

## Part 14 Chapter 9: VIATICAL SETTLEMENT INVESTMENT CONTRACTS

### *Rule 9.01 Viatical Settlement Investment Contracts as Securities.*

- A. **Viatical Settlement Investment Contracts:** A viatical settlement investment contract is any agreement, regardless of title or caption, for the purchase, sale, assignment, transfer, devise, or bequest of any portion of the benefit of the life insurance policy or certificate. The term “viatical settlement or similar agreement” as used in the definition of “security” in the Act does not include:
1. The assignment, transfer, sale, devise, or bequest of a death benefit, life insurance policy or certificate of insurance by the viator to the viatical settlement provider under the Viatical Settlements Act as codified at Miss. Code Ann. Sections 83-7-201 *et seq.*;
  2. The assignment of a life insurance policy to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan; or
  3. The exercise of accelerated benefits under the terms of a life insurance policy issued in accordance with the insurance laws of this state.
- B. **Issuer:** With respect to a viatical settlement investment contract that is non-fractionalized or non-pooled, “issuer” means the person effecting the transactions with the investors in such contracts. With respect to a viatical settlement investment contract that is fractional or pooled, issuer means the person who creates the fractional or pooled interest.

Source: *Miss. Code Ann.* §§ 75-71-203, 204, 307, 502, 510, 605, 605(b), 608(c), 610(e), 404 (2016).

### *Rule 9.03 Scope of Viatical Settlement Investment Contract Requirements.*

- A. The provisions of this Chapter 9 set out the regulatory standards for the exemption of viatical settlement investment contracts from the registration requirement of the Act, renewal of the exemption from registration, fees, effective dates, and related matters for viatical settlement investment contracts and issuers.
- B. Nothing in this Chapter shall:
1. Provide an exemption from the fraud provisions of the Act;
  2. Relieve broker-dealers or agents from compliance with the Act; or

3. Prohibit an issuer from using the registration procedures in the Act or from claiming an exemption available under the Act.

Source: *Miss. Code Ann.* § 75-71-605 (2016).

*Rule 9.05 Exemption from Registration.*

- A. Except as provided in Subsection (B) of this Rule, an offer or sale of a viatical settlement investment contract or a security that represents or is secured by a viatical settlement investment contract is exempt from registration under the Act if the issuer:
  1. At least thirty (30) days prior to the date the initial offer is made, files a registration statement on the Division's Form V902, a filing fee as provided in Rule 4.11, and the materials contained in Subsection (A)(2) of this Rule.
  2. The following items must be filed with a registration statement:
    - a. Prospectus, pamphlet, circular, form letter, advertisement, or other sales literature used or intended to be used in connection with the offer or sale of the security; and
    - b. The issuer's most recent audited income and expense statement and balance sheet. A prospective viatical settlement purchaser may obtain copies upon written request to the Division.
  3. All viatical settlement investment contracts sold in this state must include a medical release executed by the viator in favor of the Secretary of State for the State of Mississippi. This release must be maintained in the issuer's office and must be provided by the issuer to the Division upon demand.
  4. Before a sale, each prospective individual viatical settlement purchaser must be furnished written information that is sufficient to make an informed investment decision. For the purposes of this Subsection, information that is sufficient to make an informed investment decision includes the:
    - a. Viatical settlement disclosure document developed by the Secretary of State and available on the the Division's Form VIAD, Part I. The issuer must provide in that document an address to which a notice of rescission may be sent; and
    - b. Disclosure of any significant factors that may affect the outcome of the investment.
  5. On or before the time of closure of a sale, defined as the date when the viatical settlement provider locates and proposes to the viatical settlement purchaser an acceptable specific viatical contract under the executed purchase agreement, an

individual investor must receive a viatical settlement disclosure document that the issuer has completed using the Division's Form VIAD, Part II.

