. The company will report to the states what expectation was used, but the state regulators will not find out until years later whether there has been gaming.

Commissioner Vaughan said concerns were expressed at the December Life Insurance and Annuities (A) Committee hearing about sales to well individuals, "AIDS paper" transactions and investments. There was also a suggestion made to postpone adoption of the model act until after these issues were addressed. Mr. Dunlap said the working group voted to treat them separately because the issues are somewhat different. He asks for closure on the issue of terminally ill and chronically ill individuals and then the working group will go forward with the new emerging issues.

George Coleman (Prudential) said the Alert package has not been commented on by the life insurance industry, and he expressed concern that the initial draft contains errors. Mr. Dunlap asked interested parties to provide comments on the Alert package as soon as possible. Mr. Foley clarified that the document Mr. Coleman is speaking about is the description of viatical settlements, which will probably end up as Appendix A of the regulation. The Alert package being considered by the working group is actually three separate documents. North Dakota's original intention when suggesting an Alert package was to have a brochure to be distributed widely with bullet points that would get people's attention. At the Viatical Settlements Working Group meeting, the group decided to break that document into two pieces; one for investors and one for viators.

Scott Cipinko (National Alliance of Life Companies—NALC) said he would like to see this document go through the NAIC process and be adopted by the plenary. Mr. Dunlap clarified that the plan is to discuss the draft further at the April 26 interim meeting and complete work so that it can be brought before the Life Insurance and Annuities (A) Committee in June. That would bring this before the Executive Committee and Plenary at the Fall National Meeting. Julie Spiezio (American Council of Life Insurance—ACLI) asked for a deadline for comments on the Alert package. Mr. Dunlap asked that comments on the lengthier informational brochure be provided by April 12 and on the shorter information bullets that Mr. Foley and a small subgroup are working on by April 1.

Mr. Foley asked for a roll call vote on adoption of the Viatical Settlements Working Group report. He said North Dakota will vote against adoption of the model regulation. He said North Dakota feels that

the privacy issue has not been handled appropriately. Acting Superintendent Batte said the revisions addressed the charge that was given to the working group. Some issues have not been totally addressed, but the working group has more charges for 1999 that will address these issues. He urged the adoption of the model regulation now. Pennsylvania, Louisiana, Massachusetts, New Mexico, Oklahoma and Iowa voted in favor of the motion. North Dakota voted against the motion to adopt the report of the Viatical Settlements Working Group (Attachment Two). The motion passed.

3. Report of Life Disclosure Working Group

Mr. Foley reported that the working group discussed the charges, most of which require a revisitation of the Life Insurance Illustrations Model Regulation to see if changes are needed to the model or to other models that might interact with its requirements. Mr. Foley moved and Commissioner Koken seconded a motion to receive the report of the Life Disclosure Working Group (Attachment Three). The motion passed.

4. Report of Suitability Working Group

Mr. Dunlap reported for Paul DeAngelo (N.J.). He said the working group addressed its charge to review changes to the Life Insurance Advertising Model Regulation and also met at the Spring National Meeting to discuss development of a white paper on suitability. The working group agreed to continue a review of the advertising model by conference call while developing the suitability white paper. The working group heard presentations from the National Association of Securities Dealers (NASD) and the Insurance Marketplace Standards Association (IMSA). Assignments for drafting the suitability white paper have been distributed and the working group anticipates completing this project by the Winter National Meeting.

Mr. Dunlap moved and Commissioner Koken seconded a motion to receive the report of the Suitability Working Group (Attachment Four). The motion passed.

5. Report of the Life and Health Actuarial (Technical) Task Force

Mr. Foley reported that the task force discussed a number of significant issues. The Innovative Products Working Group discussed annuities and guaranteed investment contracts sold with a bail-out provision that allows a bail-out from the product if the rating from a rating agency is reduced. He said this may become a major issue to bring before the A Committee. The task force continues discussion of a new valuation system and the American Academy of Actuaries is meeting monthly on this topic and for 1999 will develop a sample annual statement using the new valuation system.

The task force talked about the 1980 CSO table and the fact that significant changes in mortality and products have occurred since its development. This issue will continue to be discussed in 1999.

The task force continues to work on issues related to the Actuarial Opinion and Memorandum Model Regulation and the major issue of whether the law of the state of domicile or the state of filing should apply.

Mr. Foley said that in 1998 the A Committee sent to the Life and Health Actuarial Task Force Appendix-791 from the Codification standards, which had been developed as a Questions & Answers document for the Life Reinsurance Agreements Model Regulation. The task force was instructed to (Q&A) address four issues remaining from that project. Of the four items, the task force was able to reach agreement between the regulators and the regulated on two of the issues. On the other two, the task force has not been able to come to closure and recommends deletion of those two items from the Q&A. Each side of the issue has presented its views and those are attached to the Q&A. The task force recommends sending this information to the states so that they can decide for themselves how to address those two issues.

Mr. Foley moved and Acting Superintendent Batte seconded a motion to adopt the report of the Life and Health Actuarial (Technical) Task Force, including the revised Q&A document. The motion

passed. Commissioner Vaughan said that it is probably appropriate to send this revision to the Financial Condition (EX4) Subcommittee so that the Accounting Practices and Procedures Task Force can take up the recommendations. Acting Superintendent Batte moved and Mr. Foley seconded a motion to refer the Q&A document to the EX4 Subcommittee. The motion passed.

6. Discuss Charge on Structured Settlements

Most of the charges to the Life Insurance and Annuities (A) Committee are clear as to which working group will take responsibility for those charges. Three charges have not been distributed to working groups. One of them is oversight of the market share report, which can be handled by the whole committee. The second is a charge related to structured settlements. Commissioner Vaughan said she discussed this issue with Commissioner Darla Lyon (S.D.), chair of the Property and Casualty (C) Committee, because this issue includes both life and property/casualty concerns. She suggested holding a joint hearing at the Summer National Meeting on this issue before deciding how to address it. The committee agreed this is an appropriate way to begin to address this charge.

Commissioner Vaughan said the third charge that has not been assigned is a new charge given by the Executive Committee. It has to do with confidentiality of the Actuarial Opinion and Memorandum Regulation. She asked that this issue be forwarded to the Life and Health Actuarial Task Force to be addressed. Mr. Foley agreed on behalf of the task force to take on that charge. Commissioner Vaughan said standardized language is being developed that will be helpful to the task force.

Having no further business, the Life Insurance and Annuities (A) Committee adjourned at 12:25 p.m.

ATTACHMENT ONE

Working Groups Reporting to the Life Insurance and Annuities (A) Committee

Life Disclosure Working Group		Equity-Indexed Products Working Group	
Tom Foley, Chair	North Dakota	Mike Batte, Chair	New Mexico
John Hartnedy	Arkansas	Gene Reed	Delaware
Sheldon Summers	California	Roger Strauss	Iowa
Frank Dino	Florida	Lester Dunlap	Louisiana
Roger Strauss	Iowa	Frank Cote	Montana
Lester Dunlap	Louisiana	Frank Stone	Oklahoma
Linda Ruthardt	Massachusetts	Leslie Jones	South Carolina
Paul DeAngelo	New Jersey	Sam Meyer	South Dakota
Mike Batte	New Mexico		
Tom Jacks	North Carolina		
Frank Stone	Oklahoma		
Ted Becker	Texas		
Viatical Settlements Working Group		Suitability Working Group	
Lester Dunlap, Chair	Louisiana	Paul DeAngelo, Chair	New Jersey
Michael Bownes	Alabama	Richard Rogers	Illinois
Kevin McCarty	Florida	Rosanne Mead	Iowa
Dale Freeman	Idaho	Marlyn Burch	Kansas
Robert Heisler	Illinois	Lester Dunlap	Louisiana
Roger Strauss	Iowa	Linda Ruthardt	Massachusetts
Marlyn Burch	Kansas	Scott Borchert	Minnesota
Tom Jacks	North Carolina	Cindy Amann	Missouri
Tom Foley	North Dakota	David Sky	New Hampshire
Dalora Schafer	Oklahoma	Louis Belo	North Carolina
Joel Ario	Oregon	Phil Bisesi	Ohio
Greg Martino	Pennsylvania	Joel Ario	Oregon
Jeanne Bryant/Neil Nevins	Tennessee	Greg Martino	Pennsylvania
Rhonda Myron	Texas	Ted Becker	Texas
		Tom Van Cooper	Vermont

ATTACHMENT TWO

Viatical Settlements Working Group
Washington, D.C.
March 8, 1999

The Viatical Settlements Working Group of the Life Insurance and Annuities (A) Committee met in the McPherson Square Room of the Grand Hyatt Hotel in Washington, D.C., at 3 p.m. on March 8, 1999. Lester Dunlap (La.) chaired the meeting. The following working group members or their representatives were present: Kevin McCarty (Fla.); Dale Freeman (Idaho); Robert Heisler (Ill.); Marlyn Burch (Kan.); Tom Jacks (N.C.); Tom Foley (N.D.); Dolora Schafer (Okla.); Jeanne Bryant (Tenn.); and Mike Boerner (Texas).

Commissioner Glenn Pomeroy (N.D.) introduced three observers to the working group's discussion. He said Roger Walter (Kansas Office of Securities Commissioner), Michael Vargon (New Mexico Securities Division), and Scott Borchert (Minnesota Department of Commerce) are interested in hearing the working group's discussion regarding viatical settlement investments. Commissioner Pomeroy said his interest in the working group's activities stemmed from his previous job as North Dakota Securities Commissioner and emphasized the importance of the Viatical Settlements Working Group becoming better connected with the securities regulators. Lester Dunlap (La.) asked staff to add the three securities regulators to the working group's interested parties list so that they can remain informed about the working group's activities.

1. Discuss Draft of Viatical Settlements Model Regulation

Mr. Dunlap said the working group did not receive any comments on the draft regulation following the Winter National Meeting. He suggested the working group review the draft and consider recommending its adoption by the parent committee. He noted that the informational brochure, which is Appendix A, needs more work and suggested that it could be added to the regulation later.

Section 3. License Requirements

Mr. Dunlap suggested changing the words "automatic revocation" in Subsection B to "lapse." The working group agreed to make that change.

Section 5. Standards for Evaluation of Reasonable Payments

Mr. Dunlap said that the draft has changed by the creation of two alternatives, the original table of life expectancy and an alternative for a standard such as that contained in the Texas and Florida regulatory schemes.

Section 6. Reporting Requirement

Mr. Dunlap noted that, for a state to determine whether a payment is reasonable, the reporting requirements in Section 6 have been expanded considerably. Tom Foley (N.D.) asked if there is a real connection between Sections 5 and 6. He opined that the minimum standards are only as valid as the assignment of expectation of life. The company could intentionally overstate the life expectancy to use a higher part of the table. Mr. Dunlap responded that Section 9E was added to address that concern. Mr. Foley responded that this provision gives an administrative recourse but he does not see how this can make the individual in the transaction whole. Mr. Dunlap agreed that this is not a perfect solution but it does allow the department to take action against the provider's license. He noted that one of the charges is to draft guidance for the states in reviewing the reasonableness of payment.

Section 8. Disclosure

Mr. Foley said North Dakota continues to have strong objections to the disclosure provision. He said that hopefully the person who is in a compromised position understands the impact of providing information to the investor.

Section 9. Prohibited Practices

Marlyn Burch (Kan.) asked if the confidentiality provisions in Section 9 satisfy all of the concerns being considered by the NAIC in other areas. Mr. Dunlap responded that he was not sure, but that this was something for the working group to monitor.

Appendices

Doug Head (Medical Escrow Society) said there have been some technical difficulties in finalizing Appendices B and C (the Standardized Viatical Settlement Verification of Coverage Forms). He asked that the working group also wait to adopt these appendices. Mr. Dunlap agreed that these appendices could be added at the same time as a revised informational brochure. Tom Jacks (N.C.) asked how long it would take to get the appendices completed. Mr. Dunlap suggested an interim meeting in Kansas City to deal with these issues as well as the "Alert" package, which is the next agenda item. He suggested a face-to-face meeting to deal with these many details. He asked Carolyn Johnson (NAIC/SSO) to schedule an interim working group meeting the last week in April.

