NEW APPLICATION

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BEFORE THE ARIZONA CORPORATION COMMISSION

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| In the matter of:<br><br>MUTUAL BENEFITS CORPORATION,<br><br>Respondent. | DOCKET NO. S-03464A-03-0000<br><br>**NOTICE OF OPPORTUNITY FOR HEARING REGARDING PROPOSED ORDER TO CEASE AND DESIST, OF DENIAL, FOR RESTITUTION, FOR ADMINISTRATIVE PENALTIES AND FOR OTHER AFFIRMATIVE ACTION** |

**NOTICE: RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**

**RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that RESPONDENT Mutual Benefits Corporation ("MBC") has engaged in acts, practices and transactions, which constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

## I.

## JURISDICTION

The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

## II.

## RESPONDENT

MBC is a corporation organized and existing under the laws of the state of Florida with its principal place of business at 200 East Broward Blvd., 10th Floor, Ft. Lauderdale, Florida 33301.

## III.

## FACTS

1. A viatical settlement is the sale of a life insurance policy by a terminally ill policy owner (the "insured" or "viator") to a third party at a discount from the life insurance policy's face value. The third party who in turn sells the beneficial interest in the policy's death benefit is known as a "viatical settlement provider." Viatical settlement providers usually sell fractionalized interests in the policy's death benefit to investors at a markup from the third party's purchase price but at less than the policy face value. The third party may remain as the owner of the policy with the investors designated as policy beneficiaries. Upon the viator's death, the viatical settlement "matures" and the investors receive their assigned portion of the policy's death benefit.

2. A life settlement is similar to a viatical settlement except the insured does not have a terminal illness.

3. MBC is a viatical and life settlement provider.

4. MBC sells viatical settlements to investors through agents such as insurance and securities sales persons.

5. From approximately March 1995 through January 2002, MBC sold at least $11,400,000 in viatical and life settlements (collectively referred to as "viaticals") through approximately 55 individual and corporate agents to approximately 349 Arizona investors.

**MBC'S SALES OF UNREGISTERED SECURITIES PRIOR TO JULY 18, 2000**

6. Prior to July 18, 2000, viaticals were regulated as investment contracts under the Securities Act. As investment contracts, viaticals were required to be registered in Arizona unless a viatical sale qualified for a transactional exemption.

7. Between early 1995 and July 17, 2002, MBC sold approximately $9,200,000 in viaticals to Arizona residents. Those viatical sales were not registered as securities nor were they exempt from registration.

8. Until July 17, 2002, dealer and salesmen registration requirements also applied to viatical providers and their sales agents.

9. During the relevant period, MBC was not registered as a securities dealer in Arizona and some of its selling agents were not registered as securities salesmen.

**MBC'S SALES OF UNREGISTERED SECURITIES AFTER JULY 18, 2000**

10. Effective July 18, 2000, revisions to the Securities Act codified the existing investment contracts analysis with respect to viatical and life settlement investment contracts by revising A.R.S. §44-1801(26) and (29) and adding §44-1850. (Collectively referred to as the "new law"). The new law no longer required the registration of viaticals provided the issuer/seller conformed to the filing and disclosure requirements set forth in §44-1850. Additionally, viatical issuers and their agents were no longer required to be registered, again contingent upon full compliance with §44-1850.[1]

11. §44-1850 is a registration exemption which requires viatical providers to file certain documents with the Division. Importantly §44-1850 is not a notice filing exemption. In other words, the exemption is not automatically available to the viatical provider upon the mere filing of documents. The Division must deem the filing complete. A filing may require additional documentation or disclosures pursuant to Division direction. Thus, until the Division gives its approval, a provider may not engage in any sales under the exemption. Furthermore, the Division may move to deny the availability of the exemption.

12. On April 3, 2001, almost nine months after the new law went into effect, MBC made its first filing under §44-1850. The Division responded on April 17, 2001, informing MBC that its filing was substantially incomplete and that additional disclosures and clarifications were required before MBC could sell under the exemption.

