Risky ‘death futures’ draw warning from state securities regulators, congressional scrutiny

WASHINGTON -- Citing deceptive marketing practices and numerous instances of fraud, state securities regulators warned Tuesday that investors should not be misled by claims that viatical settlements – interests in the death benefits of terminally ill or older Americans – offer safe, guaranteed returns like certificates of deposit.

Tuesday’s warning came as the Subcommittee on Oversight and Investigations of the House Financial Services Committee held a hearing on viatical investments. The viatical industry began around 1990 as a way to help the terminally ill, most notably AIDS patients. In a typical transaction, the person holding a life insurance policy sells it to a third party “broker” in return for a portion of the death benefit. The broker then sells shares of the policy to investors, who collect a share of the death benefit from the broker when the original policyholder dies.

Securities regulators from 21 states report bringing actions on behalf of thousands of investors nationwide who were defrauded of more than $400 million over the past three years. State regulators pointed to low interest rates and aggressive marketing as fueling a rise in viatical contract sales. In many cases, independent insurance agents have been recruited to sell viaticals, according to regulators.

“Viaticals contracts are legitimate products, but state securities regulators have two concerns,” says Joseph Borg, president of the North American Securities Administrators Association (NASAA) and director of the Alabama Securities Commission. “First, we’re concerned that the inherent risk of viatical investments – gambling on when someone will die – aren’t being adequately disclosed, and second, many investors have been outright defrauded by some viatical companies or their sales agents.”

Fraud in the marketing of viaticals is well documented. For example, a viatical settlement company known as American Benefits Services, Inc., offered investors in Texas and other states a 42 percent rate of return, with 15 percent guaranteed. Over 3,000 people invested $117 million. Investor funds collected by American Benefits were forwarded to another viatical settlement company, Financial Federated Title & Trust, which spent only $6 million to buy interests in actual life insurance policies. Regulators say the rest was diverted for the personal benefit of company organizers, including the purchase of a helicopter, boats, luxury cars (including four Aston Martins), luxury homes and large salaries.

“There’s an old saying, ‘The only sure things in life are death and taxes’ and viatical salesmen play on that,” said Denise Voigt Crawford, Texas securities commissioner. “They tell investors that because death is a sure thing, viaticals are too. But the only sure thing with viaticals are the large commissions some brokers get, making it even tougher for investors to get the returns they’re promised.”

In Vermont, state regulators allege that Mutual Benefits Corporation, a large nationwide seller of viatical policies, concealed insurance fraud and misrepresented the life expectancies on dozens of policies sold to investors. Mutual Benefits marketed viatical settlements as safe investments with “no risk of loss.” In reality, only 8 percent of Mutual Benefit’s policies posted returns within the range that was advertised, according to Vermont regulators.

“Even when investors purchase viatical policies from people who really are terminally ill, there’s no guarantee that person will die ‘on time’,” said Blythe McLaughlin, deputy commissioner of securities for Vermont. “Rapid advances in medical technology mean people, even those with serious illnesses, are living longer, so betting your life savings on someone else’s death is risky business.”
In a case highlighted at Tuesday’s hearing, John Richard Jamieson, an Ohio viaticals broker and principal in the Liberte Capital Corporation, stands accused of defrauding hundreds of investors nationwide out of at least $100 million. State insurance and securities regulators, together with federal regulators, allege Jamieson and another Liberte principal, James Capwill, used investor funds to support lavish lifestyles, including the purchase of several large homes, boats, cars and investments. According to the U.S. attorney’s office for northern Ohio, Jamieson and others bought life insurance policies from terminally ill individuals who lied to insurance companies about their medical conditions.

“Allegedly, Liberte knew of this fraud, but nonetheless induced investors to provide funds for the pay-out to the original policy holder,” Tom Geyer, assistant director for the Ohio Department of Commerce, told members of the subcommittee on Tuesday. “The scheme began to unravel when insurers began to cancel the fraudulently acquired policies.”

In Maryland, securities regulators allege that Answer Care, Inc. sold fraudulently obtained viatical contracts, many of which were later canceled. According to regulators, Answer Care ignored contradictions between the medical records and insurance policies that would have revealed the scam, instead quickly selling the policies to investors. Because they were fraudulently obtained, over 45 percent of the policies were canceled or rescinded by the insurance company, resulting in investor losses of over $3.2 million. Answer Care is currently in receivership.

In Oklahoma, securities regulators took action against two salesmen for Accelerated Benefits Corporation, a nationwide viatical company. According to regulators, the salesmen – one a convicted felon – bilked nearly 80 investors out of hundreds of thousands of dollars by promising guaranteed, tax-free profits. They also failed to tell investors that Accelerated Benefits was the subject of a permanent injunction issued by a federal court in Florida and a complaint by the Securities and Exchange Commission alleging “fraud and dishonesty.”

In a new twist, viatical companies are selling investors large numbers of “senior settlements” – interests in the death benefits of healthy older people. While growth in the sales of traditional viaticals has been dramatic – the National Viatical Association recently estimated viatical brokers would purchase and resell over $4 billion worth of life insurance policies in 2001, up from $1 billion in 1999 – growth in the market for senior settlements could be even more dramatic. A 1999 study by the Conning Corporation, a Connecticut-based research and investment management firm, said the potential market for senior settlements could be “conservatively” estimated at over $100 billion.

“The psychology of investing in viaticals is different than investing in other types of instruments, and people need to consider that going in,” said Bradley Skolnik, Indiana securities commissioner and chair of NASAA’s enforcement section. “The risk is high with viaticals, and investors need to ask themselves if the potential reward is worth the burden of hoping someone will die quickly so they can maximize their return.”

Before making any investment, state regulators urge investors to ask the following questions:

- **Are the seller and investment licensed and registered in your state?** Call your state securities regulator to find out. If they aren’t, they may be operating illegally.

- **Has the seller given you written information that fully explains the investment?**
  Make sure you get proper written information, such as a prospectus or offering circular, before you buy. The documentation should contain enough clear and accurate information to allow you or your financial adviser to evaluate and verify the particulars of the investment. Watch for jargon that sounds sophisticated but makes no sense.

- **Are claims made for the investment realistic?** Some things really are too good to be true. Use common sense and get a professional, third-party opinion when presented with investment opportunities that seem to offer unusually high returns in comparison to other investment options. Pie-in-the-sky promises often signal investment fraud.
• **Does the investment meet your personal investment goals?** Whether you are investing for long-term growth, investment income or other reasons, an investment should match your own investment goals.