BEFORE THE SECURITIES COMMISSIONER
OF THE STATE OF KANSAS

In re:

THE APPROVAL OF FILING OF NOTICE
AND SPECIFYING CONDITIONS FOR THE
OFFER AND SALE OF VIATICAL INVESTMENTS
PURSUANT TO K.S.A. 17-1262(p), AS AMENDED
BY SEC. 18 OF 2002 HOUSE BILL 2640;
AND THE REQUIRED LICENSING OF AGENTS
TO SELL SUCH SECURITIES, PURSUANT TO
K.S.A. 17-1254.

Docket No.2003E013

SPECIAL ORDER APPROVING FILING OF NOTICE AND SPECIFYING CONDITIONS FOR THE OFFER AND SALE OF VIATICAL INVESTMENTS PURSUANT TO K.S.A 17-1262(p), AS AMEDNED BY 2002 HOUSE BILL 2640; REQUIRED LICENSING OF AGENTS TO SELL SUCH SECURITIES PURSUANT TO K.S.A. 17-1254.

WHEREAS, K.S.A. 17-1262(p) was amended by 2002 House Bill No. 2640, Sec. 18, effective May 17, 2002; and

WHEREAS, K.S.A. 17-1262(p), as amended by Sec. 18 of 2002 House Bill No 2640, provides for exemption from the provisions of K.S.A. 17-1254, 17-1255, 17-1257, 17-1258, 17-1259 and 17-1260, and amendments thereto, of any transaction involving viatical investments; and

WHEREAS, K.S.A. 17-1262(p), as amended by Sec. 18 of 2002 House Bill No. 2640, provides that the Commissioner may, by rule or order, require the filing of a notice and specify conditions for the exemption, and

WHEREAS, K.S.A. 17-1254 requires agents to be registered to sell securities; and

WHEREAS, K.S.A. 17-1254(g) provides that the Commissioner may require agents to pass a written examination;

IT IS, THEREFORE, ORDERED BY THE COMMISSIONER AS FOLLOWS:

(1) Adoption of Viatical Investment Guidelines. The Guidelines Regarding Viatical Investments (attached as exhibit 1) as adopted by the North American Securities Administrators Association ("NASAA") on October 1, 2002, are hereby adopted by reference.

(2) Notice Filing Requirements for Viatical Investments. Issuers of securities subject to the standards and guidelines of the Guidelines Regarding Viatical Investments shall comply with those standards and guidelines for offers or sales of such securities in Kansas, unless the Commissioner allows exceptions or waivers of requirements of the Guidelines for good cause shown by the issuer.

(a) Before offering or selling any securities in Kansas that are subject to provisions of this Special Order, the issuer or its representative shall first file a notice with the Commissioner and pay a filing fee of $100, as authorized by K.S.A. 17-1259(b)(3), along with the following documents:

(i) the Offering Circular, Prospectus or other Disclosure Document that provides complete and accurate narrative and financial information about the issuer and securities being offered to investors in Kansas and demonstrates the issuer's compliance with the Guidelines; and

(ii) Upon request by the Commissioner or the Commissioner's staff, any other document required as an exhibit under the Guidelines.

(b) The Commissioner's staff shall, within a reasonable time, review the notice filing and related documents and issue a letter to either advise the issuer that staff and the Commissioner have no objection to the issuer's claim of exemption, or to inform the issuer that the filing is incomplete or fails to comply with requirements for the exemption.

(3) Agent Registration Requirements to Comply With Terms of the Exemption. Broker-dealer agents of agents of issuers intending to sell securities subject to the standards and guidelines of the Guidelines Regarding Viatical Investments shall have completed the series 6 Investment Company Products Examination and the series 63 Uniform Securities Agent State Law Examination, series 65 Uniform Investment Adviser Law Examination, or the series 66 Uniform Combined State Law Examination with a score of 70% or better.

IT IS FURTHER ORDERED that the SPECIAL ORDER APPROVING FILING OF NOTICE AND SPECIFYING CONDITIONS FOR THE OFFER AND SALE OF VIATICAL INVESTMENTS PURSUANT TO K.S.A 17-1262(p), AS AMENDED BY 2002 HOUSE BILL 2640; REUIRED(sic) LICENSING OF AGENTS TO SELL SUCH SECURITIES PURSUANT TO K.S.A. 17-1254; Docket No. 2003E003, issued July 23, 2002, is hereby vacated.

IT IS FURTHER ORDERED that this Special Order shall be automatically vacated upon the adoption of a permanent regulation regarding the exemption of viatical investments pursuant to K.S.A. 17-1262(p), as amended by Sec. 18 of 2002 House Bill No. 2640.

IT IS SO ORDERED.

Entered at Topeka, Kansas, on this 17 day of October, 2002.

David R. Brant

David R. Brant
Securities Commissioner
State of Kansas

GUIDELINES REGARDING VIATICAL INVESTMENTS

I. INTRODUCTION

The North American Securities Administrators Association, Inc. ("NASAA") has determined that the following Guidelines Regarding VIATICAL INVESTMENTs ("Guidelines") are consistent with public investor protection and are in the public interest. Nothing shall prevent the ADMINISTRATOR from applying different standards from those contained in these Guidelines.

There have been questions from investors and the industry regarding VIATICAL INVESTMENTS and their treatment under the Blue Sky Securities Acts. Typically, a VIATICAL INVESTMENT involves the purchase by a VIATICAL INVESTOR of an interest in an insurance policy covering the life of an individual. The purchase may be for a whole or fractional interest in the policy. Some interests may be in a pool of policies insuring the lives of several people. The INSURED receives an amount of money less than the expected death benefit of the policy, while the VIATICAL INVESTOR in turn receives the right to some portion of the face amount of the policy upon the death of the INSURED.

It is the position of NASAA that VIATICAL INVESTMENTs, commonly known as investments in viatical, senior, or life settlement contracts, are securities and must be registered with a state securities division as required by state law. Further, those persons and/or entities selling them must be registered as required by state law.