6. In order to qualify for the exemption and unless waived by the Secretary of State, the issuer and the issuer's predecessors must show, along with the issuer's predecessor, that it has been in continuous operation for at least three (3) fiscal years without a default in the payment of principal, interest, dividends, or other obligations on a security of the issuer or a predecessor of the issuer with a fixed maturity or a fixed interest, dividend, or other provision.
- B. The Secretary of State shall deny an application for exemption under this Chapter if an issuer, a predecessor of the issuer, an affiliate of the issuer, a director of this issuer, an officer of the issuer, a general partner of the issuer, a beneficial owner of ten percent (10%) or more of a class of the issuer's equity securities, a promoter of the issuer presently connected with the issuer in any capacity, an underwriter of the securities to be offered, a partner of an underwriter of the securities to be offered, a director of an underwriter of the securities to be offered, or an officer of the underwriter of the securities to be offered:
1. Has filed within the last five (5) years a registration statement that is the subject of a currently effective registration stop order entered by a state securities administrator or the SEC;
  2. Within the last five (5) years has been convicted of:
    - a. A felony;
    - b. A criminal offense involving fraud or deceit; or
    - c. A criminal offense in connection with the offer, purchase, or sale of a security;
  3. Is currently subject to a state or federal administrative enforcement order or judgment in connection with the purchase, offer, or sale of a security;
  4. Is currently subject to an order, judgment, or decree temporarily, preliminarily, or permanently restraining or enjoining the person subject to the order from engaging in or continuing to engage in conduct or a practice involving fraud or deceit in connection with the purchase, offer, or sale of a security; or
  5. For any other reason that is in the public interest as determined by the Secretary of State.

Source: *Miss. Code Ann.* § 75-71-203 (2016).

*Rule 9.07 Effective Date and Expiration Date for Exemption of Viatical Settlement Investment Contracts.* Unless made effective earlier by the Division, an application for exemption from registration under this Rule becomes effective thirty-one (31) days after the Division receives the

completed application, a fee as prescribed in Rule 4.11, and the required documents unless the Division contacts the filer either orally or in writing within thirty (30) days after the receipt of the filing to seek additional information or clarification. At such time that the Division determines that the application is not complete or that additional information is required in order to make a determination on whether or not to grant the exemption under this Chapter, the registration will be placed in pending status until such time as the Division either grants or denies the exemption. An exemption granted under this Rule shall expire twelve (12) months after the date on which it is granted. A renewal must be made prior to the expiration of the exemption on the Division's Form VR 903. Failure to timely renew will require the applicant to complete the process for application for exemption.

Source: *Miss. Code Ann.* §§ 75-71-203, 204 (2016).

*Rule 9.09 Revocation of Exemption.* The Secretary of State may, in his discretion, enter an order revoking an exemption granted pursuant to this Chapter. The order may not be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the Secretary of State may, in his discretion, summarily revoke by order any of the specified exemptions pending final determination of a proceeding under this Rule. Upon the entry of a summary order, the Secretary of State shall promptly notify all interested parties that the order has been entered and thereafter the interested parties shall have thirty (30) days from receipt of the order in which to request a hearing. Upon receipt of a request for hearing, the Secretary of State will promptly set a hearing to be held in accordance with Chapter 8 of the Rules. If any of the interested parties fails to request a hearing within the thirty (30) day period, the Secretary of State will enter a final order, and the final order will remain in full force and effect until it is vacated or modified by the Secretary of State.

Source: *Miss. Code Ann.* § 75-71-204 (2016).

*Rule 9.11 Right of Rescission Applicable to Sales of Viatical Settlement Interests*

- A. In addition to any other rights provided for under this Chapter or otherwise, a person who buys a viatical settlement investment contract or a security that either represents or is secured by a viatical settlement interest may rescind the purchase by giving the entity designated in the disclosure documents written notice of rescission, by ordinary mail, postage prepaid, postmarked no later than thirty (30) days following the later of the date on which the purchaser paid for the investment, or the date on which the purchaser received the Form VIAD Part II.
- B. The notice of rescission required under Subsection (A) of this Rule is sufficient if addressed to the entity designated for the notice at the address given in the disclosure statement. The rescission notice is effective on the date it is mailed. The rescission notice may be in any form that expresses the intention of a purchaser to rescind the transaction.

