THE LIFE SETTLEMENTS REPORT

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TEXAS COURT ISSUES RESTRAINING ORDER AGAINST LIFE PARTNERS, DOESN'T APPOINT RECEIVER

by Donna Horowitz

A Texas state court judge issued a temporary restraining order against **Life Partners Holdings** and two top executives ordering them not to destroy records or dissipate assets, but stopped short of appointing a receiver.

Judge Orlinda Naranjo of the Travis County Court in Austin, Texas, issued the temporary restraining order Aug. 17 at the request of Texas Attorney General Greg Abbott who alleged the firm had violated state securities laws and had used artificially short life expectancy reports to sell investments in life settlements.

The temporary restraining order also bars the firm from paying dividends, salary increases or bonuses.

Abbott sought the temporary restraining order to prevent the firm, Chief Executive Brian Pardo and General Counsel Scott Peden from continuing to commit fraud in connection with the sale of securities. The firm is the parent company of Waco, Texas, provider Life Partners.

In addition, the state is seeking temporary and permanent injunctions to prevent further violations of state laws, restitution, disgorgement of economic benefits, civil fines and penalties.

Abbott sued Aug. 16 on behalf of Texas Securities Commissioner John Morgan.

"In support of its determination, the Court finds that the State of Texas is likely to prevail on its claims that Defendants have violated or are in violation of the Securities Act by committing fraud and fraudulent practices in connection with sale of securities, selling unregistered securities to the public, and selling securities through unregistered securities dealers, salesmen, and agents," Naranjo said.

She said that unless the firm is

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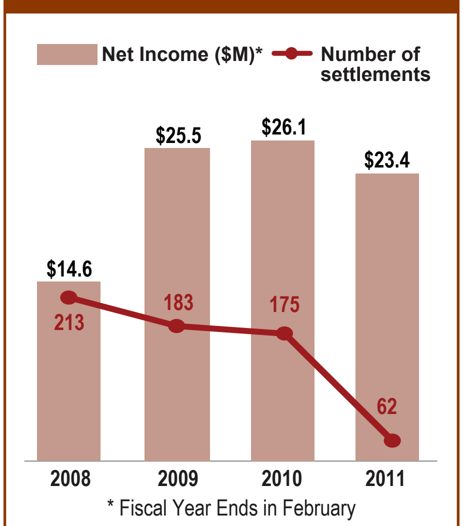
LIFE PARTNERS SETTLEMENTS & NET INCOME



Source: DealFlow Media and SEC filings.

FSA'S LATEST PROPOSAL ON RETAIL INVESTMENT MAY BRING CLARITY TO THE MARKET

by Maria Brosnan Liebel

Life settlement fund managers who are trying to raise money overseas said the Financial Services Authority's proposed ban on the sale of non-mainstream pooled investments to most retail investors may not negatively impact the market much.

The proposed guidance, released Aug. 22, continued the FSA's push for restrictions on the sale of life settlements to ordinary investors in the U.K. It would limit retail marketing for unregulated collective investment schemes (UCIS), special purpose vehicles (SPV), and qualified investment schemes (QIS).

Michael Fugler, head of global capital markets for **Welcome Life Financial Group** in Boca Raton, Fla., said the latest proposal helps repair

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previous damage the FSA caused to the life settlements market last year and will not impact it further.

"I think the FSA clarifying their thinking was good for the Industry and certainly much better than the previous FSA position in which an upper level manager labeled Life Settlements as 'toxic' in a panic without thinking through the impact of such an irresponsible statement with no support or foundation for it," he said in an email.

However, Robin Willi, principal of advisory firm **Rigi Capital Partners** in Switzerland, said the FSA's latest proposal is not good for the industry as it effectively broadens the acceptance of the financial markets to "shut down" life settlements in the U.K.

"We're going from the FSA in effect applying the emergency handbrake to a situtation in which the market consensus will be negative," Willi said.

The FSA estimated that total retail life settlement investment in the U.K. is about £1 billion ($1.6 billion), or about one-quarter of retail investments in UCIS and similar structures.