VIATICAL INVESTMENTs, in general, may not be suitable for many investors. There are risks associated with VIATICAL INVESTMENTs that individual investors may not recognize, and which unscrupulous promoters may misrepresent or fail to disclose. Funds invested in VIATICAL INVESTMENTs are not accessible on the demand of the investor. These factors and others render this type of investment unsuitable for the financial needs and interests of the average individual investor.

The question of whether VIATICAL INVESTMENTs are properly characterized as securities is answered by reference to long-standing principles governing the interpretation of state securities laws by both the state securities administrators and the courts. Conventional analysis as set forth in *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946) and its progeny results in the conclusion that VIATICAL INVESTMENTs are securities.

NASAA is mindful of the decision of the D.C. Circuit in *SEC v. Life Partners, Inc.*, 87 F.3d 536, 543 (D.C. Cir. 1996), *pet. for reh. denied,* 102 F.3d 587 (D.C. Cir. 1996). NASAA does not agree with either the rationale or the outcome of this case. State securities regulators are not bound by the interpretation of federal statutes by federal courts, particularly where the rationale does not serve the prophylactic and remedial purposes of the state securities laws. *Life Partners* disregards the premise underlying the *Howey* test--that is, that the statutory definition of "security" "embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits." *Howey,* 328 U.S. at 299.

NASAA concludes that VIATICAL INVESTMENTs, regardless of the health status or age of the insured, are securities. All persons involved in the offer and/or sale of VIATICAL INVESTMENTs should be aware of the nature and extent of the registration and antifraud provisions of state securities laws, as well as the applicability of these provisions to every offer and/or sale of a security.

A. Application

The standards contained in these Guidelines apply to the offer and sale of VIATICAL INVESTMENTs. These Guidelines do not apply to investments in a pool of life insurance policies, as those offerings are covered by existing registration guidelines. Applications not conforming to the standards contained herein shall be looked upon with disfavor. However, the ADMINISTRATOR may allow waivers or exceptions from certain standards under these Guidelines, if good cause is shown, or may require different standards based on provisions of statutes or regulations of a state.

B. Definitions

1. ADMINISTRATOR means the official or agency responsible for administering and enforcing the securities laws and regulations of a state.

2. AFFILIATE means a PERSON who, directly or indirectly, CONTOLS, is CONTROLLED by, or is under common CONTROL with the PERSON specified herein.

3. AUDITED FINANCIAL STATEMENTS means financial statements that have been audited and reported upon by independent Certified Public Accountants in accordance with generally accepted auditing standards of the American Institute of Certified Public Accountants.

4. BROKER-DEALER means any PERSON meeting the definition of this term under the securities laws of the states where VIATICAL INVESTMENTs are offered for sale.

5. CONTROL means the power to direct or influence the direction of the management or policies of a PERSON, directly or indirectly, through the ownership of voting securities, by contract or otherwise.

6 DEFAULT means any failure by the ESCROW AGENT to fulfill any one or more of its obligations or commitments under the escrow agreement, which continues for sixty (60) days without being cured or waived.

7. ESCROW AGENT means a state or federally regulated financial institution organized under the laws of the United States or any state, whose responsibilities

include those set forth in IV. A. 1. of these Guidelines. It may not be affiliated with the VIATICAL ISSUER, its PROMOTERS, or AFFILIATES. A financial institution may not be disallowed to act as an ESCROW AGENT merely because the VIATICAL ISSUER, its PROMOTERS, or AFFILIATES are customers thereof. An ESCROW AGENT may also include an attorney or certified public accountant who: (1) is not affiliated with the VIATICAL ISSUER, its PROMOTERS, or AFFILIATES; (2) is licensed to do business in the state in which s/he practices; and (3) can demonstrate that s/he is adequately insured or can provide a fidelity bond.

8. GAAP means Generally Accepted Accounting Principles as established by the Financial Accounting Standards Boards (FASB), Accounting Principles Board (APB), Accounting Research Bulletins (ARB) and American Institute of Certified Public Accountants (AICPA).

9. INSURED means the person covered under the policy which is the subject of a VIATICAL INVESTMENT.

10. OFFERING CIRCULAR means the disclosure document that provides material information about the offering of VIATICAL INVESTMENTS. The disclosure document may also be identified as a "prospectus."

11. PERSON means an individual, a corporation, a limited liability company, a partnership, an association, organization, a government or a political subdivision of a government, or other legal entity.

12. PROMOTER means:

    a. A PERSON who, alone or in conjunction with one or more PERSONs, directly or indirectly, took the initiative in founding or organizing the VIATICAL ISSUER or CONTOLS the VIATICAL ISSUER;

    b. A PERSON who, directly or indirectly, receives, as consideration for services and/or property rendered, five percent (5%) or more of any class of the VIATICAL ISSUER's equity securities or five percent (5%) or more of the proceeds from the sale of any class of the VIATICAL ISSUER's equity securities;

    c. A PERSON who:

        (i) Is an officer or director for the VIATICAL ISSUER; or

        (ii) Anyone who legally or beneficially owns, directly or indirectly, five percent (5%) or more of any class of the VIATICAL ISSUER's equity securities; or

(iii) A PERSON who is an AFFILIATE of a PERSON specified in a, b, c(i) or c(ii).

d. A PROMOTER does not include:

(i) A PERSON who receives securities or proceeds solely as underwriting compensation if that PERSON falls outside the definition of a, b, or c.

(ii) An unaffiliated institutional investor, who purchased the VIATICAL ISSUER's equity securities more than one year prior to the filing date of the VIATICAL ISSUER's registration statement. An unaffiliated institutional investor who purchased the VIATICAL ISSUER's equity securities on an arm's-length basis within one year prior to the filing date of the VIATICAL ISSUER's registration statement may, at the ADMINISTRATOR's discretion, be excluded from the definition of PROMOTER.

13. UNDERWRITER – Any PERSON that enters into a contractual agreement with the VIATICAL ISSUER to offer and sell VIATICAL INVESTMENTs on behalf of the VIATICAL ISSUER to VIATICAL INVESTORs. The underwriting agreement between the UNDERWRITER and the VIATICAL ISSUER may specify either a "firm" underwriting in which the UNDERWRITER agrees to purchase all of the VIATICAL INVESTMENTs in an offering for resale to INVESTORs, or a "best efforts" underwriting without an obligation to purchase and resell all of the VIATICAL INVESTMENTs.

