ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672
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For Your Peace of Mind

Viaticals

Viaticals in the News

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New class of investment cashes in on terminally ill.

by Cecile Gutscher
Dow Jones News Service

NEW YORK - Making securities out of a macabre new class of now - - life insurance policies held by the terminally ill - a gaining acceptance on Wall Street. For time, terminally ill patients have been selling future death benefits on insurance policies to investment agencies for 70 percent to 30 percent of their face value. The dying patient gets cash before he or she dies, and the investment firm gets a profit when the death benefit is paid. Now, pools of those purchased death, benefits are being grouped into a class of investment called asset-backed securities. Much the way mortgage-backed securities combine the right to collect on large numbers of mortgages. these securities give investors a stream of income derived from the sum of the future death-benefit payments. To date, there's bow only 'one offering of just S35 million of these securities. That may not sound like much in financial markets where trillions of dollars in transactions are recorded daily. but proponents say the potential investment pool is vast and untapped.

On the plus side, investors view such policies as relatively stable collateral for asset-backed securities. "There can be no default on payment, only delay," says Sharon Crockett, director of structured finance at Standard & Poor's Ratings Group. Purchases of life insurance policies from the terminally ill are known as "viatical settlements." The somewhat unusual financial term comes from the Christian doctrine of viatica - that is, the Eucharist when administered to a person near or in danger of death. Before that, in the Roman Empire, a viaticum meant the money and supplies given to officials before risky journeys.

Most of the people who have sold their policies for cash have been afflicted with acquired immune deficiency syndrome. But about 50 companies have begun to offer the service to terminally ill cancer and heart-disease patients.

Standard A Poor's has been one of the most vocal proponents of security backed by death benefits. S&P keeps a renowned AIDS researcher on retainer to rate the offerings and spent a year and a half developing rating criteria. "We wouldn't have done that if, we didn't believe them was a potential for growth," Crockett said. Only 7 percent of 400,000 people disposed with AIDS in the United States have sold their policies since the business emerged in the late 1980s, but the pool of policies is estimated to be $350 million and growing 25 percent a year.

Last month, in the first securitization of viatical settlements, Ironwood Capital Partners Ltd. of Hartford, Conn., closed a $35 million deal for Dignity Partners Inc., a San Francisco viatical company. The package was backed by a pool of life-insurance policies purchased from AIDS and patients infected with the human immunodeficiency virus.

At first blush, the business of backing securities with collateral derived from dying patients sounds callous. "That's the difficulty in doing a transaction like this," said David Olson, managing director at Ironwood. "There's about five minutes where you just sort of shudder and get this dirty feeling, but people quickly realize that this is a good thing." With the cash, patients are able to improve their quality of life, buy medical supplies or support themselves. proponents argue. "Once you're able to hand someone a check for $100,000, You change their lives," said Bradley N. Rotter, chairman of Dignity Partners. "You empower them to get pay for medical care and let their financial affairs in order."

Outline of Events | Underwriting Criteria | Viatical FAQ's | Request Information | Health | Medicare Supplement | Supplemental | Long Term Care | Life | Auto | Investments

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Dennis L. Waldock
Divisional Senior Vice President - Investments

FEB 18 1999

PaineWebber

2/18/99

Norm

I am the oldest registered Stock Broker in Alaska (1967) and with the Firm of PaineWebber for 30 years. I am very much in Favor of HS 83 And would Hope that you could also support this Bill.

D. L. Waldock

Established 1879
Member New York Stock Exchange Inc
Other Principal Exchanges

Gwaltney & Gwaltney, Inc.

FEB 19 1999

facsimile transmission

To:	Representitive Norman Rokeberg
Company:	
From:	Jack Gwaltney
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Pages:	7
Date/Time:	02/19/99 05:03 PM
Subject:	
Document Number:	

Message: Representative Rokeberg here is the outline I followed in the teleconference today. Also I have included additional information just received from Future First. Thanks for taking time out of a very busy schedule to let us discuss the most important Issue.

Chairman Rokeberg and Members of this Committee. Thank you for the opportunity to discuss HB 83 and recent requirements and allegations from the Division of Banking and Securities that is adversely affecting commerce and the consumers of Alaska.

My discussion today partially deals with what I feel is a constitutional breach of rights. Further, I am somewhat incensed by the implication that I have broken a statute that hasn't even been put in place and that "formal action...will be held in abeyance pending...response." If it turns out that legislation passes which makes viatical investments a security you can rest assured I will never sell another viatical. To have the specter hanging over my head that I could be charged with criminal action is quite alarming.

When I first spoke to Mr. Salveson, of the Division of Banking and Securities, whom I called after one of our agents received a phone call to cease and desist, I agreed to also cease and desist until as he put it, "We can get this thing straightened out." Now comes a letter indicating I might be charged with a violation of the Alaska Securities act, and that I am required to submit the names of clients and many other documents.

The definition of Viatical has most definitely not been addressed by statute in this and many other states. Of those States which have classified the

product, all have opted for a definition in favor of being guided under insurance laws not securities. The legislature in Alaska can choose to classify the product as it wishes, though it looks likely they will be the only one of the few states that have opted in the direction that HB83 seems to be heading on this issue.

It is my understanding, the state of Florida has enacted legislation that has served as a model to many other states. One of the main questions at issue with the division of Securities and banking is that they consider Viaticals as an investment contract. Thus far Viaticals have been viewed as personal property similar to real estate. In real estate a purchaser is exchanging money for property of value. This represents a fixed value not the definition of a security. Also at issue is the fact that most policies are sold in fractional amounts, which usually constitutes several parts of the face value, [or death value].

I have provided Representative Rokeberg additional information on this subject.

The Future First Viatical settlement program does not meet the definition of a security under SEC v. W. J. Howey Co.,328 U.S. 293 1946. The

Supreme court under section 2[1] of the Securities Act defined an investment contract "as an investment of money undertaken with the expectation of profit, whose profits are derived solely from the efforts of others with existence of a common enterprise." The assertion that Viatical settlements require an investment of money with the expectation of profit cannot be argued. We can easily argue, however, and it seems apparent to reasonable people, that "profit derived solely from the efforts of others," and "existence of a common enterprise" remain definitively excluded. Further, viaticals do not place principal at risk and provide a guaranteed return, subject to carrier solvency, which is a separate issue addressed under Title 21 of Alaska Statutes, and viaticals have not been deemed securities by the SEC, which seems to carry as much weight as any argument I can imagine.

My immediate concern is the arbitrary application of a cease and desist order on a product which is not addressed in any current statute or regulation, and to my understanding and research is only now pending definition. One of my associates has performed a word search on what I believe are the statutes relating to both Titles 45 and 21, and the term

"viatical" is not found. It appears to me that the allegation that these products conform to the investment securities act seems to be a matter of opinion until it is defined by statute.

Issuing a cease and desist order without defined regulatory authority seems to be to be a classical breach of constitutional rights. It is my understanding that "regulators" exist to protect the public interest and welfare. Regulators protect the public at large from unscrupulous providers and inappropriate products. The sale of viaticals, at present, represents no such threat to public welfare. These products have been sold for a long time, and in my experience, we have yet to have a single consumer complaint in Alaska. Consumers are now unable to exercise their right to purchase these products.

During a similar controversy over Surplus Lines with the Division of Insurance, the Division solicited advise, counsel, and testimony from numerous sources and began issuing bulletins on findings. A subsequent law was promulgated and enforced with a defined inception date and penalties for non-compliance. This was a reasonable approach to the situation. During the fact finding period, no producers were held to a

standard or law that "might" be passed. They dealt only with what was, then offered a period of time to gain compliance after the law was passed. Do these products need to be regulated? My opinion is yes, most definitely. But I feel they are reflective of insurance products much more than securities or investment products. Again, Representative Rokeberg is in possession of preliminary information that will support this position. Even so, in the absence of statutory regulation, we the public can not be held accountable for laws that do not exist.

Please note, without question if HB83 passes in its current form, we will comply with all appropriate law and statute just as I have with insurance law for the last thirty-eight years without incident, allegation, or consumer complaint.

To summarize, I am complying with the cease and desist order, despite the fact I feel it is grossly inappropriate. I will follow this testimony with additional correspondence to prove my point for Division of Insurance regulation.

Ladies and gentlemen, thank you for your attention and the opportunity to participate in this hearing.

FutureFirst
FINANCIAL GROUP

OFFICE OF THE PRESIDENT

February 19, 1999

Jack,

In reference to our phone conversation this afternoon, I will re-cap some of the key points of issues regarding regulation. It is extremely important to understand the intent or purpose of regulation before modeling any legislation on an industry.

In 1996 the Florida Department of Banking and Finance investigated all activities of Viatical Settlement Funding Companies and found no investment concerns with Future First Financial Group. They reviewed our material and we basically never heard from them again. Soon after, the Department of Insurance notified us of their intent to regulate Viatical Settlements through their department. As such, Future First Financial Group is a licensed Viatical Settlement Company in Florida. The Department has also monitored our business practices in other states in their recent audit of our program. In accordance with this license we must agree to audits at the discretion of the Department. The audit selects a random sample of policies from all states to test our procedures for purchaser placement and Viator payment. We are also required to furnish audited financial information and current financial information to include the mandatory deposit requirements of the Department. Florida has put together a good program and several states may be modeling their programs after the Florida program.

Like Florida, many of the states will initiate some sort of investigative process through the state banking side, only to find that the Department of Insurance is better suited to regulate the industry. Lobbying for regulation has never been from the policy purchase side, but has instead been from the sellers' side. Most of the concern for a need to regulate was because many of the policy sellers were being taken advantage of. The policyholders were changing ownership and beneficiary information only to receive partial payments from brokers. Delays in payments only led to policyholders dying before receiving full payments with all the extra money remaining with the brokers. The intent of regulation was to protect the policy sellers and in turn has included regulation to monitor both sides of the transaction.

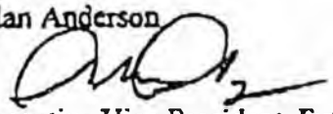
Following the history behind attempts to make Viatical Settlements a security, the Securities and Exchange Commission (SEC) has been unable to sue for this ruling. Additionally, appeals have been unsuccessful. The concept of "fractionalization" came originally from the SEC vs Life Partners cases. Years ago, Life Partners made themselves the owners and beneficiaries of the policies and their investors were given beneficial interest in this pool. Although the SEC made valid arguments that the success or failure of the investment depended on Life Partners being in business in order for investors to receive their payments, they were unable to convince the Federal Government that these investments were securities.

"Fractionalization" was never intended to represent more than one beneficiary on a policy. It was represented as the scenario described above. Not allowing for multiple beneficiaries on an insurance policy violates the rights of individuals to collectively purchase personal property. An insurance policy is nothing more than the personal property of the policyholder, and all policyholders have the right to sell personal property. It is important to not represent securities concerns that don't exist. It's not fair to the individuals selling their policies. It is similar to a homeowner being told they can't sell their home because it's a security.

In no way does any purchase program offered through Future First Financial Group represent a security. Future First does not take purchaser funds and buy policies with unknown expectations. Securities are investments that many times over are dependent on the growth and financial performance of the companies they invest in. The investor never truly knows the final outcome. All purchasers of the death benefits of life insurance policies know from the day they request the settlement what their future value return will be because it is set at life expectancy. I will say it again – all returns are fixed! They will never change! Only the rate of return is not known. This will not be known until the death of the policyholder. Purchasers will not lose their principal. The Trustee of the premium paying escrow fund pays all policy premiums until maturity.

I've run out of time on these comments but if there are any questions please call. Just remember, enforcing securities laws on non-securities is not the answer if the state wants some control over the Viatical Settlement Process. Simply have them model the legislation after Florida. They are tough but fair and have done all the work.

Alan Anderson



Executive Vice President, Future First Financial Group

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STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES, AND CORPORATIONS

February 18, 1999

VIA FAX AND U.S. MAIL
(907) 297-7363

Jack Gwaltney
Premier Investments and Insurance, Inc.
3510 Spenard Road, Suite 104
Anchorage, AK 99503

Dear Jack Gwaltney:

Re: Future First Financial Group of Ponte Vedra Beach, FL

Reference is made to our conversation of February 17 regarding the program offered though the above sponsor (Future First) for the sale of interests in viatical settlement contracts (the viatical program). This office administers and enforces the Alaska Securities Act (AS 45.55) and it is our opinion that the viatical program, as offered through your agent Escrow Alaska Financial, Inc., is an investment contract security under AS 45.55.990(12) and subject to the registration provisions of AS 45.55.070. Firms and individuals that sell securities must also be registered as broker dealers or agents under AS 45.55.030.

Please immediately confirm to this Division in writing, as the Alaska General manager for the Future First viatical program, that the offer and sale of interests in the viatical program, including all advertising, has been voluntarily stopped. A copy of this letter must be provided to all firms and individuals who were previously authorized to sell the program and a list of those firms and individuals, including address and telephone numbers, must be provided to this office. Also, provide a list of all Alaskan purchasers of the viatical program. If you are offering any other viatical programs, disclosure to this office is required.

If you are aware of any other (non-affiliated) firms or individuals offering the Future First viatical program to Alaska residents, please identify.

As discussed, provide a copy of all written materials provided to or signed by an investor. If not set out in the written materials, disclose to this office supplementally the selling compensation structure of this offering. Provide a copy of any scripts used in telephone sales presentations and if none, so state. Provide a copy of any attorney's opinion, letters or court cases relied upon that supports your position that the viatical program does not constitute a security under AS 45.55. Forward a copy of any financial statements for Future First and if none, so state.

Please be advised that the advertisement of "Returns up to 42% **Guaranteed**" (emphasis added) in the newspaper constitutes a public offering and that, even in the event a securities registration is subsequently made effective, is strictly prohibited by 3 AAC 08.900(2). Identify the publications used, provide a list of all dates of publication and a copy of any advertising or notice used to promote the viatical program by you, Premier Investments and Insurance, Inc, or any agent or affiliate.

You are required to immediately respond to this letter under AS 45.55.910 and state whether or not you, Premier Investments and Insurance, Inc and its agents and affiliates agree to voluntarily cease and desist from offering or selling the Future First viatical program to Alaska residents. A response to the other information items is required within 10 days. A decision whether to take formal action under the Alaska Securities Act will be held in abeyance pending your full response. If we determine subsequently that there were ongoing activities that violated the Alaska Securities Act after your receipt of this letter, we will treat any such activity as a knowing violation of the Act.

