

## **Institutional Life Markets Association**

March 26, 2007

### **VIA E-MAIL AND FEDEX**

Honorable Julie McPeak  
Chairperson, Life Insurance and Annuities "A" Committee  
National Association of Insurance Commissioners  
2301 McGee Street, Suite 800  
Kansas City, Missouri 64108-2662

### **RE: Viatical Settlements Model Act**

Dear Commissioner McPeak:

The Institutional Life Markets Association ("ILMA") is a newly formed 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.

Enclosed for your benefit please find a copy of ILMA's Guiding Principles. These Guiding Principles, to which every ILMA member subscribes, set forth our beliefs as to how business in the mortality and longevity marketplace should be conducted and our goals for the industry.

We, the members of ILMA, believe that the development of a robust longevity and mortality market is crucial to addressing the interests of an aging population in which retirement is increasingly financed by personal savings and not defined benefit pension plans. The development of this market is also needed to address the interests of other holders of longevity and mortality risk, who are turning increasingly to the capital markets in order to manage this risk. As one of the most important and visible sectors of the longevity and mortality market, the life settlement business provides a consumer with the opportunity to capitalize on the economic value of his or her life insurance policy in much the same way as a consumer may capitalize on other assets in his or her portfolio.

We commend the National Association of Insurance Commissioners ("NAIC") for its work in seeking to develop the regulation of this market in a manner that balances the needs of the various participants, although we have reservations regarding certain portions of the proposed changes. While we approve of the NAIC's efforts to address the problem of stranger owned life insurance ("STOLI"), and in comments herein we propose additional changes to further restrict STOLI transactions, we do not believe that, for the reasons discussed below, prohibiting life settlements for five years is the best approach.

We welcome this opportunity to comment on the March 16, 2007 version of the NAIC Viatical Settlements Model Act (the "March Draft"). Generally, we approve of the revisions proposed by the Office of the Comptroller of the Currency (the "OCC"), presented to the NAIC in a correspondence dated February 22, 2007 (the "OCC Correspondence") and included in the March Draft, and we have made some minor changes in order to clarify certain of those provisions. Our comments also incorporate other modifications and clarifications designed to aid the prudent development of the mortality and longevity businesses and to help enable consumers to realize all of the economic opportunities associated with holding a life insurance policy.

Enclosed for your review is a copy of the March Draft with our proposed revisions incorporated therein, tracked in black lined formatting, and set forth below is our explanation of the principle changes thereto. We respectfully request that the Life Insurance and Annuities "A" Committee consider incorporating these revisions into the March Draft in their entirety.

1. Bank. The March Draft should be revised to include the following additional defined term as Section 2B:

"Bank" means any bank as such term is defined in 12 U.S.C. § 1813(a), (b), (c) and (s).

This revision would clarify what types of lending institutions are at issue when the March Draft makes reference to the term "bank." For your benefit, we enclose a copy of 12 U.S.C. §§ 1813(a)-(c) and (s).

2. Policy. The term "policy," as defined in Section 21 of the March Draft, should be revised as follows:

"Policy" means an individual or group policy, group certificate, or other contract or arrangement of life insurance owned by a resident of this state an individual who has his or her primary residence in this state or any other person who has its principal place of business or trust administration in this state, regardless of whether delivered or issued for delivery in this state. The term "policy" does not include any annuity contract other than an annuity contract with a guaranteed minimum death benefit.

This revision recognizes that policies may be owned by trusts, corporations or other entities in addition to being owned by individuals. The revised definition also makes clear that the term "policy" includes annuity contracts with guaranteed minimum death benefits.

Additionally, throughout the March Draft, the term "life insurance policy" should be replaced with the term "policy."

3. Premium Finance Company. The March Draft should be revised to include the following additional defined term as Section 2K:

“Premium finance company” means a premium finance agency or premium finance company (i) license pursuant to this state’s premium finance company or agency licensing requirements; (ii) exempt from this state’s licensing requirements; or (iii) otherwise not required to be license pursuant to this state’s licensing requirements.

