

company operating at 1525 Louisquisset Pike, Lincoln, Rhode Island.¹ Unique Financial Services, Inc., also known as Unique Financial Services (“Unique”), was a financial services company² and now appears to be listed at the home address of Kelly, 108 Saratoga Ave, Pawtucket, RI 02861-2320.

2. Timothy M. Kelly (“Kelly”) is the president and secretary and an owner and operator of TTTAG, an owner and operator of TTRS, and the president and an owner and operator of Unique. Kelly was subject to a September 4, 2003 Final Order to Bar issued by the Securities Division of the Rhode Island Department of Business Regulation (the “Department”), which barred Kelly “from association with any broker-dealer or investment adviser” or from being “a partner, officer, director, a person occupying similar status or performing similar functions, or a person directly or indirectly controlling the broker-dealer or investment adviser,” Kelly was also subject to a March 21, 2002 Bar issued by the National Association of Securities Dealers (a predecessor of FINRA, the self-regulatory organization charged with overseeing broker dealers by the Securities and Exchange Commission). Kelly is an actively licensed insurance producer in Rhode Island and does business as Unique *Attached as Exhibit #1 is the Department’s Final Order to Bar Kelly and its associated documents*

3. Theodore E. Maranda (“Maranda”) is the vice president and treasurer and an owner and operator of TTTAG, and an owner and operator of TTRS³. Maranda is an actively licensed insurance producer in Rhode Island. Maranda is also the president of Maranda Tax Advisory Group, Inc., a Rhode Island corporation he established in 2005.

¹ TTTAG was incorporated in the State of Rhode Island on December 20, 2005. On November 6, 2014, the Rhode Island Secretary of State revoked TTTAG’s Certificate of Incorporation.

² Unique was incorporated in the State of Rhode Island on December 10, 1999. On November 14, 2001, the Rhode Island Secretary of State revoked Unique’s Certificate of Incorporation.

³ TTRS’s website lists Maranda and Kelly as co-president of TTRS.

4. GetEasy Group “GetEasy”, a/k/a iGetEasy, a/k/a iGetMania are upon information and belief a multi-level marketing group based in Europe. They operate a number of websites, including www.officegeteasy.com and <http://igetmania-way.eu/>.

The Complaint

5. On August 12, 2015, the Rhode Island Department of Business Regulation Securities Division (the “Division”) received a complaint from SB (the “Complainant”), a resident of North Providence, Rhode Island. Complainant claims he met with Respondent Kelly at T&T’s Lincoln offices for financial planning services, and that “several weeks later we were contacted [by Kelly] with an investment offer. We met with Mr. Kelly who assured us that this was a safe investment and not a scam. [Kelly] Even went so far as to tell us that he and his partner were investing in this plan.” Complainant further states that “After accounts were set up all went well for about a month. After that things began to go wrong. Could not log into accounts. Then system went down... Each time we got an excuse as to what was going on and to be patient... Each month we got another excuse.”

6. The complaint identifies that Complainant had received from T&T an advertisement in the mail about this investment offer.

7. In a piece of “sales literature” that Respondent Kelly provided to Complainant when he made the investment, the document states:

“Make the fee for the “Membership Participation Fee” out to Unique Financial Services.
We will make the Wire Transfer to Geteasy Group for you and purchase your Membership.”

The “sales literature” provided by Respondent Kelly to Complainant also stated:

“\$5,000 American Dollars,
This will give you a guaranteed 12 month return of **\$10,800 US Dollars.**
Your Return will be paid to you @ \$225 a week for 48 Weeks.”

And in Respondents' "sales literature," it further noted that "You will be given a special website to check on your *WEEKLY EARNINGS*." (Emphasis in original.)⁴

8. Complainant and Victim GM alleges that as part of T&T's/Kelly's solicitation of Complainant, in T&T's office, Kelly showed Complainant videos posted on the GetEasy website. Those videos explained how GetEasy and the transaction would work, and that with their "Membership Participation Fee," GetEasy would purchase additional GPS tracker units, and Complainant's weekly payments would come from those additional units.

9. Upon information and belief, Respondent Kelly explained to investors that GetEasy or GetEasy Group invested in GPS locator devices and leased them out to 3rd parties and that this business model purportedly allowed GetEasy to take an investment and more than double the money over the span of a year.

10. Respondent Kelly told Complainant and other investors in Rhode Island that if they recruited other investors, their own income would increase. In sales literature, on its own website and on the website of others, GetEasy referred to itself and others referred to its program as a Multi-Level Marketing ("MLM") program.

11. On or about October 28, 2014, Complainant invested \$10,000 with Respondents by delivery of a check in said amount to Respondent Kelly⁵. It was Complainant's understanding and belief that he was investing such funds in GetEasy through Respondents T&T and Kelly, with the

⁴ Victim GM was able to view online statements initially, but within a month Victim GM was no longer able to view her statement online. Victim GM and Complainant told Respondent Kelly about the website problems and Kelly gave multiple reasons for the problems. Complainant was never able to view his statements online.

⁵ Complainant's delivery of \$10,000 to Respondent Kelly represented an investment of \$5,000 in the name of Complainant and an investment of \$5,000 in the name of a friend of Complainant, hereinafter referred to as "Victim GM". To fund the \$10,000 investment with Respondents, Complainant took a loan from his personal 401(k) plan. Complainant will pay interest on that loan until the loan is repaid.

expectation that in exchange for the \$10,000 investment, they were guaranteed to receive more than \$20,000 over the next forty-eight (48) weeks.