It said the UCIS retail market is worth around £2.5 billion in the U.K. "A total of 85,000 ordinary retail investors have direct holdings in these investments, which can hold assets like traded life policy investments, fine wines, crops and timber," the FSA said in a statement. Another £1.5 billion is invested in SPV and QIS.

The total life settlement market in the U.K., including institutional investment, is estimated at about £25 billion.

A UCIS is an investment product that is not subject to rules required of regulated investment schemes. UCIS may not be covered by the U.K.'s Financial Services Compensation Scheme. UCIS already are not supposed to be promoted to the general public, and the FSA estimates only 4% of all UCIS are held by retail investors.

However, current sales restrictions are "widely misinterpreted, poorly understood and sometimes simply ignored, undermining the consumer safeguards they are intended to provide," the FSA said.

Defining Ordinary

In a 2010 review of UCIS sales, the FSA found that only one in four sales to retail customers were suitable for them, and a number of non-mainstream pooled investments have failed completely.

The FSA now proposes to generally restrict promotions to sophisticated investors and high-net-worth individuals for whom these products would be suitable. It also seeks to better define retail investors. The term has previously been interpreted broadly, according to life settlement market players.

A retail investor is "a client who is neither a professional client nor an eligible counterparty" as defined by the FSA's Conduct of Business Sourcebook. The regulator would then break down retail investors into three categories: sophisticated investors, high-net-worth individuals, and "average or ordinary retail investors."

Sophisticated investors are defined as having "extensive investment experience and knowledge, who are better able to understand the risks of complex and unusual investments." A high-net-worth investor would have to meet criteria including having an annual income of more than £100,000 or investable assets of more than £250,000.

An average or ordinary investor is neither of those. "These are the investors of ordinary means and experience who make up the vast majority of the retail market in the U.K.," the FSA said. "Such investors are at particular risk in relation to inappropriate promotion of non-mainstream pooled investments."

The FSA would eliminate a firm's ability to promote UCIS to people whom it deemed the investment would be suitable.

"Our supervisory work has found it to be the most often used exemption for inappropriate promotions of UCIS to retail clients, with many firms appearing to regard the exemption as allowing promotion to any retail client so as long as advice is given," the FSA said.

The FSA would also end the ability of an adviser to market to ordinary retail investors who are currently invested in UCIS.

"As the quality of promotion and sales in the past has been so poor, this category could compound potential consumer detriment by allowing further promotion to investors on the basis of an investment that may have been unlawfully promoted and/or unsuitably recommended," it said.

However, there would be an exemption for investments that are being wound down or liquidated, an FSA spokesman said in an email. Those investors could receive promotions from a new investment that is designed to replace it.

The FSA acknowledged its latest proposal could lead to liquidity problems and capital losses. Existing customers may request redemptions, and funds that depend on continuing investment from retail investors will have to adapt to changes in their investor base, it said.

"However, as the majority of investment in non-mainstream pooled investments is by customers unaffected by proposals in this consultation, such as institutional investors, we do not expect liquidity problems to arise in many cases if at all," it said.

Focus on Life Settlements

Last November, the FSA roiled the market when it said it wanted to ban the sales of life settlements to retail investors, calling the investment product toxic and sometimes resembling Ponzi schemes. It was reacting to major life settlement scandals including **Keydata Investment Services**, which resulted in more than £450 million in losses, and **ARM Asset-Backed Securities**, which is currently attempting to restructure.

In April, the FSA softened its rhetoric, but still strongly discouraged independent financial advisers from promoting life settlements to ordinary investors. It said it would follow up on the issue in new rules for UCIS.

In the UCIS proposal, the FSA said it has found serious problems with how life settlement investments are designed and sold to retail investors.

"They are generally higher risk, complex and opaque products, but are often marketed as low risk on the basis of being uncorrelated with mainstream investments," it said. "Many ordinary retail investors have bought them looking for safe returns. But many of these products have failed, causing significant consumer detriment."

It said it was aware of five life settlement investment companies that have targeted retail investors, but it didn't name them.

The Guernsey-based EEA Life Settlements Fund, managed by **EEA Fund Management** in London, is a UCIS. EEA suspended the fund days after the FSA's proposed ban last year. The regulator's statements led to a rash of redemption requests and subscription cancellations, EEA said. It has yet to re-open. EEA representatives declined to comment on the FSA's latest proposal.