If you have any questions, please feel free to contact me at 907/465-2524. However, only written replies suitable for filing with the Administrator, subject to AS 45.55.160, will be considered as responding to this letter.

Sincerely,

Dennis Salveson

Dennis Salveson
Securities Examiner

Cc: Escrow Alaska Financial, Inc.
J.H. Judy Gopaul, Marg Walker
VIA FAX AND U.S. MAIL

From the desk of
David E. Gwaltney, C.I.C.
Personal Correspondence

6217 Chevigny Street
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Telephone: (907) 297-7302
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e-mail: dave@insuranceak.com

February 19, 1999

Mr. Dennis Salveson
State of Alaska
Division of Banking
P.O. Box 110808
Juneau, Alaska 99811-0808

Re: February 18, 1999 Premiere Investment Correspondence
Constitutional breach

Dear Mr. Salveson:

Please accept this correspondence as the first of what I anticipate will be three letters addressing issues raised in your February 18, 1999 correspondence to Jack Gwaltney of Premiere Investments and Insurance, Inc. Mr. Gwaltney has passed your letter on to me as required in your correspondence, and I have ceased solicitation and discussion of the product voluntarily, at least temporarily.

My letter today deals with what I feel is a constitutional breach of rights. Further, I am somewhat incensed by the implication that I have broken statute and that "formal action...will be held in abeyance pending...response." First, the definition of Viatical has most definitely not been addressed by statute in this and most other states. Of those States which have classified the product, virtually all have opted for a definition in favor of insurance offerings, not securities. The legislature in Alaska can choose to classify the product as it wishes, though it looks likely they will be in a vast minority if it opts in the direction that HB83 seems to be heading on this issue. (This will be the subject of my next correspondence.)

My immediate concern is the arbitrary application of a cease and desist order on a product which is not addressed in any current statute or regulation, and to my understanding and research is only now pending definition. I have performed a word search on what I believe are the statutes relating to both Titles 45 and 21, and the term "viatical" is not found. It appears to me that your allegation that these products conform to the investment securities act seems to be a matter of opinion until it is defined by statute. (Without digressing into my next correspondence prematurely, viaticals do not place principal at risk, do provide a guaranteed return (subject to carrier solvency, which is a separate issue addressed under Title 21) and they have not been deemed securities by the SEC, which seems to carry as much weight as any argument I can imagine.)

Issuing a cease and desist order without defined regulatory authority seems to be to be a classical breach of constitutional rights. It is my understanding that "regulators" exist to protect the

public interest and welfare. Regulators protect the public at large from unscrupulous providers and inappropriate products. The sale of viaticals, at present, represents no such threat to public welfare. These products have been sold for more than a decade in the presented format and in my experience we've yet to have a single consumer complaint in Alaska.

Next month will be the twentieth anniversary of my insurance licensure in the State of Alaska. (Incidentally, I've been a Series 7 registered representative since 1984 as well.) Over those twenty years, there have been many concerns over the suitability of numerous products, including a certain class known as "Surplus Lines." Despite the potential public harm or concerns (which are potentially most devastating, by the way, certainly well in excess of viatical sales), the Division of Insurance never issued a cease and desist on the sale of those products. They (the Division) recognized that although additional regulation may be required to fully protect the consumer, the product was still valued and to remove it without cause or notification would place many Alaskan consumers as well as agents and brokers in an untenable position to protect themselves or earn a living.

Your order has done that. Consumers are now unable to exercise their right to purchase these products. Many salespeople are now offering these products for their livelihood, and your order is eliminating their ability to earn a living and provide for their families. Is there a statute that deals with this issue? Will there be State reimbursement? If not, I hope the Attorney General's office agrees with your position, or the State of Alaska will be offering liquidated damages at a time when we (the populace of our State) can least afford it.

In the case of Surplus Lines, the Division of Insurance solicited advise, counsel, and testimony from numerous sources and began issuing bulletins on findings. A subsequent law was promulgated and enforced with a defined inception date and penalties for non-compliance. This was a reasonable approach to the situation. During the fact finding period, no producers were held to a standard or law that "might" be passed. They dealt only with what was, then offered a period of time to gain compliance after the law was passed.

A secondary issue deals with your demand for "...all written materials provided to or signed by an investor." I will not comply with this demand at present for fear of a much larger problem, that being the Federal Privacy Act. As you're aware, by their very nature, the Viatical product deals with individual rights of privacy and terminal medical conditions. Until I can be shown, in writing and at the direction of a federal authority, that releasing this confidential medical information to you is deemed appropriate, my files will remain confidential. I will, however, be happy to provide all non-client specific sales material per your request.

Do these products need to be regulated? My opinion is yes, most definitely. But I feel they are reflective of insurance products much more than securities products. (Future correspondence to substantiate.) Even so, in the absence of statutory regulation, we the public can not be held accountable for laws that do not exist.

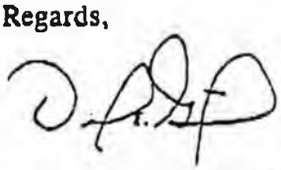
You also request information and/or attorney's opinion statements supporting our position on the products themselves. This request for information (supposedly to determine the nature and breadth of our violation), followed immediately by the implication that we have criminally violated Title 45 statutes, seems very close to a request to incriminate ourselves. Last time I checked our legal system, "criminals" were innocent until proven guilty. The burden of proof

does not rest on us - the burden that we have violated a law rests with you. If you feel this statement is an over-reaction, please explain the nature of the cease and desist, and also explain the not-even-veiled threat of further recrimination for non-voluntary compliance with your "request."

Please note that, without question, if HB83 passes in its current form, we will comply with all appropriate law and statute just as I have with insurance law for the last twenty years. I simply see no reason to comply with laws that don't exist nor sit idly while I'm threatened with the removal of my livelihood.

To summarize, I am complying with your cease and desist order, despite the fact I feel it is grossly inappropriate. I will follow this letter with additional correspondence to prove my point for Division of Insurance regulation. I will comply with your request for file information as soon as I'm assured that compliance will not violate or preempt an existing federal statute. And I respectfully request re-consideration of the cease and desist until laws relating to our conduct and product offering have been established.

Regards,



David E. Gwaltney, CIC

P.S. I am writing this letter under personal letterhead given my position for Viatical sales is under a personal agreement. Please note that my current industry positions include President, Principal/Manager and Compliance Officer of Gwaltney & Gwaltney, Inc., President, Alaska Independent Insurance Agents and Brokers, and Property Casualty Representative for the Division of Insurance Continuing Education Advisory Committee. My comments is this correspondence are personal in nature and bare no correlation to those or other positions held.

cc: Rep. Norm Rokeberg (constituent)
Sen. Drue Pearce, (constituent)
Rep. Ramona Barnes (by request)

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Viaticals Not Securities, Court Rules

By Jim Connolly

Viatical settlements are not securities subject to federal securities laws, a District of Columbia appeals court ruled in a 2-to-1 decision earlier this month.

The ruling in *Securities and Exchange Commission v. Life Partners, Inc. and Brian Pardo* reversed a district court decision handed down in August 1995 which addressed the sale of "fractional interests" in viatical settlements.

Viatical settlements are contracts in which an investor purchases a life insurance policy from a terminally ill person at a discount that can range from 20 percent to 40 percent depending on the life expectancy of the viator, the seller of the policy.

If viatical settlements are not securities, neither are they insurance policies, according to the court opinion which determined that "...a viatical settlement is not an insurance policy, and the business of selling fractional interests in insurance policies is no part of 'the business of insurance.'"

The court continued, "LPI's offering does not, therefore, qualify for the insurance exemption from the federal securities laws, and is not shielded from federal regulation by the McCarran-Ferguson Act."

The appeals court reasoned that viatical settlements are not securities because the "profits from their purchase do not derive predominantly from the efforts of a party or parties other than the investors."

Court Also Said That Viatical Settlements Are Not Insurance Policies

The district court had determined that the defendants were selling unregistered securities but that the case rested on a "gray area of securities law."

"We are disappointed with the outcome," said Leo Orenstein, assistant chief litigation counsel with the SEC. At press time, no decision had been made on whether the SEC would take further action.

But, according to Mr. Orenstein, the SEC could request a rehearing en banc by the appeals court. Such petitions are granted "very infrequently," he said, but in this case, "there is a question of first impression. This is virgin territory."

Other options, he said, include an appeal to the Supreme Court, a rehearing and then an appeal to the Supreme Court, or a decision to let the current decision stand.

"Fractionalized interests are a very smart way to buy viatical settlements and spread risk and return," according to Brian Pardo, current chairman and former president of Life Partners, Waco, Texas.

Within 60 to 90 days, Life Partners "will begin to act as an agent selling fractionalized interests again," Mr. Pardo said. "Now a million dollars and three years later, we can go back to the original way that we do business."

Speaking for the Viatical Association of America, Meir Eliav, president, said, "we as an industry, are very much concerned that investors, one or many, have a very good understanding of the risks they are taking upon themselves by buying policies." This is particularly true of the small investor, he said. ©

FutureFirst
FINANCIAL GROUP

OFFICE OF THE PRESIDENT

November 5, 1998

The following analysis is provided to educate all concerned parties on the Future First Viatical Program, and how the Securities and Exchange Commission (SEC) may view this program. This analysis is strictly the opinion of Future First Financial Group, Inc. Future First strongly recommends the consultation with private legal counsel on the following position.

From all available information and in our opinion, it is not the intent of the SEC to exercise jurisdiction over Viatical Settlement Companies. Leo Orenstein, assistant chief litigation counsel at the SEC's division of enforcement says the SEC is not opposed to the simple brokering of insurance policies, yet Viatical Companies that do much more are having to 'bare all' to the SEC. To date, only one Viatical Company has been charged by the SEC.

Specifically, the SEC contended that the Viatical Company charged sold fractional interests in insurance contracts, thus constituting a sale of investment contracts subject to federal securities laws. The Future First Viatical Program coordinates the purchase of the death benefits of life insurance policies by direction of a Purchase Request Agreement (PRA). The Purchaser named in the PRA authorizes Future First to act on their behalf to purchase the death-related benefit of an insurance policy. The purchaser becomes a beneficiary of the death benefit of an insurance policy. Future First as well as most Viatical Companies coordinate this exchange of real property in a manner resembling the Real Estate Business. Viatical Brokers (requiring a license in many states) serve as agents for the Viators (sellers), and Viatical Companies (requiring a license in many states) serve as agents for the purchasers. The Future First Program requires an attorney for closing and through this closing the transaction is finalized through the exchange of money (value).

As in real estate all purchasers are exchanging money for property of value. This value is fixed – never to increase or decrease in value. Similarities to real estate are focused mostly on the transaction process not the future value. Investors in real estate base most of their future value estimates on the economy. Viatical Settlements coordinated through the Future First program have a fixed future value, not dependent on the economy.

The Future First Viatical Settlement Program does not meet the definition of a security under SEC v. W.J. Howey Co., 328 U.S. 293 (1946) [hereinafter Howey]. The Supreme Court under section 2(1) of the Securities Act defined an investment contract as an investment of money undertaken with the expectation of profit, whose profits are derived solely from the efforts of others with the existence of a common enterprise.

Under Howey, all Viatical Settlements require an investment of money with expectations of profit. These two points Future First cannot argue. Future First will argue that profits derived solely from the efforts of others and the existence of a common enterprise are not satisfied under Howey.

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www.futurefirst.com

For Howey to be satisfied, Viatical Settlement profits must be derived solely from the efforts of others. In application, the courts have not adhered to a literal interpretation of the word "solely." In SEC v. International Loan Network, Inc., 968 F.2d 1304, 1308 (D.C.Cir.1992), "solely" was relaxed to "predominately." In any case, to satisfy this test, both the "others" whose effort produces profits and the effort itself must be identified. Under the Future First Viatical Program there are many possible "others:" the policy seller, a financial advisor of the seller, the policy broker, a financial advisor to the purchaser, and the purchaser's broker to name a few. The complexity of the settlement and the inability to know just when a person will die, makes it literally impossible to identify "others" and "whose effort" to satisfy Howey.

Common enterprise under Howey is defined in terms of horizontal and vertical commonality. Under horizontal commonality a common enterprise is defined in terms of the relationship between individual investors. A common enterprise exists if investor funds are pooled together, usually with pro-rata distribution of profits or losses. Both forms of vertical commonality define a common enterprise in terms of the relationship between the individual investor and the promoter. Narrow vertical commonality demands that the success or failure of the investor mirror the success or failure of the promoter. The broader form of vertical commonality requires that only the success or failure of the investor be dependent upon the efforts of the promoter. In our opinion, for Howey to be satisfied under common enterprise, both horizontal and vertical commonality must exist. It is difficult to argue against horizontal commonality, but neither forms of vertical commonality are present under the Future First Viatical Program. The success or failure of Future First Financial Group, Inc. has no correlation with the success or failure of a Viatical Settlement under the Future First Program. As described earlier, the value of the purchase is fixed at closing, never to increase – never to decrease. It is simply an exchange of real property finalized through a closing.

Beyond Howey and the SEC, Future First Financial Group, Inc. has developed the finest Viatical Program in the industry. Years of research and experience has uncovered the good and the bad in the industry, and Future First has capitalized on them all. Since day one, the Future First Viatical Program has become the model for the industry.

Probably the number one concern for all purchasers is: *who has access to purchaser funds?* Simply answered, *no one at Future First!* Future First is only authorized to make deposits. An independent CPA serves as trustee on the account, and only they have the authority to transact funds out of this account. This trustee is bound by a Trust and Escrow agreement limiting them to specific transactions at the direction of a law firm, and is personally covered by a Fidelity/Surety bond, providing third party protection of all purchaser funds.

The Future First Viatical Program has been designed to allow for as much choice as possible in the purchase process. As an agent for the purchaser, Future First is bound by the PRA to arrange the purchase of the death benefits of insurance policies under fixed program returns of their choice. The purchaser knows and agrees upon all settlement programs prior to closing.

After closing, the greatest concern for the purchaser is insurance policy premium payments. Some companies will not pay premium payments beyond their determination of life expectancy.

