



November 30, 2007

VIA ELECTRONIC MAIL

State of New York Department of Insurance
25 Beaver Street
New York, NY 10004
Attention: Superintendent Eric R. Dinallo

Re: Department 11/20/07 Draft: Viatical Settlements Act

Dear Superintendent Dinallo:

We, the members of the Institutional Life Markets Association, Inc. ("ILMA"), welcome this opportunity to comment on the November 20, 2007 draft viatical settlements legislation (the "Draft Act") that the State of New York Department of Insurance (the "Department") has recently circulated.

ILMA is a trade association comprised of a number of the world's leading institutional investors and intermediaries in the mortality and longevity marketplace, formed to encourage the prudent and competitive development of a suite of evolving mortality and longevity related financial businesses, including the businesses of life settlements and premium finance.

We commend the Department for its work in advancing consumer protection in the life settlement market and we believe that our comments will strengthen the Draft Act in a way that will benefit both the consumer and the marketplace. As such, we encourage the Department to incorporate these comments in the version of the Draft Act that will be introduced as proposed legislation in the State of New York. We look forward to discussing our comments with the Department, and as we continue to study the Draft Act, we may have additional thoughts that we hope to share at the upcoming Department meeting on December 5, 2007.

At this point, we wish to highlight our two main concerns with the Draft Act: the registration requirements for viaticated policy investors and the extra-territorial application of the Draft Act. We strongly believe that requiring investors to register will discourage the development of a robust life settlement market to the detriment of consumers in New York. In addition, in order to avoid confusion and conflicts of

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laws, the Draft Act should apply only to transactions with viators in New York. Our detailed comments on these and other matters are set forth below.

Comments:

1. Short Title:

We respectfully propose that Section 7801 should be amended and restated as follows:

“This article shall be known and may be cited as the “viatical life settlements act”.

In addition, all references throughout the insurance law to “viatical settlements” shall be changed to “life settlement”.

Analysis. Historically, the term viatical settlements has been associated with the purchase of life insurance policies from terminally ill insureds. Today, investors commonly purchase life insurance policies from insureds who are not terminally or chronically ill. These purchases are commonly referred to in the marketplace as “life settlements.” As the Draft Act regulates purchases of life insurance policies irrespective of the health of the insured, it would be appropriate to refer to the act as the “life settlements act” and all references to “viatical settlement” should be replaced with the term “life settlement.”

2. Definition of Viatical Settlement Contract:

We respectfully propose that Section 7802(i)(1)(D) be amended as follows:

“any other agreement that the superintendent determines is substantially similar to any of the foregoing in accordance with guidelines or regulations promulgated by the Department.”

Analysis: This amendment provides greater clarity as to the types of transactions that may be deemed to be viatical settlement contracts. Without such clarity, it will be difficult to develop new products to meet the demands of consumers.

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We respectfully propose that Section 7802(i)(3) should be amended by inserting the following additional sub-clauses and by renumbering the remaining sub-clauses accordingly:

“(B) a premium finance loan or other loan made by a bank, savings bank, savings and loan association, credit union or other licensed lending institution;

(C) a loan made by a lender in compliance with article twelve-B of the banking law;”

Analysis. The business of premium finance is recognized as an appropriate and legitimate activity under New York law and subject to regulation by the banking department. It should not be the intent of the Draft Act to regulate banking activities, which activity is subject to significant regulatory oversight by both federal and state authorities. This proposed amendment clarifies that premium finance loans are not viatical settlement contracts and is consistent with concerns expressed by the Office of the Comptroller of the Currency in a letter to the National Association of Insurance Commissioners dated February 22, 2007.

We respectfully propose that Section 7802(i)(3)(B) should be referenced as Section 7802(i)(3)(D) and amended and restated as follows:

“(B)(D) the making of a policy loan in an amount not to exceed the cash surrender value of such policy, or the paying of surrender benefits or other benefits, by the issuer of a policy with respect to that policy;”

Analysis. This proposed amendment clarifies that a policy loan made by an issuer should not exceed the available cash surrender value in order to benefit from the exemption.

3. Registration Requirements:

We respectfully propose that Section 7804 should be amended by deleting references therein to “viaticated policy investors” and all references in the Draft Act to “registered viaticated policy investors” shall be changed to “viaticated policy investors.”