14. VIATICAL INVESTMENT means the contractual right to receive any portion of the death benefit or ownership of a life insurance policy or certificate, for consideration that is less than the expected death benefit of the life insurance policy or certificate. VIATICAL INVESTMENT does not include:

a. any transaction between a VIATOR and a viatical settlement provider as defined by [reference to state statute or most recent version of the National Association of Insurance Commissioners ("NAIC") Model Viatical Settlement Act];

b. any transfer of ownership and/or beneficial interest in a life insurance policy from a viatical settlement provider to another viatical settlement provider as defined by [reference to state statute or most recent version of the NAIC Model Viatical Settlement Act] or to any legal entity formed solely for the purpose of holding ownership and/or beneficial interest in a life insurance policy or policies;

c. the *bona fide* assignment of a life insurance policy to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan; or

d. the exercise of accelerated benefits pursuant to the terms of a life insurance policy issued in accordance with the insurance laws of this state.

[Drafting Note – The definition of VIATICAL INVESTMENT is intended to include transactions in life insurance policies regardless of the age or health of the INSURED. Some states may have adopted insurance laws that modify the NAIC Model Viatical Settlement Act to limit the scope of coverage to insureds who are terminally or chronically ill. States are encouraged to review their respective insurance laws for consistency.]

15. VIATICAL INVESTOR means any PERSON who purchases or subscribes to purchase a VIATICAL INVESTMENT.

16. VIATICAL ISSUER means, in the case of a fractional interest in VIATICAL INVESTMENTs, any PERSON who creates, for the purpose of sale, the fractional interest, and in the case of a VIATICAL INVESTMENT that is not fractionalized, any PERSON engaged in the business of effecting transactions in VIATICAL INVESTMENTs to which the VIATOR is not a party. VIATICAL ISSUER does not include a [broker dealer], an [agent], or any PERSON who sells a VIATICAL INVESTMENT to no more than one natural person in a calendar year. A VIATICAL ISSUER pursuant to this section is an issuer within the definition of [reference to statutory definition of issuer].

17. VIATOR means the owner of a life insurance policy or a certificate holder under a group policy who enters or seeks to enter into a viatical settlement contract, as defined by [reference to state statute or most recent version of the NAIC Model Viatical Settlement Act].

II. REQUIREMENTS OF THE VIATICAL ISSUER

A. Experience

The VIATICAL ISSUER shall be able to demonstrate the knowledge and expertise necessary to conduct the business of the VIATICAL ISSUER.

B. Financial Condition

The VIATICAL ISSUER shall generally be required to demonstrate that it is solvent and will, with reasonable certainty, be able to meet any financial obligations of the VIATICAL ISSUER.

C. Financial Statements of the VIATICAL ISSUER

1. Financial statements of the VIATICAL ISSUER are required for its three most recent fiscal years preceding the proposed offering of VIATICAL

INVESTMENTs and interim financial statements, if applicable, since the end of its last fiscal year. Interim financial statements shall be for a period that ended within 120 days of the date of filing of the application for registration of viatical investments. Interim financial statements may be unaudited. No interim financial statements shall be required if the filing occurs within 120 days after the end of the VIATICAL ISSUER's last fiscal year. The financial statements for the most recent fiscal year of the issuer shall be audited. The financial statements for the two years before the most recent fiscal year of the VIATICAL ISSUER may be reviewed, but the reviewed financial statements should be presented in conformity with GAAP in the same format as the AUDITED FINANCIAL STATEMENTS for the VIATICAL ISSUER's last fiscal year. The financial statements shall include all financial statements and notes required by GAAP as follows:

a. Balance Sheet (Statement of Financial Condition);

b. Statement of Income or Operations;

c. Statement of Equity

d. Statement of Cash Flows; and

e. Notes to financial statements to explain accounting policies and provide other disclosures required by GAAP.

2. An application for registration by a VIATICAL ISSUER in unsound financial condition may be denied by the Administrator.

3. A VIATICAL ISSUER shall be deemed to be in unsound financial condition if the financial statements provided in accordance with C.1 above:

a. Contain a footnote or an explanatory paragraph in the independent auditor's report regarding the issuer's ability to continue as a going concern; or

b. Otherwise demonstrate that the VIATICAL ISSUER is in unsound financial condition. The ADMINISTRATOR may consider any information material to determining the financial soundness of the VIATICAL ISSUER, including but not limited to any of the following:

1. An accumulated deficit;

2. Negative equity;

3. An inability to satisfy current obligations as they come due; or

4. Negative cash flow from operations.

4. An application for registration by a VIATICAL ISSUER in unsound financial condition may be registered by the ADMINISTRATOR if the chief financial officer of the VIATICAL ISSUER provides pro forma financial data acceptable to the ADMINISTRATOR that:

a. Demonstrate that the VIATICAL ISSUER's financial condition will improve as a direct result of the offering, or as a proximate result of the offering (as part of a long term business plan);

b. Demonstrate when profitability is expected to occur; and

c. Are supported with documentation of and the bases for any assumptions.

5. In addition to satisfying the requirements of II. C. 4 above, the VIATICAL ISSUER must:

a. Include in the OFFERING CIRCULAR prominent disclosure that the VIATICAL ISSUER is considered to be in unsound financial condition; and

b. Include in the OFFERING CIRCULAR the following risk factors as applicable:

1. The presence of an explanatory paragraph in the independent auditor's report;

2. If the VIATICAL ISSUER has not been generating revenues from operations, the means by which the VIATICAL ISSUER has been financing its operations;

3. The amount of any accumulated deficit;

4. The presence and amount of any negative equity;

5. The need for any future financing;

6. Those services provided by the VIATICAL ISSUER in servicing or monitoring the VIATICAL INVESTMENT that would need to be replaced in the event of a cessation of operations on the part of the VIATICAL ISSUER.

6. Subject to the requirements of individual states, the VIATICAL ISSUER shall provide upon request its annual AUDITED FINANCIAL STATEMENTS to any VIATICAL INVESTOR whose investment has not matured or to the Administrator while any VIATICAL INVESTMENT sold pursuant to a registration authorized by that ADMINISTRATOR has not matured.