Mike Batte (N.M.) expressed concern with Appendix A. He said a cursory reading shows several omissions that need to be addressed. He said the various methods of connecting individual investors and persons wishing to sell their policy are not complete. Mr. Vargon said that securities regulators see more of the secondary market transactions where an individual contributes money and then gets a list of policies he might buy. Mr. Walter agreed that some states clearly take the position that this is a security while others do not. Mr. Vargon agreed that several states have taken the position that this one-to-one interaction is not a security. This is the position in at least Michigan, Missouri and Florida. Mr. Jacks expressed an eagerness to finalize the regulation and said that, since the working group has already agreed not to adopt the appendices at this time, these other issues could be discussed at the interim meeting.

Mr. Jacks moved and Kevin McCarty (Fla.) seconded a motion to adopt the Viatical Settlements Model Regulation with the amendments described during the meeting. Mr. Foley said that North Dakota would vote against the motion for the reasons he had described in the last several meetings. Mr. Foley expressed concern about some faulty provisions in the model and the fact that it does not cover the categories 3 and 4 he had described at the December 1998 hearing before the Life Insurance and Annuities (A) Committee. The motion to adopt the model regulation passed with Florida, Illinois, Kansas, North Carolina, Oklahoma and Louisiana voting in favor of the motion and Idaho, North Dakota and Tennessee voting against the motion. (Attachment Two-A).

2. Review "Alert" Package Draft

Mr. Dunlap said the working group discussed at the Winter National Meeting a suggestion by Mr. Foley that a package of materials be prepared to advise regulators, consumers and the media about the viatical settlement industry and the issues that should be considered. He said the two most important issues are the sale of life insurance covering healthy people and the need to bring the attention of the public to investment issues. Mr. Dunlap said the package before the working group contains two parts: an informational piece put together by the viatical settlement industry (Attachment Two-B) and shorter pieces from Mr. Foley and from Mr. Burch (Attachment Two-C). Doug Head (Medical Escrow Society) said the first document is designed to help regulators understand viatical settlements and also to give to people that call with questions. He noted that there is a potential for misunderstanding the viatical settlement industry and he welcomed work at the interim meeting to improve this document. Mr. Foley described the document he had prepared and said it had two purposes. He said he tried to give a balanced presentation for people interested in viaticating a policy or investing in one. He suggested keeping the document short and using color, etc., to make it visually pleasing. He said that he tried to help people think about how they would feel knowing that someone owned their life insurance policy and knew who they were and where they lived. He noted that people selling policies are generally in a compromised position with. The investment part of his document cautions people to consider the advertisements that promised an unrealistic return.

Mr. Dunlap asked how regulators could facilitate distribution of the Alert package to those who need it. Mr. Foley suggested that a space be allowed in the brochure so that anyone interested in distributing it could add his own name and this could be distributed by insurance regulators and securities regulators. Mr. Dunlap added that the AARP would also have many who are interested in this information. Mr. Foley agreed that was an excellent idea and also suggested notifying the media. Dale Freeman (Idaho) asked how the viatical settlement industry finds individuals who want to sell their policies. He said he had seen many advertisements for investors, but not advertisements soliciting people to sell their policies. Mr. Head responded that the dominant way is by word of mouth. Mr. Jacks said he agreed with Mr. Foley's thrust but was uncomfortable with the tone of that document. Mr. McCarty agreed that the document does need more balance and suggested that the working group members work to change the tone of the document. Mr. Foley announced that he would soon be moving to the Kansas Insurance Department and that Mr. Burch would continue to represent Kansas on the working group, but Mr. Foley said he wants to continue to be involved, particularly in the actuarial issues and the Alert package. Mr. Dunlap described the possibility that the NAIC communications staff could assist in development of the Alert package with the assistance of a public relations firm. The working group discussed whether to send the document as it now exists to the public relations firm or whether the working group should change the tone of the document prior to passing it along to the communications staff. Mr. Foley, Mr. McCarty, Dalora Schafer (Okla.) and Mr. Jacks agreed to work on a redraft of the Alert package before the interim meeting. John Matthews (Allstate Life) offered the assistance of the technical resource advisors to this process. Mr. Burch asked if this document would be geared more toward investors or to consumers and the working group agreed that it should be addressed mostly to the media and to consumers. Mr. Burch suggested that it does not work to mix investor information in the same document with consumer information. He said consumers who are considering selling a life insurance policy, particularly when they are ill, do not want to hear about the concerns of the investor. Mr. McCarty agreed that these are totally diverse interests and that it is meaningless to try to put them together in one document. Mr. Jacks suggested that the small group working on the Alert package determine the best way to handle this problem. Mr. Walters said that, to the extent investors are targeted by this document, the securities regulators would like to be involved. He said that this is a unique process that blends the two regulatory agencies.

3. Consider How to Address 1999 Charges

Mr. Dunlap said several charges to this working group have not yet been discussed and he suggested talking about out how to implement those charges. One of the major charges to the working group is to discuss issues related to policies insuring healthy people. These might be individuals with high dollar policies they no longer need, seniors in need of funds, or the so-called AIDS paper policies that are issued to individuals who intend to immediately viaticate the policy. Mr. Head said that the Viatical Settlement Model Act needs a Part B to cover those types situations. He said that some have suggested that the definition of viatical settlements in the Viatical Settlements Model Act could be changed to include well individuals and that would address the problems. He said he thought that is an inappropriate solution because much of the Viatical Settlements Model Act would be difficult to apply to sales of policies by healthy people. Mike McNerney (Mutual Benefits Corporation) said the industry has suggestions that will help the working group address several of its charges. He noted that the Viatical Association of America

(VAA) has taken the position that these transactions should be regulated. He emphasized that the industry document is a first draft to jump-start the conversation on the issue. He said that the industry needs a scheme under which to operate and needs to know the rules.

Mr. Dunlap asked if the VAA has a position on "AIDS paper" transactions. Mr. McNerney said that the organization does not have a specific position, but does have a strong antifraud position. He said he is troubled by the possibility of a fraudulent application to obtain insurance with the goal of selling it and is also concerned about impinging on a person's rights to do what he wants to with his contract. He said that he personally has not found a balance between these two concerns. Mr. Head said that, if you define this narrowly to be a policy bought for the specific purpose of reselling it, the VAA is not in favor of this. Mr. Dunlap asked if this constituted a significant percentage of the business. Mr. Head responded in the negative. Mr. McNerney said his company does not buy policies in the contestable period.

Mr. Matthews said that, at a recent meeting of the technical resource advisors, the topic of "AIDS paper" was discussed. All present agreed that the model law should include a prohibition against this activity. Mr. Matthews said the American Council of Life Insurance (ACLI) task force on the issue talked about options to stop "AIDS paper" transactions. Some of the options discussed would make it a criminal act to facilitate the purchase of life insurance to sell it, a rebuttable presumption that a transaction during the contestability period is fraudulent, or sharing information between the insurer and the viatical settlement provider that is considering purchase of a policy. Julie Spiezio (ACLI) emphasized that the insurer may have no way of knowing that the individual is purchasing insurance for the purpose of selling it. Insurers are concerned about the strong possibility of fraud.

Ms. Spiezio said that she is aware of instances where viatical settlement providers or brokers approached insurance agents and suggested the "AIDS paper" transaction. Mr. McNerney was also aware of the opposite situation. Mr. Foley asked the regulators not to lose sight of the insurable interest issue. This has never been a problem before because there was never a secondary market for life insurance policies. He opined that insurable interest is becoming more important and the issue of whether insurable interest only needs to be in place at the time of issue needs to be revisited. Mike Boerner (Texas) said that when a person buys a policy to sell it, he really does not have an insurable interest in his own policy either. Ms. Spiezio said it is difficult to get at the party who induced that person to buy insurance. If the policy is just denied, it doesn't really matter because the individual did not want the policy anyhow.

Mr. Dunlap said one other important charge to the working group relates to the area of investments in viatical settlements. He said anyone could look on the Internet and see ads with exorbitant claims for rates of return for investments in viatical settlements. He said this is an area that needs work by the regulators.

Another issue is the development of a handbook to assist regulators in interpretation of viatical settlement data to determine reasonableness of payments. He said this project is down on the list of priorities but will be important to regulators. Mr. Dunlap said he would look to Mr. Foley to take the lead on this actuarial issue. Mr. Head said he also believed this is an important issue and offered to bring proposals on the issue.

Having no further business, the Viatical Settlements Working Group adjourned at 4:50 p.m.

ATTACHMENT TWO-A

Viatical Settlements Model Regulation
Draft: March 8, 1999
Adopted by the Life Insurance and Annuities (A) Committee

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Section 1. Authority

This regulation is adopted by the commissioner pursuant to the authority in Section [insert reference to state statute equivalent to Section 10 of the Viatical Settlements Model Act].

Drafting Note: States considering adoption of this version of the regulation should be sure the corresponding elements contained in the current Viatical Settlements Model Act have been put in place.

Section 2. Definitions

In addition to the definitions in Section [insert reference to equivalent to Section 2 of the Viatical Settlements Model Act], the following definitions apply to this regulation:

A. "Chronically ill" means:

- (1) Being unable to perform at least two (2) activities of daily living (i.e., eating, toileting, transferring, bathing, dressing or continence);
- (2) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or
- (3) Having a level of disability similar to that described in (1) above as determined by the Secretary of Health and Human Services;

B. "Insured" means the person covered under the policy being considered for viatication;

C. "Life expectancy" means the mean of the number of months the individual insured under the life insurance policy to be viaticated can be expected to live as determined by the viatical settlement provider considering medical records and appropriate experiential data;

D. "Net death benefit" means the amount of the life insurance policy or certificate to be viaticated less any outstanding debts or liens;

E. "Patient identifying information" means an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, social security number, or any other information that is likely to lead to the identification of the insured; and

F. "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in twenty-four (24) months or less.

Section 13. License Requirements for Viatical Settlement Providers

~~A viatical settlement provider, as defined in [insert reference to Section 2 of Viatical Settlement Act], shall not enter into or solicit a viatical settlement contract without first obtaining a license from the commissioner.~~

Drafting Note: States should consider including an effective date three to four months in the future, to allow existing companies to continue operation while licensing requirements are being implemented.

~~A. The application shall be on a form required by the commissioner.~~

~~B. Only those individuals named in the application may act as viatical settlement providers.~~

CA. In addition to the information required in Section [insert reference to state law equivalent to Section 3 of the Viatical Settlements Model Act], the commissioner may ask for such additional other information as is necessary to determine whether the applicant for a license as a viatical settlement provider, viatical settlement broker or viatical settlement representative complies with the requirements of Section [insert reference to state law equivalent to Section 3 of Viatical Settlements Model Act].

~~D. Viatical settlement providers shall acquire and maintain a surety in the amount of \$[insert amount]. A copy of the executed bond shall be filed with the commissioner at the time of application for a license.~~

Section 2. License Requirements for Viatical Settlement Brokers

~~A viatical settlement broker shall not solicit a viatical settlement contract without first obtaining a license from the commissioner.~~

~~A. A viatical settlement broker shall make application on a form required by the commissioner.~~

CB. The application shall be accompanied by a fee of \$[insert amount]. The license may be renewed yearly by payment of a fee of \$[insert amount] and a current copy of a letter of good standing obtained from the filing officer of the applicant's state of domicile. If a viatical settlement provider, viatical settlement broker or viatical settlement representative fails to pay the renewal fee within the time prescribed, or a viatical settlement provider fails to submit the reports required in Section 6 of this Act, such nonpayment or failure to submit the required reports shall result in automatic

revocation-lapse of the license. If a viatical settlement provider has, at the time of renewal, viatical settlements where the insured has not died, it shall do one of the following:

(1) Renew or maintain its current license status until the earlier of the following events:

(a) The date the viatical settlement provider properly assigns, sells or otherwise transfers the viatical settlements where the insured has not died; or

(b) The date that the last insured covered by viatical settlement transaction has died.

(2) Appoint, in writing, either the viatical settlement provider that entered into the viatical settlement, the broker who received commissions from the viatical settlement, if applicable, or any other viatical settlement provider or broker licensed in this state to make all inquiries to the viator, or the viator's designee, regarding health status of the viator or any other matters.

Drafting Note: If fees are covered in state law or a comprehensive fee regulation, delete reference to fees in Subsection B.