This should be a warning sign that these companies may not be placing appropriate life estimates with purchaser funds. The Future First Viatical Program, guarantees in writing under the PRA, to pay all insurance policy premiums to maturity, no matter how many years beyond the program the seller lives! This is accomplished through the Fidelity Viatical Special Trust. Advance premium payments required of the settlement at closing are deposited into this account. This is the sole purpose of this account, and bound by a Trust and Escrow agreement, this money can only be used for premium payments. All excess funds must remain in this account, earning interest over time, existing independent of Future First, to pay all policy premiums until maturity. Although this account may be over-funded, over-funding will allow for perpetual growth in the account even as individuals live beyond life estimates.

Future First Financial Group is a proponent for purchaser / investor protection. Protection may be in some form of regulation, but not at the expense of the entire industry. Regulation has almost ruined some industries, where de-regulation has been the savior. Any attempt to regulate a person's right to sell their personal property should not be approached. Most of the states developing legislation to regulate Viatical Settlements are following the lead of other states with legislation already in place. They are pushing the regulation through the insurance departments, with most of the emphasis on protection of the seller. Although this is an extremely important area to place emphasis, the protection of the purchaser / investor has received less attention.

This is not a reason for regulation by means of making this purchase of real property a security! It means that the insurance departments need to model the Viatical purchase process in some form similar to the Future First process. Regulation must not complicate this process and transform this process into something it's not. It is nothing more than the exchange of real property!

The future of this industry is not tied to more regulation. It is tied to legitimate claims of fixed future returns. The best 'statistical guessers' in the world will be wrong more times than right given a shorter time to be right. This is not magic, it's just common sense. Time is the key element to future events. This is why time is such a critical factor of the unknown. With more time, the unknown may be more predictable. Therefore, we must not be so naïve and force naivete on purchasers / investors by claiming to be of a higher power when it comes to estimating life expectancy. It is then reasonable to assume that Viatical Companies should have a much better track record on longer-term programs than shorter-term programs. No one really knows when a person will pass away. What we do know is that one day they will and the purchaser / investor will receive their promised fixed return as long as the Viatical Company or Third Party Trust has not let the policy lapse. Based on what the industry is offering in the competitive market for fixed returns, even a Viator doubling their life estimate presents an extremely competitive and risk averse return.

All of the employees, managers, and officers of Future First Financial Group, Inc. welcome you to the finest Viatical Program in the industry.

TONY KNOWLES, GOVERNOR

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES, AND CORPORATIONS

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February 19, 1999

The Honorable Norman Rokeberg
Chairman, Labor & Commerce Committee
Alaska House of Representatives
State Capitol Room 24
Juneau, AK 99801-1182

FEB 19 1999

Dear Chairman Rokeberg:

RE: Information on viaticals

At the hearing of the House Labor and Commerce Committee on Wednesday, February 17, 1999, you asked that we provide you with some further information about the issue of viaticals as securities and various state responses.

In the May 11, 1998 issue of *BestWeek* (pp. 13-14), it was reported that the founders of Mutual Benefits Corp., a viatical settlement firm in Miami, Florida agreed to pay $950,000 to settle charges brought against the firm by the U.S. Securities and Exchange Commission (SEC) for allegedly misleading investors. The article states that this was the first case concerning viaticals in which the SEC achieved full injunctive and monetary relief. In the previous December, the SEC lost a battle in the District of Columbia Appellate Court against Life Partners Inc., a Waco, Texas viatical settlement company (I believe the cite is 318 U.S. App. D.C. 305, 87 F.3d).

In the SEC v. Life Partners Inc. case, the appeals court found the viatical interests were not investment contracts based on its analysis of the activities of the company both before and after the investors' money was received. Although the decision is not binding outside of the D.C. area, it caused the SEC and state regulators considerable concern as the growth of the industry has been accompanied by a growth in complaints about the marketing of these interests to investors. The Mutual Benefits action shows that the SEC continues to look at this issue on a case by case basis.

In the November 2, 1998 issue of *Investment News* (pp. 1 and 33), a number of investor complaints are described, and the article states that at that point "...only Maine has formally put life insurance agents on notice that viaticals are subject to state securities laws and that all sales agents be licensed." Sales agents may not be insurance agents, of course. The North American Securities Administrators Association (NASAA) has created a task force to follow developments

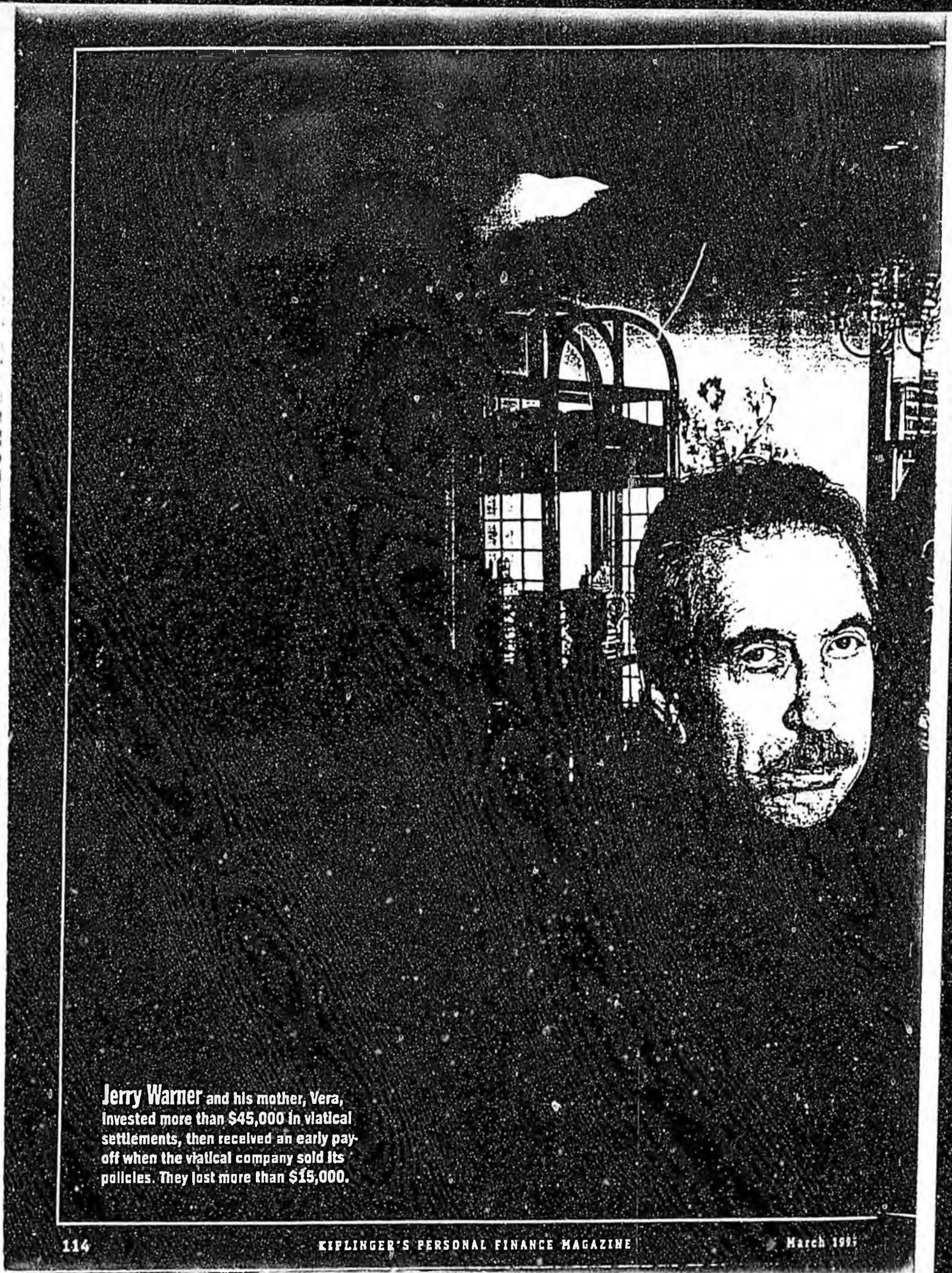
in this field, and individual states are beginning to take actions to overcome the chilling effect SEC v. Life Partners, Inc. had on regulatory efforts. In addition to Maine, Missouri has introduced HB 492 and Oregon has introduced SB 285 to add interests in viatical settlements to the definition of securities in their securities statutes. Recently, we have had communication with a number of other states that are considering adding these interests to the definition of a security. Those state include North Dakota, South Dakota, Ohio, California, and Arizona. Arizona attempted legislation a year ago, but industry opposition killed the bill. We do not know what specific proposals were introduced there, or what specific objections were raised.

We would not be surprised if the viatical industry prefers not to have these interests added to the Alaska Securities Act. We have no objection to the proper marketing of these securities, but experience both here in Alaska and elsewhere shows a need to protect investors from improper marketing of these securities by unlicensed agents.

We hope this letter is responsive to the chairman's question. For your added information, we have attached a copy of an article on viatical investments appearing in the March issue of *Kiplinger's Personal Finance Magazine*.

Yours truly,

Franklin T. Elder
Director



Jerry Warner and his mother, Vera, invested more than $45,000 in viatical settlements, then received an early pay-off when the viatical company sold its policies. They lost more than $15,000.

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By buying life insurance po
of the terminally ill, investo
thought they were getting a
payoff from a humanitarian
investment. Now they're waiti
for the policyholders to die

By Kimberly Lankford

Photo

For more than a decade after her husband died, Betty Paxton barely touched her savings, other than to reinvest CDs and savings bonds when they matured. But two and a half years ago, Paxton, then 78 and worried about her health, filled out a card she'd received in the mail requesting more information about probate and estate planning.

A few weeks later, an insurance agent arrived at the door of her Ohio apartment. Initially he sold Paxton an annuity. Then, a little over a year later, the agent was back. He urged her to cash in her savings bonds and buy a viatical settlement—a life insurance policy that a terminally ill person sells to receive part of the death benefit early. The agent told Paxton she would earn a guaranteed 24% by investing in policies of people expected to live 24 months or less. When the insured person died, she would receive the death benefit.

Paxton felt uncomfortable about profiting from someone's death, but the agent reassured her that her investment would give terminally ill people money to help them live during their final days. He said *60 Minutes* had called viaticals "a perfect no-risk investment." The agent would not leave, Paxton says, until she promised to sell her savings bonds and buy a viatical investment—even though she'd lose four months of interest by cashing in early.

As Paxton's CDs and savings bonds matured over the next five months, she bought a total of $33,000 worth of viatical-settlement investments on three people who, she was told, had life expectancies of 24 months or less.

For several years, viatical-settlement companies have been pushing these investments as a risk-free way to get a guaranteed return. With viatical settlements, terminally ill patients sell their life insurance policies before they die and get a fraction of the death benefit in cash. The policy remains in force and investors can buy portions of the policy at a discount to the death benefit. The investors become the beneficiaries and get their share of the full death benefit when the insured dies or, in the industry's terms, when the policy "matures."

Longer life expectancies aren't the only problem. Quick-buck artists have poured their efforts into selling viatical settlements (which are unregulated as investments), concentrating on elderly investors looking for a higher return on their fixed-income investments. Several viatical companies and their owners have been charged with fraud or misrepresentation; two such cases involved nearly $100 million each. More than 35 state securities regulators are now investigating viatical-settlement companies, estimates John Ellis, securities counsel with the Missouri Securities Division.

"There's a lot of fraud almost inherent in these," says Bill McDonald, assistant commissioner of the California Department of Corporations' enforcement division. "Viaticals are unique because legally you're not entitled to know much about the insureds," he says. "You're completely at the mercy of the broker."

Now that several years have passed since a lot of policies were sold and the payoffs aren't forthcoming, the industry is "right on the edge of collapsing," says Roger Walter, general counsel for the Kansas Securities Commissioner and chairman of a national task force of securities regulators who are investigating viatical investments. The national organization of insurance commissioners is also searching for ways to regulate viaticals.

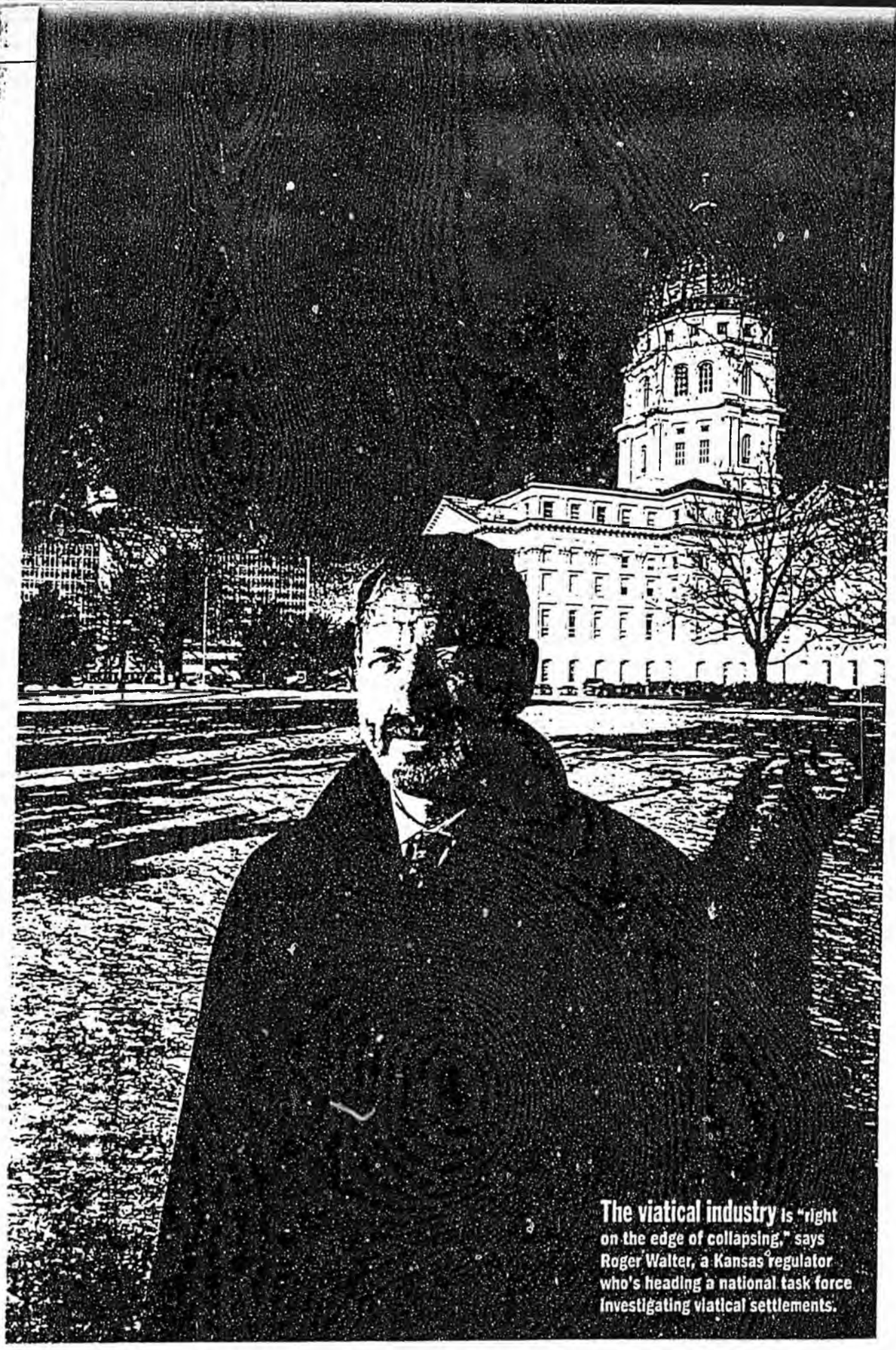
We had little trouble finding people who invested in

Quick-buck artists have poured their efforts into selling viatical settlements, concentrating on elderly investors looking for a higher return.