[1] Effective August 22, 2002, the registration exemption for viatical issuers and sales agents under A.R.S. §44-1850 was eliminated. Offers for sale and sales of viaticals must be through a registered dealer and salesman.

13. In mid-May 2001, a MBC marketing employee deliberately mislead an Arizona agent by telling the agent that he could sell viaticals in Arizona using his life insurance license notwithstanding anything the agent had read to the contrary. Until the Division approved MBC's use of the exemption, MBC could not sell viaticals in Arizona. Therefore, MBC's agents could not sell MBC viaticals in Arizona regardless of an agent's license status.

14. On June 19, 2001, the Division again placed MBC on notice that the exemption under A.R.S. §44-1850 would not be available until MBC's filing deficiencies were addressed and resolved. Nothing further was heard from MBC until September 2001, when MBC informed the Division that it was no longer doing business in Arizona.

15. At about the same time it informed the Division it was no longer selling viaticals in Arizona, MBC wrote to an Arizona agent extolling its leading role in supporting state legislation designed to protect sellers and purchasers of viaticals. MBC proclaimed that its efforts resulted in new viatical legislation in Arizona and that it was in the process of conforming its practices to the new law. MBC then went on to advise that until its marketing material was approved in Arizona, it would not be accepting any new purchases from Arizona residents. MBC told its agent that it expected the sales stoppage to be temporary and that it expected sales would resume without much delay. MBC mislead this agent. It was not reasonable to characterize the new legislation as recent. The new law had gone into effect in July 2000, more than one year before it wrote to this agent. Furthermore, MBC's statements were disingenuous as MBC was not actively conforming its practices to the new law given that its next substantive response to the Division's April 17, 2001, letter did not occur until April 10, 2002, seven months after it wrote to the agent and twenty-one months after the effective date of the new law.

16. From July 18, 2000 through January 2003, MBC sold approximately $2,200,000 in viaticals in Arizona.

17. MBC's sales in Arizona after July 18, 2000 were not the result of an administrative oversight or misunderstanding of the new law. The substantial number of post July 2000 sales demonstrates MBC engaged in an extensive selling effort in deliberate disregard of Arizona's securities laws.

18. Prior to its filing, MBC was clearly on notice regarding the requirements of the new law. MBC had actively participated in the legislative process surrounding the new law.

19. The Division had given MBC clear and unambiguous notice that MBC could not sell viaticals in Arizona.

20. Even after representing that it was no longer doing business in Arizona, MBC engaged in deceptive and manipulative acts to effect sales to Arizona residents by encouraging the use of out-of-state addresses to create the false appearance that these were not Arizona sales.

**MBC's Marketing Program**

21. MBC provides marketing literature to its agents who use it to solicit investors and make sales pitches. MBC also offers to its sales agents suggestions for flyers, direct mail pieces and advertising.

22. MBC's marketing literature is misleading because of its lack of balance. For example, in its summer 2001 newsletter, MBC discussed how well its life settlements program was operating. MBC listed a sampling of life settlements that matured much sooner than anticipated. Settlements with 60-72 month life expectancies matured within 2 -18 months. There was no discussion, however, about whether these settlements were anomalies. Nor did MBC present any data concerning the number of policies that had not timely matured for comparison purposes. A significant number of MBC's viatical settlements have not matured within the projected life expectancy and to this date remain unmatured. In fact, many of these viaticals have extended beyond the projected maturity date not by days or months but by years.

23. MBC's marketing literature is misleading in other respects. MBC's marketing literature focuses exclusively on the product's double digit returns, security, and lack of risk. By design its literature seeks to capture the investor's attention by amplifying these program attributes in large bold typesets; ploys that are misleading. For example, MBC's references to market risk such as "TOTAL PROTECTION" from adverse market conditions", "This INVESTMENT is STOCK MARKET Proof.", and "Wouldn't it be great to know that my PRINCIPAL AND PROFIT is secured and not at ANY MARKET RISK!" mislead investors by suggesting there is no risk associated with a viatical investment. Statements of "FULLY SECURED!!!", "Better alternative to CDs or annuities" give the impression that viaticals are safer than CDs. MBC further misleads investors by twisting a cautionary statement stating "Wouldn't it be great if I FOUND OUT it WASN'T TOO GOOD TO BE TRUE!". (Emphasis in originals).