7. The ADMINISTRATOR may waive any requirement of II. C. 1 through 6 above, upon a showing by the VIATICAL ISSUER that any post investment escrow, tracking, medical evaluation or other investment-related services are to be performed by a PERSON other than the VIATICAL ISSUER.

8. In the event of a waiver by the ADMINISTRATOR, pursuant to II. C. 7 above, the ADMINISTRATOR may require the VIATICAL ISSUER to supply AUDITED FINANCIAL STATEMENTS, in compliance with II.C.1 through 6 above, for any PERSON performing post investment escrow, tracking, medical evaluation or other investment-related services.

D. Premium Payments

The VIATICAL ISSUER shall demonstrate that there is a reasonable plan for the payment of premiums on life insurance policies underlying the VIATICAL INVESTMENTS, which shall include the notification to VIATICAL INVESTORS of any anticipated inability to pay premiums at least 90 days before premium payments are due.

III. SUITABILITY OF VIATICAL INVESTORS

Sales of VIATICAL INVESTMENTs shall be made only to suitable investors or other PERSONS the VIATICAL ISSUER reasonably believes, after reasonable inquiry, to be suitable investors. A corporation, partnership, or other organization specifically formed for the purpose of acquiring the securities offered by the VIATICAL ISSUER may be a suitable investor only if each of the equity owners of the corporation, partnership, or other organization is a suitable investor. Suitable investors may include the following:

A. Any PERSON that meets the definition of accredited investor in Regulation D, Rule 501(a) of the Securities Act of 1933 or Qualified Institutional Buyer in Rule 144A of the Securities Act of 1933;

B. A natural person who, either individually or jointly with the person's spouse, (i) has a minimum net worth of [one hundred fifty thousand dollars ($150,000)] and had, during the immediately preceding tax year, gross income in excess of [one hundred thousand dollars ($100,000)] and reasonably expects gross income in excess of [one hundred thousand dollars ($100,000)] during the current tax year or (ii) has a minimum net worth of [two hundred fifty thousand dollars ($250,000)]. "Net worth" shall be determined exclusive of home, home

furnishings, and automobiles. Other assets included in the computation of net worth shall be valued at fair market value. The aggregate amount of VIATICAL INVESTMENTs of each natural person shall not exceed [10 percent] of their net worth, as defined by this subsection.

IV. ESCROW REQUIREMENTS

A. General Requirements

1. There shall at all times be one or more ESCROW AGENTs who are responsible for accepting investor funds, transferring funds in order to purchase policies, paying insurance premiums, and receiving death benefits for all policies where VIATICAL INVESTORs are not the beneficiaries.

2. The ESCROW AGENT may not receive more than 20% of its total revenue from all sources including its fees for escrow services, from the VIATICAL ISSUER.

3. The ESCROW AGENT may not lend more than 5% of the value of the premium escrow account to the VIATICAL ISSUER.

B. The Escrow Agreements

1. The escrow agreements must be filed with the ADMINISTRATOR and shall become part of the registration statement.

2. The VIATICAL ISSUER shall demonstrate that the plan for payment of insurance premiums is reasonable to cover future premium obligations.

3. The escrow agreement governing the receipt of VIATICAL INVESTOR funds shall provide for the transfer of funds into a policy within 90 days of the receipt of those funds. The escrow agreement governing the receipt of death benefits from a life insurance company upon the death of the INSURED shall provide for the distribution to VIATICAL INVESTORs of the death benefits within 30 days of the receipt of those proceeds.

4. The escrow agreement shall provide that any escrow accounts established by or on behalf of ESCROW AGENTS are not subject to the claims of creditors, excluding VIATICAL INVESTORS, of the VIATICAL ISSUER, its AFFILIATES and PROMOTERS.

5. The escrow agreement shall provide that if the ESCROW AGENT voluntarily withdraws as ESCROW AGENT, the VIATICAL ISSUER shall designate a successor ESCROW AGENT. The withdrawing ESCROW AGENT may petition a court to appoint a successor ESCROW

AGENT. The withdrawing or resigning ESCROW AGENT must continue to perform under the escrow agreement until the successor ESCROW AGENT is designated by the VIATICAL ISSUER or the court.

6. If the escrow agreement allows the ESCROW AGENT to be terminated by the VIATICAL ISSUER or the VIATICAL INVESTORs, there must be a reasonable procedure set forth in the escrow agreement for replacing the ESCROW AGENT.

7. The escrow agreement shall provide that the ESCROW AGENT shall provide a report to the VIATICAL INVESTORs if there has been any known DEFAULT under the escrow agreement, within 30 days of such DEFAULT. The report shall disclose the steps the ESCROW AGENT is taking to remedy the DEFAULT.

V. COMPENSATION

A. The VIATICAL ISSUER shall demonstrate that compensation, fees and expenses paid to all parties are fair, competitive and commercially reasonable.

B. The registration statement must fully disclose and itemize all compensation, fees and expenses which have been paid in the 12 months of operation preceding the application in connection with the sale of VIATICAL INVESTMENTs, including but not limited to those paid to the VIATICAL ISSUER, the selling agents, the viatical broker, the VIATOR, the ESCROW AGENT, and the medical consultant or reviewer.

C. The registration statement must fully disclose changes in the VIATICAL ISSUER's business model that may have a material effect on the compensation, fees and expenses disclosed in Section V. B. The registration statement must further disclose those changes in the marketplace the VIATICAL ISSUER reasonably foresees that may have a material effect on compensation, fees and expenses disclosed in Section V. B.