~~E. A viatical settlement broker shall acquire and maintain an errors and omissions policy in an amount commensurate with the broker's exposure, satisfactory to the insurance commissioner.~~

~~C. The license issued to a viatical settlement provider, viatical settlement broker or viatical settlement representative shall be a limited license which that allows solicitation only of viatical settlements, it to operate only within the scope of its license.~~

~~D. Prelicensing education and continuing education required of other agents and brokers in Section [insert section] shall not apply to viatical settlement brokers.~~

Drafting Note: Delete Subsection D if the state does not require prelicensing and continuing education.

~~F. The commissioner shall have the right to suspend, revoke or refuse to renew the license of any viatical settlement broker if the commissioner finds that:~~

~~(1) There was any misrepresentation in the application for a license;~~

~~(2) The broker has been found guilty of fraudulent or dishonest practices, has been found guilty of a felony or any misdemeanor of which criminal fraud is an element, or is otherwise shown to be untrustworthy or incompetent;~~

~~(3) The licensee has placed or attempted to place a viatical settlement with a viatical settlement provider not licensed in this state; or~~

~~(4) The licensee has violated any of the provisions of [insert citation to the Viatical Settlement Act] or this regulation.~~

~~G. Before the commissioner shall deny a license application or suspend, revoke or fail to renew the license of a viatical settlement broker, the commissioner shall conduct a hearing in accordance with [cite the state's administrative procedure act].~~

Section 3. Other Requirements for Brokers

~~A. In the absence of a written agreement making the broker the viator's agent, viatical settlement brokers shall be presumed to be agents of viatical settlement providers.~~

Section 4. Appointment Requirements for Viatical Settlement Representatives

A viatical settlement representative, as defined in [insert reference to Section 2 of Viatical Settlement Act], shall not solicit a viatical settlement contract without first obtaining an appointment from a licensed viatical settlement provider or licensed viatical settlement broker.

A. The appointment shall be made on a form required by the commissioner.

B. The appointment shall be accompanied by a fee of \$[insert amount]. The appointment may be renewed yearly by payment of a fee of \$[insert amount]. Failure to pay the renewal fee within the time prescribed may result in automatic expiration of the appointment.

C. If the appointment is revoked by either party, the appointing viatical settlement provider or viatical settlement broker shall notify the commissioner of the revocation within thirty (30) days.

Section 45. Standards for Evaluation of Reasonable Payments

[Alternative I]

[In order to assure that viators receive a reasonable return for viaticating an insurance policy, the following shall be minimum discounts:

Insured's Life Expectancy	Minimum Percentage of Face Value Less Outstanding Loans Received by Viator
Less than 6 months	[80%]
At least 6 but less than 12 months	[70%]
At least 12 but less than 18 months	[65%]
At least 18 but less than 24 months	[60%]
Twenty-four months or more	[50%]

The percentage may be reduced by [5%] for viaticating a policy written by an insurer rated less than the highest [4] categories by A.M. Best, or a comparable rating by another rating agency.]

~~B. — Viatical settlement brokers shall not, without the written agreement of the viator obtained prior to performing any services in connection with a viatical settlement, seek or obtain any compensation from the viator.~~

[Alternative II]

[A viatical settlement company or broker shall not enter into a viatical settlement that provides a payment to the viator that is unreasonable or unjust. In determining whether a payment is unreasonable or unjust, the commissioner may consider, among other factors, the life expectancy of the viator, the applicable rating of the insurance company that issued the subject policy by a rating service generally recognized by the insurance industry, regulators and consumer groups, and the prevailing discount rates in the viatical settlement market in [insert state], or if insufficient data is available for [insert state], the prevailing rates nationally or in other states that maintain this data.]

Section 5. — Reporting Requirement

~~On March 1 of each calendar year, each viatical settlement provider licensed in this state shall make a report containing the following information for the previous calendar year:~~

~~A. — For each policy viaticated:~~

- ~~(1) — Date viatical settlement entered into;~~
- ~~(2) — Life expectancy of viator at time of contract;~~
- ~~(3) — Face amount of policy;~~
- ~~(4) — Amount paid by the viatical settlement provider to viaticate the policy; and~~
- ~~(5) — If the viator has died:~~
 - ~~(a) — Date of death; and~~
 - ~~(b) — Total insurance premiums paid by viatical settlement provider to maintain the policy in force;~~

~~B. — Breakdown of applications received, accepted and rejected, by disease category;~~~~C. — Breakdown of policies viaticated by issuer and policy type;~~~~D. — Number of secondary market vs. primary market transactions;~~~~E. — Portfolio size; and~~~~F. — Amount of outside borrowings.~~

Section 6. — Reporting Requirement

On March 1 of each calendar year, each viatical settlement provider licensed in this state shall make a report of all viatical settlement transactions where the viator is a resident of this state and for all states in the aggregate containing the following information for the previous calendar year:

A. — For viatical settlements contracted during the reporting period:

- (1) Date of viatical settlement contract;
- (2) Viator's state of residence at the time of the contract;
- (3) Mean life expectancy of the insured at time of contract in months;
- (4) Face amount of policy viaticated;
- (5) Net death benefit viaticated;
- (6) Estimated total premiums to keep policy in force for mean life expectancy;
- (7) Net amount paid to viator;
- (8) Source of policy (B-Broker; D-Direct Purchase; SM-Secondary Market);
- (9) Type of coverage (I-Individual or G-Group);
- (10) Within the contestable or suicide period, or both, at the time of viatical settlement (yes or no);
- (11) Primary ICD Diagnosis Code, in numeric format, as defined by the international classification of diseases, as published by the U.S. Department of Health and Human Services; and
- (12) Type of funding (I-Institutional; P-Private).

B. For viatical settlements where death has occurred during the reporting period:

- (1) Date of viatical settlement contract;
- (2) Viator's state of residence at the time of the contract;
- (3) Mean life expectancy of the insured at time of contract in months;
- (4) Net death benefit collected;
- (5) Total premiums paid to maintain the policy (WP-Waiver of Premium; NA-Not Applicable);
- (6) Net amount paid to viator;
- (7) Primary ICD Diagnosis Code, in numeric format, as defined by the International classification of diseases, as published by the U.S. Department of Health and Human Services;
- (8) Date of death;
- (9) Amount of time between date of contract and date of death in months;
- (10) Difference between the number of months that passed between the date of contract and the date of death and the mean life expectancy in months as determined by the reporting company;

C. Name and address of each viatical settlement broker through whom the reporting company purchased a policy from a viator who resided in this state at the time of contract;

D. Number of policies reviewed and rejected; and

E. Number of policies purchased in the secondary market as a percentage of total policies purchased.

Section 67. General Rules

A. With respect to policies containing a provision for double or additional indemnity for accidental death, the additional payment shall remain payable to the beneficiary last named by the viator prior to entering into the viatical settlement ~~agreement contract~~, or to such other beneficiary, other than the viatical settlement provider, as the viator may thereafter designate, or in the absence of a ~~designation beneficiary~~, to the estate of the viator.

B. Payment of the proceeds of a viatical settlement pursuant to [insert citation for Section 9D of Viatical Settlements Model Act] shall be by means of wire transfer to the account of the viator or by certified check ~~or cashier's check~~.

C. Payment of the proceeds ~~to the viator~~ pursuant to a viatical settlement shall be made in a lump sum ~~Retention of a portion of the proceeds by the viatical settlement provider or escrow agent is not permissible, except where installment payments shall not be made unless the viatical settlement company provider has purchased an annuity or similar financial~~

instrument issued by a licensed insurance company or bank, or an affiliate of either. Retention of a portion of the proceeds by the viatical settlement provider or escrow agent is not permissible.

D. A viatical settlement provider, viatical settlement or broker or viatical settlement representative shall not discriminate in the making or solicitation of viatical settlements on the basis of race, age, sex, national origin, creed, religion, occupation, marital or family status or sexual orientation, or discriminate between viators with dependents and without.

E. A viatical settlement provider, or viatical settlement broker or viatical settlement representative shall not pay or offer to pay any finder's fee, commission or other compensation to any viator's insured's physician, or to an attorney, accountant or other person providing medical, legal or financial planning services to the viator, or to any other person acting as an agent of the viator with respect to the viatical settlement.

~~F. Contacts for the purpose of determining the health status of the viator by the viatical settlement provider or broker after the viatical settlement has occurred should be limited to once every three (3) months for viators with a life expectancy of more than one year, and to no more than one per month for viators with a life expectancy of one year or less. The provider or broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into.~~

~~GE. A Viatical settlement provider and brokers shall not knowingly solicit investors who could influence the treatment of have treated or have been asked to treat the illness of the viators insured whose coverage would be the subject of the investment.~~

~~HG. Advertising standards:~~

- ~~(1) Advertising should related to the viatical settlement shall be truthful and not misleading by fact or implication.~~
- ~~(2) If the advertiser emphasizes the speed with which the viatication will occur, the advertising must disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.~~
- ~~(3) If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the advertiser during the past six (6) months.~~

H. If a viatical settlement provider enters into a viatical settlement that allows the viator to retain an interest in the policy, the viatical settlement contract shall contain the following provisions:

- (1) A provision that the viatical settlement provider will effect the transfer of the amount of the death benefit only to the extent or portion of the amount viaticated. Benefits in excess of the amount viaticated shall be paid directly to the viator's beneficiary by the insurance company;
- (2) A provision that the viatical settlement provider will, upon acknowledgment of the perfection of the transfer, either:
 - (a) Advise the insured, in writing, that the insurance company has confirmed the viator's interest in the policy; or
 - (b) Send a copy of the instrument sent from the insurance company to the viatical settlement company that acknowledges the viator's interest in the policy; and
- (3) A provision that apportions the premiums to be paid by the viatical settlement company and the viator. It is permissible for the viatical settlement contract to specify that all premiums shall be paid by the viatical settlement company. The contract may also require that the viator reimburse the viatical settlement provider for the premiums attributable to the retained interest.

Section 8. Disclosure

A. A disclosure document containing the disclosures required in [insert reference to state law enacting Viatical Settlements Model Act] and this regulation shall be provided before or concurrent with taking an application for a viatical settlement contract.

B. The disclosure document shall contain the following language: "All medical, financial or personal information solicited or obtained by a viatical settlement company or viatical settlement broker about a viator and insured, including the viator and insured's identity or the identity of family members, a spouse or a significant other, is confidential." The information shall not be disclosed in any form to any person, unless disclosure:

- (1) Is necessary to effect the viatical settlement between the viator and the viatical settlement provider; and
- (2) The viator and insured have provided prior written consent to the disclosure.

C. The disclosure shall include advising the viator and insured that the information may be provided to financing entities including individual and institutional purchasers.

Section 9. Prohibited Practices

A. A viatical settlement provider, viatical settlement broker or viatical settlement representative shall not provide patient identifying information to any person, unless the insured and viator provide written consent to the release of the information at or before the time of the viatical settlement transaction pursuant to Section 8B.

B. A viatical settlement provider, viatical settlement broker or viatical settlement representative shall obtain from a person that is provided with patient identifying information a signed affirmation that the person or entity will not further divulge the information without procuring the express, written consent of the insured for the disclosure. Notwithstanding the foregoing, if a viatical settlement provider, viatical settlement broker or viatical settlement representative is served with a subpoena and, therefore, compelled to produce records containing patient identifying information, it shall notify the viator and the insured in writing at their last known addresses within five (5) business days after receiving notice of the subpoena.

C. A viatical settlement provider shall not act also as a viatical settlement broker, whether entitled to collect a fee directly or indirectly, in the same viatical settlement.

D. A viatical settlement broker shall not, without the written agreement of the viator obtained prior to performing any services in connection with a viatical settlement, seek or obtain any compensation from the viator.

E. A viatical settlement provider shall not use a longer life expectancy than is realistic in order to reduce the payout to which the viator is entitled.

Drafting Note: Market conduct examiners should review annual reports closely to detect a pattern of abuse in artificially raising the life expectancy.

Section 10. Insurance Company Practices

A. Life insurance companies authorized to do business in this state shall respond to a request for verification of coverage from a viatical settlement provider or a viatical settlement broker within thirty (30) calendar days of the date a request is received, subject to the following conditions:

(1) A current authorization consistent with applicable law, signed by the policyowner or certificateholder, accompanies the request;

(2) In the case of an individual policy, submission of a form substantially similar to Appendix B, which has been completed by the viatical settlement provider or the viatical settlement broker in accordance with the instructions on the form.

Drafting Note: The appendices referenced in this subsection are being drafted.