12. Complainant and Victim GM have not received *any* money from the investment made with Respondents.

13. Upon information and belief, Respondents T&T and Kelly also offered and sold the GetEasy “Membership” to other Rhode Island residents, and some of those other investors were dissatisfied with their investments.

Kelly’s Knowledge

14. Kelly knew or should have known that the GetEasy investment scheme was a fraud. In July 2015, Kelly stated that GetEasy “seemed to be a world wide well organized Ponzi scheme.” But Kelly had enough experience in the securities field in general and specifically with schemes that guarantee unrealistic income that he knew, or should have known, that GetEasy’s claims to double your money within 48-weeks was a scam.

15. Kelly was first licensed to sell securities in Rhode Island in 1983. Before his bar from the industry, he held Series 6, 26 and 63 securities licenses, each requiring him to pass a test on security industry and state securities rules.

16. Kelly is not licensed, and has not had a license to sell securities in Rhode Island since March 28, 2001. In fact, in 2002, Kelly was barred by the National Association of Securities Dealers⁶ from association with any broker dealer and in 2003 the Director barred Kelly “from association with any broker-dealer or investment adviser” or from being “a partner, officer, director, a person occupying similar status or performing similar functions, or a person directly or indirectly controlling the broker-dealer or investment adviser,” as shown in Exhibit 1. These two bars prohibit Kelly from selling securities in Rhode Island and essentially anywhere else in the US.

⁶ A self-regulatory organization with authority from the SEC, now known as FINRA, the Financial Industry Regulatory Authority.

17. As part of the complaint that led to Kelly's 2003 final order to bar, a senior investor claimed that Kelly sold an investment in 14 pay telephones in the state of Utah for \$70,000. That investor claimed that Kelly had promised him a 14% rate of return and that the investment was appropriate for retirement income. That investment did *not* return 14% and it was *not* appropriate for retirement income. Those investments met the test to be called a security, and those securities were not registered with the state. That was part of the reason that the Director barred Kelly in 2003.

18. The guaranteed investment promised by Respondent's "sales literature" was not real, and Respondents knew or should have known that it was not real.

The GetEasy Membership was a Security

19. Pursuant to R.I. General Laws § 7-11-101(22) an investment contract is a security.

20. The seminal securities case defining whether an investment is an investment contract, and therefore a security, is *S.E.C. v. W.J. Howey Co. et al.*, 328 U.S. 293 (1946). There the Supreme Court stated that "an investment contract for purposes of the Securities Act means a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party, it being immaterial whether the shares in the enterprise are evidenced by formal certificates or by nominal interests in the physical assets employed in the enterprise." *Howey* at 298-99. The Court specified that the key "test is whether the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others." *Howey* at 301.

21. The *Howey* test is satisfied when pursuant to a contract, transaction or scheme, a consumer (1) invests his money (2) in a common enterprise (3) with an expectation of profit (4) to come solely from the efforts of others.

22. Complainant and Victim GM both invested money with Respondents, in the GetEasy transaction and/or scheme, with not only an expectation but with Respondents' *guarantee* of a profit to come solely from the efforts of others.

23. Therefore, the "Membership" investment that Respondents solicited, offered and sold to Complainant and Victim GM in October 2014, and as to which Respondents guaranteed a rate of return, was an investment contract, and as such, a "security" as defined by R.I.G.L. Section 7-11-101(22).

24. The "Membership" was not registered as a security with the State of Rhode Island or with the federal government, and it was not exempt from registration as a security.

25. Upon information and belief, Kelly did offer and sell the "Membership" to others within the state of Rhode Island.

Maranda Knew or Should Have Known about the GetEasy Scheme

26. Upon information and belief, as an officer, owner and operator of T&T, Maranda was generally aware of the financial services and investments offered and sold by T&T and Kelly, including Respondent T&T/Kelly's solicitation, offer and sale of GetEasy securities to Complainant and to other Rhode Island investors.

27. Notwithstanding the November 6, 2014 revocation of TTTAG's incorporation status, T&T continues to hold itself out and offer services on its website www.safemoneyretirement.net as 'T&T Retirement Specialist.' T&T's website lists both Respondents Kelly and Maranda as presidents. Maranda was aware of Kelly's solicitation, offering and sale of GetEasy Memberships because, as Kelly stated to Complainant, Maranda had invested upwards of \$20,000 in GetEasy himself, and because Maranda was included on numerous emails between disgruntled Rhode Island consumers and Kelly regarding their investments in GetEasy.

28. Upon information and belief, Respondents T&T and Kelly offered unregistered securities within the state and Respondent Maranda was aware of and aided and abetted those actions.

COUNT I

VIOLATION OF § 7-11-201 BY ACTING AS AN UNLICENSED BROKER-DEALER OR SALES REPRESENTATIVE

29. The Division herein restates the allegations and facts set forth in paragraphs 1 through 28.

30. R.I. Gen. Laws § 7-11-201 provides that no person may transact business in this state as a broker-dealer or sales representative unless licensed or exempt from licensing.

31. Respondents Kelly and T&T transacted business in the State of Rhode Island as a broker-dealer and sales representative without proper licensure or exemption from licensure, in violation of RIUSA.