Viatical-settlement investments really took off when terminal AIDS patients began selling their policies to viatical firms in the early 1990s. But when protease inhibitors and other medical advancements started extending patients' lives, viatical investors found themselves waiting longer than expected for a payout. Many are still waiting. Others, such as Jerry Warner of Independence, Mo., and his mother, Vera—who together invested more than $45,000 in viatical settlements—found themselves with an unexpected payout, but for much less than they'd put in. They lost more than $15,000 between them.

viatical settlements and now wish they hadn't. Some have lost thousands of dollars; others haven't seen a cent yet because the policyholders have lived years longer than expected. Many investors are risk-averse seniors—a prime target of viatical sellers—who, like Paxton, have cashed in their savings and are still waiting for their money.

Some were told lies or half-truths and strong-armed. When they expressed reluctance to participate in this admittedly morbid investment, they were assured that viatical settlements are humane instruments that give the terminally ill much-needed cash. What they weren't told is



The viatical industry is "right on the edge of collapsing," says Roger Walter, a Kansas regulator who's heading a national task force investigating viatical settlements.

Some investors feel intimidated by the salespeople and fear they'll never get their money back if their names appear in print.

that there are actually more investors than there are policies. In some cases, investors have had to wait for several weeks before the viatical company could find policies for them to buy. At least one viatical company has urged terminally ill people to hide their medical conditions from life insurance companies so they could buy policies that the company could immediately resell to investors. And several insurers are willing to buy back policies themselves or offer to pay death benefits while policyholders are still alive, so terminally ill people aren't dependent on individual investors for cash.

Almost everyone we talked with is embarrassed and angry. Some are intimidated by the salespeople and afraid they'll never get their money back if their names appear in print. Among the investors we interviewed, only Jerry and Vera Warner agreed to let us use their real names.

When Betty Paxton's son learned about her viatical investments, he was suspicious. After he and his financial adviser did some digging, the suspicion turned to anger.

Paxton's son discovered many risks that his mother hadn't been warned about—such as that the policyholders could outlive their life expectancies and leave Paxton without access to her money for years to come. (The insureds could live even longer than the 80-year-old Paxton.) If she tried to resell the policies before the policyholders died, she'd probably get 25% to 50% less than her original investment—if she could find a buyer.

The salesman didn't explain that the 24% total return would become a smaller annualized return each year the insured people lived beyond their life expectancy—or that Paxton could even be forced to pay additional premiums to keep the policies in force. And if anyone who invested in the same policies didn't pay the premiums, the policies could lapse and she'd lose her investment.

Paxton wasn't given any medical information about the policyholders until after she had invested her money. Because the policyholders wanted privacy, there was no way she could get a second opinion and verify that their life expectancies were reasonable.

Paxton's son and his financial adviser even looked up the full *60 Minutes* quote and discovered it was taken out of context from a 1995 program about AIDS—before medical advancements extended patients' life expectancies—but none of the people Paxton invested in had AIDS.

After the Ohio Department of Insurance told Paxton's son that the agent had been the subject of several complaints for misrepresentation, he sent certified letters to Beneficial Assistance, the Baltimore, Md., company that sold the policies, asking to have his mother's money refunded because this was clearly an unsuitable investment for her. So far, he has received no response.

Perhaps the biggest drawback of viatical investments is that the return depends on when the policyholder dies. Miscalculations are inevitable, but some companies have deliberately filed false medical reports. Life Options International, a Tuscaloosa, Ala., company that drew close to $5 million in investments from 250 Missouri residents, was issued a cease and desist order by the Missouri Commissioner of Securities, which charged the company with misrepresenting insureds' medical conditions and falsely underestimating

Big commissions, big compromise

MARK CORTAZZO, a financial planner in Denville, N.J., receives at least one letter a month trying to recruit him to sell viatical investments. The companies usually offer him 7% to 12% of the investment amount. "It would take me ten years with a client to earn the same money these people make from selling one viatical," says Cortazzo.

But Cortazzo won't sell viaticals. And he wonders whether many of the salespeople, who don't need to be licensed in most states, really understand how the investments work. One solicitation for prospective salespeople, for example, includes a "Pyramid of Safety," which shows viatical settlements, insurance and annuities on the bottom layer as the safest investments. CDs and money-market accounts are listed on the next layer up, as riskier investments.

Chris Gemignani, the lawyer for a life insurance agent who was offered 15% commissions to sell viaticals, researched the business for his client and discovered that so many people were taking a cut of the sale that there was little money left to help the terminally ill person. Additional money is used to pay premiums and to track the insured (if you can't find the insured and don't get a death certificate, there's no payout). His client decided not to bite.

Some viatical salespeople have been trying to be responsive to their clients. Karl Hanke, who sold half a million dollars in viaticals to about 50 of his clients from 1995 to 1997, probably earned about $40,000 in commissions, but now he calls the investments a "service nightmare." He's tried in vain to get information for clients who expected payouts several years ago. "The companies won't even take my phone calls," he says. He doesn't sell viaticals anymore.

life expectancies. In one case, an independent doctor estimated the insured's life expectancy to be four to ten years, but the company told an investor it was 36 to 48 months.

Patty Norton was one Life Options investor. As the 55-year-old Missouri woman's certificates of deposit matured in late 1994 and early 1995, she was disappointed with her investment options. "When the CDs came due, the new rate was just zilch," she says. A broker recommended that she buy viaticals instead. He told her that even if the person didn't die after the second or third year, the company would still offer to give back her money with a small return; but she'd get the big bucks if she waited until the person died. He also told her the policies were paid up—no matter how long the policyholders lived, she wouldn't owe any money to pay premiums. Both statements were untrue.

Within a year, Norton owned portions of seven policies from Life Options. Some promised a 10.5% return when the insured died, which she was told should be in about six to 12 months. Others promised 56% returns on life expectancies of two to three years and 95% for life expectancies of three to four years. "You think that didn't look good?" she says.

One of the insureds did die a year after Norton bought the policy, and she made $525 on her $5,000 investment. But she had to give back her $500 gain on another $5,000 policy. According to Norton, Life Options said that the insured's family claimed he didn't have the right to sell the policy and wanted the insured's son to receive the death benefit. The company told her she could get back her original investment, but she'd have to return her gains to avoid a lawsuit.

Four years later, the five remaining insureds are still alive. Norton has about $50,000 in the viaticals but has not received any updates from the company.

Sometimes the life-expectancy problem can turn returns into big losses. In 1996, Jerry Warner, 53, of Independence, Mo., purchased part of two life insurance policies belonging to terminally ill people for nearly $19,000. His 76-year-old mother, Vera, from Lake of the Ozarks, Mo., invested $27,000. Vera, who had had a friend who died of AIDS, says, "I just wanted to invest my money and thought, why not help someone at the same time?"

The Warners were told the patients were expected to live about three to five years. They both thought the lump sum they'd receive after the patients died would equal a 12% to 20% return for each year.

More than two years later, their investments unexpectedly paid off—but at far less than they had invested. Jerry received a check for $12,000—nearly $7,000 less than the amount he had invested. His mother lost nearly $8,700. The company, Aide the Living, told investors that because medical advancements had extended the life expectancies of the insureds, the company needed to sell the policies as soon as possible and had accepted an offer from the highest bidder. "They didn't give us any choice," says Warner, who hadn't been warned that Aide the Living could sell the policies for less than the invested amount.

About 70 Missouri residents had invested more than $4 million with Aide the Living, the Missouri Securities Division discovered. It charged the company with misrepresentation and issued a cease and desist order prohibiting it from doing business in the state. Other states have also issued orders against the company.

After five years, Janice Cannady hasn't received a payout. Meanwhile she's been diagnosed with Alzheimer's disease and her husband has died.

Anne Jones's nephew—a viatical salesman—convinced her that she'd get better returns from viatical investments than she would from an annuity. At his urging, she cashed out a recently purchased annuity, paid $24,000 in surrender charges and bought portions of insurance policies on seven terminally ill people. By the end of 1995, she had invested more than $214,000 in viatical settlements. She expected to receive $309,000 when the people died—which she was told should be no more than 24 to 36 months later.

Jones received one payout, for $24,000. Jones, who is 70, still has nearly $193,000 tied up in the other six policies. One person, who had a 12- to 18-month life expectancy in 1995, is still alive 43 months later. The 15% return Jones was to receive on that policy has dwindled to less than 4.2% per year—and is still falling.

The viatical company recently sent her a letter claiming that, because the insureds had outlived their life expectancies, she'd either have to pay premiums to prevent the policies from lapsing or sell them back to the company for half of her original investment. If she did that, she'd lose more than $96,000.

Despite the company's threat to start charging her for premiums, the insurance companies told the Kansas Securities Commissioner's office, which is investigating her case, that premiums had been waived on some of the policies because the policyholders were considered disabled.

There's another complication. The viaticals are in an IRA, and since Jones turned 70½ recently, she needs to begin taking withdrawals. Other than the $24,000 payout she received, the rest of her IRA money is trapped in the viaticals. Any required distributions she can't take will be considered excess accumulations and subject to a 50% penalty for every year they're not distributed.

The uncertain wait for the payoff could have more dire repercussions for Janice Cannady, 75. Five years ago, a salesman from her hometown in Nebraska recommended that she cash in her CDs and buy a viatical for $12,000. The investment was to pay out $20,000 when the insured

In one large court case, a viatical company owner pleaded guilty to fraud after he and his colleagues pocketed $95 million in investments.

died which, she was told, should be in 18 to 36 months.

Five years later, she still hasn't received a payout. Janice's daughter, Sally, requested an updated medical report, but the company hasn't responded. Since she bought the policy, Janice has been diagnosed with Alzheimer's disease and her husband has died. Sally wonders what will happen if her mother needs to enter a nursing home. She'll need the money to cover the bills. But if she doesn't have it, she'll have to apply for medicaid—which might be difficult because of the viatical. "It complicates eligibility if you have an asset you can sell only at a tremendous discount," says Cynthia Barrett, an elder-law attorney in Portland, Ore.

Dick Hausten's in-laws were 78 years old when they saw a newspaper ad offering "guaranteed returns." A salesman came to their home, told them they were "burning their money by leaving it in CDs" and sold them $92,000 in viatical settlements. (Hausten let us use his real name but not the names of his in-laws.)

When Hausten found out, he called the two doctors' phone numbers printed on the insureds' medical evaluations and got two wrong numbers. He couldn't find any evidence that they really were doctors. Plus, the medical report for one of the policyholders was from 1989, when he was said to have a life expectancy of 48 months. Yet the investment was made in 1998.

Nine months later, Hausten's father-in-law asked the company to return their money and received 88% of their original investment. They lost $11,000.

The company that sold the policies, Accelerated Benefits Corp., continues to run advertisements that say, "With the stock market plummeting and interest rates falling, isn't it nice to know there is still an investment that offers your clients fixed high profits with safety?" (Regulators cannot discuss current investigations, but at least one state is looking into Accelerated Benefits Corp.)

Several lawsuits have been won against viatical-settlement companies, and more have been filed. In the largest viatical case so far, David Laing, owner of Personal Choice Opportunities, of Palm Springs, Cal., pleaded guilty to fraud. More than 1,100 investors had given Laing's firm a total of $95 million to purchase viatical investments, which were advertised as a "risk-free" way to earn 25% per year. Laing and his colleagues pocketed the money and never bought the viaticals.

After an investigation that included the FBI, several states' securities regulators and the U.S. attorney for the Southern District of New York, a receiver was appointed to track down the money and return it to investors.

The Securities and Exchange Commission brought a separate suit against Laing and has gone after other viatical firms for misrepresentation. Civil suits are also starting to appear. Mitchell Perlstein of Investors' Law Center and Scott Link of Ackerman, Link & Sartory have filed class-action lawsuits in Florida against three viatical-settlement companies, alleging that they misrepresented insureds' life expectancies because they knew protease inhibitors had extended the lives of AIDS patients. Yet they continued to tell potential investors that "death is certain and measured only in a matter of months." The plaintiffs are still waiting for payouts they expected several years ago. •

REPORTER: MARGARET RINGER

What to do if you've invested in a viatical

WHAT IF YOU already own a viatical settlement and suspect the company of misrepresentation or wonder whether you should accept an offer to sell back the policy? First contact the securities administrator, insurance department and attorney general in your state and the state where the company is located. (Find your state's Web site and contact numbers at www.piperinfo.com/state/states.html.) They may be investigating the firm and usually have leverage to get more information from the insurance company and the viatical company. Also contact the Securities and Exchange Commission's Office of Investor Education and Assistance at 202-942-7040.