- C. Notwithstanding the time limit in Subsection (A) of this Rule, if the issuer has not found an acceptably suitable viatical settlement investment contract and closed the transaction within ninety (90) days of the execution of the purchase agreement, on the ninetieth (90th) day following the execution of the purchase agreement, the issuer shall provide the viatical settlement purchaser with a rescission offer using a form approved by the Division, and the viatical settlement investment contract purchaser will have ten (10) business days from its receipt to either accept or reject the rescission offer. The issuer shall keep a record of the rescission offer and its acceptance or rejection for at least three (3) years after providing that offer, and shall provide that record to the Division at its request.
- D. In this Rule, “**business day**” means a day other than Saturday, Sunday, or a state or federal holiday.

Source: *Miss. Code Ann.* § 75-71-510 (2016).

#### *Rule 9.13 Advertising.*

- A. The exemption contained in this Chapter shall not be available to any issuer who engages in false or misleading advertising in the sale or promotion of viatical settlement investment contracts. Furthermore, the Secretary of State shall revoke an exemption granted pursuant to this Chapter of the Rules if he determines that an issuer has engaged in false or misleading advertisement of viatical settlement investment contracts.
- B. False and misleading viatical settlement investment contracts advertisements include, but are not limited to, the following representations:
  - 1. “Fully secured,” “100% secured,” “fully insured,” “secure,” “safe,” “backed by rated insurance company(s),” “backed by federal and/or state law,” or similar representations;
  - 2. “No risk,” “minimal risk,” “low risk,” “no speculation,” “no fluctuation,” or similar representations;
  - 3. “Guaranteed fixed return,” “annual return,” “principal,” “earnings,” “profits,” “investment,” or similar representations;
  - 4. “No sales charges or fees,” or other similar representations;
  - 5. “High yield,” “superior return,” “excellent return,” “high return,” “quick profit,” or similar representations;
  - 6. “Perfect investment,” “proven investment,” or similar representations;
  - 7. Purported favorable representations or testimonials about the benefits of viaticals as an investment, taken out of context from newspapers, trade papers, journals, radio and television programs, and all other forms of print and electronic media.

Source: *Miss. Code Ann.* §§ 75-71-502, 610(e), (f) (2016).

*Rule 9.15 Sales Agents.* Any sales agent who engages in the sale of viatical settlement investment contracts must provide the Secretary of State with the following:

- A. Proof of obtaining a passing grade on the FINRA Series 7 examination;
- B. Proof of obtaining a passing grade on the FINRA Series 63 examination;
- C. An accurate, complete and signed Form U-4; and,
- D. A filing fee as specified in Rule 4.11.

Source: *Miss. Code Ann.* § 75-71-404 (2016).

*Rule 9.17 Waiver of Viatical Settlement Requirements.* Upon the request of an issuer, the Secretary of State may, in his discretion, waive a requirement of this Chapter of the Rules by order if he determines the waiver to be in the public interest and that the requirement to be waived is not necessary for protection of investors. The issuer bears the burden of proof to satisfy the Secretary of State that the waiver is in the public interest and that the requirement to be waived is not necessary for protection of investors.

Source: *Miss. Code Ann.* § 75-71-307, 407 (2016).

*Rule 9.19 Privacy.* Except as required for the Secretary of State to execute his responsibilities under the Act, an issuer of a viatical settlement interest may not disclose to another person the identity of the viator or insured of the insurance policy that is the subject of the viatical settlement interest.

Source: *Miss. Code Ann.* § 75-71-605 (2016).

## **Part 14 Chapter 9: VIATICAL SETTLEMENT INVESTMENT CONTRACTS**

*Rule 9.01 Viatical Settlement Investment Contracts as Securities.*

- A. **Viatical Settlement Investment Contracts:** A viatical settlement investment contract is any agreement, regardless of title or caption, for the purchase, sale, assignment, transfer, devise, or bequest of any portion of the benefit of the life insurance policy or certificate. The term “viatical settlement or similar agreement” as used in the definition of “security” in the Act does not include:
  - 1. ~~(a)~~The assignment, transfer, sale, devise, or bequest of a death benefit, life insurance policy or certificate of insurance by the viator to the viatical settlement

provider under the Viatical Settlements Act as codified at Miss. Code Ann. Sections 83-7-201 *et seq.*;

2. ~~(b)~~The assignment of a life insurance policy to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan; or
3. ~~(e)~~The exercise of accelerated benefits under the terms of a life insurance policy issued in accordance with the insurance laws of this state.