32. Respondent Maranda aided and abetted Respondents Kelly and T&T's activities.

COUNT II

VIOLATION OF § 7-11-301 BY OFFERING AND SELLING UNREGISTERED SECURITIES

33. The Division herein restates the allegations and facts set forth in paragraphs 1 through 28.

34. R.I. Gen. Laws § 7-11-301 provides that no person may offer to sell or sell a security in this state unless the security is registered under this chapter, the security or transaction is exempt under this chapter, or it is a federally covered security.

35. Respondents Kelly and T&T offered and sold unregistered securities for sale in Rhode Island and such securities and sales were not exempt under RIUSA.

36. Respondent Maranda aided and abetted Respondents Kelly and T&T's activities.

COUNT III

VIOLATION OF § 7-11-501 BY PERPETRATING A FRAUDULENT SECURITIES SCHEME

37. The Division herein restates the allegations and facts set forth in paragraphs 1 through 28.

38. R.I. Gen. Laws § 7-11-501 provides that in connection with the offer to sell, sale, offer to purchase, or purchase of a security, a person may not, directly or indirectly, employ a device, scheme or artifice to defraud; make untrue statements of material fact; or engage in an act, practice or course of business that operates or would operate as a fraud or deceit on any person.

39. Respondents Kelly, T&T and Unique perpetrated a fraudulent investment scheme by soliciting and accepting monies from the Complainant, Victim GM and other Rhode Island residents and by guaranteeing to such parties a return of more than double their investments, by making untrue statements of material fact to such parties and by engaging in acts, practices and a course of business that would operate and did operate as a fraud or deceit on Complainant, Victim GM and other Rhode Island residents. Respondents Kelly, T&T and Unique were either aware of the fact that GetEasy was a fraudulent scheme, or was willfully blind of the same.

40. Respondent Maranda aided and abetted Respondents Kelly, T&T's and Unique's activities.

Based upon the foregoing, the Director determines that the following action is necessary to prevent or avoid an immediate danger to the public welfare, that it is in the public interest, appropriate for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of RIUSA.


Accordingly, IT IS HEREBY ORDERED THAT:

- (1) Respondents and any person associated therewith shall immediately cease and desist from any further violation of Sections 201, 301 and 501 of RIUSA.
- (2) Respondents and any person associated therewith shall retain and maintain all written and computer and other electronic records regarding their business activities and the subject solicitations, offers and sales until further order of the Director.

Therefore, unless the Director receives a written request for a hearing and answer to this Notice within thirty (30) days of the date of this Notice, the Director will regard Respondents as having been provided notice and an opportunity for hearing, and as having waived the right to a hearing, and the Order will become final. If the Director receives a request for a hearing within thirty (30) days of the date of this Notice, the Director shall set the matter for hearing no more than sixty (60) nor less than twenty (20) days from the receipt of the request for hearing and shall promptly notify the parties of the time and place for hearing. If no hearing is requested and none is ordered by the Director, the Order becomes permanent on the thirtieth (30th) day after its entry and remains in effect unless or until modified or vacated by the Director.

Pursuant to § 7-11-602, if the Director reasonably believes that a violation of RIUSA has occurred, he may (after such further notice and hearing in an administrative proceeding unless the right to notice and hearing is waived by a person against whom the sanction is imposed), impose a civil penalty up to a maximum of ten thousand (\$10,000) for a single violation or of one hundred thousand dollars (\$100,000) for multiple violations in a single proceeding, in addition to any specific powers granted under R.I. Gen. Laws § 7-11-101 et seq.

Dated this 16th day of September, 2015



Macky McCleary, Director

Rhode Island Department of Business Regulation

Order No. 15-43

THE DIRECTOR RESERVES THE RIGHT TO PUBLISH A NOTICE OF THIS ORDER IN A NEWSPAPER OF GENERAL CIRCULATION IN THE STATE OF RHODE ISLAND.

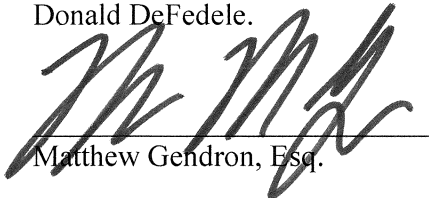
All are welcome at the Rhode Island Department of Business Regulation ("DBR"). If any reasonable accommodation is needed to ensure equal access, service or participation, please contact DBR at 401-462-9551, RI Relay at 7-1-1, or email directorofficeinquiry@dbr.ri.gov at least three (3) business days prior to the hearing.

CERTIFICATION

I hereby certify that on this 24 day of September 2015 a copy of this Order was sent by first class mail postage prepaid and as notated below, to:

<p>T&T Tax Advisory Group, Inc. 1525 Louisquisset Pike Suite 201 A Lincoln, RI 02865 - Also by hand delivery <i>JS</i></p>	<p>T&T Retirement Specialist 1525 Louisquisset Pike Suite 201 A Lincoln, RI 02865 - Also by hand delivery <i>JS</i></p>
<p>Timothy M. Kelly 108 Saratoga Ave Pawtucket, RI 02861-2320 - Also by certified mail</p>	<p>Theodore Maranda 70 Ruth St Woonsocket, RI 02895 - Also by certified mail</p>
<p>Unique Financial Services 108 Saratoga Ave Pawtucket, RI 02861-2320</p>	<p>GetEasy Group Rua Cidade de Bissau, N.º 51 A / B 1800-075 Lisboa Portugal</p>

and by electronic mail to TimKelly10@aol.com, TTTax@Cox.Net, info@geteasygroup.com as well as the following parties at the Department of Business Regulation: Maria D' Alessandro, Esq., Deputy Director, Securities, Pamela Toro, Esq., Elizabeth Dwyer, Esq., Joanne Sullivan, and Donald DeFedele.


