

**DIRK KEMPTHORNE**  
GOVERNOR



**GAVIN M. GEE**  
DIRECTOR

**STATE OF IDAHO**  
**DEPARTMENT OF FINANCE**  
700 W. STATE STREET, 2ND FLOOR  
P.O. BOX 83720  
BOISE, IDAHO 83720-0031  
www.finance.state.id.us

June 6, 2001

Re:

Dear M

Your letter of May 1, 2001 seeks to determine if the viatically-related investment opportunity offered by \_\_\_\_\_ and \_\_\_\_\_ constitute securities regulated under the Idaho Securities Act. In connection with your inquiry, you also provided a brochure for our review.

As presented, investors are offered an opportunity to purchase a percentage interest in the death benefits payable under a specified life insurance policy or policies. This ownership interest takes the form of an interest in a trust that is formed for the specific purpose of holding the policy or policies. A portion of the investor's proceeds are a) used to pay compensation to \_\_\_\_\_, b) retained by the trust to pay future insurance policy premiums, and c) paid as consideration for the viatical investment interest.

Based solely on the information presented in the marketing materials, we are of the view that the proposed investment interests would constitute securities under the Idaho Securities Act.

Should you have any questions or wish to discuss this matter further, please feel free to contact the undersigned directly.

Sincerely,

**JAMES A. BURNS**  
Securities Investigator

Banks & Savings Banks (208) 332-8005  
Credit Unions (208) 332-8003  
Securities (208) 332-8004  
Money Transmitters (208) 332-8004

PHONE: (208) 332-8000  
FAX: (208) 332-8098  
Director's Fax: (208) 332-8097  
Securities Fax: (208) 332-8099

Supporting Services (208) 332-8001  
Mortgage Companies (208) 332-8002  
Finance Companies (208) 332-8002  
Collection Agencies (208) 332-8002

**EQUAL OPPORTUNITY EMPLOYER**

**VIA FEDERAL EXPRESS**

Ms. Marilyn T. Chastain  
Bureau Chief  
Idaho Securities Bureau  
Department of Finance  
700 West State Street, Second Floor  
P.O. Box 83720  
Boise, Idaho 83720-0031

Re:

Dear Ms. Chastain:

Our firm serves as general counsel for \_\_\_\_\_, a licensed viatical settlement company. Several weeks ago, my partner, \_\_\_\_\_ spoke with a staff attorney in your office concerning whether the sale of viaticals is considered to be securities. He was advised that Idaho follows the decision in SEC v. Life Partners, and that your office evaluates each transaction on a case-by-case basis. We were then invited to provide information concerning the proposed transaction for your review.

In furtherance of that discussion, I am enclosing a brochure with ' \_\_\_\_\_ ' printed on the cover. This brochure contains the contract documents and informative materials used by \_\_\_\_\_ and its affiliate, \_\_\_\_\_, a Delaware corporation, in the sale of viaticated policies to investors. Note that Paragraph 19 of the Purchase Agreement includes risk disclosures relating to investment in viatical settlements.

Ms. Marilyn T. Chastain  
May 1, 2001  
Page 2

anticipates the sale of viaticals and interests in viaticals as described in the contract documents included in the \_\_\_\_\_ brochure. The purchase mechanics involve the sale to the purchaser of an interest in policy proceeds with the irrevocable designation of an escrow account controlled by an independent fiduciary ( \_\_\_\_\_ CPA) as the recipient of those proceeds. Proceeds are then paid from the escrow account with the consent of \_\_\_\_\_ to the investor(s) upon policy maturity. This pattern is intended to follow the fact pattern set out in the Life Partners decision.

\_\_\_\_\_ also has secured a proposal from Tyser Special Risk Ltd. for reinsurance to be underwritten by Lloyds of London. This reinsurance would protect investors from the risk that policies would not mature in accordance with anticipated life expectancies of the insured under those policies. This would, in effect, provide a floor under the rate of return that would be realized by investors as to policies subject to such reinsurance. The proposed reinsurance would pay the face value of a covered policy if the insured survived for a period equal to the insured's projected life expectancy plus 24 months. The reinsurer requires that the insured's projected life expectancy be determined by an independent group of consulting physicians, such as American Viatical Testing, Inc. in Roswell, Georgia. The premium for reinsurance coverage is five percent of the face value of covered policies plus any applicable taxes.

\_\_\_\_\_ would like to offer reinsurance in order to provide prospective investors protection from a major risk of investment in viaticals, which is the survival of viators for longer than their projected life expectancies. Because, statistically speaking, one-half of insureds will survive for longer than their projected life expectancies, reinsurance would reduce the concerns of those investors who do experience a deferred maturity. In order to provide reinsurance, the underwriter will require that a portfolio of policies be submitted for consideration. In other words, due to underwriting considerations, policies cannot be submitted for reinsurance on an individual policy-by-policy basis. Accordingly, \_\_\_\_\_ anticipates selling interests in portfolios of reinsured policies as well as interests in individual policies. We ask that the Bureau consider this transactional pattern in light of Life Partners and advise us whether it involves the sale of a security that would require registration, or an exemption from registration, under the applicable Idaho statutes.

By way of background, \_\_\_\_\_ is the principal of \_\_\_\_\_ as well as \_\_\_\_\_ acquires policies from insureds in viatical transactions, and provides the monitoring of insureds and other related services necessary to keep the policy in force and to collect policy proceeds when the insured passes away. \_\_\_\_\_ acts as a financial intermediary in the purchase and sale of viatical settlements. As such, \_\_\_\_\_ principal source of revenue is the transaction fees generated by policy purchases and sales.

Ms. Marilyn T. Chastain  
May 1, 2001  
Page 3

has been in the viatical settlement business since 1990 and is licensed as a viatical settlement provider in a number of states, including Illinois, New York and California. Prior to his involvement with starting in 1990, was formerly managing partner of The an options trading firm established in 1975, and its subsidiary, an options clearing firm. The total capital of was in excess of \$30 million. In 1990, the business was slowly wound down. The firm had 55 employees, provided clearing operations for 35 independent broker/dealers, had credit lines of more than \$200 million and dealt in thousands of different securities. Mr. is also a certified public accountant and currently serves as President of the (formerly the ), a national trade association.

If you require any additional information, please do not hesitate to contact the undersigned.

Yours very truly,

Enclosures

cc:

(without enclosure)