You'll need to contact that many people because viatical settlements aren't regulated by one central agency. The securities commission takes the lead in some states; in others, it's the insurance department. And some states haven't figured out yet what to do with viaticals—which makes it easy for unscrupulous sellers.

"One of the things con artists do is rely on jurisdictional gaps—they have the advantage of confusion," says Bill McDonald of the California Department of Corporations, which is currently participating in about ten viatical investigations.

But few consumer organizations know how to help viatical investors. The best one-stop resource is Gloria Grening Wolk's *Viatical Settlements: An Investor's Guide* (Bialkin Books) and her Web site (www.viatical-expert.net). She learned about viatical investments while writing a financial guide for people with terminal illnesses.

The Florida Department of Insurance also offers a free booklet that discusses the risks related to viatical-settlement investments. Call the department's consumer help line at 850-922-3132.

From the desk of
David E. Gwaltney, C.I.C.
Personal Correspondence

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February 22, 1999

Representative Norman Rokeberg
Chairman, House Labor and Commerce
State of Alaska, House of Representatives

Re: February 19, 1999 committee testimony

Dear Chairman:

Thank you very much for allowing Jack and my testimony at your recent L&C Committee Hearing on HB-83. I know the procedure was somewhat unconventional, and your willingness to allow us the public forum to air our concerns was gratifying. I will even go onto say that my prior experiences with the legislative process have been less than desirable, and your efforts both on the part of our Association and now personally have renewed my hope for the system. I know we have a long way to go, but at least having an advocate like you looking at both sides gives me hope.

Per your request, please accept the following as my written testimony for the committee hearing of February 19, 1999:

> Chairman Rokeberg, Members of the Committee:
>
> I wish to add my concurrence with Jack's testimony. In addition, I wish to argue on a point of logic as to the actual nature of a viatical settlement. As you know, numerous State and Federal Courts have upheld that the proceeds of life insurance policies are personal property. They are sold as an estate asset or planning tool and have always been regulated by the Division of Insurance. Further, proceeds are taxed as personal property, not securities. The best comparison to a mature life insurance policy may be the equity in your personal residence. Both the insurance proceeds and home are considered personal property, not securities. To sell viaticals as securities would be the same as selling your house as a security. Selling any personal property as a security provides an undo complication (and will restrict free market trade to no appreciable benefit). Thank you for your consideration.

I am still distressed at the constitutional nature of the "cease and desist" request (the Director noted there was no "order") issued by the Division of Banking. First, if there is no order (or implied order), what's the big deal? Why couldn't we continue our sales efforts until the end result was ascertained?

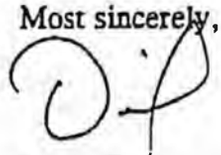
From a political standpoint, it's my feeling that the regulators are very quickly forgetting that if a "problem" is not consumer related, they really have no business involving themselves in the market system. As stated in our joint testimony, both Jack and I feel this product needs regulation (or at least a licensure process - Insurance License proceeds go into the General Fund, as you know), though the extra burden of securities disclosures, etc., would severely hamper the consumer's ability to purchase the product and would drive many salespeople out of the business.

I think it is important to note at this time that I happen to be a Series 7 Security Representative. Passage of the implied regulation as presented would actually help me personally by removing competition from the marketplace. Even though it would put money in my pocket, it still doesn't make the Division's position "right." I'd just like to make the point this is a regulation and market issue, not one of economics.

Please feel free to contact me if you would like additional information on this or other insurance related issues. I will be at your immediate disposal.

Thank you once again for your help and graciousness. I am very pleased to have voted for you and to have you as my Representative.

Most sincerely,



David E. Gwaltney, CIC

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE COMMITTEE

Representative Norman Rokeberg, Chairman
Representative Andrew Halcro, Vice-Chairman
Representative John Harris
Representative Lisa Murkowski
Representative Jerry Sanders
Representative Tom Brice
Representative Sharon Cissna

State Capitol
Juneau, AK 99801-1182
Telephone: (907) 465-4954
Fax: (907) 465-2040

MEMORANDUM

TO: House Labor & Commerce Committee Members

FROM: Rep. Norman Rokeberg, Chairman
House Labor & Commerce Committee

DATE: February 22, 1999

RE: Proposed CS for HB 83 (L&C)
LS0253\G, Bannister, 2/20/99

As the Committee decided on Friday, the following changes have been made to this legislation:

1. All references to "viatical settlements" have been removed from the CS
2. Page 21, lines 2-3. "dual agency capacity" has been removed and the following has been inserted: After "disclose": "to a customer that the broker-dealer or agent is acting as an agent for both the customer and another person;"

FISCAL NOTE

Bi.. Version: CSHB 83(L&C)
(H) Publish Date: 2/24/99

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Revision Date/Time (Note if correction) _____
Dept. Affected Commerce & Econ. Dev.
Title Alaska Securities Act
BRU Banking, Securities and Corporations
Component Banking, Securities and Corporations
Sponsor Labor & Commerce by Request
Requester House Labor & Commerce
Component Serial No. 1233

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

Because most of the provisions of HB 83 simply bring the Alaska Securities Act (the Act) into compliance with federal law (National Securities Markets Improvement Act of 1996 (NSMIA)), thus preserving the State's revenue and current authority to regulate market participants, there is no cost to implement this bill. Failure to pass this bill would result in a loss of currently anticipated revenue to the State of an estimated $3.9 million in FY00, rising to $6.4 million in FY05. Most of the language in HB 83 is uniform language, drafted by the North American Securities Administrators Assn., and has been adopted in a majority of the states at this time.

Prepared by Franklin T. Elder, Acting Director Phone 465-2521
Division Banking, Securities and Corporations Date/Time 2/12/99 8:06 AM
Approved by Commissioner Deborah B. Sedwick Date 2/12/99
Agency Commerce and Economic Development

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Alaska Securities Act

Department of Commerce and Economic Development

Division of Banking, Securities and Corporations

CS HB 83(L&C)

(Alaska Securities Act Bill)

Table of Contents

A J.J HR 83

01/16/98

AMENDMENTS TO THE ALASKA SECUTITIES ACT

Congress has recently enacted federal securities laws[1] that have a direct effect on Alaska (and other states) securities law and regulations. This federal action results in significant changes in both the registration of securities and those who market them. It is therefore essential that Alaska amend the Alaska Securities Act to conform to new federal provisions and to assure a degree of uniformity with other states. Another primary issue is to preserve Alaska's ability to collect designated revenues in excess of $3 million that funds the division's investor protection programs.

The new federal law (NSMIA) provides in part:

- New class of security **Federal Covered Securities,** exempt from state registration. These include securities like Mutual Funds and limited offerings under Regulation D of the SEC.
- Federal Covered Securities would:
  - File a Notice with the State[2].
  - Pay Notice fees.
- New class of **Federal Covered Advisers** which are those with more than $25 million under management. This class would no longer fall under the jurisdiction of the States. Although exempt, they too would have to file Notice and pay fees for the purpose of funding local investor protection.

The effect of this federal legislation also provides greater responsibility of the state to register and regulate those who are not within the Federal Covered Advisers and their investment adviser representatives (equivalent to Broker Dealer representatives.)

The legislation we propose covers the areas that need to be addressed because of federal action. This will allow Alaska to:

- Preserve funding for investor protection.
- Conform with securities laws of other states.
- Establish regulation for state licensed investment advisers and representatives of investment advisers. Also regulation for those Federal Covered Advisers who have a place of business in Alaska.

There are two primary points to consider. This legislation preserves the right for Alaska to continue to collect over $3 million dollars in Notice fees. If by 1999 we do not enact legislation, Alaska will be preempted from requiring Notice and the intended fees. With the increase of problems in Alaska in investment advising it is essential that Alaska continues to receive this financial support.

---

[1] The National Securities Markets Improvement Act (NSMIA) enacted October 11, 1996.

[2] NSMIA requires the states to amend their securities law by October 1999 to prevent preemption of Notice and fees.

B

DRAFT FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HB 83

Revision Date/Time (Note if correction) _____
Dept. Affected Commerce & Econ. Dev.
Title Alaska Securities Act
BRU Banking, Securities and Corporations
Component Banking, Securities and Corporations
Sponsor Labor & Commerce by Request
Requester _____
Component Serial No. 1233

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

Because most of the provisions of HB 83 simply bring the Alaska Securities Act (the Act) into compliance with federal law (National Securities Markets Improvement Act of 1996 (NSMIA)), thus preserving the State's revenue and current authority to regulate market participants, there is no cost to implement this bill. Failure to pass this bill would result in a loss of currently anticipated revenue to the State of an estimated $3.9 million in FY00, rising to $6.4 million in FY05. Most of the language in HB 83 is uniform language, drafted by the North American Securities Administrators Assn., and has been adopted in a majority of the states at this time.

Prepared by Franklin T. Elder, Acting Director Phone 465-2521
Division Banking, Securities and Corporations Date/Time 2/10/99 9:52 AM
Approved by Commissioner Deborah B. Sedwick Date _____
Agency Commerce and Economic Development

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DRAFT FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. *For Information Only*

Revision Date/Time (Note if correction) _____
Dept. Affected Commerce & Econ. Dev.
Title Alaska Securities Act
BRU Banking, Securities and Corporations
Component Banking, Securities and Corporations
Sponsor *For information only*
Requester _____
Component Serial No. 1233

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )	(3,900.0)	(4,370.0)	(4,809.0)	(5,293.0)	(5,826.0)	(6,412.0)

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

There is no cost to implement the Securities Act, but if this bill were not to pass, the State through the division, would lose revenue from refundable and non-refundable mutual funds and such a loss would be fiscally devastating as depicted above. In addition the State would lose approximately 335 federally covered advisers at $75 per year per adviser - totaling approximately $25,000. As well as revenue of $20,000 from loss of notice fees for the Reg D 506 filings.

Prepared by Franklin T. Elder, Acting Director Phone 465-2521
Division Banking, Securities and Corporations Date/Time 2/10/99 10:53 AM
Approved by Commissioner Deborah B. Sedwick Date _____
Agency Commerce and Economic Development

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For further distribution information, call the Governor's Legislative Office

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.
10 G Street N.E., Suite 710
Washington, DC 20002
202-737-0900
Telecopier: 202-783-3571
E-mail: general@nasaa.org
Web Address: http://www.nasaa.org

NASAA

February 3, 1999

F. Terry Elder
Acting Director
Department of Commerce and Economic Development
Division of Banking, Securities & Corporations
333 Willoughby Avenue, 9th Floor
Juneau, AK 99811

Re: Proposed Legislation to Amend Alaska Securities Act

Dear Mr. Elder:

I am writing on behalf of the North American Securities Administrators Association (NASAA)[1] to express our support for the proposed amendments to the Alaska Securities Act. NASAA recognizes such amendments represent a concerted effort by the Division of Banking, Securities and Corporation ("the division") to respond to the changes brought about by the National Securities Markets Improvement Act of 1996 ("NSMIA").

Although certain state authority was preempted under the NSMIA, other aspects of regulation were left to the discretion of state securities regulators, some within certain parameters. NASAA drafted and distributed to its members uniform statutory and regulatory amendments to accommodate the NSMIA as well as to give direction to the states in the areas left to their discretion. NASAA amendments were adopted by the membership in an effort to create uniformity among the states in those areas they continued to regulate.

Alaska's proposed amendments follow those adopted by NASAA. The implementation of the proposed amendments by Alaska will facilitate uniform regulation consistent with other similarly amended state securities laws ultimately to benefit Alaska investors. In addition, such implementation is in accordance with the NSMIA.

[1] NASAA is the association of the 65 state, provincial and territorial securities regulatory agencies of the United States, Canada and Mexico. NASAA serves as a forum for state regulators to work with each other in an effort to protect investors at the grassroots level and to promote fair and open capital markets. NASAA serves as the voice of its members in forwarding those interests.

Once again, NASAA strongly supports the division's proposed amendments. As such, we are willing to assist in any manner possible to ensure their enactment. Please feel free to share this letter with the legislature in consideration of the amendments. If NASAA can be of any assistance in the enactment process, please do not hesitate to contact us.

Respectfully,

Philip A. Feigin
Executive Director

INVESTMENT COMPANY INSTITUTE

February 18, 1999

Willis F. Kirkpatrick, Director
Department of Commerce & Economic Development
Division of Banking, Securities & Corporations
333 Willoughby Avenue, 9th Floor
Juneau, AK 99811

Re: House Bill 83

Dear Director Kirkpatrick:

The Investment Company Institute* is writing to you to express our support for the amendments recently proposed by the Department of Commerce & Economic Development to the Alaska Securities Act in House Bill 83. In particular, these amendments will faithfully and comprehensively implement the provisions of the National Securities Markets Improvements Act of 1996 ("NSMIA"), which effected sweeping reforms of the nation's federal securities acts. We are most supportive of the legislative enactment of the amendments proposed by the Department and stand ready to assist the Department in this process.

The Institute believes that the amendments proposed by the Department will not only conform the Alaska Act to federal law, but also strengthen the ability of the Department to concentrate its efforts on redressing fraud and abusive practices in the offer and sale of securities and in the rendering of investment advice. As a result, enactment of these amendments will benefit all Alaska investors.

As stated above, the Institute stands ready to assist the Department in securing the enactment of this most worthwhile legislation. In this regard, please contact me at 202/326-5825 if I or the Institute can be of any assistance to you in this process, including providing oral or written testimony in support of the legislation. Also, please do not hesitate to provide this letter of support to the legislature during its consideration of this bill.

Sincerely,

Tamara K. Reed
Associate Counsel

* The Investment Company Institute is the national association of the American investment company industry. Its membership includes 7,408 open-end investment companies ("mutual funds"), 449 closed-end investment companies and 8 sponsors of unit investment trusts. Its mutual fund members have assets of about $5.468 trillion, accounting for approximately 95% of total industry assets, and over 62 million individual shareholders. The Institute also represents the interests of investment advisers. Many of the Institute's investment adviser members render investment advice to both investment companies and other clients. In addition, the Institute's membership includes 482 associate members which render investment management services exclusively to non-investment company clients. A substantial portion of the total assets managed by registered investment advisers are managed by these Institute members and associate members.