**B. Issuer:** With respect to a viatical settlement investment contract that is non-fractionalized or non-pooled, “issuer” means the person effecting the transactions with the investors in such contracts. With respect to a viatical settlement investment contract that is fractional or pooled, issuer means the person who creates the fractional or pooled interest.

Source: *Miss. Code Ann.* §§ 75-71-203, 204, 307, 502, 510, 605, 605(b), 608(c), 610(e), 404 (Rev. 2009 2016).

*Rule 9.03 Scope ~~Of~~ Viatical Settlement Investment Contract Requirements.*

- A. The provisions of this ~~Chapter 9~~Article 9 set out the regulatory standards for the exemption of viatical settlement investment contracts from the registration requirement of the Act, renewal of the exemption from registration, fees, effective dates, and related matters for viatical settlement investment contracts and issuers.
- B. Nothing in this ~~Chapter~~Article 9 shall:
  1. Provide an exemption from the fraud provisions of the Act;
  2. Relieve broker-dealers or agents from compliance with the Act; or
  3. Prohibit an issuer from using the registration procedures in the Act or from claiming an exemption available under the Act.

Source: *Miss. Code Ann.* § 75-71-605 (Rev. 2009 2016).

*Rule 9.05 Exemption from Registration.*

- A. Except as provided in Subsection (B) of this Rule ~~Rule 905(B)~~, an offer or sale of a viatical settlement investment contract; or a security that represents or is secured by a viatical settlement investment contract; is exempt from registration under the Act if the issuer:

1. At least thirty (30) days prior to the date the initial offer is made, files a registration statement on ~~State of Mississippi~~ the Division's Form V902, a filing fee as provided in Rule 4.11, and the materials contained in Subsection (A)(2) of this Rule.
2. The following items must be filed with a registration statement:
  - a. Prospectus, pamphlet, circular, form letter, advertisement, or other sales literature used or intended to be used in connection with the offer or sale of the security; and
  - b. The issuer's most recent audited income and expense statement and balance sheet. A prospective viatical settlement purchaser may obtain copies upon written request to the ~~Secretary of State~~ Division.
3. All viatical settlement investment contracts sold in ~~this state-Mississippi~~ must include a medical release executed by the viator in favor of the Secretary of State for the State of Mississippi. This release must be maintained in the issuer's office and must be provided by the issuer to the ~~Secretary of State~~ Division upon demand.
4. Before a sale, each prospective individual viatical settlement purchaser must be furnished written information that is sufficient to make an informed investment decision. For the purposes of this Subsection paragraph, information that is sufficient to make an informed investment decision includes the:
  - a. Viatical settlement disclosure document developed by the Secretary of State and available on the ~~State of Mississippi~~ the Division's Form VIAD, Part I. The issuer must provide in that document an address to which a notice of rescission may be sent; ~~and~~
  - b. Disclosure of any significant factors that may affect the outcome of the investment.
5. On or before the time of closure of a sale, defined as the date when the viatical settlement provider locates and proposes to the viatical settlement purchaser an acceptable, specific viatical contract under the executed purchase agreement, an individual investor must receive a viatical settlement disclosure document that the issuer has completed using ~~State of Mississippi~~ the Division's Form VIAD, Part II.
6. In order to qualify for the exemption and unless waived by the Secretary of State, the issuer and the issuer's predecessors must show, along with the issuer's predecessor, that it has been in continuous operation for at least three (3) fiscal years without a default ~~during the current fiscal year or within the two (2) preceding fiscal years~~ in the payment of principal, interest, dividends, or other obligations on a security of the issuer or a predecessor of the issuer with a fixed maturity or a fixed interest, dividend, or other provision.