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Analysis. Investors provide the liquidity necessary to maintain a robust market for life settlements so that consumers can achieve the highest possible value for life insurance policies that are either unwanted or unneeded. Requiring investors who wish to own directly the policies they purchase to first register with the Department will have a chilling effect on the life settlement industry in New York and cause a robust market in life settlements to move away from the State of New York. This will result in fewer choices for consumers without achieving the Department's intent of obtaining greater industry oversight and regulation and may also result in lost revenue for the state as the market moves elsewhere.

We also believe that it is not necessary to require registration in order to require investors to comply with the privacy provisions of the Draft Act. The Department will have jurisdiction over investors to the extent that such investors do business in New York or acquire viaticated policies in New York.

4. Privacy:

We respectfully propose that Section 7809(a)(1) should be amended and restated as follows:

“(1) to a licensed viatical settlement provider, licensed viatical settlement broker, registered viaticated policy investor or registered viatical settlement intermediary or authorized representative thereof, and any life expectancy provider or life settlement service provider, including policy servicing companies, medical tracking companies, financial analysts and rating agencies, as reasonably necessary for the purpose of effectuating a viatical settlement contract or maintaining a viaticated policy or effectuating capital market transactions, and upon the written consent of insured, which consent need be obtained only in the process of effectuating a viatical settlement contract and not each time the information is to be disclosed provided that such consent covers the person or persons to whom such information would be delivered;”

Analysis. This amendment clarifies that the viatical settlement provider or viaticated policy investor may share such information with life expectancy providers and other service providers, such as tracking companies, which is a common practice in the life settlement industry. Also, investors may need to share such information with rating agencies in connection with securitization transactions and other offerings. In addition, this amendment clarifies that a general consent

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from the insured regarding privacy is sufficient and that a new consent need not be obtained each time disclosure is made.

We respectfully propose that Section 7809(a)(4) should be amended and restated as follows:

“(4) necessary to allow the licensed viatical settlement provider, ~~registered viaticated policy investor or registered viatical settlement intermediary or authorized representative thereof, and any life settlement service provider, including policy servicing companies and medical tracking companies, and funeral home operators,~~ to contact the insured or the insured’s designee for the purpose of determining the health status of the insured, obtaining a death certificate or preparing, submitting or collecting upon a claim for a death benefit under a policy.”

Analysis. This amendment clarifies that the viatical settlement provider or viaticated policy investor may continue to work with third party service providers, as is the common industry practice today.

We respectfully propose that Section 7809(c) should be deleted in its entirety.

Analysis. The other provisions of Section 7809 detail specific privacy requirements that apply to licensed entities and investors. Section 7809(c) appears to mandate compliance with every state and federal privacy law, even those that are normally applicable only to healthcare practitioners, as well as common law privacy requirements. This makes for an unworkable regulatory and compliance scheme, and, in all likelihood, would afford little, if any, additional protection to the consumer. We note that many investors, such as banks, already are subject to substantive privacy laws, such as the privacy provisions in the Gramm Leach Bliley Act.

5. Disclosure

We respectfully propose that Section 7810(b)(11) should be amended and restated as follows:

“(11) ~~how and to whom~~ that the identity of the insured and medical, financial or personal information about the insured and family member may

be disclosed in accordance with applicable law and any continuing obligations of the insured to renew consent to share information;”

Analysis: This proposed amendment clarifies what must be disclosed while preserving the Department’s intent that viators are aware that personal information may be disclosed to other parties.

6. General Rules

We respectfully propose that Section 7811(a)(2)(A) be deleted.

In addition, we respectfully propose that Section 7811(a)(3) be amended by deleting the words “medical evidence and”.

Analysis: The insurer does not need to receive a copy of the medical release in order to process a request for verification of coverage. Correspondingly, Section 7811(a)(3) provides that an insurer may indicate, based on the medical evidence and documents provided, whether the insurer intends to pursue an investigation. This provision, along with the reference to the medical release in Section 7811(a)(2)(A), creates the impression that there is an obligation to deliver certain medical information to the insurer. We are also concerned that this opens the door for the insurer to cause substantial delay in delivering a verification for coverage if the insurer requests substantial additional information.

We respectfully propose that Section 7811(c) be amended by reestablishing the fifteen-day rescission period, as opposed to the thirty days provided in the Draft Act.