INVESTMENT COMPANY INSTITUTE

January 5, 1998

Willis F. Kirkpatrick, Director
Department of Commerce & Economic Development
Division of Banking, Securities & Corporations
333 Willoughby Avenue, 9th Floor
Juneau, Alaska 99811

Re: Proposed Securities Legislation

Dear Director Kirkpatrick:

The Investment Company Institute[1] is writing to you to express our support for the amendments recently proposed by the Department of Commerce & Economic Development to the Alaska Securities Act. In particular, these amendments will faithfully and comprehensively implement the provisions of the National Securities Markets Improvements Act of 1996 ("NSMIA"), which effected sweeping reforms of the nation's federal securities acts. We are most supportive of the legislative enactment of the amendments proposed by the Department and stand ready to assist the Department in this process.

The Institute believes that the amendments proposed by the Department will not only conform the Alaska Act to federal law, but also strengthen the ability of the Department to concentrate its efforts on redressing fraud and abusive practices in the offer and sale of securities and in the rendering of investment adviser. As a result, enactment of these amendment will benefit all Alaska investors.

As stated above, the Institute stands ready to assist the Department in securing the enactment of this most worthwhile legislation. In this regard, please contact me at 202/326-5825 if I or the Institute can be of any assistance to you in this process, including providing oral or written testimony in support of the legislation. Also, please do not hesitate to provide this letter of support to the legislature during its consideration of this bill.

Sincerely,

Tamara K. Reed

Tamara K. Reed
Associate Counsel

[1] The Investment Company Institute is the national association of the American investment company industry. Its membership includes 6,742 open-end investment companies ("mutual funds"), 442 closed-end investment companies and 10 sponsors of unit investment trusts. Its mutual fund members have assets of about $4.359 trillion, accounting for approximately 95% of total industry assets, and over 59 million individual shareholders. The Institute also represents the interests of investment advisers. Many of the Institute's investment adviser members render investment advice to both investment companies and other clients. In addition, the Institute's membership includes 472 associate members which render investment management services exclusively to non-investment company clients. A substantial portion of the total assets managed by registered investment advisers are managed by these Institute members and associate members.

E

ICAA

February 18, 1999

By Facsimile and U.S. Mail

Willis F. Kirkpatrick, Director
Department of Commerce and Economic Development
Division of Banking, Securities and Corporations
333 Willoughby Avenue, 9th Floor
Juneau, AK 99811

Re: Legislation to Amend Alaska Securities Act – House Bill No. 83

Dear Mr. Kirkpatrick:

I am writing on behalf of the Investment Counsel Association of America (ICAA) to continue to express our support for the Division of Banking, Securities and Corporation's proposed statutory revisions to the Alaska Securities Act relating to investment advisers, now reflected in House Bill No. 83.

The ICAA is a national not-for-profit association of more than 235 investment advisory firms. ICAA member firms collectively manage funds in excess of $1.8 trillion for a wide variety of institutional and individual clients. All of our members are registered with the U.S. Securities and Exchange Commission.

We commend the Division for its efforts in drafting this important legislation. As you know, the Investment Advisers Supervision Coordination Act ("Coordination Act," Title III of the National Securities Markets Improvement of 1996) allocated regulatory responsibility for larger advisers to the SEC and responsibility for smaller advisers and financial planners to the states. The proposed revisions to the Alaska Securities Act relating to investment advisers effectively respond to changes in the regulatory structure mandated by the Coordination Act. Significantly, the legislation would implement the Coordination Act in a manner that is substantially uniform with other states that already have adopted such implementing legislation. The legislation should result in less duplicative and overlapping regulation of investment advisers, while enhancing the protection of Alaska investors through more focused use of limited regulatory resources.

We appreciate the Division's consideration of our comments during the drafting process and recommend that the proposed legislation be accorded prompt consideration. Please feel free to share this letter with or relay our support of this bill to the legislature. We look forward to working with you on proposed implementing regulations once the

INVESTMENT COUNSEL ASSOCIATION OF AMERICA, INC.
1050 17TH STREET, N.W., SUITE 725 WASHINGTON, DC 20036-5503
(202) 293-ICAA FAX (202) 293-4223

bill has been enacted. Please do not hesitate to call me if you require any further information.

Sincerely,

Karen L. Barr

Karen L. Barr
General Counsel

ICAA

January 2, 1998

By Facsimile and U.S. Mail

Willis F. Kirkpatrick, Director
Department of Commerce and Economic Development
Division of Banking, Securities and Corporations
333 Willoughby Avenue, 9th Floor
Juneau, AK 99811

Re: Draft Legislation to Amend Alaska Securities Act

Dear Mr. Kirkpatrick:

I am writing on behalf of the Investment Counsel Association of America (ICAA) to express our support for the Division of Banking, Securities and Corporation's proposed statutory revisions to the Alaska Securities Act relating to investment advisers.

The ICAA is a national not-for-profit association of 225 investment advisory firms. ICAA member firms collectively manage funds in excess of $1.3 trillion for a wide variety of institutional and individual clients. All of our members are SEC-registered.

We commend the Division for its efforts in drafting this important legislation. As you know, the Investment Advisers Supervision Coordination Act ("Coordination Act," Title III of the National Securities Markets Improvement of 1996) allocated regulatory responsibility for larger advisers to the SEC and responsibility for smaller advisers and financial planners to the states. The proposed revisions to the Alaska Securities Act relating to investment advisers effectively respond to changes in the regulatory structure mandated by the Coordination Act. Significantly, the legislation would implement the Coordination Act in a manner that is substantially uniform with other states that already have adopted such implementing legislation. The legislation should result in less duplicative and overlapping regulation of investment advisers, while enhancing the protection of Alaska investors through more focused use of limited regulatory resources.

We appreciate the Division's consideration of our comments during the drafting process and recommend that the proposed legislation be accorded prompt consideration. Please feel free to share this letter with or relay our support of this bill to the legislature. We look forward to working with you on proposed implementing regulations once the

INVESTMENT COUNSEL ASSOCIATION OF AMERICA, INC.
1050 17TH STREET, N.W., SUITE 725 WASHINGTON, DC 20036-5503
(202) 293-ICAA FAX (202) 293-4223

bill has been enacted. Please do not hesitate to call me if you require any further information.

Sincerely,

Karen L. Barr
General Counsel

By Facsimile

December 17, 1998

Mr. F. Terry Elder
Securities Examiner
Division of Banking, Securities & Corporations
State Office Building, 9th Floor
333 Willoughby Avenue
Juneau, Alaska 110807

Dear Mr. Elder:

The Institute of Certified Financial Planners[1] has reviewed H.B. 486 in anticipation of a similar proposal being considered during the 1999 session of the Legislature. House Bill 486, as you are aware, would have provided conforming amendments to the Alaska Securities Act of 1959 in response to a 1996 federal securities reform law[2] mandating certain uniform regulatory requirements for state-licensed investment advisory firms.

The ICFP believes the changes contained in H.B. 486 – principally those requiring what are essentially uniform books and records, net minimum capital, and financial reporting requirements for state investment advisers, as well as a uniform 5-client *de minimis* exemption for both federal and state-licensed investment advisers, are badly needed to bring clarity and conformity to Alaska's investment advisory law, consistent with NSMIA and the majority of other state securities laws as similarly amended.

The Institute wishes to go on record in strong support of legislation to be considered by the 1999 session of the Alaska legislature identical to the amendments proposed in H.B. 486.

---

[1] The Institute of Certified Financial Planners (the "Institute" or "ICFP") is a Denver-based professional association representing approximately 14,000 CFP licensees in the U.S., including 16 in the state of Alaska. The Institute serves as a resource for legislative and regulatory policy makers on issues affecting financial planning.

[2] The National Securities Markets Improvement Act of 1996 ("NSMIA"). Approximately 75 percent of ICFP members are licensed by state securities administrators, with the remainder registered with the Securities & Exchange Commission.

The undersigned can be contacted at 1.800.322.4237, ext. 129, and would be pleased to respond to any questions or concerns regarding the specific provisions of such legislation.

Sincerely,

Duane R. Thompson
Director of Government Relations

cc: ICFP Board of Directors
National Government Relations Committee

INTERNATIONAL ASSOCIATION
FOR FINANCIAL PLANNING

Suite B-300
5775 Glenridge Drive, NE
Atlanta, Georgia 30328-5364
Voice 404.845.0011
Fax 404.845.3660
Web http://www.iafp.org

February 9, 1999

The Honorable Gail Phillips, Speaker
Alaska House of Representatives
State Capitol
Juneau, AK 99801-1182

Dear Speaker Phillips:

The International Association for Financial Planning (IAFP) is the largest and oldest membership association representing the financial planning community, with over 17,000 members nationwide. We are dedicated to the idea that objective advice supports smart financial decision-making. The purpose of this letter is to offer our support of House Bill 83. We believe its passage will enhance investment adviser regulation in Alaska and further the goals of the consumer, our members, and the financial planning process.

This bill provides consumers cost savings and added trust in investment advisers. Making regulation more uniform will ensure greater understanding of the rules by investment advisers and allow them to operate more efficiently. The Division of Banking, Securities, & Corporations will be able to more effectively and efficiently supervise the activities of investment advisers doing business in Alaska. All those interested in sound investment advice will benefit from this legislation.

As I am leaving IAFP, please call Dale Brown at 800-945-4237, extension 7764, if you need more information on IAFP, our members, or if you want to discuss this is more detail.

Respectfully submitted,

Michael C. Herndon

Michael C. Herndon
Government Affairs Manager

Cc: Franklin Terry Elder

HUGHES THORSNESS POWELL
HUDDLESTON & BAUMAN LLC
ATTORNEYS AT LAW

FEB 22 1999

February 18, 1999

Direct Dial:(907)263-8251
E-Mail Address: RLM@htlaw.com

Franklin Terry Elder
Acting Director, Securities Dept.
Division of Banking, Securities and Corporations
Department of Commerce & Economic Development
State of Alaska
P. O. Box 110807
Juneau, AK 99811-0807

VIA FAX:907-465-2521
Original to follow by mail

Re: H.B. 83 - Alaska Securities Act

Dear Mr. Elder:

I am writing to express my support for the provisions of House Bill 83. In particular, the revised exempt transaction provisions set out in Section 46 are a substantial improvement and will make ordinary business activity for corporations and similar business entities much easier.

I also want to thank you for your willingness to involve business and estate planning lawyers in the drafting process. You willingness to work with us on areas of mutual concern was an absolute breath of fresh air. Having dealt with government bureaucracies over almost 25 years of law practice, I have become used to agencies that are more concerned about expanding their regulatory turf than they are with determining what works and what is necessary to accomplish legitimate objectives without burdening the business community with unnecessary regulations or hoops to jump through. Your willingness to work with those at the sharp end of the stick to make procedures easier, while still looking out for the interests of the public is more than commendable.

As you know, securities law issues have been a potential problem with new Alaska trust business where individuals are considering setting up family limited liability companies or limited partnerships. House Bill 83 goes a long way to eliminating those impediments to developing additional work in the Alaska financial services sector.

Please feel free to share this correspondence with such legislators or legislative committees as you see fit.

HUGHES THORSNESS POWELL
HUDDLESTON & BAUMAN LLC
ATTORNEYS AT LAW

Very truly yours,

HUGHES THORSNESS POWELL
HUDDLESTON & BAUMAN LLC

By Robert L. Manley
Robert L. Manley

RLM:kao: 97135

Arbor Capital Management
310 K Street, Suite 200 • Anchorage, AK 99501
Phone: (907) 264-6689 • Fax: (907) 264-6690

February 18, 1999

Mr. Dennis Salveson
Securities Examiner
Department of Commerce &
Economic Development
P.O. Box 110807
Juneau, AK 99811-0807

Via Facsimile: (907) 465-2549
Two Pages

Dear Mr. Salveson:

I have perused House Bill 83, the version of which I have attached its first page herewith. I have no material objection to the items detailed therein, specifically sections 45.55.023, 45.55.030, and 45.55.990.

Should you need to contact me in relation to this writing, please phone (907) 264-6689.

Sincerely,

Robert Sheldon

Robert Sheldon
Principal

1-LS0253\D

HOUSE BILL NO. 83

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

Introduced: 2/8/99
Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

"An Act relating to the licensing of, acts and practices of, notice filings required of, duties of, registration of, capitalization of, financial requirements for, bonding of, coordinated securities examinations of, recordkeeping by, and documents filed by certain securities occupations; relating to public entity investment pools; relating to investment advisory contracts; relating to the examination of records of certain securities occupations; relating to federal covered securities; relating to the registration of securities; relating to the general exemptions for securities and transactions; relating to offers of securities on the Internet; relating to the confidentiality of investigative files under the Alaska Securities Act; relating to the payment by certain securities occupations of expenses and fees of investigations and examinations; relating to petitions to superior court by the administrator to reduce civil penalties to judgment;

Planning & Investments, Inc.
Planning for your success.

4000 Old Seward Hwy., Suite 301
Anchorage, Alaska 99503
(907) 561-3118
Fax (907) 562-6225

February 18, 1999

Franklin T. Elden
Director
Division of Banking, Securities and Corporations
State of Alaska
Juneau, Alaska

Mr. Elden:

I have reviewed House Bill 83 and, as a State of Alaska Registered Investment Advisor, I wish to express my support for the bill. Its passage would be beneficial to our profession.

Sincerely,

Mark Schneiter, CPA
Vice President

Polaris
FINANCIAL PLANNING, LTD.
... a Southeast Alaska Company

526 Main Street
Juneau, Alaska 99801

Tel: 907-585-4975
Fax: 907-586-4976
Email: tfm@polarisfp.com

February 19, 1999

Sent via FAX (465-2549)

Dennis Salveson
State of Alaska
Department of Commerce and Economic Development
Division of Banking, Securities and Corporations

Dear Mr. Salveson,

I have reviewed recently introduced legislation entitled House Bill 83, and have a few brief comments.

To put my comments into perspective, I will provide some background. I recently established a local business named Polaris Financial Planning, Ltd. which engages in comprehensive personal financial planning, including personal investment management. Because the company is small, I fall within the jurisdiction of the State of Alaska under Title III of the National Securities Market Improvement Act of 1996. As such, Polaris is registered with the State of Alaska as a State Investment Advisor, and I am personally registered as an Investment Advisor Representative.