 Matthew Gendron, Esq.

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
DIVISION OF SECURITIES
233 RICHMOND STREET
PROVIDENCE, RHODE ISLAND 02903-4232

Copy Sent to Kelly

IN THE MATTER OF :
TIMOTHY M. KELLY :
Respondent. :

FINAL ORDER TO BAR

The Director ("Director") of the Rhode Island Department of Business Regulation issues this Order pursuant to R.I. Gen. Laws §§ 7-11-710 and 42-35-1 et seq. and the Rules of Practice and Procedure in Administrative Hearings Before the Department of Business Regulation. On December 2, 2002 the Department issued a Notice of Intent to Bar, Impose Civil Penalty and of Opportunity for Hearing. The Director hereby enters a Final Order to Bar against Timothy M. Kelly based upon his failure to timely request a hearing in accordance with R.I. Gen. Laws § 7-11-710.

Entered this 4th day of September, 2003.

Marilyn Shannon McConaghy
Marilyn Shannon McConaghy, Esq., Director
Rhode Island Department of Business Regulation

Order No.: 03-118

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
233 RICHMOND STREET
PROVIDENCE, RHODE ISLAND 02903

IN THE MATTER OF:

TIMOTHY M. KELLY

Respondent.

:
:
: NOTICE OF INTENT TO BAR,
: IMPOSE CIVIL PENALTY
: AND OF OPPORTUNITY FOR
: HEARING
:
/:
:
:

The Director of the Department of Business Regulation ("Director") hereby issues this Notice Of Intent To Bar, To Impose Civil Penalty And Of Opportunity For A Hearing ("Notice"), pursuant to § 602 of the Rhode Island Uniform Securities Act of 1990 ("RIUSA"), § 7-11-101 et seq., of the Rhode Island General Laws, 1989, as amended, and Rhode Island General Laws, § 42-35-1 et seq., to Timothy M. Kelly ("Respondent").

The Director issues this Notice for the following reasons:

1. Respondent is a Rhode Island resident residing at 1076 Overlook Circle, North Providence, Rhode Island 02904.
2. During the period from May 1, 2000 to April 3, 2001 Respondent was licensed with the State of Rhode Island Department of Business Regulation Securities Division ("Division") as a sales representative of Protective Group Securities Corporation ("Protective Group"), pursuant to R.I. Gen. Laws § 7-11-201. Respondent was licensed as a sales representative of WMA Securities, Inc. ("WMA Securities") from November 28, 1995 to November 4, 1999.

3. Protective Group and WMA Securities were during the time period Respondent was licensed, and are currently, licensed with the Division, as broker-dealers, pursuant to R.I. Gen. Laws § 7-11-201.
4. Respondent is not currently licensed as a sales representative with the Division.
5. The Director issued an Emergency Order To Cease And Desist (the "Order") against Respondent on March 16, 2000 (Attached as Exhibit "A"). The Order was related to Respondent's sale of payphone investments.
6. On March 7, 2001, the Division issued its Policy Statement On Viatical Settlement Contracts, which clarifies the Division's position that viatical contracts are securities (Attached as Exhibit "B").
7. On March 18, 2002 the Division's review of Respondent's web site disclosed that he was offering viatical contracts over the internet.
8. On March 19, 2002 the Division conducted an unannounced examination of Respondent's books and records pursuant to R. I. Gen. Laws § 7-11-211.
9. Respondent informed the Division staff that he had made a viatical contract sale in April of 2001, and provided documentation disclosing the sale.
10. The documentation disclosed that Respondent sold a viatical contract to one investor in the amount of \$27,000.00 on April 25, 2001.
11. The Futures First viatical contract was not registered as a security with the state of Rhode Island, pursuant to R. I. Gen. Laws § 7-11-301.
12. Respondent was not licensed as a broker-dealer or a sales representative at the time of the viatical contract sale.

13. On March 21, 2002, the National Association of Securities Dealers Regulation, Inc. ("NASDR"), a self regulatory organization, barred Respondent from association with any broker-dealer, due to his sale of viatical contracts and payphone investments while he was registered with WMA Securities.

COUNT I

VIOLATION OF R. I. GEN. LAWS §7-11-301 FOR THE OFFER AND SALE OF UNREGISTERED SECURITIES

14. The Division herein restates the allegations and facts set forth in paragraphs 1 through 13.

15. R.I. Gen. Laws § 7-11-301 provides that a person may not sell, or offer to sell, a security in this state unless the security is registered, exempt from registration, or is a federal covered security.

16. Pursuant to the Division's Policy Statement On Viatical Settlement Contracts, which went into effect on March 7, 2001, viatical contracts are securities. Therefore, the viatical contracts must be registered as securities, and the person selling the viatical contract must be licensed, under RIUSA.

17. Respondent offered and sold a Futures First viatical contract, in the State of Rhode Island which was not registered with the Division, on April 25, 2001, in violation of RIUSA.