24. MBC's focus on returns also misleads investors. Statements such as "Are your current money market, CDs or annuity returns too low?" coupled with large bold print promising 12 – 72% returns, serve to confuse investors' understanding of investment earnings. Furthermore, there is no disclosure that 12-72% returns could equate to significantly lower annualized returns the longer a viator lives.

25. MBC misleads investors regarding risk and rates. For example, statements such as "Until today, a high return meant a higher risk.", "low interest rate = low return" implies MBC's viaticals offer a high return without a corresponding increase in investment risk. This is simply not true.

26. Comparisons such as stating annuity investments are usually "tied up for 7-10 years" make no mention of the fact that as an illiquid investment a viatical investor's funds could be similarly tied up should the viator live beyond the projected life expectancy.

27. Furthermore, numerous investors believed that returns were annual returns while still others believed that whether or not the investment matured, they had purchased a one, two or three-year investment that would pay the stated percentage at the end of the defined term.

**THE PURCHASE TRANSACTION**

28. The mechanics of a viatical purchase by an investor are relatively simple. The investor executes various documents such as a purchase or participation agreement, trust agreement and suitability form. The executed documents and the investor's payment, usually in the form of a personal check made payable to MBC or a designated escrow agent, is given to the agent who in turn forwards the documents and payment to MBC. At some later date, MBC, the escrow agent or a trustee, notifies the investor usually through a series of letters, of receipt of the investor's funds and placement of the funds for a specific policy. Usually the investor receives an executed copy of an "absolute assignment of policy" naming MBC or a trustee as the policy owner and an executed change of beneficiary document naming the investor or his or her designee as a beneficiary under the policy.

29. In most circumstances the investor does not learn about which viatical settlement the investor purchased until after the transaction closes. MBC maintains that it shops for a policy after receiving the investor's funds; that it does not inventory policies. Implicitly, MBC is stating that an investor cannot know what specific policy the investor is purchasing before tendering payment because the policy has not yet been located and purchased by MBC. However, it appears that at least in some sales, MBC agents knew exactly what policies were available and they had access to other relevant information about the viator. Whether this information was given to the investor appears to have been within the agent's discretion.

30. Furthermore, MBC hides behind the cloak of secrecy of purported state law concerning certain prohibitions on disclosing information about the viator to restrict information being released about the investment in a timely and useful manner to the investor.

**INVESTOR RELIANCE**

31. Investors purchasing MBC viatical settlements rely exclusively on MBC's extensive expertise and substantial efforts in selecting and evaluating the policies purchased. The profits that

the investors expect to realize depend entirely on MBC's expertise in choosing which policies to purchase, which in turn depends entirely on MBC's entrepreneurial and managerial skills. Without MBC's efforts, the investor could not participate in this investment. MBC's efforts encompass the entire spectrum of conduct necessary to present the investment for purchase by investors.

32. The investor has no role in the pre-purchase process. MBC or others at MBC's direction, obtain, review and verify the viator's medical, financial, and insurance information to ensure the viator meets MBC's qualifying criteria. MBC or others selected by MBC and at its direction, analyze actuarial and health information to assign a projected life expectancy and purchase price for the policy. MBC or others selected by MBC and at its direction effect and/or ensure the transfer of policy ownership, removal and addition of beneficiaries, payment to the viator and making funds available for policy premium payments. In most instances, it is not until after the investor signs all agreements and tenders payment that the investor learns anything about the viator including his or her medical condition. In other words, investors are usually given no detailed information about their investment until after the purchase is completed. The investor must rely exclusively on the representations of the sales agent and MBC. The investor has no ability to undertake any independent investigation into the investment.