- B. The Secretary of State shall deny an application for exemption under this ~~Chapter~~Article if an issuer, a predecessor of the issuer, an affiliate of the issuer, a director of this issuer, an officer of the issuer, a general partner of the issuer, a beneficial owner of ten percent (10%) or more of a class of the issuer's equity securities, a promoter of the issuer presently connected with the issuer in any capacity, an underwriter of the securities to be offered, a partner of an underwriter of the securities to be offered, a director of an underwriter of the securities to be offered, or an officer of the underwriter of the securities to be offered:
1. Has filed within the last five (5) years a registration statement that is the subject of a currently effective registration stop order entered by a state securities administrator or the SEC;
  2. Within the last five (5) years has been convicted of:
    - a. ~~a~~A felony;
    - b. ~~a~~A criminal offense involving fraud or deceit; or
    - c. ~~A~~a criminal offense in connection with the offer, purchase, or sale of a security;
  3. Is currently subject to a state or federal administrative enforcement order or judgment in connection with the purchase, offer, or sale of a security;~~or~~
  4. Is currently subject to an order, judgment, or decree temporarily, preliminarily, or permanently restraining or enjoining the person subject to the order from engaging in or continuing to engage in conduct or a practice involving fraud or deceit in connection with the purchase, offer, or sale of a security; or
  5. For any other reason that is in the public interest as determined by the Secretary of State.

~~A. For any other reason that is in the public interest as determined by the Secretary of State.~~

Source: *Miss. Code Ann.* § 75-71-203 (Rev. 2009 2016).

*Rule 9.07 Effective Date and Expiration Date for Exemption of Viatical Settlement Investment Contracts.* Unless made effective earlier by the ~~Secretary of State~~ Division, an application for exemption from registration under this Rule becomes effective thirty-one (31) days after the ~~Secretary of State~~ Division receives the completed application, a fee as prescribed in Rule 4.11, and the required documents unless the ~~Secretary of State~~ Division contacts the filer either orally or in writing within thirty (30) days after the receipt of the filing to seek additional information or clarification. At such time that the ~~Secretary of State~~ Division determines that the application is not complete or that additional information is required in order to make a determination on whether or not to grant the exemption under this ~~Chapter~~Article, the registration will be placed in pending status until such time as the ~~Secretary of State~~ Division either grants or denies the

exemption. An exemption granted under this Rule shall expire twelve (12) months after the date on which it is granted. A renewal must be made prior to the expiration of the exemption on ~~State of Mississippi~~ the Division's Form VR 903. Failure to timely renew will require the applicant to complete the process for application for exemption.

Source: *Miss. Code Ann.* §§ 75-71-203, 204 (~~Rev. 2009~~ 2016).

*Rule 9.09 Revocation of Exemption.* The Secretary of State may, in his discretion, enter an order revoking an exemption granted pursuant to this ~~Chapter Article~~. The order may not be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the Secretary of State may, in his discretion, summarily revoke by order any of the specified exemptions pending final determination of a proceeding under this ~~subsection~~ Rule. Upon the entry of a summary order, the Secretary of State shall promptly notify all interested parties that the order has been entered and thereafter the interested parties shall have thirty (30) days from receipt of the order in which to request a hearing. Upon receipt of a request for hearing, the Secretary of State will promptly set a hearing to be held in accordance with ~~Chapter Article~~ 8 of the Rules. If any of the interested parties fails to request a hearing within the thirty (30) day period, the Secretary of State will enter a final order, and the final order will remain in full force and effect until it is vacated or modified by the Secretary of State.

Source: *Miss. Code Ann.* § 75-71-204 (~~Rev. 2009~~ 2016).