VI. RETENTION OF RECORDS

Subject to the requirements of individual states, the VIATICAL ISSUER shall, for a minimum of three (3) years from the date of purchase of the VIATICAL INVESTMENTs or one (1) year from the date of maturity of the VIATICAL INVESTMENTs, whichever period is longer, retain copies of all:

1. prospectuses, pamphlets, circulars, advertisements or other sales literature provided to VIATICAL INVESTORs;

2. disclosure documents provided to VIATICAL INVESTORs;

3. purchase agreements;

4. escrow agreements;

5. servicing agreements entered into between VIATICAL INVESTORs and IRA administrators;

6. checks, drafts or other forms of payment received from VIATICAL INVESTORs;

7. records relating to the payment of premiums on insurance policies underlying the VIATICAL INVESTMENTs;

8. documents relating to the determination of life expectancy of the INSURED;

9. documents relating to the monitoring of the INSURED's whereabouts;

10. documents relating to the monitoring of the INSURED's ongoing medical condition;

11. written communications with VIATICAL INVESTORs;

12. written communications with the insurance company that issued the insurance policy underlying the VIATICAL INVESTMENTs;

13. sales agreements or contracts with sales agents and BROKER-DEALERs;

14. documents required to be maintained by the VIATICAL ISSUER licensed under the [NAIC Model Viatical Settlement Act or similar viatical regulatory act of the particular state]; and

15. documents obtained by the VIATICAL ISSUER in performing due diligence on the life insurance policies subject to the VIATICAL INVESTMENTs.

The VIATICAL ISSUER shall provide the above documents upon request of the ADMINISTRATOR and will be subject to examination in accordance with the provisions of [statutory reference].

VII. ANNUAL REPORTS TO VIATICAL INVESTORS

The VIATICAL ISSUER shall provide the following disclosure, if known or reasonably could be known to the VIATICAL ISSUER and subject to federal and state privacy laws, to each VIATICAL INVESTOR at least annually:

1. The INSURED's current medical condition.

2. Any change of status of the underlying policy.
3. The status of premium payments on the policy, the amount currently specifically escrowed to continue to pay such premiums on the underlying policy, and the time period for which remaining escrowed funds will keep the underlying policy in force.
4. The date of maturity or other disposition of the underlying policy.

VIII. OFFERING CIRCULAR

VIATICAL INVESTORs shall receive all material information necessary to make informed investment decisions, and the VIATICAL ISSUER must provide VIATICAL INVESTORs with a complete OFFERING CIRCULAR at least 48 hours prior to their purchase of VIATICAL INVESTMENTs.

The OFFERING CIRCULAR must be written in clearly understandable language and disclose all relevant and material information that affects or would affect a VIATICAL INVESTOR's decision to purchase the VIATICAL INVESTMENT. The information outlined below is not intended to be all-inclusive and the VIATICAL ISSUER must include other information not specifically listed that would be material to a VIATICAL INVESTOR's understanding of the VIATICAL ISSUER and the VIATICAL INVESTMENT.

The following information must be included in the OFFERING CIRCULAR unless the VIATICAL ISSUER can demonstrate to the ADMINISTRATOR that a particular type of information is not applicable or material to an understanding of the VIATICAL ISSUER or the VIATICAL INVESTMENT.

A. COVER PAGE

1. Name of the VIATICAL ISSUER.

2. Principal address and telephone number of the VIATICAL ISSUER

3. The estimated gross proceeds to be received from the sale of VIATICAL INVESTMENTS.

4. A statement that the offering is subject to certain risks and the page number(s) in the OFFERING CIRCULAR where the risk factors are disclosed.

5. Name, address and telephone number of each ESCROW AGENT.

6. Name, address and telephone number of the principal UNDERWRITER or BROKER-DEALER assisting with the offering of the VIATICAL INVESTMENTs.

7. The proposed termination date of the offering and the VIATICAL ISSUER's right to extend the offering, if any.

8. Date of the OFFERING CIRCULAR.

9. Any legends that are required by applicable state laws, rules or regulations. The following is a model legend:

> In making an investment decision, you must rely on your own examination of the terms of the offering, including the merits and risks involved. These VIATICAL INVESTMENTS have not been recommended by any federal or state securities commission or regulatory authority. Furthermore, the foregoing authorities have not confirmed the accuracy or determined the adequacy of this document. Any representation to the contrary is a criminal offense.
>
> No person has been authorized to give any information or to make any representations in connection with this offering other than those contained in this OFFERING CIRCULAR, and if given or made, such information or representations must not be relied upon as having been made by the VIATICAL ISSUER.

For filings with some ADMINISTRATORS, it may be necessary to add a legend to describe statutory rescission rights that are available to VIATICAL INVESTORS.

10. Disclose any limitations or conditions of sales to VIATICAL INVESTORS in this State, including but not limited to the suitability requirements set forth in Section III.

A table of contents should follow the cover page or it may be placed on the back of the last page to outline and provide page number references for the various sections and subtitles in the OFFERING CIRCULAR.

B. SUMMARY

A summary of narrative and financial information that describes the nature of the investment and highlights the key aspects and risks of the VIATICAL INVESTMENTs, and the financial and operational characteristics of the VIATICAL ISSUER should be presented concisely in the OFFERING CIRCULAR following the cover page or risk factor section. The Summary section should include the disclosure of the VIATICAL ISSUER's proposed estimated use of proceeds, and a summary of the proposed estimated compensation and fees to be paid by or on behalf of the VIATICAL ISSUER in connection with the VIATICAL INVESTMENTs.

C. RISK FACTORS

1. Format and Use of Risk Factors

a. Risk factors should immediately follow the Cover Page or the Summary. Consistent with investor protection, a comprehensive listing of the material risks to the potential VIATICAL INVESTORs in the offering should be located at the forefront of the OFFERING CIRCULAR. Potential VIATICAL INVESTORs often focus on the forepart of the document. When comparing potential investment opportunities, consistency in format of complex disclosure documents further assists the VIATICAL INVESTOR.

b. Risk factor captions should appear in off-set or emphasized type. As a listing of the material risks of the VIATICAL INVESTMENTs, captions should stand out to the eye of the reader. *Italicized,* **bold-faced**, or <u>underlined</u> type assists the reader to quickly comprehend the scope and nature of the particular risk factors, and permits the reader to focus further on the risk factors of most interest to that reader. For the same reason, VIATICAL ISSUERs should avoid lengthy captions.