33. Investors who purchased MBC viaticals prior to late 1996 were given no rights of involvement in the investment. They were entirely passive. MBC performed all efforts associated with the investment.

34. In late 1996, MBC changed its agreements to purportedly give investors the right to control and perform post-purchase efforts. However, at least with respect to purchases made between late 1996 through 1999, these rights were impracticable and illusory.

35. The manner in which MBC structures its viatical program demonstrates it retains direct or indirect control over all facets of the program. For example, for those investors who purchased viaticals between late 1996 and 1999, the investor's right to direct and control the investment was

essentially eliminated by virtue of the language in the purchase and trust agreements. Agreements identified Anthony Livoti as the trustee, Brinkley, McNerney, Morgan, Solomon & Tatum, LLP, MBC's outside counsel, as the escrow agent and Viatical Services Inc., ("VSI") as the post-purchase service provider. The agreements contained only a few blanks that the investor need fill-in such as the investor's name, date and amount invested. Of the dozens of investor files collected by the Division, every investor between late 1996 and 1999 utilized the services of Livoti and VSI to perform post-purchase services. Furthermore, regardless of any purported election in MBC's purchase documents relating to the investor's freedom to select a trustee or post-purchase services company of their own choosing, MBC directs its agents to advise prospective investors that Livoti and VSI are the trustee and service company to be used.

36. Under MBC's Trust Agreement, any interest earned on future premiums and any unused premiums held by the trustee are the property of MBC. However, the interest and unused premiums, which are retained as a reserve, may be used as needed by the trustee to pay premiums for any policy the trustee administers. MBC structured its relationship with the trustee so as to give the purchaser a strong incentive to use the MBC selected trustee. This bias is created because if the purchaser uses his or her own trustee to pay premiums, there is no reserve from which to draw funds for future premium payments. However, if the purchaser utilizes the MBC-selected trustee, the purchaser gets the potential benefit of the reserve to pay premiums should the viator live beyond his or her projected life expectancy.

37. Investors also did not generally understand that they had the right to perform post-purchase efforts. If they understood they had that option, many did not feel qualified as they lacked the requisite knowledge or access to information to perform these functions. Furthermore, as a policy beneficiary but not an owner, an investor's ability to access information about the viator or the policy itself may be substantially limited.

38. In sum, investors were not on equal bargaining terms with MBC as MBC controlled the entire transaction and information disclosure to its advantage.

**MBC'S MATERIAL MISREPRESENTATIONS AND OMISSIONS**

39. As previously discussed, MBC promoted viaticals as investment products that offered no speculative or stock market risk. Prospective investors were told that MBC could secure the investor's financial future and cautioned investors not to "gamble your financial future with high risk investments." MBC's marketing literature exclaimed that its viaticals offer "a unique opportunity for the serious minded and profit motivated individual who does not wish to risk their underlying principal."

40. At least with respect to MBC's viatical sales effected between 1995 and 1999, agents generally followed MBC's marketing literature. Agents represented that investments in a viatical settlement present little to no risk and provide returns that were higher than most other investments. Agents claimed MBC viaticals were a "solid" "no gamble" "guaranteed" "fully insured" investment always emphasizing that investors could not lose any money. Agents misrepresented or omitted to tell investors about the potential risks.

41. Investors were not advised of the detrimental effect on the investors' profits should the viator live beyond the projected life expectancy. For example, a viator with a three-year life expectancy might be marketed as providing a 42% return. MBC maintains the investor will always receive a fixed 42% return on the investor's principal investment. However, if the policy maturity date extends beyond the three year period, the annual rate of return or yield decreases substantially. Furthermore, the purchase agreements obligate the investor to pay premium payments after a certain point, thus the return, regardless of whether it is characterized as a fixed or annual return, may be eliminated. In fact, the investor could actually lose all of his or her investment.

42. Agents also failed to provide investors with financial information with which to determine the continuing ability of MBC or the trustee to pay premiums until maturity of a policy or to

explain to investors the risk that they might ultimately be responsible for paying the premiums on the underlying insurance policies should the viator outlive the projected life expectancy or should any established premium reserve be exhausted.