*Rule 9.11 Right of Rescission Applicable to Sales of Viatical Settlement Interests*

- A. In addition to any other rights provided for under this ~~Chapter Article~~ or otherwise, a person who buys a viatical settlement investment contract or a security that either represents or is secured by a viatical settlement interest may rescind the purchase by giving the entity designated in the disclosure documents written notice of rescission, by ordinary mail, postage prepaid, postmarked no later than thirty (30) days following the later of the date on which the purchaser paid for the investment, or the date on which the purchaser received the Form VIAD Part II.
- B. The notice of rescission required under Subsection (A) of this Rule ~~Rule 911(A)~~ is sufficient if addressed to the entity designated for the notice at the address given in the disclosure statement. The rescission notice is effective on the date it is mailed. The rescission notice may be in any form that expresses the intention of a purchaser to rescind the transaction.
- C. Notwithstanding the time limit in Subsection ~~Rule 911(A) of this Rule~~, if the issuer has not found an acceptably suitable viatical settlement investment contract and closed the transaction within ninety (90) days of the execution of the purchase agreement, on the ninetieth (90th) day following the execution of the purchase agreement, the issuer shall provide the viatical settlement purchaser with a rescission

offer using a form approved by the ~~Secretary of State~~ Division, and the viatical settlement investment contract purchaser will have ten (10) business days from its receipt to either accept or reject the rescission offer. The issuer shall keep a record of the rescission offer and its acceptance or rejection for at least three (3) years after providing that offer, and shall provide that record to the ~~Secretary of State~~ Division at ~~his~~ its request.

- D. In this Rule, “**business day**” means a day other than Saturday, Sunday, or a state or federal holiday.

Source: *Miss. Code Ann.* § 75-71-510 (~~Rev. 2009~~ 2016).

*Rule 9.13 Advertising.*

- A. The exemption contained in this ~~Chapter Article~~ shall not be available to any issuer who engages in false or misleading advertising in the sale or promotion of viatical settlement investment contracts. Furthermore, the Secretary of State shall revoke an exemption granted pursuant to this ~~Chapter Article~~ 9 of the Rules if he determines that an issuer has engaged in false or misleading advertisement of viatical settlement investment contracts.
- B. False and misleading viatical settlement investment contracts advertisements include, but are not limited to, the following representations:
1. “Fully secured,” “100% secured,” “fully insured,” “secure,” “safe,” “backed by rated insurance company(s),” “backed by federal and/or state law,” or similar representations;
  2. “No risk,” “minimal risk,” “low risk,” “no speculation,” “no fluctuation,” or similar representations;
  3. “Guaranteed fixed return, annual return, principal, earnings, profits, investment,” or similar representations;
  4. “No sales charges or fees,” or other similar representations;
  5. “High yield,” “superior return,” “excellent return,” “high return,” “quick profit,” or similar representations;
  6. “Perfect investment,” “proven investment,” or similar representations;
  7. Purported favorable representations or testimonials about the benefits of viaticals as an investment, taken out of context from newspapers, trade papers, journals, radio and television programs, and all other forms of print and electronic media.

Source: *Miss. Code Ann.* §§ 75-71-502, 610(e), (f) (~~Rev. 2009~~ 2016).

*Rule 9.15 Sales Agents.* Any sales agent who engages in the sale of viatical settlement investment contracts must provide the Secretary of State with the following:

- A. Proof of obtaining a passing grade on the FINRA Series 7 examination;
- B. Proof of obtaining a passing grade on the FINRA Series 63 examination;
- C. An accurate, complete and signed Form U-4; and,
- D. A filing fee as specified in Rule 4.11.

Source: *Miss. Code Ann.* § 75-71-404 (~~Rev. 2009~~ 2016).

*Rule 9.17 Waiver of Viatical Settlement Requirements.* Upon the request of an issuer, the Secretary of State may, in his discretion, waive a requirement of this ~~Chapter~~ Article 9 of the Rules by order if he determines the waiver to be in the public interest and that the requirement to be waived is not necessary for protection of investors. The issuer bears the burden of proof to satisfy the Secretary of State that the waiver is in the public interest and that the requirement to be waived is not necessary for protection of investors.

Source: *Miss. Code Ann.* § 75-71-307, 407 (~~Rev. 2009~~ 2016).

*Rule 9.19 Privacy.* Except as required for the Secretary of State to execute his responsibilities under the Act, an issuer of a viatical settlement interest may not disclose to another person the identity of the viator or insured of the insurance policy that is the subject of the viatical settlement interest.

Source: *Miss. Code Ann.* § 75-71-605 (~~Rev. 2009~~ 2016).