My overall impression of HB 83 is quite favorable. Much of the Bill focuses on the broker-dealer industry, and securities registration issues outside the scope of activities of a typical small financial planner. On these I have no specific comment. Substantial parts of the Bill deal with procedural and administrative matters such as initial and renewal registration, surety bonds, minimum financial requirements and the like. These provisions appear to be comparable to procedures in other jurisdictions, and in my opinion present no particular problem for the small business owner.

The one area I wish to comment on specifically is Section 45.55.023, 'Unethical business practices of state investment advisors...' This section goes to the heart of what Financial Planning is all about, and what the public has a right to expect from our profession.

Section 023 makes the relationship between the financial professional and the client absolutely clear. Sub-section (a) states unequivocally that the professional has a fiduciary responsibility to the client, and must act in the best interests of the client. These paragraphs leave no doubt that the various principles of ethical conduct found in the Investment Advisors Act of 1940 shall also be applied to State Investment Advisors

through the Alaska Statutes. Any lingering doubt created by Title III of the National Securities Market Improvement Act is put to rest.

The legislation supports the work of professional organizations such as the Institute of Certified Financial Planners and the Certified Financial Planner Board of Standards in their efforts to implement codes of professional conduct based on the fiduciary concept. The efforts of these organizations, in conjunction with legislative initiatives such as HB 83, can only serve to benefit the public and elevate the profession.

I support this legislation, and wish the sponsors of HB 83 success in seeing it through to enactment.

Very truly yours,

Thomas F. McBrien

Terry P. Welsh CLU, ChFC
Certified Financial Planner
Registered Investment Advisor

R. Newt Mattison
Financial Consultant

AFA

February 22, 1999

Mr. F. Terry Elder
Director
Division of Banking, Securities & Corporations
State Office Building, 9th Floor
333 Willoughby Avenue
Juneau, Alaska 110807

Dear Mr. Elder:

I have recently reviewed the sections of HB #83 which pertain to investment advisors and I am writing to lend support to the bill. As a financial planner and registered investment advisor with the State of Alaska and State of Washington I have been concerned as to the lack of clear definition and regulation that relate to investment advisors in Alaska. As I understand the legislation, it will more clearly conform to the regulations governing investment advisors with the SEC as well as other states throughout the country.

I applaud you in your efforts to provide more clear oversight of investment advisors and I believe that the proposed legislation will be of benefit to investors and investment advisors throughout Alaska.

Please count me among the financial professionals who support HB #83. If it would be helpful to you for me to provide either written or oral testimony please let me know.

Sincerely,

Terry P. Welsh, CFP, ChFC, CLU
Registered Investment Advisor

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(907) 225-0619 • Fax (907) 247-0619 • 809 Water Street • Ketchikan, Alaska 99901

National Planning
CORPORATION SM

2-18-99

To: Dennis Salveson, CPA
State of Alaska
Division of Banking & Securities

Fr: Joan Zimmerman CFP
Adviser Representative

RE: HB 83 "Alaska Securities Act"

Dennis, I have had an opportunity to review HB 83 and support the passage of HB 83 as written.

One suggestion, in the definitions , it might be helpful to define "disclosure" for the benefit of the average consumer.

Joan Zimmerman

BLUNCK FINANCIAL
REGISTERED INVESTMENT ADVISOR

Nancy Blunck, MS, CFP
Certified Financial Planner

February 22, 1999

Mr. Dennis Salveson, CPA
State of Alaska Division of Banking, Securities & Corporations
State Office Building, 9th Floor
333 Willoughby Avenue
PO Box 110807
Juneau, Alaska 99811-0807

Fax number: (907) 465-~~2524~~ 1165-2549

Re: HR 83

Dear Mr. Salveson:

Thank you for the opportunity to comment on the proposed state investment advisor law change and proposed regulation changes embodied in HR 83.

I have read the letter dated December 17, 1998 to Mr. Terry Elder of your division. The letter is from the Institute of Certified Financial Planners (ICFP). It speaks to the law change but not the regulation changes. I am in agreement with the ICFP's support of the law change.

I have had the opportunity to look at the Administrative Code Regulations which have been drafted to implement the law changes. Having had a chance to look at these, I have several comments:

1. I strongly support the general idea that there is uniform regulation of the investment advisor industry on a national basis by comparable adoption of laws and rules by each state. Investors and investment advisors alike are better served by uniform requirements for state investment advisors. The law changes are much needed to bring conformity to Alaska's investment advisory law.
2. I strongly support the waiver for Certified Financial Planners (CFPs) on the Series 63 and Series 65 exams.
3. I am concerned about the bonding requirement for state investment advisors who have discretion but do not have custody. It is my understanding that most (about two thirds) of the states considered and rejected this bonding requirement. It is also my understanding that the National Association of Securities Administrators Association (NASAA) initially supported this bonding requirement but has backed off its position. That leaves the State of Alaska writing the bonding requirement in a manner that is not consistent with NASAA. I oppose this bonding requirement.
4. Although this is not an issue currently being addressed by the proposed regulations for Alaska, I would like to go on record as strongly opposing the National Association of Securities Dealers (NASD) as a potential self regulatory organization (SRO) for investment advisors. I am far more comfortable with a body like the CFP Board of Standards acting as a self regulatory body.

Sincerely,

Nancy Blunck

Nancy Blunck, MS, CFP

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RECIPROCAL RELATIONSHIP
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TELEPHONE (907) 586-8110

February 19, 1999

Terry Elder
Acting Director, Securities Dept.
Division of Banking, Securities and Corporations
Department of Commerce & Economic Development
P.O. Box 110807
Juneau, AK 99811-0807

FEB 24 1999
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DIVIS.

Re: H.B. 83 - Alaska Securities Act
Our File No.: 0579-0

Dear Mr. Elder:

I would like to express my support for the provision of House Bill 83 and specifically the revised exempt transaction provisions set forth in Section 46. These provisions are a substantial improvement and will assist business entities in conducting business in the State of Alaska. House Bill 83 is important in eliminating many of the impediments that we have seen in developing Alaska's new trust business and related issues regarding family limited liability companies and family limited partnerships. House Bill 83 will provide significant improvement over current law and will allow Alaska to be more competitive and response to the needs of those seeking to do business in the State of Alaska.

If I can be of any assistance on this matter, please contact me.

Sincerely,

HARTIG, RHODES, NORMAN,
MAHONEY & EDWARDS, P.C.

By: Peter B. Brautigam

PBB:jh
cc: Robert L. Manley, Esq.
F:\PBBDOCS\0579\0\hb-83-ltr.wpd

Lee Ann Gerhart
3818 Clay Products Road
Anchorage, AK 99517
(907)243-8951
email: Lee_Ann_Gerhart@compuserve.com

February 18, 1999

Attn: Mr. Dennis Salveson
State of Alaska
Department of Commerce and Economic Development
Division of Banking, Securities and Corporations
P.O. Box 110807
Juneau, Alaska 99811-0807

fax: 907(465)-2549

Mr. Salveson:

I have read House Bill HB-83 and support the bill. I appreciate your attention to my particular circumstances in making the amendment to 45.55.990, Section 70 (35)(B)(vii).

Lee Ann Gerhart

Lee Ann Gerhart

Comments on Non-NSMIA-Related Sections of CS HB 83(L&C) (Securities Act Bill)

Overview

CS HB 83(L&C) (Securities Act bill) preserves over $4 million in annual State revenue and maintains the State's role in investor protection by amending the Alaska Securities Act (AS 45.55) to conform to federal law (National Securities Markets Improvement Act of 1996 (NSMIA)) passed in October 1996. The uniform language for those sections of the bill dealing with NSMIA was drafted by the North American Securities Administrators Association (NASAA), and is supported by the Investment Company Institute (ICI), the Investment Counsel Association of America (ICAA), the Institute of Certified Financial Planners (ICFP), and the International Association for Financial Planning (IAFP).

The sections of the bill that deal with non-NSMIA changes (23 of 76 in whole or in part), are included to add or update language to current uniform language as drafted by NASAA, to clarify certain sections of the Act to improve understanding of current policy, and to add certain exemptions from registration to the Act to improve access to capital markets for Alaska businesses. The sections below are the non-NSMIA sections in the proposed legislation. The seven sections indicated with "(Part)" are sections that include some NSMIA and some non-NSMIA changes. This paper concentrates its comments on the non-NSMIA changes. The full comment paper provides comments on all sections of the bill.

Section 12 (Part)
Section 45.55.030(f), (j)

New subsection (f) prohibits agents from dual registration which is currently prohibited by regulation. New subsection (j) allows agents to do wrap accounts without registration as investment adviser representatives which is standard practice in the industry and current Division policy.

Old law did not specifically provide for wrap accounts and dual registration.

Section 13
Section 45.55.035

New section to Uniform Securities Act provides for reciprocal limited registration of Canadian and US broker-dealers and their agents to serve existing customers who are temporarily residing outside their jurisdiction. Language drafted and adopted by NASAA and supported by the Securities Industry Association (SIA).

Old law does not provide for anything less than full registration, limiting the ability of Canadian and US broker-dealers to serve clients temporarily located outside their registered locations.

Section 15
Section 45.55.040(b)
Language describing effectiveness dates of registration is deleted from subsection (b), since the Division plans to include this language in its regulations.

Old law contained effectiveness language.

Section 25
Section 45.55.050(d)
Language is added to subsection (d) to clarify, in accordance with current policy and practice, that the Division may inspect records at any time.

Old law did not clearly state inspections may come at any time.

Section 26 (Part)
Section 45.55.050(k)
Subsection (k) is added to require broker-dealers to comply with NASD supervision requirements. Compliance is required by the NASD, but this amendment is needed to allow the Division to take action against broker-dealer for failure to supervise its agents.

Old law did not mention broker-dealer supervision.

Section 27 (Part)
Section 45.55.060(a)
Subsection (a)(2) makes repeated violations of the Act a basis for administrative action and not just wilful acts. Subsection (a)(3) clarifies the definition of "convicted" to conform with current policy. Subsection (a)(10) provides authority to take action against a person who fails to maintain and produce required records. Subsection (a)(11) provides authority to take action against persons who default on a student loan or do not comply with child support enforcement laws.

Old law did not provide for actions based on AS 14.43 or AS 25.27, and it did require violations of the Act to be wilful to be actionable under this section.

Section 34
Section 45.55.090
Adds language to clarify that the SEC is the United States Securities and Exchange Commission.

Old law did not specify that the SEC is the US SEC.

Section 37
Section 45.55.110(c)
Adds language to clarify that the SEC is the United States Securities and Exchange Commission.

Old law did not specify that the SEC is the US SEC.

Section 44 (Part)
Section 45.55.900(a)
(1) Subsection (a) is amended to include exemption from notice filing requirements of federal covered securities.

Old law did not mention federal covered securities.

(2) Subsection (a)(1) is amended to include US territories and the District of Columbia in order to update this exemption to the current uniform language.

Old law did not include US territories and the District of Columbia in this exemption.

(3) Subsection (a)(3) is amended to cover any security issued or guaranteed by a bank or other issuer listed in the subsection and not only a security representing an interest in or debt of the issuer. In addition, obligations of a federal reserve bank are explicitly added to the exemption.

Old law limited the issued security to interests in or debts of the issuer, and did not mention federal reserve banks.

(4) Subsection (a)(4) is amended to expand the types of short-term debt securities that are covered by the exemption from commercial paper to other types of securities that are also eligible for discount by a federal reserve bank.

Old law only covered commercial paper.

(5) Subsection (a)(5) is amended to reflect a provision in NSMIA which excluded certain plans from the definition of an investment company if the assets were used exclusively for the benefit of the beneficiaries, thus putting these plans on the same footing as similar employee benefit plans covered by this exemption.

Old law did not include plans allowed by NSMIA.

(6) Subsection (a)(10) is amended to update the names of stock exchanges and to add the Philadelphia Stock Exchange, which has been accepted by the administrator as having sufficiently high financial standards to be comparable to other exchanges currently covered by the exemption.

Old law did not include the Philadelphia Stock Exchange.

(7) Subsection (a)(11) is amended to include securities of funds excluded from the definition of an investment company. This was added by the Philanthropy Protection Act of 1995 to include pooled funds of charitable organizations. Without this amendment the subsection would not comply with the Philanthropy Protection Act of 1995.

Old law did not include funds exempted by the Philanthropy Protection Act of 1995.

(8) A new subsection (a)(13) is added to provide an exemption from registration of securities issued in connection with the acquisition of a bank by a holding company under

specified circumstances which require the holding company to be substantially equivalent to a bank. This amendment puts holding company acquisitions on an equal footing with the current exemption at (a)(3).

Old law did not provide an exemption for a bank holding company to acquire a bank under these limiting circumstances.

Section 45 (Part)
Section 45.55.900(b)
(1) Subsection (b) is amended to include exemption from notice filing requirements of federal covered securities.

Old law did not mention federal covered securities.

(2) Subsections (b)(5)(A)(ii) and (b)(5)(B)(iii) have been deleted for private, nonpublic offerings that are limited in terms of the number of investors. The Uniform Securities Act does not include a dollar amount limitation.

Old law limits the exemptions to $100,000 and $500,000, respectively.

(3) Subsection (b)(5)(B)(ii) is amended and language is added to clarify what information must be made available to an investor to allow the investor to make an informed decision.

Old law tied the information requirement to that required under full registration.

(4) New subsection (b)(5)(C) is added as a self-executing exemption, without a dollar limitation, to cover initial issuance of securities to up to 10 persons while maintaining disclosure requirements and commission restrictions for investor protection.

Old law requires such persons to register, seek another exemption, or obtain a no-action letter from the Division to avoid violating the Alaska Securities Act.

(5) New subsection (b)(5)(D) is added as a self-executing exemption, without a dollar limitation, for an issuer who sells a business and its assets and liabilities to a buyer, when the transfer of stock is solely incidental to the sale of the business.

Old law requires such persons to register, seek another exemption, or obtain a no-action letter from the Division to avoid violating the Alaska Securities Act.

(6) Subsection (b)(9) is amended to exclude promoters or controlling persons from claiming this exemption and escaping a registration requirement altogether after using the new exemption at (b)(5)(C).