43. Investors were given no detailed information about the principals or business background of MBC or any other organization involved in MBC's viaticals disclosed in MBC's marketing literature. For example:

a. MBC did not disclose its regulatory problems. MBC did not disclose to investors that its founders, Joel Steinger and Leslie Steinger sustained $950,000 in civil sanctions from the United States Securities and Exchange Commission ("SEC") in 1998 for causing MBC to sell unregistered securities and making misrepresentations in connection with those sales. From October 1994 through April 1996, MBC sold approximately $100 million dollars worth of unregistered viatical settlements nationwide, including sales in Arizona. MBC misrepresented to investors that the investors held irrevocable interests in certain policies when they did not. MBC further misrepresented that investor funds were held in a special trust account when that account was simply an MBC checking account.

b. MBC holds itself out as an organization that "...strongly believe[s] in giving back to the community and [has] donated millions of dollars to a whole host of charitable organizations, locally and nationally including:...The Ryan White Foundation, [and] CenterOne of Broward County...." MBC did not disclose to investors that the interests of MBC principals, Steven Steiner; one of MBC's purported independent reviewing physicians, Dr. Clark Mitchell; and the purported independent trustee used by MBC, Anthony Livoti, are or were involved in associated businesses thereby presenting potential conflicts of interests and self-dealing. For example, Steiner and Livoti were and are principals in Community Healthcare/CenterOne, Inc.[1] and Mitchell was a principal through at least through 1998.

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[1] Community Healthcare/CenterOne, Inc. was formed from the 2001 merger of Community Healthcare of Broward, Inc. and CenterOne, Inc. Community Healthcare of Broward, Inc. was formerly the Ryan White Foundation for Medical

c. MBC did not disclose to investors that it was subject to a rescission order in the Commonwealth of Virginia in 2000 as a result of its selling unregistered securities.

d. MBC did not disclose to investors that it was subject to a 2001 cease and desist order in Vermont as a result of its selling unregistered securities and making misrepresentations in connection with those sales.

44. MBC markets its viatical program as a humanitarian effort. In return for selling his or her life insurance policy the viator receives cash purportedly to allow the viator to live his or her final days in greater comfort. Investors believe their investment funds are being given to the viator for this humanitarian purpose. While some portion of the investor's funds is paid to the viator, investors had no idea of how little of their funds are actually paid to the viator. In fact, investors were given no information about the use of their investment funds, such as the cost to purchase the policy and the fees and commissions payable to the various parties and participants in the program. For example, a policy with a face value of $100,000 insuring a viator with a three-year life expectancy might be purchased by MBC for $70,423. Of the purchase amount only $29,000 goes to the viator while $41,423 is paid in commissions, expenses, fees and funds escrowed to pay policy premiums. In fact, commission payments exceed 18%. None of this information was made known to potential investors.

45. A key component of a viatical settlement involves the projected life expectancy of the insured. The projected life expectancy determines both the price an investor pays to purchase a viatical settlement and the return MBC advertises the investor is likely to realize. For investors, the projected life expectancy assigned by MBC was a material factor in making their investment decision.

46. MBC through its sales agents mislead investors by minimizing the risk that viators would live beyond their projected life expectancies. MBC agents virtually guaranteed investors that

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Treatment, Inc. which was formerly the American Aids Foundation. Steven Steiner was and is a principal and director of these corporations.

viators would die within or close to the life expectancy period established by MBC. Implicitly, the purportedly "independent" physician's review of a viator's medical records was trustworthy and credible. Some purchasers who were financially unsophisticated and lacked prior investment experience, accorded considerable weight to the independent physician's estimate of life expectancy. Even investors who had prior investment experience considered the independent reviewing physician's opinion important in making their investment decision.

47. One of MBC's purported independent physicians was Clark C. Mitchell, M.D. In letters provided to Arizona investors, Dr. Mitchell stated he had reviewed the viator's medical records and personally spoken with the viator's physician in order to establish the viator's life expectancy.