2. Specific Risk Factors

The VIATICAL ISSUER must describe to potential VIATICAL INVESTORs the risks of investing in the VIATICAL INVESTMENTs. Statements to the effect that little or no risk is involved in VIATICAL INVESTMENTs are prohibited, and such statements will be regarded as material misrepresentations. It is important that the VIATICAL ISSUER concisely describe all of the relevant and material risks which may include, if applicable, the following:

a. **The rate of return on your investment cannot be calculated before the insured dies.** The longer the insured lives, the **lower** the rate of return on your investment will be.

b. **No one can accurately predict the actual life expectancy of an insured.**

Some factors that may affect the accuracy of a prediction are:

- The experience and qualifications of the PERSONs making the life expectancy prediction.
- The nature of the insured's illness.
- Future breakthrough treatments and cures.
- If the insured has AIDS, the definition of AIDS used by the viatical company.

c. **You may have to pay money in addition to your initial investment.**

The insurance company will cancel the policy in which you have invested if periodic premium payments are not made to keep the policy in force. The insurance company **will not pay the death benefit** if the policy is not in force.

It is likely that a portion of the money you invest will be set aside to pay premiums. However, if the insured lives longer than expected, you may be required to pay **additional** premiums to keep the policy in force.

d. **Being a beneficiary of a policy and not also an owner carries special risks.**

The person who buys a life insurance policy is the owner of the policy and decides who the beneficiaries of the policy will be - that is, who will receive the death benefit when the owner dies. If the owner **sells** that policy (now called a viator), the investors become the new beneficiaries and therefore are entitled to receive the death benefit when the insured dies. The new **owner** of the policy may be the investors, the viatical company, or the escrow agent.

Only an **owner** of a policy, **not a beneficiary**, has the right to make premium payments directly to the insurance company so that the policy will remain in force.

If the funds that have been set aside to pay premiums run out, you will be dependent on the viatical company to collect additional premium money from investors and to pay premiums promptly. If that company goes out of business or otherwise fails to collect premiums from investors, you may not be able to pay the premiums yourself if you are only a beneficiary.

e. **Term insurance policies carry special risks.**

A term policy is issued for a specific time period. The insurance company will not pay the death benefit if the insured outlives that time period. If you purchase a term policy, you will be dependent on the viatical company from which you purchased your viatical investment to renew the policy when the term expires.

f. **Contestable policies carry special risks.**

The insurance company may "**contest**" a policy for a two-year period after its issuance if the company finds a reason to cancel the policy.

The insurance company **will not pay the death benefit** if:

- the insured dies within the contestability period, **and**
- the insurance company has a reason to cancel the policy.

One example of a reason that an insurance company might cancel a policy is if the insured did not truthfully answer a question on the policy

application. The policy may also be cancelled if the insured commits suicide within the two-year contestability period.

g. **Group policies carry special risks.**

A group policy insures the members of a specific group of people, usually the employees of a company. The biggest risk for someone who invests in a group policy is that the policy can be terminated by the employer or the insurance company. Although the policy may contain a provision allowing conversion to an individual policy, there may be limits or restrictions on the right to convert. Also, the insurance company may charge additional premiums once the policy is converted.

h. **Investing IRA money in a viatical settlement contract carries special risks.**

Internal Revenue Code section 408(a)(3) requires that "no part of trust [IRA] funds will be invested in life insurance contracts." This means that the Internal Revenue Service may not allow you the tax benefits of an IRA if you invest in a viatical settlement contract.

Even if such an investment is allowed, you should carefully consider your age, the life expectancy of the insured, and the difficulty in predicting life expectancy before investing IRA funds in a viatical settlement contract. Since death benefits are not paid until the insured dies, **you may encounter a problem taking annual distributions from your IRA that are mandatory beginning at age 70½.** If the funds are not available to take the mandatory distribution, you may be penalized by the IRS.

i. **An investment in a viatical settlement contract is not a liquid investment.**

The death benefit on a viatical settlement contract will not be paid until the insured dies, and there is no established secondary market for viatical investments. This means that you will probably not be able to sell your contract in an emergency to raise money for your immediate needs.

j. **Check any promises of guarantees carefully.**

The viatical company from which you purchase your viatical investment may provide a performance or fidelity bond, or another similar instrument, with your purchase. The purpose of these instruments is to "guarantee," or "insure," your investment. Ask exactly what is being guaranteed. Also ask the salesperson for a copy of the instrument.

If the company issuing the "guarantee" does not have the necessary financial resources to make payments under the "guarantee," you will not receive any benefit from the "guarantee."

You should do a background check on the company issuing the guarantee instrument. Contact the appropriate regulator to verify that the company exists, is in good standing, and is licensed to do business in the appropriate state(s). Obtain a copy of the company's most recent financial statements. **Be particularly wary if the company is located in a foreign country.**

The terms of the contract between the company issuing the "guarantee" and the viatical company may also affect how valuable, or useful, the "guarantee" is to you. Ask for a copy of this agreement.

k. **You could lose some of the death benefit you have purchased if the insurance company that issued the life insurance policy goes out of business.**

Insurance companies are rated based on their financial safety and soundness. A lower rating means that the company is more likely to go out of business. Each state maintains an insurance guarantee fund for the benefit of policyholders of insurance companies that have gone out of business. The guarantee fund may impose a limit on the amount that can be recovered on each policy.

Also, the payment on your viatical settlement contract would be delayed if you needed to seek funds from this guarantee fund or from the receivership of the insurance company. This delay would reduce the rate of return on your investment.

l. **Privacy laws and other factors may limit the information you receive about the insured.**

Federal and state privacy laws may limit the information you receive about the insured after your investment, such as the insured's current medical condition. In addition, other factors, such as the insured's unwillingness to cooperate, may limit the information you receive after your investment.

m. **You should seek legal advice to help you understand the nature of this investment, the terms and conditions of any contract you are asked to sign, and the tax consequences of your decision to invest.**

There are many risks and potential risks associated with an investment in a viatical settlement contract. You should be aware that there may be risks related to this type of investment in addition to those discussed above.

D. HISTORY AND OPERATIONS

1. Provide a brief description of the VIATICAL ISSUER, including the name, address of principal office, state of organization, date of organization, and type of legal entity (corporation, unincorporated, association, etc).

2. Provide the names, positions held and principal occupations during the past five years of each executive officer of the VIATICAL ISSUER. List also the names of the directors, and summarize any material transaction between the VIATICAL ISSUER and any officer, director, or controlling person within the past three years.

