## Florida Senate - 2005

By Senator Garcia

40-1380-05

1	A bill to be entitled
2	An act relating to securities transactions;
3	amending s. 517.021, F.S.; providing that
4	viatical settlement investments are securities
5	for purposes of regulation and defining that
6	term; defining the term "qualified
7	institutional buyer"; creating s. 517.072,
8	F.S.; providing that viatical settlement
9	investments are not covered by certain
10	exemptions; amending s. 517.081, F.S.;
11	establishing guidelines for evaluating certain
12	securities; authorizing the adoption of certain
13	disclosure and recordkeeping requirements for
14	the sale of viatical settlement investments;
15	creating ss. 517.1215 and 517.1217, F.S.;
16	providing for the adoption of rules relating to
17	rules of conduct and prohibited business
18	practices of investment advisors and dealers;
19	repealing s. 626.99245(4), F.S., which provides
20	that the regulation of viatical settlement
21	investments and providers of such investments
22	is exclusively within the jurisdiction of the
23	Office of Insurance Regulation; providing an
24	effective date.
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26	Be It Enacted by the Legislature of the State of Florida:
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28	Section 1. Paragraph $(w)$ is added to subsection (20)
29	of section 517.021, Florida Statutes, and subsections (22) and
30	(23) are added to that section to read:
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1	517.021 DefinitionsWhen used in this chapter,
2	unless the context otherwise indicates, the following terms
3	have the following respective meanings:
4	(20) "Security" includes any of the following:
5	(w) A viatical settlement investment.
6	(22) "Viatical settlement investment" means an
7	agreement for the purchase, sale, assignment, transfer,
8	devise, or bequest of any legal or equitable interest in a
9	viaticated policy as defined in chapter 626. The term does not
10	<u>include:</u>
11	<u>(a) The transfer or assignment of an interest in a</u>
12	previously viaticated policy from a natural person who
13	transfers or assigns no more than one such interest in a
14	<u>calendar year.</u>
15	(b) The provision of stop-loss coverage to a viatical
16	settlement provider, financing entity, or related provider
17	trust, as defined in s. 626.9911, by an authorized or eligible
18	insurer.
19	(c) The transfer or assignment of a viaticated policy
20	from a licensed viatical settlement provider to another
21	licensed viatical settlement provider, a related provider
22	trust, or a financing entity, as defined in s. 626.9911, or a
23	contingency insurer, if the transfer or assignment is not the
24	direct or indirect promotion of a scheme or enterprise with
25	the intent to violate or evade this chapter.
26	(d) The transfer or assignment of a viaticated policy
27	to a bank, trust company, savings institution, insurance
28	company, dealer, or investment company, as defined by the
29	Investment Company Act of 1940, a pension or profit-sharing
30	trust, or qualified institutional buyer, as defined by
31	Securities and Exchange Commission Rule 144A (17 C.F.R.

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1 230.144A(a)), if the transfer or assignment is not for the 2 direct or indirect promotion of a scheme or enterprise with the intent to violate or evade this chapter. 3 4 (e) The transfer or assignment of a viaticated policy by a court-appointed conservator of a viatical settlement 5 б provider who transfers or assigns ownership of viaticated 7 policies pursuant to the court's order. (23) "Qualified institutional buyer" means a qualified 8 institutional buyer, as defined by U.S. Securities and 9 10 Exchange Commission Rule 144A (17 C.F.R. 230.144A(a)) under the Securities Act of 1933, as amended, or any foreign buyer 11 12 that satisfies the minimum financial requirements of such 13 rule. Section 2. Section 517.072, Florida Statutes, is 14 created to read: 15 517.072 Viatical settlement investments.--The 16 exemptions in s. 517.051(6), (8), and (10) do not apply to a 17 viatical settlement investment as defined in s. 517.021(22). 18 The offering of a viatical settlement investment is not an 19 exempt transaction under s. 517.061(2), (3), (8), (11), or 2.0 21 (18), regardless of whether the offering otherwise complies with that section, unless the offering is to a qualified 2.2 23 institutional buyer. Section 3. Subsection (7) of section 517.081, Florida 2.4 Statutes, is amended and subsection (8) is added to that 25 section to read: 26 27 517.081 Registration procedure.--2.8 (7)(a) If upon examination of any application the office finds shall find that the sale of the security referred 29 to therein would not be fraudulent and would not work or tend 30 to work a fraud upon the purchaser, that the terms of the sale 31

