

October 14, 2013

The Honorable Kevin McCarty
Commissioner
Office of Insurance Regulation
State of Florida
200 East Gaines Street
Tallahassee, Florida 32399

RE: Mandated Study of Secondary Market

Dear Commissioner McCarty:

I would like to provide the following comments to you regarding the 2013 statutorily mandated Florida Office of Insurance Regulation study of the secondary market, i.e., “to “review Florida law and regulations to determine whether there are adequate protections for purchasers of life insurance policies in the secondary life insurance market to ensure that this market continues to exist for Florida seniors.”

I believe that I am qualified both personally and through my company to offer insights on the secondary market with regard to both seniors and investors. This comes from our unique position of being able to see this issue from both sides of the life settlement business and its impact on the cost and availability of life insurance for older clients. I am President and CEO of ValMark Securities, a national specialty insurance broker that works through 120 independently-owned firms. ValMark’s independent firms offer a wide range of insurance solutions for families, closely-held businesses and public companies. Founded 50 years ago, we have expanded our offering to include insurance brokerage with multiple companies in all 50 states, asset management, general securities and life settlements. A dozen of our firms are based in Florida making it our state with the 2nd most advisors.

Almost 10 years ago ValMark became an early entrant to the life settlement brokerage business. We had clients with over \$45 Billion of insurance coverage and we wanted to help those policyholders who no longer needed their policies to have the option of settling these policies instead of surrendering them. We were aware of the risks to these policyholders and our reputation if we allowed third parties to broker these policies for us, so we created our own internal life settlement brokerage and have operated it at the highest standard, including full disclosure of all bids and compensation. We were especially aware of the risk of Stranger Originated Life Insurance (STOLI) and put protections in place to prevent these transactions. See my article “Free Life Insurance: Risks and Costs of Non-Recourse Premium Financing,” co-authored by R. Marshall Jones, Stephan R. Leimberg and myself from the July 2006 issues of *Estate Planning Magazine* (33 ETPL 3). ValMark currently holds settlement brokerage licenses in several states including Florida. In the past 10 years, we have evaluated approximately 3,000



policies for settlement and have concluded final sale of over 300 policies (a good number from Florida policyholder), at the highest level of ethics without a single client complaint. As a broker dealer, we have also had the opportunity to examine numerous, private placement offerings of life settlements packaged as investments and have declined to approve them because of risks to the investors. I have also reviewed other documents including the one filed with the SEC on August 12, 2012 by LIMA LS PLC for 250 Million dollars of notes which is promoting "return of premium" legislation. I would welcome the opportunity to demonstrate from the statements in their own filing why I believe that they had full knowledge that they purchased policies with the indicia of STOLI and many of the policies were originated in a manner to bypass protections put in place for consumers. .

Our company favors a well-organized and regulated secondary market for life insurance. As an organization, we see the benefit of helping a select group of older clients get true market value for their policies, and have attempted to bring order and regulation to a business line that has often operated in the shadows and fringes of the financial services world and applaud Florida's protections. During my time as a board member of The Advanced Association of Life Underwriters (AALU), I gave testimony to the US Senate Committee on Aging's investigation of life settlements, and assisted in advocating for bills regulating the life settlement business in several states including Ohio, Wisconsin, Florida and Minnesota. I am a co-author of the only text book on the subject *Tools & Techniques of Life Settlement Planning* (National Underwriter, 2008). I have also reviewed court filings on hundred STOLI cases. It is with a high degree of experience and knowledge that I say:

- Certain Hedge Fund operators, including Fortress, have attempted to pass legislation similar to amendments offered in Florida in 2012 (requiring return of premium upon rescission) in several other states to gain profit from a large block of policies that they purchased on the tertiary market at deep discounts. Based on the litigation that they have engaged in over these policies, the price they paid for these policies and the nature of the origination of these policies, it is my expert opinion and in reading their filings with the SEC that it is clear that they knew or should have known that these policies were largely obtained by fraud.
- These speculators now seek to have the law changed so that they can unjustly profit from these policies by holding them to maturity or force the insurance companies that issued them to pay claims or refund the premium.
- If this perverse result were allowed, it would not only encourage future fraud, but it would create the unjust result, further negatively impacting the cost and availability of insurance for the older clients we serve. Already the impact of STOLI has greatly increased the complexity and cost of obtaining life insurance for clients across all the companies with which we work. The cost has gone up, there are many more documents the companies need to request to issue coverage and the time to issue policies has increased.
- It is also patently false, as investors' interests assert, that unless certain states enact legislation requiring the return of premium upon rescission, the availability of funding for seasoned life insurance policies (those originally purchased to protect families or businesses as opposed to being purchased for speculation) will be ruined. We can tell from the policies being purchased today, that the market has adjusted and smart investors have adjusted their buying parameters

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to buy only seasoned policies excluding policies conceived in fraud. In fact, by rewarding investment in speculative pools of policies based on fraud purchased several years ago might, draw capital away from pools of seasoned policies now being assembled that are from client who purchased these policies to protect their families or business.

Having read a majority of the decided court cases involving policy rescissions due to STOLI, I can say that the bar is set very high for the companies to get rescission of these policies. The cost of litigating a single case may be over a hundred thousands of dollars per policy. In those cases where the companies have prevailed, fraud was rampant and those who assisted its commission had full knowledge of what was occurring in providing the funds. It is clear to me that when fraud is proven in a court of law, the speculators should not profit from having their premiums returned.

These speculators have purchased the equivalent of swamp land for pennies on the dollar; they have polluted it with lies and fraud, now they want to rezone it as prime commercial real estate. It would be unwise public policy to permit this result and would reward unethical speculators at the cost of the general public who purchases insurance to protect their families and businesses. I am willing to make myself available by phone to assist you in evaluating this legislation and may be able to provide further documentation to help ascertain facts which may be relevant to your consideration of this legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence J. Rybka".

Lawrence J. Rybka, JD, CFP®
President & CEO

LJR:khm