48. At least two viator attending physicians maintain they never spoke with Dr. Mitchell regarding the condition, treatment or anticipated life expectancy of the viator. Furthermore these attending physicians maintain that neither they nor their office staff provided the viator's medical records to Dr. Mitchell. Thus, at least with respect to two viators, Dr. Mitchell lied when he told investors that he had spoken with the viator's physician.

49. In light of Dr. Mitchell's conduct, MBC committed a material misrepresentation of fact when it provided Arizona investors with sales material stating that the viators' life expectancies had been established by an independent physician reviewing the patient's history and medical records.

50. Furthermore, MBC made a material misrepresentation of fact when it advised investors that the viator's physician would have verified and validated that the viator was of sound mind prior to the investor purchasing the viatical. At least with respect to one attending physician, no verification or validation was given to MBC.

51. Certain sales literature distributed by MBC uses the phrase "rate of return" in describing the purported financial benefits of a viatical settlement. Indeed, under the caption "The Truth About Viatical Settlements," one MBC brochure states that viatical settlements offer investors "the potential for earning a superior rate of return."

52. MBC's use of the phrase "rate of return" in its sales literature is misleading and has the potential to compound the confusion created by MBC's false statements about the independence and reliability of its life expectancy projections. In investment terminology, the phrase "rate of return" describes "[t]he annual percentage of return on investment...." Black's Law Dictionary 1135 (5th ed. 1979). Viatical settlements do not offer annual returns but rather offer a single fixed return that is payable only when the viator dies, whether that occurs within the viator's projected life expectancy or many years thereafter. Moreover, if a viator lives beyond his or her life expectancy, as many of MBC's viators have, the fixed return, expressed on an annualized basis, significantly decreases to the detriment of the investor. Some of MBC's investors did not understand that they would never receive more than the stated fixed return or that the longer the viator lived the less they would earn on an annualized basis.

53. Other misrepresentations and omissions include but are not limited to:

a. Some investors were not told that viatical settlement contracts are illiquid investments and that there would be no public market available for resale or other disposal of their investment.

b. Agents did not disclose, discuss or explain that viaticals may not be a suitable investment for persons who have a need for a regular income from their investments.

c. Agents did not disclose, discuss or explain that a viatical might not be an appropriate investment for an IRA account because an investment made with IRA funds may require mandatory withdrawals before the investment itself matures, thereby resulting in adverse tax consequences for the investor.

f. Agents did not disclose, discuss or explain that parties to the transaction, such as the selling agent, MBC, service providers such as Viatical Services Inc ("VSI"), and any medical advisors or other participants receive their commissions and fees up front, thus the investor is reliant on the continuing operations of some if not all of these parties in order to receive a return.

g. Agents failed to provide investors with information that would allow them to verify the existence and terms of a policy or its provisions prior to actually purchasing the viatical.

h. Agents did not discuss or explain that an insured person, having received payment on the policy, may fail to comply with requests for continued contact, and may in fact become impossible to locate thereby jeopardizing their investment.

i. Agents failed to advise investors that medical advisors may have misdiagnosed or miscalculated the extent and gravity of an insured's condition.

54. MBC and its agents' misleading and omissive statements have caused actual harm to Arizona investors because many of the viatical settlements sold by MBC have not come close to performing and providing the financial benefits as represented.

**IV.**

**VIOLATION OF A.R.S. §44-1841**

**(Offer or Sale of Unregistered Securities)**

55. From in or about March 1995 through January 2003, MBC offered or sold securities in the form of viatical and life settlement investment contracts within or from Arizona.

56. The securities referred to above were not registered pursuant to the provisions of Articles 6 or 7 of the Securities Act nor were they exempt from registration pursuant to Article 4 of the Securities Act.

57. This conduct violates A.R.S. §44-1841.

**V.**

**VIOLATION OF A.R.S. §44-1842**

**(Transactions by Unregistered Dealers or Salesmen)**

58. From in or about March 1995 through January, 2003, MBC offered or sold securities within or from Arizona, while not registered as a dealer or salesmen pursuant to the provisions of Article 9 of the Securities Act or exempt from registration pursuant to Article 4 of the Securities Act.