COUNT II

VIOLATION OF R.I. GEN. LAWS § 7-11-201 FOR THE OFFER AND SALE OF SECURITIES WITHOUT LICENSURE

18. The Division herein restates the allegations and facts set forth in paragraphs 1 through 13.

19. R.I. Gen. Laws § 7-11-201 provides that no person may transact business in Rhode Island as a broker-dealer or sales representative unless that person is licensed under this chapter.

20. Respondent offered and sold securities, in the form of viatical contracts, without being licensed at the time of the offer and sale as a broker-dealer or sales representative, in violation of RIUSA.

COUNT III

VIOLATION OF R.I. GEN. LAWS § 7-11-501 FOR THE MISLEADING OFFER AND SALE OF A SECURITY

21. The Division herein restates the allegations and facts set forth in paragraphs 1 through 13.

22. R.I. Gen. Laws § 7-11-501(2) provides that a person may not make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statement made, in light of the circumstances under which they are made, not misleading, in connection with the offer or sale of a security.

23. Respondent offered and sold securities, in the form of viatical contracts, without disclosing material facts about the viatical contract and the risks involved, which made the sale misleading, in violation of RIUSA.

COUNT IV

VIOLATION OF R.I. GEN. LAWS § 7-11-212 FOR A CURRENTLY EFFECTIVE ORDER ISSUED BY A SELF REGULATORY ORGANIZATION

24. The Division herein restates the allegations and facts set forth in paragraphs 1 through 13.

25. R.I. Gen. Laws § 7-11-212(b)(7)(ii) states that the Director may bar a person who has been barred by a self regulatory organization.

26. Respondent was barred by NASD Regulation, Inc. from association with any broker-dealer, on March 21, 2002, in violation of RIUSA.

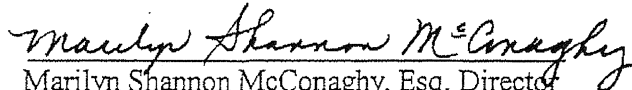
THEREFORE, unless the Director receives a written request for a hearing within thirty (30) days of the date of this Notice, the Director will regard the Respondent as having been provided with notice and an opportunity for a hearing, and as having waived the right to a hearing. Further, unless such written request for a hearing is received within the time period specified above, no hearing will be held on this matter, and the Director will by final order bar Respondent from association with any broker-dealer or investment advisor, a partner, officer or director, a person occupying similar status or performing similar functions, or a person directly or indirectly controlling the broker-dealer or investment adviser.

Pursuant to R.I. Gen. Laws § 7-11-602, if the Director reasonably believes that a violation has occurred, she may (after such notice and hearing in an administrative proceeding unless the right to notice and hearing is waived by a person against whom the sanction is imposed), impose a civil penalty up to a maximum of ten thousand dollars (\$10,000) for a single violation or of one hundred thousand dollars (\$100,000) for multiple violations, in addition to any specific powers granted under R.I. Gen. Laws § 7-11-101 et seq.

Dated this 2nd day of December, 2002.

Order No. 02-102 :

DB-KellyNoticeToBar


Marilyn Shannon McConaghy, Esq. Director
Rhode Island Department of Business Regulation

CERTIFICATION

I hereby certify on this 2nd day of December, 2002 that a copy of this Notice was sent by certified mail, return receipt requested and by first class mail, postage prepaid to Timothy M. Kelly and by hand-delivery to Maria D'Alessandro Piccirilli, Associate Director and Superintendent of Securities, and David F. Briden, Esq., Chief Securities Examiner, Department of Business Regulation, 233 Richmond Street, Providence, RI 02903

Antoinette Budano

EXHIBIT A

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
DIVISION OF SECURITIES
233 RICHMOND STREET
PROVIDENCE, RHODE ISLAND 02903-4232

IN THE MATTER OF : EMERGENCY ORDER TO
TIMOTHY M. KELLY, : CEASE AND DESIST AND
: IMPOSE CIVIL PENALTY UNDER
: SECTIONS 602 AND 712
: AND OF OPPORTUNITY FOR
: A HEARING
Respondent. :
:

I.

Pursuant to Sections 7-11-602 and 7-11-712 of the Rhode Island Uniform Securities Act of 1990 ("RIUSA") and Section 42-35-14 of the Rhode Island General Laws, ("R.I.G.L.") the Director (the "Director") of the Rhode Island Department of Business Regulation (the "Department") hereby issues this Emergency Order to Cease and Desist and of Intent to Impose Civil Penalty under Sections 7-11-602 and 7-11-712 and of Opportunity for a Hearing (the "Notice") to Timothy M. Kelly (the "Respondent").

II.

The Director makes the following findings of fact and conclusions of law with respect to this order:

1. Upon information and belief, Timothy M. Kelly ("Kelly") is licensed as an insurance producer by the Department of Business Regulation, and is a resident of the State of Rhode Island.
2. On February 22, 2000 the Securities Division of the Department of Business Regulation (the "Securities Division") received a complaint that a senior resident of this state had been offered

and sold an investment in fourteen pay telephones located in the State of Utah for a total cost of \$70,000.

3. According to the complaint the investment was offered and sold by AB to Z Financial and Gayle M. Jendzejec to the investor who was told that the pay telephone investment carried a fourteen percent rate of return and was appropriate for retirement income.

4. The Securities Division is aware of actions by several jurisdictions against companies and their sales representatives who have offered and sold pay telephone investments without registration and licensing under the securities laws.