3. Provide a brief history of the VIATICAL ISSUER.

4. Provide a list of all States in which the VIATICAL ISSUER is licensed to purchase viatical settlement contracts, has an application pending, or has been denied exemption or registration.

5. Provide a list of all States in which the VIATICAL ISSUER is registered or qualified to sell VIATICAL INVESTMENTs, has an application pending, or has been denied exemption or registration.

6. Provide the name, address, experience, and qualifications of the PERSON who determines the life expectancy of the INSURED, the type of information on which the life expectancy evaluation is based, and the relationship of the person evaluating the INSURED's life expectancy to the VIATICAL ISSUER and BROKER-DEALER, if any.

7. Provide the name and address of the PERSON(s) responsible for monitoring the INSURED's whereabouts and/or ongoing medical condition, and the frequency of monitoring the INSURED's condition. Provide an explanation of how this information will be transmitted to the VIATICAL INVESTOR, and of how the insurance company will be notified of the INSURED's death and who will be responsible for filing a claim for benefits with the insurance company.

8. Provide the name, address and telephone number of the ESCROW AGENT(s).

9. Provide information regarding whether the VIATICAL INVESTOR will be the owner of the policy, the beneficiary of the policy or have other legal interests in the policy.

10. Provide the name and address of the PERSON(s) who will receive notice from the insurance company, including, but not limited to, notice of a change in status of the insurance policy, a change in premium payments, a reduction in death benefits or a converted policy and the end of the term for a term life insurance policy.

11. Provide the name and address of the auditor(s) that audited the financial statements contained in the OFFERING CIRCULAR.

E. USE OF PROCEEDS

1. The VIATICAL ISSUER's OFFERING CIRCULAR shall disclose, in both tabular and summary form, the percentages and/or dollar amounts of the following, based upon the previous 12 months of operations:

    a. The gross proceeds received from sales of VIATICAL INVESTMENTS;
    b. A description of all direct and indirect offering expenses that were paid from the gross proceeds;
    c. The net proceeds available to the VIATICAL ISSUER;
    d. An itemized listing of the purposes for which the net proceeds were used by the VIATICAL ISSUER; and
    e. The amount of net proceeds used for each itemized purpose.

2. The OFFERING CIRCULAR shall disclose, in both tabular and summary form, the percentages and/or dollar amounts of the following:

    a. The estimated gross proceeds to be received from the sale of VIATICAL INVESTMENTS;
    b. A description of all estimated direct and indirect offering expenses that will be paid from the gross proceeds;
    c. The estimated net proceeds that will be available to the VIATICAL ISSUER;
    d. An itemized listing of the purposes for which the net proceeds are to be used by the VIATICAL ISSUER; and
    e. The estimated range of net proceeds to be used for each itemized purpose.

3. The OFFERING CIRCULAR shall prominently disclose that the disclosures required in VIII E. 2 are estimates only, and that actual amounts may vary depending on the types of policies purchased, market conditions, and other factors.

F. PLAN OF DISTRIBUTION

1. Describe the method and manner in which the VIATICAL INVESTMENTs will be offered and sold to VIATICAL INVESTORs, including the methods of solicitation and subscription.

2. List the names of responsible officials of the VIATICAL ISSUER, other than selling agents, who will answer questions regarding the VIATICAL INVESTMENTs or the VIATICAL ISSUER. Include a description of the compensation to be paid to agents of the VIATICAL ISSUER for providing services in connection with the offering.

3. Disclose any fees paid or to be paid by or on behalf of the VIATICAL ISSUER to "finders" or "advisers" in connection with the distribution of the VIATICAL INVESTMENTs, and the names of and the services rendered by such PERSONs.

4. Provide information about the UNDERWRITER and any BROKER-DEALERs that will offer and sell the VIATICAL INVESTMENTs. Include a description of the compensation to be paid to the UNDERWRITERs for providing their services in connection with the offering.

5. Describe any underwriting or selling agreement between the UNDERWRITER and the VIATICAL ISSUER, including whether such agreement is on a "best efforts" or "firm commitment" basis, whether such arrangements are "exclusive" or "nonexclusive" and whether there are provisions for indemnification of the VIATICAL ISSUER or UNDERWRITER for losses sustained as a result of claims based upon violations of applicable securities laws. Any indemnity provisions pertaining to the ESCROW AGENT shall also be disclosed. The ADMINISTRATOR may prohibit indemnification for claims due to ordinary negligence of the UNDERWRITER, VIATICAL ISSUER or ESCROW AGENT. The OFFERING CIRCULAR shall disclose any indemnification provisions for any PERSONs against liability under securities laws in connection with the offering of VIATICAL INVESTMENTs along with a statement to indicate that the ADMINISTRATOR may deem such indemnification provisions to be against public policy and unenforceable.

6. Describe the responsibilities of the UNDERWRITER, the VIATICAL ISSUER, and the agents of the VIATICAL ISSUER under the terms of any underwriting agreement. Disclose all past, present and anticipated future dealings with UNDERWRITERs, investment advisers, or financing organizations participating in this offering, including the aggregate remuneration received by such entities. Also disclose whether any executive officer, director or similar leader of the VIATICAL ISSUER is in any way affiliated with the UNDERWRITER or financing organization participating in this offering or with any executive personnel of such organization.

G. LITIGATION AND MATERIAL TRANSACTIONS

1. Describe any pending or threatened material legal proceeding or proceedings known to be contemplated by governmental authorities, administrative bodies or other PERSONs, to which the VIATICAL ISSUER and/or its leaders, officers, directors or trustees are or may be a party, or to which any of the VIATICAL ISSUER's property is or may be subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought.

2. Disclose any disciplinary actions or legal proceedings related to securities or other material financial matters involving the VIATICAL ISSUER or any officers, directors, trustees or agents of the VIATICAL ISSUER within 5 years of the offering, including civil judgments, state or federal regulatory actions and other judicial actions, including but not limited to any discipline that is disclosable to the public on the Central Registration Depository.

3. Fully disclose any VIATICAL ISSUER transactions which may materially affect this offering or a VIATICAL INVESTOR's investment decision, and which are not otherwise described above.