(3) In the case of group insurance coverage:

(a) Submission of a form substantially similar to Appendix C, which has been completed by the viatical settlement provider or viatical settlement broker in accordance with the instructions on the form, and

(b) Which has previously been referred to the group policyholder and completed to the extent the information is available to the group policyholder.

B. Nothing in this section shall prohibit a life insurance company and a viatical settlement provider or a viatical settlement broker from using another verification of coverage form that has been mutually agreed upon in writing in advance of submission of the request.

C. A life insurance company may not charge a fee for responding to a request for information from a viatical settlement provider or viatical settlement broker in compliance with this section in excess of any usual and customary charges to contractholders, certificateholders or insureds for similar services.

D. The life insurance company may send an acknowledgment of receipt of the request for verification of coverage to the policyowner or certificateholder and, where the policy owner or certificate owner is other than the insured, to the insured. The acknowledgment may contain a general description of any accelerated death benefit that is available under a provision of or rider to the life insurance contract.

Section 11. Effective Date

This regulation is effective [insert date]. A viatical settlement provider, viatical settlement broker or viatical settlement representative transacting business in this state may continue to do so pending approval of the provider, broker or representative's application for a license as long as the application is filed with the commissioner by [insert date].

ATTACHMENT TWO-B

Basic Information for Regulators and
Others Who Provide Guidance on Life Insurance Policy Sales

Life insurance policy sales first came to the attention of state regulators at the close of the last decade. At that time, such sales were few and terminally ill "viators" were the focus of efforts at legislative and regulatory protection. Similarly, because many of the early sales involved individuals with HIV disease, legislation was primarily developed in states with identifiable populations concerned with AIDS issues.

Many of those early life insurance sales occurred in cases involving the terminally ill who were not able to access Accelerated Death Benefits (ADB) and who wanted to realize some of the value in their life insurance while still living. In recent years, issues associated with life insurance policy sales have expanded. Some of those issues are:

- The sale of policies of healthy persons
- The marketing of life policies to purchasers, particularly individual investors
- The sale of newly issued policies of seniors
- The sale of newly issued policies to people with a pre-existing terminal illness

These issues have developed in addition to other issues associated with the older, traditional "viatical settlement" consumer protections for the terminally ill, including:

- Privacy issues, especially the release of confidential viator information at various phases of the viatical process
- Appropriate pricing (return to viator)
- Informed consent and disclosure

As of January 1999, 26 states had adopted varying degrees of legislation affecting traditional viatical settlements to protect the interests of terminally ill viators. These states represent the vast majority of the country's population. The NAIC is completing work on a model rule to accompany a model viatical settlement act, which was adopted in 1998.

Both the NAIC model rule and model act are designed to be used by states to enact or modify existing viatical regulations to protect the interests of viators. The model rule, along with the legislation enacted in some states, may also address protections for viatical purchasers and investors.

A number of states report rising consumer complaints related to issues surrounding the purchase of life insurance policies as an investment. No state currently has passed legislation regulating such purchases. Likewise, no state currently regulates the sale of a life policy by a healthy (not terminally ill) individual.

Companies engaged in the purchase of life insurance policies have grown markedly in number and purchase volume in recent years. Estimates of annual volume of purchases range upward from \$1 billion. Many companies are engaged in the purchase of life insurance as agents or representatives of individuals who wish to purchase policies as a form of investment.

This type of transaction has been typical since the early days of the industry. No large institutional purchasers existed until the early part of this decade. Individual investors have always funded most viatical settlements.

As the industry grows, regulators in many states are receiving frequent questions about the industry from sellers, purchasers, and the interested and concerned public. Sometimes the business is referred to generically as the "viatical settlement industry," (though this is, strictly speaking, only the purchase of a policy from a terminally ill individual). Recent questions have increasingly focused on the sale of life insurance policies to investors as well as the changing nature of the life insurance industry to include sales of policies of healthy persons. Although the number of complaints is not fully quantifiable, states report that most of them are received from purchasers, not sellers of policies.

Faced with some level of regulator concern for assistance in dealing with these issues associated with the sale of life policies, states have contemplated various actions, which may affect the emerging market for life insurance policy sales.

Florida: Regulators, who initially had concerns that led to regulation, have found few cases in which viators have complained in recent years. Most complaints involve purchasers of policies who feel that they have not been adequately educated about their investment and its risks. Florida has also found flaws in its regulatory scheme that will require legislative correction.

Texas: Regulators are concerned with marketing practices and have had an unhappy experience with an investment solicitation company that defrauded investors who had placed money with an unlicensed "viatical settlement" company.

Louisiana: Has received many complaints from individuals who placed money with companies purporting to purchase policies with the proceeds, and who did not do so with any level of sophistication, thereby placing investor funds at greater risk.

New York: Regulators have been frustrated by a recent court decision which, following reasoning of earlier cases, have declared at least one company, not domiciled in New York, to be able to purchase life policies without a license in the state.

North Dakota: Regulators have expressed considerable concern about the marketing of policies to investors in that state. Regulator concern also has resulted in the fact that North Dakota has approved no forms for any companies to purchase policies from viators in that state.

Massachusetts: The insurance commissioner has attempted several times to advance legislation protecting consumers but no viatical legislation has passed in Massachusetts.

Utah: Legislature has flatly prohibited regulation of this market.

Arizona: Has unsuccessfully attempted to write viatical legislation that declared viatical investments to be securities.

Scope of State Regulation

Regulation in all states is currently limited to protection of viators, who are defined as "terminally ill" or "chronically ill," and (in some cases) as "having a life expectancy of less than two years." Industry practice has put the purchase of these two categories of viators at a life expectancy of less than five years.

No states regulate the secondary purchase of policies from licensed viatical settlement companies. Some states license both the purchasing companies and the brokers representing the viators. No states license brokers to represent purchasing companies to investors.

The developments above indicate the range and complexity of various state approaches to emerging viatical industry issues. Some states have no designated individual or tracking system to follow these issues and no extensive public concern with the issues. Some states have activists who track changes in related laws. Others have insurance commissioners who have taken a personal interest in the issues and are asking their departments to develop better policy.

It is clear that states may face increased interest in these issues as public awareness of the possibility of the sale of a life insurance policies increases. Much like the "portability" issue came to dominate health care coverage, some consumers may see their life insurance as a "portable" asset. Some postulate that this development may adversely affect actuarial calculations and create other regulatory concerns.

As states establish a designated individual for tracking information in the area of life insurance policy sales, they are urged to forward the name of that contact to the NAIC to encourage a fully coordinated effort.

Scope of Federal Regulation

Federal tax law defines the conditions under which a viatical settlement is treated as a tax-free transaction for the viator. No other federal law is in place governing this market.

Still, seemingly wide-ranging court action has occurred which is binding only in certain limited situations or geographical areas. However, such action may be reviewed in additional action.

The Fifth District Court of Appeals considered the facts of one case involving an assertion by the SEC that viatical settlement contracts fall within the definition of a "security" and should be regulated as such. In the case of *Securities Exchange Commission v Life Partners* 986F. Supp. 664 (D.D.C. 1997), the sale of viatical settlements was not deemed to be a security.

In light of the stance that it is indeed possible to structure the purchase of a viatical settlement outside the securities jurisdiction, some viatical industry representatives have suggested that insurance departments oversee the sale of viatical contracts to purchasers. In these cases, the licensed viatical settlement provider (purchasing) company would appoint licensed life insurance agents to solicit the purchaser to invest in a viatical settlement contract as a financing entity.

Just as the viatical settlement broker owes a fiduciary duty to the viator, the appointed agent would owe a fiduciary duty to the purchaser (provider company) client. Consider that the licensed life insurance agent would conduct his business in a local area, and there would be very little interstate commerce by these agents. The insurance department would approve contracts and related informational materials. In most cases, the mechanism is already in place to regulate advertising and other promotions.

In another case, the State of New York has recently been advised by a Texas federal court that a licensing requirement may not be imposed on an assignment made to a company in Texas not otherwise doing business in New York.

Current Regulations and Issues (for viatical settlements only)

Among the issues that have been considered in recent NAIC model act development, are the following:

- **Privacy of Viators** – News stories and television coverage have, in recent months, been focused on dissatisfied investors. The privacy issue has arisen because some viators – having sold their policies – are living longer than expected. Investors in these policies are checking on the maturity of their investment and finding that the viators have received new medical treatments and are expected to live longer than originally predicted. Viators are upset that they are contacted by investors who want their investments to mature. Contacts between viators and investors are strictly limited in most state regulations as adopted.
- **Disclosure and Representation to Viators** – Early viatical laws drew from other standard life legislation. As a consequence, concepts unique to the viatical industry were not addressed in some sections of the law or were inappropriate to the actual operations of the industry. For example, the unique position of the viatical broker (as opposed to the insurance broker, representing the viator rather than the purchasing company), was not acknowledged in some states. Additionally, the NAIC recognized the need for an extensive review and rewrite of model legislation to deal with the realities of the industry. Many states are expected to take up revisions to their viatical settlement law in 1999 and beyond.
- **Understanding types of Life Insurance Policy Sales** – Various types of life insurance policies have been sold under the general term “viatical settlements” in recent years. Though the original term “viatical” came from the Latin *viaticum* meaning “supplies for a long journey,” the evolution of this industry was a response to a perceived consumer need for alternatives to accelerated death benefits. In this context, it is useful to understand the various types of transactions now occurring.

The availability of Accelerated Death Benefits has increased in recent years. Many companies that did not offer them in the late 1980s now do so. For the most part, ADBs are limited to persons with certifiable life expectancy of less than one year. Insurance companies do not treat them as a profit center and generally write benefit checks for 50% or less of the face value of the policies. ADBs are clearly a humanitarian gesture which are encouraged by the viatical settlement industry, but they require filings and other guarantees that they are not abused to avoid responsibility by companies already on the risk of payment.

Viatical Settlements have been provided by for-profit companies and individuals not affiliated with the insurance companies. The market initially developed because of the desire of terminally ill individuals to obtain funds for an improved quality of life when ADBs were not available, or when the consumer option of passing funds to a beneficiary was not the highest priority.

A narrow definition of a viatical settlement might confine the use of the phrase to a restricted condition: diagnosed terminal illness with a life expectancy of less than two years.

In some cases, viatical settlement funds were used to seek medical care and in other cases, to simply enhance the quality of life of the terminally ill viator. Over the last decade, viators in every state have exercised the viatical option. There has been an emerging recognition that the viator is making a rightful decision about his own property and is qualified to do so with certain consumer protections in place.

Early attention toward the viatical option, and early regulatory efforts, focused on appropriate payments to viators. These payments have increased markedly over the intervening years.

In the 1990s increasing numbers of viators found that they were able to make constructive use of their funds by selling life insurance policies earlier rather than later. These transactions are often called Long-Term Viatical Settlements. Many viators with recognized terminal illness found that their life expectancy was 30 or 36 months or more. In some cases, these viators determined that rapid-but-expensive medical intervention might prolong their lives.

An illustration of this phenomenon was the development of protease inhibitors that resulted in the first combination treatments (so called “drug cocktails”) for people with HIV disease. Viators with terminal diagnoses and 30 months to live found that the treatment might enhance life expectancy indefinitely. Purchasers of the life insurance policies were dubious, but policies were sold nonetheless.

No one could accurately predict outcomes, but in the end many viators have lived substantially beyond their life expectancy of 30 months. Nevertheless, viators with other diseases make similar decisions daily, and purchasing companies continue to make the decision to buy policies. This long-term market has expanded significantly since 1994.

Recently, as an outgrowth of the viatical settlement industry, the life insurance market has found another category of persons who have life insurance and wish to sell it. Settlements for Healthy Persons generally involve a person with very high net worth (often an insured executive) who is insured as part of a corporate strategy involving “key person” policies.

The executive – upon retirement or downsizing – finds himself in possession of a large policy with heavy premium load, which is no longer useful. Or – in some instances – the company is in possession of the policy and wishes to recoup some of the assets represented by years of premium payments.

A market for these policies exists and some policies have been sold in this market. Estimated face value of the policies purchased by one large purchaser in 1998 was \$300 million. Though this particular market is probably limited in scope to very large policies, the emergence of the market has many holders of smaller policies re-examining their situation.

Sales of “healthy” policies has created new challenges which may well require new legislative solutions, as it may not be prudent – particularly as this market continues to expand – to categorize this type of life insurance policy sale with traditional viatical settlements.