The HC I Life Settlement Fund, managed by **Host Capital**, is the only known authorized life settlement QIS in the U.K. It's a feeder fund into the Strategic Life Settlement Fund, which is listed on the Irish Stock Exchange. Iain Stamp, of **Life Settlement Consulting** and distributor firm **UK Innovative Financial Designs**, who helped launch the HC I fund, supports the FSA's latest proposal.

Stamp said in an email that he's been in close contact with the FSA for the past two years, and "we know exactly their views on promotion."

The Assured Fund in the Cayman Islands is sold to both retail and institutional investors. The fund didn't receive an increase in redemption requests following the FSA's criticism in November, said Andrew Walters, financial director of fund manager **Policy Selection** in Cambridge, U.K.

"The FSA's comments will make it hard to raise new investment from the U.K. The FSA has quite a reach. Their announcements are heeded worldwide," Walters said. "That doesn't change the fact that we're seeing institutions coming back into the space."

He said that it comes down to the independent financial advisers. If they see that the Assured Fund is a suitable investment for their clients, then Policy Selection will continue to support them and send them marketing materials.

The FSA is "facing the same problem over there that this country did 20 years ago" in regards to the sales of unregistered investments, said Paul Siegert, president and chairman of **GWG Holdings**, a life settlements investment company in Minneapolis that is registered with the Securities and Exchange Commission. GWG formed a partnership with **Athena Securities** in Ireland last year to raise capital in Europe.

He said the U.K. regulator is "sort of catching up" after being lax for a long time. But now it is overreacting and "compromising businesses that are good and have good products."

Bob Sharpe, an investor in the failed ARM bonds, which were promoted as retirement investments by **Rockingham Independent** in the U.K., agreed. But he said the FSA's guidance comes too late.

"I think some investors were given poor advice that led them to invest too much of their capital in one place, but I don't see how IFAs like Rockingham were supposed to risk assess things like the regulators setting out to destroy an investment class," he said in an email. "They are masters of hindsight expertise."

Siegert is also chief executive of the non-profit Insurance Studies Institute, serves as vice chairman of the Life Insurance Settlement Association, and works with the European Life Settlement Association in developing its code of practice. He said he is currently writing a paper for the Insurance Studies Institute on suitability, including definitions of a retail investor.

He said there are a lot of investors who consider themselves institutional that "don't know what they are doing." During the last market meltdown, many municipalities, smaller foundations and trusts lost millions of dollars because they didn't have good advice on various investments. He said any investor that does not have in-house staff to do its own due diligence should be a different classification.

GWG is targeting sophisticated and institutional investors. Despite the FSA's warnings on life settlements, "I don't think there is much concern at the more sophisticated level. Those people are able to look through the structure and management to see what is going on," Siegert said.

Fugler said institutional investors are being more cautious. "I see more institutions willing to consider Insurance Linked Securities for investment purposes but I also see different type of structures, more clarity in the underlying investments and better life expectancy reports, all of which demonstrate a maturing market," he said. "The 'gunslinging' is over."

Siegert noted that the European Union's Alternative Investment Fund Managers Directive (AIFMD) will take effect next year. He said it will require anything sold in Europe to be registered, "and that changes the whole paradigm."

FSA spokesman Christopher Hamilton said that the agency believes the proposed guidance is consistent with the AIFMD. "At present, our understanding is that by default AIFs may only be promoted to professional customers. National regulators can choose if they want to allow AIFs to be marketed to certain groups of retail customers," he said in an email.

The FSA expects to allow alternative investment funds structured as UCIS, QIS and SPVs to be promoted to the proposed categories of retail customers. As it gets closer to implementing the AIFMD, the FSA can refine the policy statement for non-mainstream pooled investment consultation, "if need be," Hamilton said.

Representatives of the European Life Settlement Association were not available to comment. But the trade group will be meeting with the FSA on Sept. 18, a spokesman said.

Public comment on the proposed guidance is due Nov. 14. A summary of feedback and final guidance is expected in the first quarter 2013.

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