Analysis: The fifteen-day rescission period is typical in the industry. A typical life settlement transaction generally takes several months from start to finish, and the viator has many opportunities to consider and reconsider whether he or she wishes to enter into a transaction. Accordingly, there is no need to extend the rescission period.

We respectfully propose that Section 7811(a)(4) be amended by adding the words “or viaticated policy investor” following the phrase “to a viatical settlement provider”.

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Analysis: While a licensed viatical settlement provider is the person who would enter into a viatical settlement contract with a viator, often the licensed viatical settlement provider will name the viaticated policy investor in the change of owner forms delivered to the insurer. This eliminates the need for a two step transaction, where the ownership of the policy is changed first to the viatical settlement provider and then again to the viaticated policy investor. Also, this eliminates credit risk as between the viatical settlement provider and the viaticated policy investor.

7. Prohibited Practices:

We respectfully propose that Section 7812(f)(1) should be amended and restated as follows:

“No person or premium finance agency that enters into a premium finance agreement, as such terms are defined pursuant to article twelve-B of the banking law, with the owner of a policy with regard to such policy, no person affiliated or associated, directly or indirectly, with such person or premium finance agency, and no person that participated, directly or indirectly, or through an affiliated or associated person or entity, in arranging or facilitating the arrangement or servicing of such premium finance agreement with the owner of a policy with regard to such policy shall receive any proceeds, fees or other consideration, directly or indirectly, from the policy or the owner of the policy or any other person with respect to the premium finance agreement or viatical settlement contract or other transaction related to such policy (other than commissions payable by the insurer issuing the policy to licensed life insurance producers and agents involved in having such policy issued) that are in addition to the amounts required to pay the principal, interest and service charges related to policy premium paid under the premium finance agreement and any other costs and expenses incurred by the person or premium finance agency advancing funds pursuant to such premium finance agreement ~~as are authorized and limited by article twelve-B of the banking law~~ and specified in the premium finance agreement or subsequent sale of such agreement. The provisions of this subsection shall not apply to activities of a federally or state chartered bank or savings and loan association.”

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Analysis. Premium finance agencies may have affiliations with life insurance producers. The proposed amendment makes clear that such affiliated life insurance producers will be able to collect commission earned in connection with placing the policy.

In connection with making a premium finance loan, a lender may incur certain costs and expenses, such as closing costs, documentation fees, legal fees, collateral support fees and hedging fees, that are properly charged to the borrower. This amendment permits the lender to continue to collect such additional fees and expenses.

In addition, this amendment extends the exemption provided to federally chartered banks to state chartered banks, as both federal and state banks should be treated equally for purposes of the Draft Act.

8. Applicability; Contract Provisions:

We respectfully propose that Section 7816 should be amended and restated as follows:

“The provisions of this article shall apply to any viatical settlement contract made or proposed to be made or solicited with a viator resident in this state at the time the viatical settlement contract is executed, and the provisions in this act relating to viatical settlement brokers, viatical settlement intermediaries, viatical settlement providers and viaticated policy investors shall apply only to such viatical settlement contracts and not with respect to any other business conducted by such persons.”

Analysis. This provision makes clear that the reach of the Draft Act is limited to New York viators and does not apply extraterritorially to all business conducted by a person who is licensed or based in New York.

We respectfully propose that Section 7817 should be deleted in its entirety.

Analysis. If application of the Draft Act is limited to New York viators this provision is no longer necessary.

In connection with the proposed amendments to Section 7816, the Department may wish to reconsider Section 7803(a)(2).

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Our director of government relations, Jack Kelly, will be contacting the Department to discuss the contents of this letter in greater detail, and, as noted above, we look forward to participating in the Department meeting to discuss the Draft Act scheduled for December 5, 2007. In the meantime, should you have any questions or comments, please feel free to contact Mr. Kelly directly at (202) 289-1011 or by email at jkelly@mcphersongroup.us.

We thank you for the opportunity to comment on this matter and we look forward to continuing our dialogue with the Department toward the development of the longevity and mortality marketplace in the State of New York.

Very truly yours,

Institutional Life Markets Association, Inc.

Andrew Plevin
Vice President

cc: Institutional Life Markets Association, Inc., Board of Directors
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