Recently, there has been speculation in the industry about the possibility of purchasing policies for the explicit purpose of reselling them. There is considerable uncertainty about the origin of this phenomenon, but it may be related to new insurance sales strategies. The viatical industry generally has opposed Settlements of Policies Not Yet Purchased, but is uncertain of the affect of any regulatory effort to restrain it.

Questions emerge as to the rights of legitimate policyholders and their protection if limits are placed on the purchases of policies and their resale in the marketplace. This new development is one which bears scrutiny as it has the potential for related conflicts of interest, if insurance brokers are selling policies and then reselling them. (Issues of representation are already recognized in some state laws.) Still, a flat prohibition on the sale of contestable life insurance policies would negatively impact some individuals with the legitimate need to liquidate assets such as their life insurance.

NAIC regulators will consider some of these issues in 1999 and will seek to understand the differences between traditional viatical settlements and other life insurance policy sales represented by other circumstances like settlements for healthy persons and settlements of policies not yet purchased.

The Basics of Life Insurance Policy Sales

The emergence of viatical settlements has opened many eyes to similar and related potential transactions involving life insurance policy sales for consumer-oriented reasons. States that wish to provide consumer information on issues associated with viatical settlements or other life insurance policy sales should consider the following information and may wish to modify or use sections for publications or for the training of consumer advocates.

Viatical Settlements

Basic Information for Investors and for Anyone Considering Selling a Life Insurance Policy

Life insurance policyholders and investors may be interested in a new option available in the changing life insurance market. Individuals with terminal or chronic illnesses are able to sell their life insurance for a percentage of the face value of the policy, thereby obtaining immediate cash. The transaction is called a viatical settlement. This brochure defines some basic terms and offers other important tips for policyholders considering a viatical settlement. It also explores key questions for potential viatical settlement investors to consider.

Common Terms:

- **Viatical Settlement:** A viatical settlement is the sale of a life insurance policy to a third party (typically known as a viatical settlement provider), wherein a terminally or chronically ill policy holder receives cash during his or her lifetime. In these transactions, the viatical settlement provider (purchaser) becomes the new owner and/or beneficiary of the life insurance policy and pays all future premium payments, collecting the death benefit of the policy upon the death of the insured.
- **Viator (seller):** The original owner of a life insurance policy or certificate that is the subject of a viatical settlement.
- **Viatical Settlement Provider (purchaser/buyer):** The purchaser of a life insurance policy insuring the life of a terminally or chronically ill individual.
- **Viatical Settlement Broker:** An individual or company representing the seller (viator) who “shops” the policy to more than one purchaser, creating competitive bidding for the policy. In return, the broker receives a commission paid by the viatical settlement provider (purchaser). No commission is paid if the potential viator decides not to proceed or, if for some other reason, the viatical settlement transaction is not completed.
- **Viatical Settlement Agent or Representative:** An individual or company representing either a single viatical settlement provider or viatical settlement broker.
- **Most life insurance policies – including individual, employer-sponsored group and association policies – allow for the assignment or sale of such coverage to a third party, including a viatical settlement provider. Also, both the Federal Government and the U.S. Military allow employees (personnel) to assign or convert their coverage to enable viatical settlements.**

Viatical Settlements

The term “viatical” comes from the Latin word *viaticum*, which means provisions for the journey.

In a viatical settlement, a viator sells the “face value” (the amount payable to the beneficiaries, such as \$100,000) of a life insurance policy to a viatical settlement provider in return for an immediate cash payment. The viator will receive a negotiated payment for less than the face value. Usually the viator receives something like 30% to 80% of the face value of the policy,

depending on a number of factors such as life expectancy. In return, the viatical provider, investor or trust becomes the owner and/or beneficiary of the life insurance policy.

A viatical settlement, like any complex financial or legal transaction, requires close scrutiny. When considering such a settlement, you may wish to consult one or more of the following: an attorney, physician, life insurance agent or company, tax advisor, accountant, financial planner or insurance department official. Because viatical settlements are a relatively new phenomenon, and because they are not the primary business of the professionals noted above, you may have to – in some ways – help educate them about the process. Still, within the context of their specialty, any one of these professionals can lend valuable insight that may affect the decision to “viaticate” or to pursue another option.

A viatical settlement may not be in the best interest of a viator since each individual has specific financial and personal needs, and other individual circumstances that may be better served by another option. Alternative options may include: borrowing from your policy's cash value; canceling the policy and using its surrender value; borrowing against the value of your policy from a lending institution; borrowing funds from a friend or relative; or utilizing an insurance policy's accelerated death benefit (ADB) provision.

Accelerated Death Benefits

Because they are a similar and, under certain circumstances, a logical alternative to viatical settlements, we will cover ADBs in greater detail than the other options noted above.

Some insurance companies offer a provision to pay a portion, typically 25% to 50%, of the policy's death benefit, minus any policy debt, before the death of the insured. Companies that do this will pay the predetermined ADB amount for an insured diagnosed as terminally ill. Often certain illness limitations may apply, such as illnesses that qualify and the existence of a relatively short life expectancy (typically a year or less).

Upon the death of the insured, the beneficiary receives the remainder of the death benefit. In some cases the policyholder may pay an additional premium on the base policy for this option or the insurer may assess a small service fee against the death benefit or accelerated payment. You should contact your insurance company or agent to determine if your policy includes such a provision.

You also should investigate the ongoing consequences of the decision to exercise your policy's ADB. For instance, after receiving funds from an advanced payment you may or may not be able to receive an additional payment while you are living. Likewise, in some cases the remaining amount (after an advanced payment) can be viaticated; in other cases, the remaining amount can only be paid to the original beneficiaries upon the death of the policyholder.

Considering Your Options

When considering a viatical settlement, an accelerated death benefit or any of the many other options, you may wish to contact representatives of any government agency that provides you with government benefits or entitlements, as the proceeds from your transaction – including viatical settlements and ADBs – may affect eligibility for government programs and services.

Likewise, the (STATE) Department of Insurance (REGULATES/DOES NOT REGULATE) viatical settlement providers and brokers, and their representatives. For special requirements affecting viatical settlements, and a complete list of authorized providers, brokers, and their representatives in the state of (STATE) call the Department of Insurance at (PHONE).

The Viatical Settlement Process

Potential viators who are contemplating a viatical settlement should understand how the process works and the timing of the process and its various phases. The entire viatical settlement process normally takes 2 to 6 weeks depending on turn-around time at each phase, which varies from case to case, and can take longer.

Phase 1 – Underwriting process:

Once a viatical settlement broker or provider receives a viator's application and the necessary authorizations for the release of medical and other pertinent information, the broker or provider collects appropriate medical and insurance information:

1. The viatical settlement provider utilizes complete medical records from your physician and/or clinic to determine the insured's life expectancy and may use in-house or third party medical reviewers, or a combination of both. Depending on their methods and assumptions, life expectancies may vary from one provider to the next. All medical information obtained is subject to federal and state law relating to confidentiality of medical information.
2. The broker and provider utilize insurance company policy information to determine if the policy has any limitations or restrictions that would affect or impede the viatical settlement. With group life insurance, the broker or provider may also need to contact the administrator of a policy, which may be an organization other than the employer or other issuer of the policy.

Each of the brokers or providers you have applied with will contact your doctor for medical records and insurance company for policy information. Likewise, each broker you contact may “shop” your policy to the same or some of the same provider companies.

Phase 2 – Offer process:

The viatical settlement provider(s), using the information obtained in the underwriting phase, determine(s) an offer. In determining a proposal, a viatical settlement provider takes into account various factors, including:

- Estimated life expectancy and medical condition of the insured. Generally, the shorter the life expectancy of the insured, the more the viatical settlement provider will offer for the policy.
- The amount of life insurance coverage.
- Loans or advances, if any, previously taken against the policy.
- Amount of premiums necessary to keep the life insurance policy in force.
- The rating of the issuing insurance company.
- Prevailing interest rates.
- State laws, if any, that may affect the policy or transaction.

Phase 3 – Closing process:

1. Upon acceptance of an offer by a viator, a “closing” package is forwarded to the viator. While closing documents will vary from one provider (funding company) to another, they typically include an offer letter, a viatical settlement contract, and the applicable insurance company change forms necessary to transfer the policy.
2. The closing documents are then returned to the provider for signature and final processing.
3. The viatical provider will place the proceeds in escrow (See General Consumer Tips) and send the signed insurance change forms to the insurance company for recording.

Phase 4 –Funding process:

Once the insurance company notifies the viatical settlement provider that the changes on the life insurance policy have been recorded, funds are released to the viator, usually the next business day.

This is a relatively simple procedure similar to the process associated with selling a house. A property is listed or offered by the owner; an offer is extended; an offer is accepted and funds are escrowed; the sale is closed only with the agreement of all parties and the assets are transferred.

General Consumer Tips for Viators:

If after reading this brochure you decide to pursue a viatical settlement, consider the following guidelines for making an informed decision:

- To determine the market value of your policy, you may wish to contact several viatical settlement providers or use a viatical settlement broker to contact several providers for you.
- Remember that you are not obligated to accept a particular viatical settlement offer. You can delay a sale or ask for new offers at any time before the settlement is completed. In most states, you have the right to change your mind about the settlement up to 15 days after you receive the proceeds, provided that you return all of the proceeds. Be sure your right of rescission is clearly stated in the viatical contract.
- Make sure the purchaser uses an escrow account with an independent escrow agent. Like a real estate transaction, you want assurance of the proper transfer of your money. The viatical settlement provider or investor should ensure this by depositing the full value of the offer you accept into the escrow account.
- Prior to accepting an offer, you should determine what would happen to any dividends, additional increases in the face amount of the policy, accidental death benefits or other benefits under the policy once you have entered into the viatical settlement. Depending on your policy and the issuing company, you may be able to retain these additional benefits. You may wish to seek the advice of your insurance agent.
- Make sure you are comfortable with the confidentiality provisions offered by each party to the viatical settlement. You will want to note the conditions under which there may be an obligation, both during the settlement process and after the settlement is complete, to release further medical information, or to disclose other information about your life insurance policy or your medical condition. Parties to the transaction may include any or all of the following: a viatical settlement provider, a viatical settlement broker, or a representative of either of these entities; an escrow agent; a financial institution; an individual investor; a medical underwriter; or other advisors or consultants.
- Understand where the viatical settlement provider is obtaining funds to purchase the policy. In general, there are three financial structures: self-funding, institutional funding and individual investors. Self-funded companies use their own financial resources as capital; institutionally-funded companies rely on institutional investors, like lending establishments or pension funds; and individual investor-funded companies use capital obtained from individuals.

- The purchaser is allowed to contact the viator after the settlement has taken place, but there are limitations. For the purpose of determining the health of the insured, a viatical settlement provider, viatical settlement broker or viatical settlement representative may contact you up to once every three months for a viator with a life expectancy of more than one year, and no more than once per month for a viator with a life expectancy of one year or less.
- As a result of passage of the 1996 Health Insurance Portability and Accountability Act, the proceeds from these settlements are free of federal tax for two groups of people: (1) persons who have been diagnosed with a terminal illness and with a life expectancy of 24 months or less, and (2) certain chronically ill individuals. If you qualify for this federal tax-free advantage, you must use a viatical settlement provider who is licensed in the state where you live. In states where licensing is not required, you must use a provider who complies with the standards of the National Association of Insurance Commissioners Model Viatical Settlement Act. You also likely will want to consult with your financial or tax adviser.
- If you proceed with a viatical settlement and feel you were not treated fairly by any party involved in the process, contact your state insurance department (as noted above) or one of the viatical industry associations, the National Viatical Association, #, or the Viatical Association of America, #. The industry associations also are good sources of information about their members, who are viatical settlement providers, brokers, representatives and agents.

Viators should understand that some states regulate viatical settlements and some states do not. The National Association of Insurance Commissioners has adopted model legislation for such transactions with the intent of protecting the viator.

