

Focus On Advanced Sales  
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## NEW YORK INSURANCE DEPARTMENT ISSUES OPINION ON CERTAIN PREMIUM FINANCING TRANSACTIONS

The Office of General Counsel of the New York Insurance Department recently issued an Opinion finding that certain premium financing arrangements are not permissible under New York law. The transaction considered in the Opinion is structured as follows:

Third party lenders propose to loan money to high net worth clients in order to purchase life insurance policies. There is an option agreement to sell the policy to a third party (generally a hedge fund) on a predetermined date which is at least 2 years from the date of the loan. The loan matures on a date on or after the exercise date in the option agreement. The purchase price is set at a predetermined formula sufficient to repay the loan plus interest. The customer is not obligated to sell the policy but is liable for the ongoing premium as well as loan and interest repayment if he does not. Furthermore, a bank guarantees the obligations of the hedge fund to purchase the policy.

The Opinion states that these transactions are not permissible for the following reasons:

1. The policies do not appear to be bought by the customer "on their own initiative" as required by New York Insurance Law.
2. The hedge funds do not appear to have a sufficient insurable interest, resulting in the transaction potentially involving the purchase of the policy solely as a speculative investment for the benefit of a disinterested third party;
3. Potential rebating violations as the insured could recoup the premiums paid and thereby receive free coverage for the initial two year period, arguably an inducement to enter into the transaction.

### Planning Considerations:

1. This Opinion is valid only in New York. However, it is likely that we will see more opinions on it now that New York has done so.
2. Not all premium financing plans fall under this Opinion. There are still viable premium financing arrangements available. Be sure that your customers are advised by their own legal counsel prior to entering into a premium financing transaction. An

attorney or legal opinion provided by the plan marketer is not enough to protect you or your customer.

AIG Life Brokerage Group has retained the law firm of FRIEDMAN & DOWNEY, P.C., as national counsel for estate and business planning to answer your questions about advanced sales cases. We practice in the areas of business and estate planning and advise insurance companies and agents about marketing issues. We also conduct advanced sales seminars and write articles about life insurance for the Journal of Financial Service Professionals (formerly the CLU JOURNAL), The National Underwriter, and law reviews.

#### HOW TO CONTACT DOUG FRIEDMAN and HEATHER DOWNEY

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