5. On February 23, 2000 the Securities Division conducted an examination of the books and records of the AB to Z Financial and extensive interviews with Gayle M. Jendzejec and Louisa M. Montecalvo, the sole members of AB to Z Financial and licensed sales representatives of Lincoln Financial Advisors Corp, a licensed broker dealer. During the course of the interview they told the examiners that Marc Sutherland, Leonard Martin and Jeffrey Massey were also selling pay telephone investments.

6. On March 6, 2000 an examination of the books and records of Leonard Martin and Jeffrey Massey was conducted by the Division. During that examination documents and files were located which show that individuals were offered and sold pay telephone investments by Jeffrey Massey, Leonard Martin, and Timothy M. Kelly.

7. Prior to these sales, Kelly executed sales representative agreements with Jeffrey Massey and his company, Massey and Associates, which provided that he would be paid a 14% commission for all pay telephone sales procured by him.
8. Jeffrey Massey also received override compensation on Kelly's sales and in addition sold pay telephones to his clients for which he received the full commission.
9. The pay telephone investments sold by the Respondent constitute an investment contract and therefore securities under 7-11-101(22) of RIUSA. These investments are subject to the registration, licensing and disclosure requirements under the statute.

COUNT I

VIOLATION OF SECTION 501 OF RIUSA BY NOT PROVIDING ADEQUATE DISCLOSURE TO INVESTORS

10. Paragraph 1 through 9 above are incorporated in this Count I.
11. Section 501 of RIUSA provides that in the offer to sell, offer to purchase or purchase of a security, a person may not directly or indirectly make an untrue statement of material fact or omit to state a material fact necessary in order to make the statement made, in light of the circumstances under which they are made, not misleading.
12. The Respondent offered and sold securities to several investors without making adequate disclosures and failing to inform the investors of material facts with respect to their investment

including, but not limited to, risk of the investment and the fact that these investments constitute securities under RIUSA.

COUNT II

VIOLATION OF SECTION 301 OF RIUSA BY SELLING UNREGISTERED SECURITIES

13. Paragraph 1 through 9 above are incorporated in this Count II.
14. Section 301 provides that a person may not offer to sell or sell a security in this state unless the security is registered, exempt from registration or is a federally covered security.
15. The Respondent offered and sold securities in the State of Rhode Island without registration in violation of RIUSA.

COUNT III

VIOLATION OF SECTION 201 OF RIUSA BY NOT BEING LICENSED AS A BROKER DEALER OR SALES REPRESENTATIVE

16. Paragraph 1 through 9 above are incorporated in this Count III.
17. Section 201 of RIUSA provides that no person may transact business in this state as a broker dealer or sales representative unless licensed or exempt from licensing.
18. Respondent Timothy Kelly was acting as a broker dealer as defined in Section 101 (1) of RIUSA, and a sales representative under section 101 (20) of RIUSA, without proper licensure in violation of RIUSA.

Based on the foregoing, the Director determines that the following action is necessary to prevent or avoid an immediate

danger to the public welfare, that it is in the public interest, appropriate for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of RIUSA.

Accordingly, IT IS HEREBY ORDERED THAT:

(1) Respondent and any person associated therewith shall immediately cease and desist from any further violation of Sections 201, 301, 501 of RIUSA.

(2) Respondent and any person associated therewith shall retain and maintain all written and computer records regarding its business activities and the subject offering until further order of the Director.

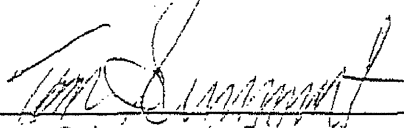
THEREFORE, unless the Director receives a written request for a hearing and answer to this Notice within thirty (30) days of the date of this Notice, the Director will regard Respondent as having been provided notice and an opportunity for hearing, and as having waived the right to a hearing. Further, unless such written request for a hearing is received within the time period specified above, no hearing will be held on this matter and the Director will by order grant the relief requested herein.

Pursuant to Section 7-11-602(b), if the Director reasonably believes that a violation of RIUSA has occurred, he may (after such notice and hearing in an administrative proceeding unless the right to notice and hearing is waived by a person against whom the sanction is imposed), issue a Cease and Desist Order against a person who violates this chapter or rule of the director, and impose a civil penalty up to a maximum of ten thousand dollars

*Should say
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FURTHER
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(\$10,000) for a single violation or of one hundred thousand dollars (\$100,000) for multiple violations, in addition to any specific power granted under the Act.

Dated this 16 day of March, 2000.



Tom Schumpert Director
Rhode Island Department of
Business Regulation

DBR #00-0083

THE DIRECTOR RESERVES THE RIGHT TO PUBLISH A NOTICE OF THIS ORDER
IN A NEWSPAPER OF GENERAL CIRCULATION IN THE STATE OF RHODE ISLAND.

kelly.c&d

CERTIFICATION

I hereby certify that on this 30th day March, 2000, that I caused a copy of the within Emergency Order to Cease and Desist to be mailed, via certified and first class mail to: Timothy M. Kelly, 840 Smithfield Avenue, Lincoln, Rhode Island 02865

Antonetta Budano

STATE OF RHODE ISLAND
DEPARTMENT OF BUSINESS REGULATION
SECURITIES DIVISION

POLICY STATEMENT ON VIATICAL
SETTLEMENT CONTRACTS

The Securities Division (the "Division") of the Rhode Island Department of Business Regulation has received numerous inquiries from investors, viatical settlement companies and participants in the securities industry generally regarding the treatment of viatical settlements under the Rhode Island Uniform Securities Act ("RIUSA"), *R.I. Gen. Laws* §§ 7-11-101, et. seq. (1990). The Division is aware of instances in which viatical settlements are advertised to the investing public as 100% secure, with "guaranteed" rates of return as high as 40% or more. Many persons making such claims have not registered the viatical settlement agreements for sale in Rhode Island, and more often than not, the persons offering the same have not been registered under RIUSA as broker-dealers, agents, investment advisers or investment adviser representatives.