This revision would clarify what types of lending institutions are at issue when the March Draft makes reference to the term “premium finance company.”

4. Viatical Settlement Contract. The following should be added as Section 2P(2)(c) of the March Draft:

The viator or the insured agrees on the date of the premium finance loan to share any portion of the settlement proceeds (if any); provided, however, that nothing in this Section 2P(2)(c) shall prevent or prohibit a bank or premium finance company from collecting any amount due and owing under the premium finance loan.

Premium finance loans where a lender shares in the proceeds generated from the settlement of a policy is the type of STOLI transaction that the NAIC should seek to prohibit.

5. Viatical Settlement Contract. As noted above, we concur with the OCC’s comments with regard to modifying and relocating Section 2N(2)(a) of the March Draft. We believe that such section would be clearer with the following revisions:

A premium finance loan made for a policy by a bank or a premium finance company to a viator on, before or after the date of issuance of the policy where the loan proceeds are used solely to pay:

- (i) Premiums for the policy;
- (ii) The costs of the loan, including, without limitation, interest, arrangement or origination fees, utilization fees and similar fees, prepayment fees and charges, closing costs, legal fees and expenses, trustee fees and expenses, and third party collateral provider fees and expenses, including fees payable to letter of credit issuers.

6. Viatical Settlement Contract. Section 2N(3)(b) should be revised as follows:

A loan made by a bank or premium finance company in which the lender takes an assignment of a policy solely as collateral for a loan;

We believe that the language concerning loan defaults is best addressed in a separate section as set forth below. Our proposed Section 2P(3)(d) reads as follows:

Any act of foreclosure on a loan that pursuant to this Section 2P(3) is not a viatical settlement contract and any sale, whether at foreclosure or thereafter, by a bank or premium finance company of any policy that is collaterally assigned to it in connection with any such loan.

7. Viaticated Policy. Section 2S of the March Draft should be revised to clarify that policies can be owned, and certificates held by trusts, corporations and other entities in addition to being owned by individuals.
8. Reporting Requirements and Privacy. The following language should be added as new subsection (8) to Section 6B of the March Draft:

Has otherwise been consented to by the insured and such information provided solely to (i) “qualified institutional buyers” with internal procedures to protect the identity of the insureds and insureds’ protected health information; (ii) nationally recognized statistical rating organizations; (iii) nationally recognized auditing firms; and (iv) persons in the business of providing life expectancies.

The following language should also be added as a new paragraph at the end of Section 6B of the March Draft:

Notwithstanding anything in Section 6B herein to the contrary, a viatical settlement provider, viatical settlement broker, [viatical settlement investment agent,] insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured’s identity, may disclose all information relating to the insured to any other person in compliance with the Gramm-Leach-Bliley Act, the Fair Credit Reporting Act, any successor acts and other applicable federal privacy laws.

Investors require access to an insured’s medical and other information in order to determine a policy’s fair market value. To the extent an insured consents to such a disclosure, and to the extent an investor has internal procedures to protect an insured’s identity and an insured’s protected health information such as procedures mandated by federal law, disclosure of this information should be permitted under this provision.

9. Disclosure to Viator. Section 8A(6) of the March Draft should be revised in order to provide a viator the right to rescind a viatical settlement contract before the earlier of (i) thirty (30) calendar days after the contract’s execution or (ii) fifteen (15) days after the viator receives the viatical settlement proceeds. The fifteen (15) day rescission period is sufficient for a viator to consider the prudence of his or her decision, and a longer period may create market uncertainty because of an unnecessarily long period of time required for these transactions to truly be considered complete.
10. Disclosure to Viator. A viatical settlement provider acts as a counter party to the viator in an arm’s length transaction and not as a fiduciary. Accordingly, Section

8B(3), which, among other things, would require a viatical settlement provider to disclose to the viator the amount and method of the providers compensation upon the resale of a policy should be deleted in its entirety. The fee disclosure that we believe is necessary and appropriate for the viator is already contained in Section 8C(4), which requires the viatical settlement broker to disclose its compensation.