59. This conduct violates A.R.S. §44-1842.

## VI.

## VIOLATION OF A.R.S. §44-1991

**(Fraud in Connection with the Offer or Sale of Securities)**

60. In connection with the offer or sale of securities between 1995 through 2003 within or from Arizona, MBC directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts which were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; and (iii) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon offerees and investors. MBC's conduct includes, but is not limited to, the conduct set forth in paragraphs 10-54 above.

61. This conduct violates A.R.S. §44-1991.

62. MBC directly or indirectly controlled persons within the meaning of A.R.S. §44-1999. Therefore, MBC is liable to the same extent as controlled persons for their violations of A.R.S. §44-1991.

63. MBC made, participated in or induced the sale of a security within the meaning of A.R.S. §44-2003(A). Therefore, MBC is jointly and severally liable for the above violations of A.R.S. §§44-1841, 44-1842 and 44-1991.

## VII.

## REMEDIES PURSUANT TO A.R.S. §44-1850

**(Denial or Revocation of Exemption)**

64. MBC's conduct is grounds to deny its use of the exemption under A.R.S. §44-1850 pursuant to §44-1850(D)(5) . Specifically, MBC has failed to reasonably supervise its sales agents.

## VIII.

## REQUESTED RELIEF

The Division requests that the Commission grant the following relief against MBC:

1. Order MBC to permanently cease and desist from violating the Securities Act, pursuant to A.R.S. §44-2032(1);

2. Order MBC to take affirmative action to correct the conditions resulting from its acts, practices or transactions, including a requirement to:

   a. provide the Commission with a full and complete accounting within 30 days of the entry of an Order by the Commission, of all viatical and life settlement sales made to Arizona residents, including all sales that have matured, pursuant to A.R.S. §44-2032(1);

   b. make restitution to each and every Arizona resident who purchased a MBC viatical and whose viatical has not yet paid, including purchasers whose viaticals are estimated to mature at a future date; such restitution payments plus interest at the statutory judgment rate to be made within 120 days of the entry of an order of restitution by the Commission; and

2. Order MBC to pay the state of Arizona administrative penalties of up to five thousand dollars ($5,000) for each violation of the Securities Act, pursuant to A.R.S. §44-2036;

3. Order the denial of MBC's use of the registration exemption under A.R.S. §44-1850;

## IX.

## HEARING OPPORTUNITY

MBC may request a hearing pursuant to A.R.S. §44-1972 and A.A.C. R14-4-306. **If MBC requests a hearing, MBC must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. MBC must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. A Docket Control cover sheet must accompany the request. A cover sheet form and instructions may be obtained from Docket Control

by calling (602) 542-3477 or on the Commission's Internet web site at www.cc.state.az.us/utility/forms/index.htm.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made, the Commission may, without a hearing, enter an order against MBC granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shelly M. Hood, Executive Assistant to the Executive Secretary, voice phone number 602/542-3931, e-mail shood@cc.state.az.us. Requests should be made as early as possible to allow time to arrange the accommodation.

## X.

## ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if MBC requests a hearing, MBC must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice of Opportunity for Hearing. A Docket Control cover sheet must accompany the Answer. A cover sheet form and instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.cc.state.az.us/utility/forms/index.htm.

Additionally, MBC must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007, addressed to Phillip A. Hofling, Esq.

The Answer shall contain an admission or denial of each allegation in this Notice and the original signature of MBC or MBC's attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

When MBC intends in good faith to deny only a part or a qualification of an allegation, MBC shall specify that part or qualification of the allegation and shall admit the remainder. MBC waives any affirmative defense not raised in the answer.

The officer presiding over the hearing may grant relief from the requirement to file an Answer for good cause shown.

Dated this 25th day of April, 2003.

Mark Sendrow

Mark Sendrow
Director of Securities