General Tips for Viatical Settlement Investors

People make investments for many reasons. But most rely on this fundamental understanding: investments that offer high returns usually involve greater risk. Viatical settlement investors should carefully weigh the risk of a low return on their investment or the risk of losing their investment altogether against potential return. Some key issues to understand include the following:

- The annual return on a viatical settlement transaction depends on the accurate estimate of the insured's life expectancy and the timing of his or her demise. An "annual return" can never be "guaranteed" because of the difficulty of accurately determining life expectancy.
- Know the identity of the party or parties who would be responsible for future premiums after the investor purchases the policy, and how these premium payments are guaranteed. If premiums are prepaid in escrow for a certain period of time, know the identity of the party who would pay premiums if the insured lives beyond his or her life expectancy. The policy may lapse if premiums are not paid and an investment agreement may require you to make those premium payments at some point.
- If a policy is on "waiver of premium" – which allows disabled policyholders to forego premium payments – know who would be responsible for the payment of premiums if the health of the insured improves to the point where he or she is no longer disabled.
- Under certain conditions, the insurance company may cancel the waiver of premium status on certain policies. In this event, premium payments will then be required and member companies shall identify the party or parties who shall be required to make those payments.
- There are risks peculiar to group policies, owned by employers or other organizations. The primary risk is the possibility that the owner (i.e., employer) or the insurance company may terminate the group policy. This termination will trigger the need to convert the group coverage to an individual policy. Determine if there are any limitations or caps in the conversion rights and the identity of the party responsible for the payment of any additional premiums once the policy is converted.
- Understand who determines the life expectancy of the insured (e.g., in-house staff, independent physicians, specialty firms that weigh medical and actuarial data). These parties make the determination of life expectancy based on medical evidence presented to the viatical company by the insured's physician and/or hospital. Developments in medical treatments or unexpected changes in the insured's medical condition could affect the accuracy of such determination.
- Insurance companies may dispute death claims for policies that have not been in effect for more than two years at the date of death. In such a case, the death benefit payment could be denied on various grounds. Also, if the insured commits suicide within two years of the issuance of the policy, the insurance company may not pay the death benefits.
- The purchase of a viatical settlement should not be considered a liquid investment, since it is impossible to predict the exact timing of its maturity and the funds may not be available until the death of the insured.

Investors should understand that, while some states regulate viatical settlements, currently no laws address the investor side of the transaction. Thus, anyone considering an investment in viatical settlements should understand details of the process and the risks involved before making any commitment. Typically, viatical settlement investment is not for the everyday investor.

ATTACHMENT TWO-C

"ALERT" Drafts

Viaticals

This is a draft of a potential red alert brochure. It could be a one or two fold piece with an area where the regulator could stamp their name and contact information. Technology today may allow us to print this with the regulator's identifying info incorporated. The intent is to get basis information to as many Americans as possible as soon as possible. Please view this as a draft – it needs to be refined to have the largest effect on the most people so that if they do these transactions, at least they had some chance to be warned.

T. Foley Feb. 5, 1999

Have you or anyone you know been asked any of the following:

Would you like to sell your insurance policy?

Would you like to buy someone else's insurance policy?

Would you like to trade the monthly payments you receive for that accident for a lump sum now?

Are you interested in a "can't miss, sure-thing investment" that will pay you up to 40% return?

Would you be interested in someone else buying an insurance policy on your life and then immediately selling it?

If you answered yes to any of these questions, then you may have been exposed to a relatively new activity that is largely unregulated by any government agency and that is causing many Americans financial set-backs.

These activities generally involve you receiving an amount of money now and giving up receiving a generally larger amount later. As these transactions are largely not regulated by government agencies, you may not be told the entire story. Please review the following questions and answers.

What is a viatical settlement (VS)?

Generally, this is the purchase of all rights under a life insurance policy by a company or individual that has no other interest in the person insured under the policy. Bob Smith is the insured and owner of a \$100,000 life insurance policy. XYZ company pays Bob an amount less than \$100,000, say, \$40,000 and they become owner of his policy. The policy continues on Bob's life and XYZ receives \$100,000 when Bob dies.

Why did companies begin buying life insurance policies on strangers?

In the early 1980s when AIDS was a new disease in America, viatical companies began paying AIDS patients their death benefit early. They did this because the patient had immediate needs for money to pay for medical treatment and death generally happened in a short time. Therefore, it amounted to paying a known death benefit a few months or years early.

How did life insurance companies respond to AIDS patients?

Life insurance companies also began paying death benefits early for AIDS patients using what is called an Accelerated Death Benefit (ADB) provision. Generally, for death expected within 12 months, most insurance companies will pay the death benefit early with a discount for interest. Generally, the amount the owner receives under a ADB is greater than under a viatical settlement.

Are Viatical Settlements only for AIDS patients?

No. By the late 1980s VS companies had begun "buying" insurance policies on people with other terminal diseases. The method was similar in that anyone who is expected to die before their life expectancy is given an amount of money now with the VS company receiving the death benefit at their death.

So, Viatical Settlements are only for insureds who are expected to die early?

No. Now there are VS companies that will purchase insurance policies on people with a normal life expectancy. Not everyone is a candidate for these programs as it is usually those with large amount policies.

Are there VS companies that encourage people to purchase insurance policies solely to then buy them?

There is increasing evidence that some VS companies and some individuals are encouraging individuals to purchase insurance on their life for the express purpose to then sell it to the VS company. They find individuals who may have some

medical problems that will impair their lifetime and attempt to "hide" these conditions from the insurance company. This is fraud.

What concerns should I have if someone else owns life insurance on me?

Life insurance in America historically has been for the benefit of loved ones, business associates or creditors. Those that would benefit from our death have every interest in our continuing to live. With a VS, others would benefit from our death, in fact, they financially benefit if we die sooner. There are many people who are not comfortable with a disinterested other person or organization benefiting directly from their death. There are examples of insureds being contacted regularly to see if they are still alive. Before considering such a transaction, you should ask yourself how you would feel being in this situation.

Why would I be asked to buy someone else's insurance policy?

Viatical Settlements began, as described above, because an AIDS patient was facing an imminent death. The VS company did not have to wait long to get the death benefits. Today, there is significant uncertainty about the life expectancy of AIDS patients because of new drug therapies. So, VS companies do not want to invest their own money in buying these policies because if the insureds live too long, they may lose money. So, now, VS companies solicit individual "investors" and use their money to buy policies on AIDS patients. Then the "investor" has the risk of the insured living too long with the VS company taking a portion of the "investment" up front.

Are these VS "investments" regulated by any government body?

Generally, there is no regulation of these transactions. Every day, thousands of Americans are being asked to invest in these transactions and being told very little about the risks involved.

What are structured settlements and are they related to Viatical Settlements?

Structured settlements are payments, generally monthly, made to individuals and received as a result of court action. The courts require payments to be made over time so that the receiver, who usually has some degree of disability, will not "use-up" the benefits early and then not be able to provide for themselves. There are companies that, not unlike VS companies, will pay the individual a lump sum amount now in exchange for them receiving the remainder of the payments. This amount usually is deeply discounted which provides for a relatively small amount compared with the value of the future payments.

Where can I get information if approached for any of these transactions?

State insurance department
State securities department
NAIC
Web sites, e.g., www.viatical-expert.net
Other

Understanding Viaticals

DEFINING TERMS
BENEFIT OPTIONS
SETTLEMENTS
THE PROCESS
CONSUMER TIPS

**YOUR STATE INSURANCE
DEPARTMENT**

1-800-555-5555

The Journey

People living with a terminal illness are often faced with very difficult financial choices. A viatical settlement is a choice that can provide immediate cash to assist with expenses.

A viatical settlement may not be for everyone, but for some individuals coping with a terminal illness a viatical settlement may make good financial sense. Before entering into such an agreement, it is important to learn the language, check all your options and protect your rights.

The best way to protect your rights is to consult your own advisor who is familiar with your personal financial needs and the viatical laws in your state. Consider consulting one of more of the following: an attorney, physician, life insurance agent or company, tax advisor, accountant, financial planner or your state Insurance Department.

The first step Making an informed decision

- **Review Your Options!**
- Find out if you have any cash value in your policy. If you do, there are three options: (1) borrow from the cash value, (2) cancel the policy for its current cash value, (3) use the cash value as collateral to secure a loan from a financial institution.
- Find out if you have an “accelerated benefit” rider on your policy. Keep in mind a combination of an “accelerated benefit” and a viatical settlement could net more cash.
- Your insurance company is required to disclose all of this information in a timely manner.
- Understand the time frame for your viatical settlement. While each transaction varies the probable time frame is 2 to 6 weeks from the initial call.
- Understand where the viatical settlement provider is getting the funds to purchase your policy. In general there are three possibilities; self-funding, institutional funding and individual investors.
- The proceeds from this settlement may be tax free. Contact a professional tax advisor. Also find out if the proceeds would be subject to claims from any creditors.
- Find out if you will lose any other payments such as Social Security, unemployment, or food stamps if you receive a cash settlement from your life policy? Don't close any deal until you know the answer.

<p>The second step: Understanding the process</p> <ul style="list-style-type: none"> • Work with your personal advisor and decide whether to work with a viatical company or through a broker who will do the comparison shopping for you. • If you do not use a broker, comparison shop on your own by contacting three to five companies. Remember you are not obligated to accept a particular viatical offer and can delay a sale or ask for new offers at any time during this process. • If you decide to use a broker, they will make sure all application forms are in order and shop around for the best offer for your individual situation. Always remember a broker is in business to make money. A broker's commission is paid by the viatical company making the offer but will be figured into the offer made to you. <p>The Offer</p> <ul style="list-style-type: none"> • The company or broker will need to gather information about you before they make an offer. They'll request the following: estimated life expectancy, medical condition, the amount of life insurance coverage, loans or advances against the policy, monthly premium amount, the rating of the issuing insurance company, prevailing interest rates and state laws that may affect the transaction. • In addition, they may also request a credit check to see if you have any outstanding liens or judgments which might affect their rights to the proceeds. 	<p>The second step Understanding the process</p> <p>The Closing</p> <ul style="list-style-type: none"> • A closing package will be sent to you. It will include an offer letter, viatical settlement contract and the applicable insurance company change forms necessary to transfer the policy. • The closing documents should then be returned to the provider for signatures. • The viatical provider will place the proceeds in escrow and send the signed change forms to the insurance company for recording. Make sure the purchaser uses an escrow account with an independent agent or financial institution to ensure safety of your funds. <p>The Funding</p> <ul style="list-style-type: none"> • Once the insurance company notifies the viatical settlement provider that the changes have been recorded, the money will be sent to you, usually the next business day. Keep in mind this is a relatively simple procedure; it's similar to the process you'd go through in selling a house. • Remember you have the right to change your mind about the settlement up to 15 days AFTER you receive the proceeds, provided you return all proceeds. 	<p>Defining the Terms</p> <p>The word "viatical" is derived from the Latin word "viaticum," meaning traveling expenses for a journey.</p> <p>Viatical Settlements: The money available from the sale of a life insurance policy to another person by the terminally ill policy holder</p> <p>Viator: The person selling the life insurance policy who will receive the money from the settlement. This person will give up ownership of the policy in exchange for immediate cash.</p> <p>Viatical Settlement Company: The entity that purchases the life insurance policy from a terminally ill individual. The buyer becomes the policy owner and must pay any premiums that are due, and eventually collects the entire death benefit from the insurance policy.</p> <p>Viatical Settlement Broker: The person or company who represents the seller (viator) and can "shop" for viatical offers. The broker is paid a commission by the settlement company if the offer is completed.</p> <p>Accelerated Death Benefits (ADB): This is a rider on a life policy that typically pays from 25% to 50% of the policy's death benefit, before the death of the insured. It may be another way to access cash from the policy without selling the policy to a third party. Contact your insurance company to see if your policy includes this provision.</p>
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ATTACHMENT THREE

Life Disclosure Working Group
Washington, D.C.
March 8, 1999

The Life Disclosure Working Group of the Life Insurance and Annuities (A) Committee met in the Grand Hyatt Hotel in Washington, D.C., at 8 a.m. on March 8, 1999. Tom Foley (N.D.) chaired the meeting. The following working group members or their representatives were present: Sheldon Summers (Calif.); Roger Strauss (Iowa); Lester Dunlap (La.); Walter Horn (Mass.); Paul DeAngelo (N.J.); Mike Batte (N.M.); and Frank Stone (Okla.).