The Director of the Department of Business Regulation has the statutory authority to enforce the laws governing the issuance, sale and other transactions relative to securities in Rhode Island, and to utilize any specific power granted under RIUSA if he "reasonably believes . . . that a person has violated [RIUSA] or a rule or order of the Director under [RIUSA]." *R.I. Gen. Laws* § 7-11-602 (1990). Toward that end, and following a careful consideration of the applicable provisions of RIUSA, the regulations promulgated thereunder, and relevant case authority, the Division concludes that for the reasons set forth herein, viatical settlement investments should be treated as securities subject to the registration and other provisions of RIUSA.

EFFECTIVE DATE MARCH 7, 2001

In general, a viatical settlement agreement is a written agreement entered into among a viatical company facilitating the transaction, an investor (or a group of investors) and a medically documented terminally ill person who is the owner of a life insurance policy or who is covered under a group policy insuring the life of such person. The premise behind the viatical settlement is to give those with a catastrophic or terminal illness monetary means with which to live and to pay medical expenses when the medical condition is at a stage where continued employment may not be possible. The viatical settlements are also being offered as life settlements to individuals who desire to sell their life insurance policy but are not terminally ill. In the agreement described above, the insured agrees to sell the life insurance policy at a discount, the amount of which is based on the life expectancy of the insured, current interest rates and the profit requirement of the investors and the viatical company. The viatical company (or a trust established by the viatical company) is named as the irrevocable beneficiary and is obligated to continue making the necessary premium payments.

In the alternative, the viatical company may simply match potential buyers with the policyholders in an arrangement whereby the investor acquires direct ownership rights in the policy. Under either arrangement, the viatical company offers and sells fractional interests in the policy to investors, thus eliminating the need for direct contact between the insured and the investor. Upon the death of the insured, the viatical company receives the face value of the policy, which is then used to repay investors a profit equal to the difference between the discounted purchase price paid to the insured and the death benefit collected under the policy from the insurer, less certain administrative costs and expenses, including premiums and a commission to the viatical company.

The question of whether or not, the foregoing arrangement, the sale of these viaticals to investors is properly characterized as a security is answered by reference to long-standing principles governing the interpretation of RIUSA by both the Division and the courts. The statutory definition of a "security," *R.I. Gen. Laws* § 7-11-101 (22) (1990), is in all material respects identical to that contained in most state acts and the Securities Act of 1933. This

... of a security includes the term "investment contract." In *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946), the United States Supreme Court held that an investment contract has four principal elements or criteria: (i) the investment of money; (ii) in a common enterprise; (iii) with an expectation of profits; (iv) to be earned through the efforts of others. Although Rhode Island courts have not yet explicitly adopted the "Howey test," virtually every other jurisdiction has adopted *Howey's* definition of investment contract in some form.

We are aware of the decision in *SEC v. Life Partners, Inc.*, 87 F.3d 536 (D.C. Cir. 1996), in which the Securities and Exchange Commission ("SEC") sought to enjoin a viatical settlement company from violating the registration requirements of the Securities Act of 1933. Prior to selling fractionalized interests in life insurance policies, the viatical company evaluated the insured's medical condition, reviewed the insurance policies, negotiated a purchase price, and prepared legal documents. The SEC argued that this arrangement was an investment contract under the *Howey* standard and that the company was accordingly in violation of section 5 of the Securities Act of 1933.

Although the Court of Appeals found the first three elements of *Howey* to be satisfied, it disagreed with the SEC's position regarding the fourth element. The court concluded that the investor's return was not dependent upon the effort of the viatical company, but rather from the length of time the insured remained alive. "In this case it is the length of the insured's life that is the overwhelming importance to the value of the viatical settlements." 87 F.3d at 548. The court noted that the fourth prong in *Howey* is concerned only with the promoter's activities after the investor parts with his money, and that the company's post-purchase activities in that case had no effect on the investor's return, constituting merely administrative or ministerial functions.

The Division does not agree with the outcome or rationale in the *Life Partner's* decision. The Division is of the view that the first three elements of the *Howey* investment contract analysis are clearly present in a viatical settlement arrangement. Furthermore, there is little support in over fifty years of judicial authority since the *Howey* decision, for drawing the "bright-line" distinction between "pre-investment" and "post-investment" managerial efforts

which the Court of Appeals attempted to draw in *Life Partners*. Both federal and state case law support the conclusion that the fourth element of the *Howey* definition is met when, upon a review of all of the efforts of the promoter as a whole, a court may conclude that the investor's realization of a profit depends substantially upon the essential management efforts of the promoter, regardless of the time at which such services are performed.

In fact, the investors in typical viatical settlement arrangements are, as a rule, completely passive, relying upon the expertise of and information gathered by the viatical company in predicting the insured's life expectancy, preparing the documentation for investment and performing all other functions essential to the investor's ability to achieve a profit. The investors do not have the skill, knowledge or access to information to perform the tasks which are necessary for their investment to be successful.