Old law does not make it clear that a "nonissuer" is not a "promoter" or "controlling person."

(7) Old subsection (b)(10) is repealed and replaced by new (b)(17), adopting the new language for the "manual exemption," as (b)(10) was sometimes called, which was developed by NASAA and supported by the Securities Industry Association (SIA). The new language protects investors at least as much as the old language while allowing reliance on publicly available filings with the SEC as well as manuals.

Old law generally required listing in a securities manual.

(8) Old subsections (b)(13)(A) and (B) are deleted eliminating the restriction on commissions and the requirement for notice filing.

Old law limited commissions to standby commissions and required a notice to be filed with the State.

(9) Old subsection (b)(15) is amended to cover votes by security holders and not just stockholders of a corporation. Also includes a typographical error correction.

Old law was limited to corporations and did not include limited liability corporations.

(10) New subsection (b)(18) is added, as drafted by NASAA, to provide an exemption for qualifying issuers that are limiting sales to accredited investors (essentially, institutions and wealthy natural persons). This will allow Alaska entrepreneurs to use ACE-Net to raise capital electronically.

Old law would require these issuers to register or seek another exemption.

(11) New subsection (b)(19) is added to provide a noticed exemption for rescission offers pursuant to AS 45.55.930.

Old law contains no specific provision for these offers which requires them to either be registered, fit another exemption, or covered by a no-action letter.

(12) New subsection (b)(20) is added to provide a self-executing exemption for transactions that are solely between family members, or between family members and entities they create.

Old law contains no exemption for these transactions which requires them to either be registered, fit another exemption, or covered by a no-action letter issued by the Division.

Section 46
Section 45.55.900(g) and (h)
Paragraph (g) is added to provide an exemption for certain offers on the Internet, as drafted by NASAA and adopted by order of the administrator. Paragraph (h) provides the administrator authority to modify requirements of the (b)(5) exemptions.

Old law does not provide for offers on the Internet.

Section 47
Section 45.55.910(e)
This section, dealing with investigations and subpoenas, is amended by adding a new subsection (e) clarifying that investigative files and materials are confidential unless required for discovery in an administrative or a judicial proceeding.

Old law does not specifically provide for confidential investigative files.

Section 48 (Part)
Section 45.55.915
This section is amended to allow the administrator the option, not the obligation, to require reimbursement for expenses of investigations in addition to examinations. Language is added to include investment adviser representatives, federal covered advisers, and state investment advisers.

Old law covers only examinations, not investigations.

Section 49
Section 45.55.920(e)
A new subsection (e) is added to allow the State to reduce a final civil penalty to court judgment without reopening the matter to a new contest. This especially will help the State go after out-of-state violators.

Old law does not provide for this mechanism without a de novo matter being raised.

Section 51 (Part)
Section 45.55.930(a)
Subsection (a) is amended to change the interest rate for rescission offers from 6% to the stated rate of the security if it had a stated, fixed rate or 8% whichever is less, and makes a corrective amendment changing "seller" to "buyer," and excludes federal covered securities which are not subject to registration.

Old law set the interest rate for rescission offers at 6%, and does not mention federal covered securities.

Section 52
Section 45.55.930(b)
Subsection (b) is amended to change the interest rate associated with damages to 8% or the stated rate of the security, whichever is less.

Old law set damages at 6%.

Section 53
Section 45.55.930(f)
Subsection (f) is amended to allow more time to bring suit when the violation alleged is that of misrepresentation or fraud, and the rescission rate to prevent suit is raised to 8% or the stated rate of the security, whichever is less.

Old law limits a civil suit to three years from the date of purchase, and sets the rescission rate at 6%.

Section 54
Section 45.55.930(j)-(k)
New subsection (j) is added to allow a buyer to sue if the buyer accepted a rescission offer and has not been paid. New subsection (k) is added to make it clear to those reading AS 45.55.930 that a rescission offer is an offer of a security subject to registration, unless exempt from registration under AS 45.55.900, as provided in the new exemption at AS 45.55.900(b)(19).

Old law did not mention what happens if a rescission offer is made and accepted but not paid, and it did not specifically state that a rescission offer is an offer under the Act.

Section 58
Section 45.55.970(e)
Subsection (e) is amended to clarify that, in accordance with current practice, the administrator may require a fee to be submitted along with requests for interpretative opinions.

Old law does not explicitly state a fee is required.

Section 61
Section 45.55.980(c)
Subsection (c)(5) is amended to include limited liability companies and limited liability partnerships to clarify the jurisdiction of the Act, in accordance with current policies and practice.

Old law did not include those relatively new entities.

Section 65
Section 45.55.990(3)
Subsection (3)(E) is amended to make de minimis exemption more workable by focusing on solicited trades and not just offers.

Old law based on offers which are difficult to trace.

Section 66
Section 45.55.990(9)
Subsection (9) is amended to add these relatively new entities to the definition of person.

Old law did not include these newer entities in the definition.

Section 68
Section 45.55.990(12)
Language is added to definition of security to clarify potential confusion between AS 45.55 and AS 45.08.

Old law did not contain this clarifying language.

Comments on All Sections of CS HB 83(L&C)
(Securities Act Bill)

Overview

The National Securities Markets Improvement Act (NSMIA), enacted on October 11, 1996, resulted in significant changes to the regulatory landscape of securities markets and people who sell securities or give investment advice.

By preempting certain securities and investment advisers from state registration, NSMIA would result in a loss of annual fee revenue for the State of Alaska of about $4-$5 million, unless Alaska adopts the changes described below to preserve its revenues through notice filings and fees, which are allowed by NSMIA. These fees are the State's primary source of fee revenue available for regulation of securities and investor protection. Without these changes, in addition to losing significant revenue, the State will be hampered significantly in its ability to protect investors from abusive potential practices of those who provide investment advice.

In particular, NSMIA created a new security, the Federal Covered Security (FCS), which is preempted from the registration requirements of the states. While some FCSs were already exempt from registration under the Alaska Securities Act (the Act), the largest impact of NSMIA in Alaska was the preemption of mutual fund and Regulation D 506 securities registrations. Alaska may no longer register these securities, but the State may require the issuers of these securities to file a notice and pay a notice fee in order to sell the security in this state. NSMIA requires states to change their statutes and regulations to provide for these notice filings and notice fees before October 1999, however, in order to preserve the state's ability to require notices and collect fees.

NSMIA also changed the regulatory landscape for broker-dealers and their agents, and for investment advisers and their investment adviser representatives. For example, states may no longer impose certain financial requirements for broker-dealers that are different from those imposed by the United States Securities and Exchange Commission (SEC). More significantly, however, NSMIA ended the dual registration requirements for investment advisers by creating Federal Covered Advisers (FCAs), essentially investment advisers with more than $25-30 million under management. These FCAs are now registered only with the SEC, while smaller investment advisers, so called State Investment Advisers (SIAs), continue to register with the states. Like the FCSs described above, however, FCAs may be required to file notice and pay fees for providing investment advisory services in Alaska: FCAs remain subject to the anti-fraud provisions of the Act.

Additional language is needed in the Alaska Act for SIAs registered with the states because those SIAs are no longer subject to some of the rules of the SEC as they were prior to NSMIA. Language is also needed to specifically license Investment Adviser Representatives (IARs). These are essentially equivalent to agents of broker-dealers. In

the past, we have licensed them based on the fact that they met the statutory definition of an investment adviser. NSMIA, however, provided that the SEC would define IARs and further provided that the states could register IARs of FCAs, if those IARs have a place of business in the state. Thus, it becomes important to treat IARs of SIAs and FCAs more like agents of broker-dealers.

Many of the changes described below are made to bring the Act into conformity with NSMIA and to preserve the ability of the state to provide investor protection for Alaskans and to continue to collect the fees from market participants who seek to provide various investment services to Alaskans. The North American Securities Administrators (NASAA) developed most of the language to promote uniformity among the states, a major policy of the Act. For the same reason, some other changes are suggested to conform to language adopted by NASAA that are similar to that used in other states.

Finally, the language in the Act needs to be flexible enough to adapt to changing conditions in this new investment environment. In particular, since the SEC now has the authority to define FCSs and IARs, for example, the state's definitions of those have to be able to quickly reflect those changes, or be subject to playing catch up with each revision. NSMIA has made it imperative for states to take into consideration what the federal government and other states are doing in the regulation of securities markets participants.

The Alaska Department of Commerce and Economic Development, Division of Banking, Securities and Corporations has received letters of support for the legislative changes described below from the North American Securities Administrators Association (NASAA), the Investment Company Institute (ICI), the major association for the mutual fund industry, the Investment Counsel Association of America, Inc. (ICAA), the major association for investment advisers, the Institute of Certified Financial Planners (ICFP), and the International Association for Financial Planning (IAFP). Many ICFP and IAFP members provide investment advisory services. These organizations represent the market participants most affected by the changes required in the Alaska Act by NSMIA.

Section 1
Section 14.43.148(h)(1)
Adds state investment advisers and their representatives to list of those whose license may be revoked for defaulting on a state student loan.

Old law did not specify state-registered investment advisers or their representatives.

Sections 2 and 3
Section 25.27.244(s)(2)
Adds state investment advisers and their representatives to list of those whose license may be revoked for noncompliance with child support enforcement requirements.

Old law did not specify state-registered investment advisers or their representatives.

Section 4
Section 37.23.050
Adds registered state investment advisers and noticed federal covered advisers to list of those entities that can contract to manage investment pools of public entities.

Old law did not differentiate between state investment advisers and federal covered advisers.

Section 5
Section 45.55.010
Provides that neither exemption by statute nor preemption by NSMIA will exempt a person from this anti-fraud provision.

Old law did not mention preempted federal covered securities.

Section 6
Section 45.55.020(b)
These restrictions on contracts are limited to state investment advisers since federal covered advisers are covered by SEC rules. Section 2 deleted since covered by new section 45.55.023(a)(16)(E).

Old law did not mention state investment advisers and federal covered advisers.

Section 7
Section 45.55.020(c)
Certain state investment adviser contracts may be allowed if they conform to the requirements of Section 205 of the Investment Advisers Act of 1940.

Old law prohibited all contracts based on capital appreciation.

Section 8
Section 45.55.020(e)
These restrictions on custody are limited to state investment advisers since federal covered advisers are covered by SEC rules.

Old law did not mention state investment advisers and federal covered advisers.

Section 9
Section 45.55.023, 45.55.025, 45.55.027, and 45.55.028
New sections are added providing investor protection from unethical business practices by persons providing investment advisory and securities business services.

Old law did not contain these provisions since we could rely on SEC rules for advisers, and broker-dealers and agents were covered in our regulations at 3 AAC 08.060 and 061.

Section 10
Section 45.55.030(c)
Registration limited by NSMIA to state investment advisers and investment adviser representatives, and registration exemptions inserted here rather than in definition section.

Old law did not mention investment adviser representatives, and registration exceptions were treated as exclusion from definition.

Section 11
Section 45.55.030(d)
Adds reference to notice filings as required by NSMIA so that both registrations and notice filings expire in one year.

Old law did not provide for notice filings.

Section 12
Section 45.55.030(e)-(j)
New sections require federal covered advisers to file notices (e), and investment advisers to hire registered representatives (g)-(i); also, allow agents to do wrap accounts without registration as investment adviser representatives (j); and prohibit agents from dual registration (f).

Old law did not mention federal covered advisers, notice filings, or investment adviser representatives, and dual registration was part of current regulations.

Section 13
Section 45.55.035
New section to Uniform Securities Act to provide for reciprocal limited registration of Canadian and US broker-dealers and their agents to serve existing customers.

Old law does not provide for anything less than full registration, limiting the ability of Canadian and US broker-dealers to serve clients temporarily located outside their registered locations.

Section 14
Section 45.55.040(a)
Provides for the registration of state investment advisers and investment adviser representatives as permitted by NSMIA, deleting fingerprint and photograph requirements, and allowing filing of promotional materials.

Old law did not mention state investment advisers or investment adviser representatives.

Section 15
Section 45.55.040(b)
Language describing effectiveness dates of registration is deleted since the Division plans to include this language in its regulations.

Old law contained effectiveness language.

Section 16
Section 45.55.040(c)
Separately provides for registration and notice fees as required by NSMIA to preserve the State's fee base.

Old law did not provide for notice fees.

Section 17
Section 45.55.040(d)
Language is added allowing state and federal covered advisers the same rights to transfer their representatives from a predecessor advisory business broker-dealers have for agents.

Old law did not mention federal covered advisers or investment adviser representatives, and advisers did not have same rights as broker-dealers regarding successors.

Section 18
Section 45.55.040(e)
Makes language more flexible to adapt to NSMIA, under which states are restricted in their ability to impose financial requirements on broker-dealers, and state and federal covered advisers.

Old law required bonding and other requirements now prohibited by NSMIA.

Section 19
Section 45.55.040(f)
Makes language more flexible to adapt to NSMIA, under which states are restricted in their ability to require bonds of broker-dealers, and state and federal covered advisers.

Old law required bonding now largely prohibited by NSMIA.

Section 20
Section 45.55.040(g)
Provide for notice filings to preserve the State's fee base, and promotes uniformity in filing and securities examinations.

Old law did not provide for notice filings or mention coordinated examinations.

Section 21
Section 45.55.040(h)-(j)
Subsection (h) provides for notice filings for federal covered advisers to preserve the State's fee base; subsection (i) provides authority to adopt regulations for fees and other procedures; and subsection (j) provides authority to require certain state investment advisers to post bonds.

Old law did not provide for notice filings or flexibility in bonding requirements, both required by NSMIA.

Section 22
Section 45.55.050(a)
Section now applies only to broker-dealers, and, pursuant to NSMIA, states may not impose books and records requirements in addition to those imposed by the SEC.

Old law included investment advisers, now covered new section, AS 45.55.050(e).

Section 23
Section 45.55.050(b)
Makes language more flexible to adapt to NSMIA which limits the financial reporting requirements of states for broker-dealers.

Old language included investment advisers, now covered in new section, AS 45.55.050(g).

Section 24
Section 45.55.050(c)
Language added to require notice filers to update filed material.

Old law did not mention notice filers.

Section 25
Section 45.55.050(d)
Language added to clarify that the Division may inspect records at any time.

Old law did not clearly state inspections may come at any time.