1. Discuss Priority of Issues Identified for the Working Group's Action

Tom Foley (N.D.) said that more than 30 states have adopted the Life Insurance Illustrations Model Regulation and it seems to be working well. However, there are several small to medium sized issues that have come up. A number of the issues identified for working group consideration relate to the illustrations. He said any conclusions reached by the working group could take

several forms: 1) the model could be amended (states would have to amend their laws as a result); 2) the Q&A document developed by the working group in 1996 could reflect the changes; 3) others solutions may become apparent after discussion of the problems. Paul DeAngelo (N.J.) asked how Mr. Foley arrived at the conclusion that the model is working well. Mr. Foley responded that, when the working group started this project in 1992, the major problem was that illustrations were undisciplined and too aggressive. The main goal of the project was to bring discipline to the process of illustrations. Mr. Foley said the feedback he gets from agents, consumers and regulators points out that the probability that the numbers in the illustration will actually come to pass is much greater. George Coleman (Prudential) said it is fair to say the scales used in an illustration are much more disciplined. He expressed the hope that this more extensive disclosure is doing what was intended; however, interested parties will have to wait for a downturn in the economy to know for sure. Barbara Lautzenheiser (Lautzenheiser & Associates), representing the American Academy of Actuaries (AAA), reminded the working group that the AAA did a survey on the illustrations model and suggested working group members might want to review the results of that survey. Mr. Foley asked Carolyn Johnson (NAIC/SSO) to make that survey available again to the members of the working group. Ms. Lautzenheiser said the survey results were dated June 1998.

Tom Van Cooper (Vt.) said it would be helpful to his state if the working group would deal with conflicts with other models earlier in the list of priorities. He said regulators are left with a cobbled-together scheme where they say in effect "ignore what we said before and do this" rather than making changes to the regulations. He suggested updating the Life Disclosure Model Regulation as a high priority. Mr. Foley agreed that might need to be moved to the top of the list. He reminded the working group of a letter to commissioners from Robert Wilcox (Deloitte & Touche). That letter gave commissioners a method for a quick fix to problems of conflicts between the existing NAIC models and the Life Insurance Illustrations Model Regulation.

Mr. Wilcox said the NAIC has recently been discussing the overall needs in the industry and how they are changing in the area of valuation, nonforfeiture and disclosure. He suggested that this set of issues must be solved simultaneously. Based on the title of this working group, it would appear that this is the appropriate venue to look at disclosure issues. Mr. Wilcox opined that a comprehensive, dynamic discussion is needed and cautioned that this would eventually result in a complete overhaul of the system rather than technical fixes. Mr. Foley said that prior to the 1980s insurers offered "traditional" products, which lended themselves to formulas to determine and describe the products. Since then, products have changed and the formulaic approach no longer works. Regulators have been trying to determine a way to get out of that mode but it is very difficult. Disclosure to policyholders is the third part of the "three-legged stool" of nonforfeiture, valuation, and nondisclosure. Mr. Foley said that, with the assistance of staff members Ms. Johnson and Mark Peavy (NAIC/SSO), he would begin the process of identifying components of models that are clearly in conflict or need updating.

(a) Illustrations too Complex

Mr. DeAngelo said he joined the Life Disclosure Working Group near the end of the process of development of the illustration regulation and did not at that time clearly understand the goal. He thought the major goal was to provide disclosure to consumers and was surprised to find that the major purpose was to rein in the numbers used in illustrations. He suggested that if the real goal is disclosure, the working group did not meet its goal. Illustrations are too long and complex. He suggested that the working group look at the issue again with an eye toward the kind of real disclosure that the average consumer would find helpful. Mr. Coleman said the working group and interested parties never thought they were drafting the perfect model, but rather came up with a good compromise. There is greater understandability and credibility but he cautioned the regulators not to mandate expensive changes to software at this time. Mr. Wilcox said that the products being illustrated are very complex and there are limits how you can make the illustration understandable. He reminded the working group that other financial products are less complex than insurance and they are described with a prospectus that no one can understand. Mr. Van Cooper suggested that more explanation be provided to help people understand the pieces of an illustration.

Linda Lanam (American Council of Life Insurance—ACLI) said there are three parts to an illustration. The narrative summary is used to explain the policy and the illustration in understandable language. Mr. DeAngelo said there is such a thing as too much information to digest. Consumers don't need more disclosure; they need simpler disclosure. He said he did not believe that the illustrations currently being used are understandable. Mr. DeAngelo also noted that the Suitability Working Group has a charge related to the Life Insurance Advertising Model Regulation and while doing its review will also check with conflicts with the illustrations model.

(b) Length of Illustrations

Mr. Foley said when the working group was developing the model regulation, it expected illustrations to be five to six pages. Once adopted, it became apparent that the working group had missed its estimate by a factor of three as illustrations are averaging 15-16 pages in length. He asked what makes the illustrations so much longer than anticipated. The interested parties in attendance generally agreed that the narrative summary is the lengthy part of the illustration. Mr. Coleman said that it is necessary to describe things sufficiently so that there is no miscommunication in the illustration. To the extent that companies abbreviate the description, lawyers or compliance staff or actuaries fear something necessary has been eliminated. Mr. Foley said he has the distinct feeling that the narrative summary replicates the policy and asked if the technical resource advisors could provide sample illustrations to the working group to help identify what is causing the extra length.

Mr. Coleman said technical resource advisors met recently and also discussed the issue of long illustrations. Several ideas were discussed including the idea of separating an illustration into the "prospectus-type" information and the numeric document. Mr. Foley said he had also thought about preparing the narrative as a printed companion piece to the other

parts of the illustration. Mr. Coleman cautioned that his group was approaching this as an optional alternative and asked the working group to not underestimate the cost to the companies for preparing the illustrations required by the model regulation. He said companies would not want to change those illustrations now. Mr. Foley asked interested parties and regulators to put all ideas on the table and then the working group would look for the most cost-effective way of implementing the best ideas. Mr. Foley asked interested parties to submit ideas to Ms. Johnson in electronic format so they could be added to the NAIC's Web site rather than being mailed to the interested parties.

(c) Reinsurance in Cash Flow Testing

One of the issues discussed late in the process of development of the Life Insurance Illustrations Model Regulation was the problem resulting when risks were passed on to a reinsurer and not reflected in the disciplined current scale. By passing along the downside risk to the reinsurer, illustrations could be more aggressive. Jeremy Starr (The Guardian Life Insurance) said the state of New York is working on a similar issue and the ACLI has appointed a committee to prepare comments for New York. He said the results of that study will be helpful to this working group and promised to provide that information before the Summer National Meeting.

(d) Equity-Indexed Life Insurance

Mr. Foley said thinking about equity-indexed life insurance in the context of a disciplined current scale is very difficult. He asked what companies are doing in a state that has adopted the Life Insurance Illustrations Model Regulation. He asked how the disciplined current scale was defined. Mr. Coleman said he asked the same question at the meeting of the technical resource advisors and received no answer. Mr. Foley asked Mr. Coleman to find an actuary who could explain how he or she calculated the disciplined current scale and to provide that information to the working group. Mr. Foley said the working group may also need to consider development of an appendix to the *Life Insurance Buyer's Guide* that describes equity-indexed life insurance.

(e) AAA Practice Note Material in the Model Regulation

Mr. Foley said he had heard suggestions that some of the practice notes from the AAA should be included in the model regulation. Mr. DeAngelo said that when he first joined the working group and began to familiarize himself with the model, he felt there were some holes in the regulation. It was not until he read the practice notes from the AAA that he reached a comfort level with the regulation. He thought the suggestion was a good one.

(f) In-Force Illustrations in the Annual Report

Mr. Coleman said mandating in-force illustrations in an annual report would be a problem because the automated systems are not integrated. Mr. Coleman also pointed out that the one-year period in the model where an in-force illustration cannot be provided is an inappropriate rule. The language was first included because of concern that a company would say it was not going to use an illustration and then a few days later provide an in-force illustration. He said this could easily be addressed by removing the prohibition in instances where a sales illustration had been delivered.

(g) Laptop Illustrations with No Printout

Mr. Foley said that at the end of the drafting process a problem was brought to the group's attention that agents are using laptop computers without printers. In that case an illustration is shown to the individual, but it cannot be printed to leave with the applicant. This issue was addressed in the question and answer document prepared by the working group but might need to be addressed further.

(h) Development of Variable Life Regulation

Carl Wilkerson (ACLI) said the Securities and Exchange Commission (SEC) is close to developing rules on personalized illustrations. He said something would probably be available within the next 30 to 60 days. He agreed to keep the working group informed of this project.

2. Next Steps

Mr. Foley invited interested parties to watch the NAIC's Web site for information and ideas on the issues identified for working group discussion and opined that the working group will need at least one two-hour meeting at the Summer National Meeting or perhaps two two-hour meetings.

Having no further business, the Life Disclosure Working Group adjourned at 9:45 a.m.

ATTACHMENT FOUR

Suitability Working Group
Washington, D.C.
March 7, 1999

The Suitability Working Group of the Life Insurance and Annuities (A) Committee met in the Grand Hyatt Hotel in Washington, D.C., at 4 p.m. on March 7, 1999. Paul DeAngelo (N.J.) chaired the meeting. The following working group members were present: Richard Rogers (Ill.); Rosanne Mead (Iowa); Lester Dunlap (La.); Scott Borchert (Minn.); Keith Wenzel (Mo.); David Sky (N.H.); Tom Jacks (N.C.); Joel Ario (Ore.); and Mike Boerner (Texas).

1. Adopt Minutes of Jan. 27, 1999, Conference Call

Richard Rogers (Ill.) moved and Joel Ario (Ore.) seconded a motion to adopt the minutes of the Jan. 27, 1999, conference call. The motion passed (Attachment Four-A).

2. Consider Life Insurance Advertising Model Regulation

Paul DeAngelo (N.J.) said the Life Insurance Advertising Model Regulation has not been amended for some time and needs attention. He said this working group started to draft amendments and will see later whether changes are needed with regard to suitability. Mr. DeAngelo said it is his intent to work on these revisions during conference calls and then later to look at the issue of suitability. He asked if the working group thinks this is an appropriate method to approach the charge. He said an alternative is to go back to the parent and say the model is adequate as is, or to ask that it be reassigned to another working group. Mr. DeAngelo recommended the working group keep the project and continue as it had started in the Jan. 27, 1999, conference call. Mr. Ario said he thought that one reason the working group was assigned this project was because it is possible that strengthening the advertising rule would obviate the need for suitability standards. He said he thought there would be interplay between the two charges, but he agreed it is appropriate to keep them distinct. Mr. Rogers agreed with this assessment. Hearing no dissenting views, Mr. DeAngelo asked Carolyn Johnson (NAIC/SSO) to schedule a conference call for late March or early April to continue review of the Life Insurance Advertising Model Regulation.

3. Consider Suitability White Paper Development

Mr. DeAngelo said that he received two questions about the scope of the suitability white paper. The first asked if this project would include the home service industry. Mr. DeAngelo opined that this was less an issue of suitability of sale, but suitability of product. Mr. Ario said a working group under the Market Conduct and Consumer Affairs (EX3) Subcommittee has already been charged with review of the home service industry. The working group reviewed the charge to the EX3 Subcommittee and agreed to let that group handle the issue of suitability in regard to home service. Mr. DeAngelo said he had also been asked whether the working group will consider credit insurance and suitability issues related to it. He opined that this is a big issue and wondered if the working group could do justice to the topic. Mr. Ario said that the EX3 Subcommittee is thinking about requesting a charge on credit insurance also, although he did not know how that discussion would evolve.

Mr. DeAngelo suggested that the working group set a time table for drafting the white paper. He asked if the working group could have a first draft prepared by May 1. Mr. Ario responded that, if this will be discussed at the Summer National Meeting, the first draft could be prepared by mid-May. The working group members agreed to have the assigned sections to Ms. Johnson by May 12. She will combine them into one document and distribute the draft for review prior to the Summer National Meeting. Mr. DeAngelo pointed out that a letter recently has been received from the American Council of Life Insurance (ACLI) with a recommendation to add additional sections to those already outlined by the working group. Mr. DeAngelo asked the members of the working group to review the letter and be ready to make a decision at the conference call mentioned earlier.