The actions which may be, and usually are, performed by the viatical company in connection with the settlement transaction include, but are not limited to: identification of insured parties with short life expectancies; evaluation of the medical condition of the insured; analysis of the life expectancy of the insured; determination of the discount at which to purchase the policy; evaluation of the terms and conditions of the policies; effectuation of the legal transfer of the policy from the insured; effectuation of changes in beneficiaries; determination of whether an insured party has died to ensure timely submission of claims for death benefits; submission of claim for death benefits to insurance companies; acceptance of payment of death benefits from insurance companies; pooling of the policies for investors; computation and distribution of pro rata shares of benefits to investors; and other actions in the process of selecting, evaluating, acquiring and packaging insurance policy benefits to be purchased. These functions are at the very heart of the entire viatical settlement transaction; accordingly, they are the type of entrepreneurial efforts which are sufficient to satisfy the fourth prong of the *Howey* test.

The *Life Partners* court further ignored a critical element vital to the success of a viatical investment and which must occur after the viatical agreement is consummated. This element is

the necessity of payment of premiums on the policy. If this task is not performed, the policy will lapse and the entire investment will collapse. Very rarely is it left to the investor to ensure that the premiums are paid. Rather, it is the promoter's responsibility (or the escrow agent picked by the promoter) to ensure these payments are made.

In *Howey*, the Supreme Court stated that the definition of a security "embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits." 328 U.S. at 299. To adopt the "bright line" distinction of the Court of Appeals in *Life Partners* would be to accept the "static principle" about which the Supreme Court warned, and to elevate the form of the transaction over its substance. The Division is of the view that a more flexible approach is consistent with the remedial purpose of RIUSA, which should be interpreted broadly to afford the maximum possible protection to Rhode Island investors.

Moreover, the position adopted today is consistent with that of other jurisdictions. In response to fraud within the viatical industry, forty-four of the fifty states currently regulate viatical settlements to some degree. See, e.g., "Division Announces its Position on Viatical Settlements," Ohio Sec. Bull. 98:3 (Ohio Div. of Sec.); *Viatical Settlement Agreements*, No. 0-0 1997, 1997 Wa. Sec. Lexis 21 (Wash. Sec. Div., July 14, 1997); *Viatical Settlements*, 1996 Wy.-No Act. Lexis 3 (Wy. Sec. Div. April 26, 1996); Interpretative Opinion, 1995 Kan. Sec. No Act. Lexis 188 (Kan. Sec. Comm'r, Nov. 14, 1995).

For the foregoing reasons, the Division opines that investments in viatical settlement agreements as described in this statement are investment contracts, and therefore constitute securities, within the meaning of *R.I. Gen. Laws* § 7-11-101 (22) (1956). A number of consequences flow directly from this conclusion. RIUSA requires that every security offered and sold in this state must be registered with the Division unless the security itself is exempt or unless the transaction pursuant to which the security is sold is exempt. *R.I. Gen. Laws* § 7-11-301 (1990). If the security or transaction is exempt from registration under *R.I. Gen. Laws* §§ 7-11-401, 7-11-402 (1990), the issuer should determine if the exemption is self-executing or if it

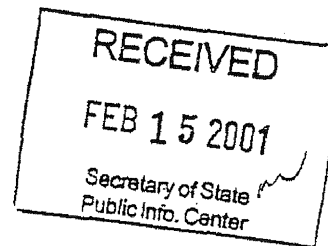
requires a form filing with the Commission. If no exemption is available and registration is therefore required, the issuer should review the provisions of *R.I. Gen. Laws* §§ 7-11-302 through 7-11-305 (1990) to determine the appropriate form of registration filing and to review other substantive and procedural requirements.

Persons engaged in the business of effecting transactions in securities must be registered with the Division as broker dealers, and individuals who represent broker dealers must be registered as sales representatives, unless they qualify for an exemption from registration. Persons engaged in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issue or promulgate analyses or reports concerning securities must be registered with the Division as investment advisers and certain individuals employed by or associated with an investment adviser must be registered as investment adviser representatives, unless they qualify for an exemption from registration.

Finally, all persons involved in the offer and sale of viatical settlements in Rhode Island should be aware of the nature and extent of the antifraud provisions of RIUSA. *R.I. Gen. Laws* § 7-11-501 (1990) provides that, in connection with the sale of any security in Rhode Island, it is unlawful to employ any device, scheme or artifice to defraud; to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading; or to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person. The antifraud provisions of RIUSA apply in the case of every offer or sale of a security in Rhode Island, including those instances in which the sale of the security is exempt from registration and the seller is exempt from licensing. Violation of the registration, licensing or antifraud provisions of RIUSA constitute a felony and may result in criminal prosecution of the offender.

The Rhode Island Uniform Securities Act was promulgated to regulate viatical settlement investments. Such investments involve unknown risks that unscrupulous promoters may misrepresent or fail to disclose to investors. The Division concludes that viatical settlements are securities as that term is defined under Rhode Island law, and it is therefore appropriate for the Division to assert its regulatory jurisdiction. The Division arrived at its conclusions based on current Rhode Island law and the long-standing public policy of investor protection. The Securities Division has no position and makes no representations on the social value of viatical settlements.

Dated this the 17th day of February, 2001.



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1. Article Addressed to:

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