11. General Rules. Section 10A(4) of the March Draft should be revised as follows:

The insurer shall respond to a request for verification of coverage submitted on an approved form by a viatical settlement provider or viatical settlement broker within thirty (30) calendar days of the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends, in good faith, to pursue an investigation at this time regarding the validity of the policy or possible fraud, and, if the insurer intends to pursue such an investigation, the insurer also shall indicate the reasonable basis therefor. If the insurer does not provide notice that it intends to investigate the validity of the policy or the possibility of fraud, then, subject to the proviso below, the insurer shall not thereafter have the standing to challenge the validity of the policy other than for the non-payment of future premiums; provided, however, that nothing contained herein is intended to shorten or lengthen the two (2) year contestability period provided in [insert state statutory reference] or otherwise restrict the ability of the insurer to challenge the validity of the policy during such period. If the insurer timely provides notice that it intends to investigate the validity of the policy or possible fraud, then the insurer, shall, in good faith, promptly conduct such investigation. The insurer shall accept a request for verification of coverage made on an NAIC form or any other form approved by the commissioner. The insurer shall accept an original or facsimile or electronic copy of such request and any accompanying authorization signed by the viator. Failure by the insurer to meet its obligations under this subsection shall be a violation of Section 11C and Section 16 of this Act.

If the life settlements market is to develop into an institutional market, and provide consumers with the benefits associated therewith, it is important to create certainty around settlement transactions. Also, sellers are required to represent that an insurable interest exists and if a policy is subsequently challenged, the estate of senior citizens may be liable and subject to litigation. We believe that the two-year contestability period, which is preserved in our proposed language, is sufficient to protect the insurance carrier.

12. General Rules. The rescission period set forth in Section 10C of the March Draft should be revised to be consistent with the rescission period referenced in Section 8A(6) (see Comment 9 above).
13. Prohibited Practices. Versions of the NAIC Viatical Settlements Model Act adopted prior to the March Draft prohibited persons from entering into viatical settlement contracts (i) prior to a policy's issuance, and (ii) for a period of two years following a policy's issuance. This two-year prohibition period was the

product of substantial comment and deliberation, and was tied logically to the insurance industry's two-year incontestability period for a life insurance policy.

However, the March Draft has replaced the two-year prohibition period with a five-year prohibition, subject to limited exceptions. The March Draft should be revised to return to the two-year prohibition for two reasons. First, a two hundred fifty percent increase in the prohibition period places an unreasonable restraint on the alienability of a consumer's life insurance policy. Second, the five-year period does little, if anything, to address the problem it was drafted to resolve. STOLI and other ill-conceived transactions are best deterred by regulating conduct at the time a policy is created. Section 2N(2)(b) of the March Draft, and our proposed Section 2P(2)(c) are examples of regulation that directly addresses the problem. Increasing the two year prohibition does little to alter conduct at the time a policy is created, and as a result, will do little to reduce the problem of STOLI transactions.

14. Prohibited Practices. By re-establishing the life settlement prohibition period at two years, the two year exception referenced in Section 11A(3) is no longer necessary, and should be deleted in its entirety.

Should you require additional information in connection with your review of the matters presented herein, please feel free to contact our government relation's director, Mr. Jack Kelly of The McPherson Group at (202) 288-1011 or via email at [jkelly@mcphersongroup.us](mailto:jkelly@mcphersongroup.us).

We thank you for the opportunity to comment on this matter and we look forward to working with you toward the development of the life settlement and premium finance industries.

Very truly yours,

Institutional Life Markets Association

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Philippe Hatstadt, Director

Enclosures