4. Presentation from National Association of Securities Dealers (NASD)

Larry Kosciulek (NASD Regulation, Inc.) presented information about the suitability rules that the NASD applies to producers selling securities products. He said the securities broker must follow the fundamentals of fair dealing and have a reasonable basis to believe that his or her recommendation is suitable for the customer. The broker must make reasonable efforts to find out the customer's risk aversion, present investments, business acumen, etc. The standards are enforced through investigation of complaints and target examinations. Mr. Kosciulek said the sanction could be a fine, suspension, a bar from sale of securities, or restitution to the customer. He said there is no gray area; the sale is either suitable or it is not. Mr. Kosciulek said new issues receiving attention are electronic communications and day traders. He said the NASD rules talk about "recommendations" and he said it is not always clear what that means in the context of the Internet. Historically, general advertising was not "recommending." Mr. Kosciulek said that the NASD is looking at creating suitability standards in regard to day traders. He said this is different because the day trader is offering consumers a "system" rather than recommending the sale of specific securities.

Mr. Kosciulek said the NASD does not look at traditional insurance products as a rule. The only reason that it might do so is if an NASD-licensed agent is accused of violations such as misappropriation of funds.

Mr. Kosciulek referred to a case that is of great importance to the NASD. He said *The Matter of District Business Conduct Committee for District 8 vs. Miguel Angel Cruz* is an important definer of the issues in regard to suitability. Mr. DeAngelo asked Ms. Johnson to distribute copies of this case to the members of the working group. Mr. DeAngelo asked how the NASD defines

advertising. Mr. Kosciulek responded that it includes communications with the public. These could be in the form of advertising (general media); sales literature (form letters); or correspondence (on a one-to-one basis). Mr. DeAngelo asked whether the NASD determines the suitability of the sale or determines whether a sale is not suitable. Mr. Kosciulek responded that it determines whether the sale is suitable. Mr. DeAngelo asked if there might not be a wide range of products that are suitable for one individual. Mr. Kosciulek agreed that no product is innately unsuitable for everyone; there might be someone who fits the risk profile of even the riskiest product. Mr. DeAngelo asked if the standard would be different based on how sophisticated the customer is. Mr. Kosciulek responded that the complexity of the product does not necessarily make it unsuitable. The customer should be able to rely on his trained agent. Mr. Ario questioned the comment of Mr. Kosciulek that there are no gray areas. Mr. Kosciulek clarified that, if a suit is brought against an agent, it is either a violation, which results in a formal action, or there is no sanction. He explained that is what he meant by no gray areas. Mr. Ario asked how many sanctions were made in a year. Mr. Kosciulek responded that he did not have statistics, but that there are not very many. He opined that this might be because the market is currently doing so well. Mr. DeAngelo suggested that transactions that may later prove to be unsuitable have not aged to the point of a complaint.

Lester Dunlap (La.) asked if the age of the client is taken into account as a measure of suitability. Mr. Kosciulek responded that this is a key consideration. For example, a product sold to a retiree with a fixed income would be judged differently than for someone who was not in that situation. He said it is an important factor. Mr. Dunlap explained that part of the impetus for this working group is concern over sales to seniors. Mr. Kosciulek responded that the NASD has similar concerns.

Scott Cipinko (National Alliance of Life Companies—NALC) asked how the NASD handles a situation where the customer wants something that is clearly not suitable. Mr. Kosciulek responded that his first impulse was to say not to deal with the customer, but he acknowledged that was a simplistic answer. He said brokers would probably get an attestation from the individual that he purchased the product under his own volition and understood the risks. Mr. Kosciulek acknowledged this is a tough call. Mr. DeAngelo asked if the burden is on the agent to prove that the sale is suitable or on the NASD to prove that it is not. Mr. Kosciulek responded that the burden is on the agent to prove the transaction is suitable.

5. Presentation from Insurance Marketplace Standards Association (IMSA)

Don Walters (ACLI) said he had been asked to discuss whether some of the IMSA standards may impose a duty with regard to the suitability of sales. He said one of the standards in the IMSA program is that the company should engage in needs-based selling. The agent and company are to make reasonable efforts to find out if the product fits in with the insurable needs and the financial objectives of the consumer. The company must have policies and standards in place to determine if that is true. Mr. Walters noted that only a few states have requirements for suitability; the IMSA program voluntarily implements suitability standards. He said the program encourages distributors to use fact-finding tools to determine the insurable needs and financial objectives. He noted that, to meet the requirements of IMSA, the company is responsible for making sure the agent has been trained so that he or she knows how to focus on the needs and objectives of the consumer. He must have product knowledge as well as the knowledge to evaluate the needs and objectives. He noted the company has an on-going obligation to monitor compliance with the principles of ethical market conduct. Mr. Walters said there are currently 215 members of the IMSA, representing a 70% market share for individual life and annuities.

Mr. DeAngelo said it is possible that the working group could say that companies that are members of IMSA do not need to follow requirements in a regulation. To determine if that is a good course to follow, the working group needs more information. He asked Mr. Walters to provide to Ms. Johnson samples of the type of written policies that companies have in place (without the specific name of the company). He asked how companies encourage agents to use needs-based selling. He suggested that the white paper might have a section on IMSA and said the information Mr. Walters presented would be very helpful. Mr. Ario said he could easily envision that a regulation would say that a company that was IMSA-certified would be deemed to be in compliance with the suitability standards. David Sky (N.H.) asked if the 215 members had all gone through a self-assessment and an independent assessment. Mr. Walters responded that both of these were necessary before a company was accredited by IMSA. He noted that a significant number of companies are working toward IMSA accreditation, and suggested that 35 to 50 new companies could be added within the next six months. Mr. Sky asked about recertification and Mr. Walters responded that in three years the membership in IMSA expires and a company has to go through the entire process again to be recertified.

Mr. Ario noted that the IMSA program is process-oriented rather than outcome-oriented. He asked what would happen if the outcome for a specific company was not good. Mr. Walters said that IMSA has asked for market conduct examination information to help in identifying whether its program is effective. He said that if a company that is IMSA accredited has a large number of complaints, IMSA could suspend or expel that member.

Mr. DeAngelo thanked the two presenters for the information they provided to the working group, and invited anyone else with information for the working group to contact Ms. Johnson to arrange a presentation before the working group. He also thanked the ACLI for suggestions for new sections for the white paper and invited any others with suggestions to provide those also. Mr. Ario asked if Mr. DeAngelo would like to invite the ACLI to draft new sections based on their suggestions. Mr. DeAngelo responded that, as a general rule, he would like to see regulators do the drafting. Mr. Ario said that after a while the comments so changed the draft that it was difficult to tell who wrote the first draft. Rosanne Mead (Iowa) agreed with Mr. DeAngelo that regulators should prepare the draft. She said the ACLI letter contains extensive comments that would be useful for drafting. Mr. Dunlap said that, because so much of this suitability white paper will refer to agents, the agents associations should also be prepared to comment on the white paper development.

Having no further business, the Suitability Working Group adjourned at 6 p.m.

ATTACHMENT FOUR-A

Suitability Working Group
Conference Call
January 27, 1999

The Suitability Working Group of the Life Insurance and Annuities (A) Committee met by conference call on Jan. 27, 1999, at 1 p.m. The following working group members or their representatives participated: Paul DeAngelo, Chair (N.J.); Richard Rogers (Ill.); Ann Outka for Rosanne Mead (Iowa); Lester Dunlap (La.); Cindy Martin (Mass.); Robert Commodore (Minn.); Cindy Amann (Mo.); Randy Ward for Phil Bisesi (Ohio); Joel Ario (Ore.); Ted Becker, Mary Keller and Bill Goodman (Texas); and Tom Crompton for Tom Van Cooper (Vt.).

Paul DeAngelo (N.J.) announced his intention to discuss the Rules Governing the Advertising of Life Insurance Model Regulation charge and to deal with the charge regarding suitability separately. He noted that at a later time there may be suitability comments that can be incorporated in the advertising model, but he asked the working group to hold those in abeyance while the group developed its thoughts on suitability. Mr. DeAngelo said that three documents would be used for the discussion during the conference call: Comments on the regulation from Massachusetts, Texas and Louisiana. Mr. DeAngelo expressed his intention to go through the documents section by section and asked for comments.

Section 1. Purpose

No changes were recommended to this section.

Section 2. Definitions

The draft from Massachusetts included a recommendation to add reference to the Internet in Section 2A(1)(a) and to Web pages in Subparagraph (b). Joel Ario (Ore.) said the concept was correct, but he suggested waiting to see what terminology is developed by the Electronic Commerce Working Group of the Special Committee on Regulatory Re-engineering. Andra Olsen (ING Group) suggested using the term "broadcast media" that reaches the public rather than being so descriptive. Mr. Ario responded that this would also cover newspapers and radio. He suggested using "electronic commerce" as a place holder for now. Robert Commodore (Minn.) noted that the suggestion to add Web pages in Subparagraph (b) might be duplicative because depictions, illustrations, etc., could be delivered over Web pages. Mr. Ario opined that the first three in that list were more like Web pages whereas the last suggestions were more generic. Mr. DeAngelo suggested leaving this as is for now and giving it more thought.

Cindy Martin (Mass.) suggested adding definitions of determinable elements and graded or modified benefits to the regulation. She said her reasons would become clear later on in review of the regulation. In response to a question from an interested party, Ms. Martin said she thought the definition of graded or modified benefits came from New York. Mr. DeAngelo asked Carolyn Johnson (NAIC/SSO) to check the Wisconsin regulations, which also contain a similar provision.

Ms. Martin asked about the correct reference for Lloyd's to be included in Subsection C; the definition of "insurer." Mr. DeAngelo asked for comments on the correct term to use in the regulation. Maureen Adolf (Prudential) noted that the definition of producer is different from that in the replacement regulation. Mr. Ario suggested that the group look at the product of the Agent's Licensing (EX3) Working Group, of which he is a member.

Section 3. Applicability

Lester Dunlap (La.) suggested that agents that utilize advertising not approved by the company be held separately accountable. Mr. DeAngelo agreed, saying that in New Jersey both the company and the agent are held responsible. He thought this sent a good message. Ms. Olsen also spoke in favor of penalties for agents. The working group reviewed the Massachusetts suggestion, which is based on the Florida system. The working group decided to rearrange the section somewhat but to include it in the draft. Ms. Martin suggested the working group may want to add a requirement that only company approved advertising be used. Mr. DeAngelo opined that it should be up to the company whether it wanted to allow agents to do their own advertising. He said that by making the company responsible, it would likely want to review any agent advertising.

Section 4. Form and Content of Advertisements

Mr. Dunlap suggested that the working group consider developing parameters to help measure whether advertising was misleading or deceptive. Mr. DeAngelo asked if Mr. Dunlap had any ideas about what should be included in the description of misleading advertising. Mr. Dunlap responded that companies have advertising materials approved in some places but not others and he opined that this might be because the language is written so broadly. Mr. DeAngelo said he did not want to be in the position of having to approve some advertising just because some other states have done so. The working group discussed the terms used in Subsection B and Mr. DeAngelo asked the working group and interested parties to consider whether there are any other terms that should be added to this list.

Section 5. Disclosure Requirements

The working group agreed to add language suggested by Massachusetts and Texas that refers to a free-look period. Mr. DeAngelo noted that this goes to whether the advertising is within the rules, not whether it complies with the contract language. It applies regardless of when the information is found to be misleading. The working group agreed to add a new Subsection E that refers to the CD annuity. Mr. Dunlap questioned the use of that term and asked whether it is intended to be illustrative or whether other terms should also be included. Mr. DeAngelo noted that the language is written broadly enough that this is an example and encouraged its inclusion because he said annuities are often sold to the elderly with the information that this is "just like a CD."

Gary Hoffman (Kansas City Life) asked if this means that insurers can never compare an annuity with a certificate of deposit. Mr. DeAngelo responded that this does not say they cannot be compared, but the insurer must point out similarities and differences.

Ms. Olsen asked about the requirement in Subsection B to prominently describe the type of policy. She asked if that means using its full generic name every time it is mentioned. Charlotte Liptak (General American) said she believes this means that someplace in the advertisement the full generic name must be used. Mr. DeAngelo responded that the typical way is to mention the full name of something the first time and thereafter use a shortened name.

Massachusetts suggested adding a new Subsection G on graded or modified benefits, which is taken from the New York and Wisconsin regulations.

Ms. Martin asked about the limitation in Subsection H to persons 50 years of age and older. Mr. DeAngelo suggested deleting the reference to 50 years of age or older and the working group agreed to do so.

Mr. DeAngelo requested that the working group consider a second conference call to address the remaining issues and agreed to redraft the regulation after the working group reviews the whole regulation.

Having no further business, the Suitability Working Group adjourned at 2:30 p.m.