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of such securities would be fair, just, and equitable, and 1 2 that the enterprise or business of the issuer is not based upon unsound business principles, it shall record the 3 registration of such security in the register of securities; 4 5 and thereupon such security so registered may be sold by any 6 registered dealer, subject, however, to the further order of 7 the office. (b) To determine whether an offering is fair, just, 8 and equitable, the commission may adopt rules that establish 9 10 requirements and standards for the filing, content, and circulation of a preliminary, final, or amended prospectus or 11 other sales literature. The commission may establish by rule 12 13 merit qualification criteria relating to the issuance of equity securities, debt securities, insurance company 14 securities, real estate investment trusts (REITs), or other 15 traditional or nontraditional investments, including, without 16 17 limitation, oil and gas investments. The criteria may include 18 the promoter's equity investment ratio, financial condition of the issuer, voting rights of shareholders, any grant of 19 options or warrants to underwriters and others, loans and 2.0 21 other affiliated transactions, the use or refund of offering 2.2 proceeds, and other relevant criteria that the commission 23 deems necessary to such determination. (8) The commission may adopt rules that establish 2.4 25 requirements and standards for: (a) Disclosures to purchasers of viatical settlement 26 27 investments; and 2.8 (b) Recordkeeping requirements for sellers of viatical 29 settlement investments. Section 4. Section 517.1215, Florida Statutes, is 30 31 created to read:

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1	517.1215 Investment advisors; rules of conduct;
2	prohibited business practices
3	(1) The commission shall, by rule, specify
4	requirements with respect to the following for investment
5	advisors deemed to have custody of client funds:
6	(a) Notification of custody, maintenance of, and
7	safequards for client funds;
8	(b) Communications with clients and independent
9	representatives;
10	(c) Requirements for investment advisors who have
11	custody of pooled investments; and
12	(d) Exceptions to custody requirements.
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14	In adopting rules the commission shall consider the rules and
15	regulations of the federal regulatory authority and the North
16	American Securities Administrators Association.
17	(2) The commission shall establish rules governing
18	conduct by and prohibited business practices for investment
19	advisors and their associated persons. In adopting the rules
20	the commission shall consider general industry standards as
21	expressed in the rules and regulations of the federal and
22	self-regulatory agencies and regulatory associations,
23	including, without limitation, the Securities and Exchange
24	Commission, the National Association of Securities Dealers,
25	and the North American Securities Administrators Association.
26	Section 5. Section 517.1217, Florida Statutes, is
27	created to read:
28	517.1217 Dealers; rules of conduct; prohibited
29	business practices
30	(1) The commission may establish rules governing
31	conduct by and prohibited business practices for dealers and

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1	their associated persons. In adopting the rules the commission
2	shall consider general industry standards as expressed in the
3	rules and requlations of the federal and self-requlatory
4	agencies and regulatory association, including, without
5	limitation, the Securities and Exchange Commission, the
6	National Association of Securities Dealers and the stock
7	exchanges, and the North American Securities Administrators
8	Association.
9	Section 6. Subsection (4) of section 626.99245,
10	<u>Florida Statutes, is repealed.</u>
11	Section 7. This act shall take effect October 1, 2005.
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14	SENATE SUMMARY
15	Revises provisions related to the regulation of viatical settlement investments and investment advisors or dealers
16	who provide such investments. Establishes guidelines for evaluating certain such securities. Provides for the
17	adoption of rules relating to disclosure and recordkeeping requirements, rules of conduct, and
18	prohibited business practices relating to such investments. Deletes a provision giving the Office of
19	Investments. Deletes a provision giving the office of Insurance Regulation exclusive jurisdiction over the sale of such investments. (See bill for details.)
20	of such investments. (see bill for details.)
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