H. FINANCIAL STATEMENTS

The ADMINISTRATOR may require financial statements required pursuant to Section II C to be attached as an Appendix to the OFFERING CIRCULAR.

IX. POST SALE DISCLOSURES

The VIATICAL ISSUER or the BROKER-DEALER offering or selling VIATICAL INVESTMENTs shall provide the following disclosure in writing to each VIATICAL INVESTOR no later than at the time of the assignment, transfer or sale of all or a portion of an insurance policy. The burden of proving that the disclosure requirements have been met is on the VIATICAL ISSUER:

A. A statement of whether the VIATICAL INVESTOR has the right to rescind the purchase of the VIATICAL INVESTMENT under existing state law.

B. The amount of the investment, the amount the VIATICAL INVESTOR will receive upon the death of the INSURED, the VIATICAL INVESTOR's percentage interest in the life insurance policy, and the total death benefit.

C. Whether the VIATICAL INVESTOR is an owner, beneficiary or has some other interest in the policy. The names and addresses of the owner(s), beneficiaries, and all other persons with an interest in the policy, other than the INSURED.

D. The name, address and rating of the company that issued the life insurance policy, the policy number, and the date of issuance of the policy, as well as the identity of the rating service used.

E. The type of policy offered or sold, e.g., whole life, term life, universal life or a group policy certificate, any additional benefits contained in the policy and the current status of the policy.

F. The extent to which premium payments or other costs related to the policy have been escrowed, including the method of calculation of the escrow amount, whether and the extent to which the premiums include premiums for riders, the disposition of premium funds set aside in the event there is a disability waiver of

premium payments, and the extent to which the VIATICAL INVESTOR will be responsible for the payment of premiums.

G. If the policy is term insurance, the date of termination of the policy, renewal and/or conversion rights, and the VIATICAL INVESTOR's responsibility for additional premiums if the INSURED or the current owner continues the policy at the end of the current term.

H. Whether the policy is contestable and, if so, the date upon which the contestability period ceases.

I. Whether the insurer that wrote the policy has any additional rights that could negatively affect or extinguish the VIATICAL INVESTOR's rights under the VIATICAL INVESTMENT, what those rights are, and under what conditions those rights are or may be exercised.

J. Copies or summaries of all the life expectancy certifications obtained by the VIATICAL ISSUER or its agents in the process of determining the price paid to the VIATOR and in offering the VIATICAL INVESTMENT.

K. The amount of any fees or other expenses charged out of investor funds for payments to sales agents.

L. All other material facts necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

VIATICAL ISSUERs and BROKER-DEALERs offering or selling VIATICAL INVESTMENTs may use the Post-Sale Viatical Disclosure Document attached as Appendix A. **However, the responsibility of disclosure rests with the VIATICAL ISSUER, and using Appendix A does not necessarily mean that this responsibility has been satisfied.**

APPENDIX A—Post-Sale Viatical Disclosure Document

Read Immediately Upon Receipt

You are purchasing a **viatical investment. A viatical investment** is an agreement for the purchase of an interest in the death benefit of a life insurance policy. The individual whose life insurance policy is being sold is called the **viator**.

Right to rescind

[If there is a right to rescind the purchase under existing state law, the terms of the law shall be summarized herein.]

What you are purchasing

2. You are investing $ _____ and will receive $ _____ upon the death of the **insured**.

   The life expectancy of the **insured** in whose policy you are investing is _____

   The **insured** has the following medical condition: _____
   _____

3. You are purchasing:

   ☐ _____ % (percent) ownership of a life insurance policy with a $ _____ death benefit

   ☐ the entire ownership of a life insurance policy with a $ _____ death benefit

   ☐ _____ % (percent) of the death benefit of a life insurance policy with a $ _____ death benefit

   ☐ the entire death benefit of a life insurance policy with a $ _____ death benefit

The insurance policy

4. The life insurance policy was issued by:

   Company: _____
   Address: _____
   _____
   Telephone Number: _____

5. The most recent A.M. Best rating for this insurance company is: _____

6. The policy number is: _____

7. The policy was issued on (date): _____

8. The policy is (check all that apply):

   ☐ A term policy

   The term of the policy is: _____

   ☐ A group policy

   Name of the Group: _____
   Address: _____
   _____
   Telephone Number: _____

   ☐ Contestable

   The policy is contestable until (date): _____

Ownership

9. After you make your purchase, you will be:

   ☐ an owner and beneficiary of a life insurance policy

   Other owners of the policy will be: (names and addresses of other investors - unless disclosure would violate state privacy laws)

   _____

   _____

   _____

   ☐ a beneficiary **only** of a life insurance policy

   The owner(s) of the policy will be: (names, addresses, and telephone numbers)

   _____

   _____

   _____

Other beneficiaries of the policy will be: (names and addresses of other investors)

_____

_____

_____

Premiums

10. Premiums on the policy are:

☐ Paid up and no additional premium payments will ever be required.

☐ Required to be paid periodically.

Premiums are:

$ _____ annually

Payments of $ _____ are due to be paid:

☐ Monthly
☐ Quarterly
☐ Semi-annually
☐ Annually

11. Term of premium payments

☐ If premium payments are made as required, the policy will be fully paid up on (date) _____

☐ Premium payments must be made until the death of the viator.

12. Funding of premium payments (check all that apply):

☐ A portion of your investment has been set aside to pay premiums. This amount will fund the payment of premiums until (date) _____

☐ These funds have been placed in an escrow account:

Name of Escrow Agent: _____
Address _____
_____
Telephone Number _____
Bank Name _____

☐ You will be obligated to pay additional money to fund premium payments after (date) _____. Payments of $ _____ will be due to be paid:

- ☐ Monthly
- ☐ Quarterly
- ☐ Semi-annually
- ☐ Annually

☐ Before these additional payments are due, you will be notified of when and to whom to make your premium payments.

Use of your investment funds

13. Of the amount you are investing:

$ _____ will be set aside to pay premiums on the policy.

$ _____ will be used to pay a commission to the person who sold you the policy.

Name of viatical company: _____
Address: _____
_____