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Via mchughj@sec.gov and regular mail

Mary L. Shapiro, Chairwoman
c/o Jennifer McHugh, Senior Advisor to the Chairman
The United States Securities & Exchange Commission
100 F Street NE Room 10734
Washington DC 20549

RE: SEC Life Settlements Task Force Staff Report Recommendations

Dear Chairwoman Shapiro and members of the Commission:

The American Council of Life Insurers (ACLI) appreciates the establishment of the SEC Life Settlements Task Force and congratulates your staff on accomplishing a useful analysis of the life settlements market. ACLI has evaluated the SEC Task Force recommendations published on 22 July 2010 and comments below on each of the five recommendations. Briefly by way of introduction to this letter, ACLI finds that:

1. Regarding the recommendation that the Commission should consider recommending to Congress that it amend the definition of "security" under the Federal securities laws to include life settlements, ACLI generally agrees but takes exception to certain details of the SEC Task Force recommendation.
2. Regarding the recommendation that the Commission should instruct staff to continue to monitor that legal standards of conduct are being met by [settlement] brokers and providers, the ACLI agrees.
3. Regarding the recommendation that the Commission should instruct the staff to monitor for the development of a life settlement securitization market, the ACLI respectfully disagrees and recommends instead that the Commission take action to prohibit by regulation or recommend to Congress to prohibit by law the securitization of life settlements.
4. Regarding the recommendation that the Commission should encourage Congress and state legislators to consider more significant and consistent regulation of life expectancy underwriters, the ACLI is neutral.
5. Regarding the recommendation that the Commission should instruct the staff to consider issuing an investor bulletin regarding investments in life settlements, the ACLI agrees and recommends consideration of even more forceful action in light of the continuing reports of investor abuse by settlement investment promoters.

The ACLI perspective is developed below by SEC Task Force recommendation.

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The Commission should consider recommending to Congress that it amend the definition of “security” under the Federal securities laws to include life settlements

The first recommendation of the SEC Task Force is premised on several analytical sub-parts that warrant more granular evaluation and comment. ACLI here comments upon three sub-parts of the SEC Task Force recommendation.

First, ACLI agrees with the recommendation that SEC should recommend that Congress should amend Federal law to define “security” to include viatical and life settlements. Such a recommendation should specifically exclude from the federal securities laws the sale of a policy by the insured or original policy owner. The exclusion, of course, implicitly respects the functional regulation by state insurance officials of the insurance policy itself and the numerous state laws enacted to regulate the life settlement transaction as one intended to benefit the original owner of the insurance policy. ACLI notes that it also supports state enactment of the Uniform Securities Act, which also defines a viatical settlement as a “security” for purposes of state securities regulation.

Second, ACLI agrees with the recommendation that life settlements be excluded from the definition of “security” for purposes of Securities Investor Protection Act (SIPA) coverage. As documented by the SEC Task Force and as evidenced by the persistent reports by officials and media of abusive investment schemes involving life settlements, the secondary market for insurance products is dangerous. The exclusion of life settlements for purposes of SIPA coverage has two benefits: (1) it warns investors of the relatively greater risks of the investment class, and (2) it eliminates the misuse of SIPA coverage as a marketing tool for settlement investment promoters attempting to assuage investor concerns about the dangers of investing in life settlements.

Third, ACLI disagrees with the SEC Task Force recommendation that all insurance producers and settlement brokers be regulated under the federal securities laws and hence obliged to obtain a federal license in addition to the state license(s) now required of them. It is well-established that an insurance producer is an agent of the insurer, and that the settlement broker (including a producer acting in the capacity of a settlement broker) is an agent of the viator or policy owner. It is also well-established in the 29 states with modern settlement laws that the settlement broker has a fiduciary duty to the policy owner. With the producer and the settlement broker clearly responsible to insurance authorities with regard to their specific roles in any insurance policy origination or settlement on behalf of a policy owner, there is no apparent justification to visit securities licensing requirements upon the insurance producer or settlement broker. At the same time, it is appropriate to require that settlement *providers* obtain a federal securities license since the provider is representing investors and purchasers of life insurance policies for investment purposes.

The Commission should instruct staff to monitor that legal standards of conduct are being met by settlement providers

The ACLI agrees that the Commission should instruct the Staff to help ensure that settlement *providers*, as well as other participants in the settlement transaction, are adequately discharging their obligations under the federal securities laws and FINRA rules. Action by FINRA and the SEC could include examination and enforcement efforts, consideration of whether existing licensing schemes should be expanded, as well as investor education efforts.

SEC staff monitoring might also extend to settlement transactions in the states lacking modern

life settlement laws, especially since some of these states indicate substantial settlement predatory investment activity. ACLI support for this SEC Task Force recommendation is consistent with ACLI policy supporting the enactment of the NAIC *Viatical Settlement Model Act*, which includes optional provisions to heighten supervision of settlement providers and “settlement purchasers.” The NAIC model further recommends that each state, in evaluating whether to modernize its settlement laws, consider whether state securities supervision of settlement activity is adequate.

The Commission should take action to prohibit by regulation or recommend to Congress to prohibit by law the securitization of life settlements

ACLI disagrees with the SEC Task Force recommendation that the Commission instruct the staff to monitor for the development of a life settlement securitization market. The ACLI recommends the prohibition of the securitization of life settlements. The ACLI public policy statement recommending prohibition of the securitization of life settlements is appended to this letter. ACLI shares SEC staff concern about the lack of information about settlement securitization activity, especially because securitizations may be attempted in reliance upon exemptions from SEC registration.

ACLI is neutral regarding the recommendation that the Commission encourage Congress and state legislators to consider more significant and consistent regulation of life expectancy underwriters

Many observers believe that the business of life settlements is based on one or more fundamental flaws that eventually will disprove the viability of a commercially viable mass market for traded insurance policies. Secondary market life expectancy evaluations are examples of where fundamental flaws likely exist. The disturbing results of debased life expectancy evaluations have been revealed in the past year by investors, the media and trial lawyers. The ACLI sees little value in expending legislative or regulatory resources to attempt to fix a key that by its very nature cannot unlock flawed business models.

The Commission should instruct the staff to consider issuing an investor bulletin regarding investments in life settlements and take even more forceful action in light of the continuing reports of investor abuse by settlement investment promoters

Investors continue being lured into risky life settlement ventures despite almost weekly revelations of danger, fraud and unrealistic promises of extraordinary returns. Ominously, reports are being published of managers of public retirement and pension funds considering investments in life settlements in a stretch for returns sufficient to remediate years of underfunding of retirement commitments. ACLI encourages the Commission to issue investor bulletins emphasizing the risks of investing in life settlements and take other actions to safeguard individual and institutional investors. This might include efforts to amplify the difficulties of evaluating life settlement investments; focus on public pension and retirement fund investment risks; periodic publication of investigations, media reports and judicial activities pertaining to life settlement investments; and consideration of the asset class as respectable from an evaluation of risks versus rewards.

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The ACLI is a national trade association with over 300 member companies representing more than 90 percent of the assets and premiums of the life insurance and annuity industry in the United States. Thank you in advance for your consideration of the observations and recommendations of the ACLI on the July 2010 recommendations of the SEC Task Force on Life Settlements.

Sincerely,



THE AMERICAN COUNCIL OF LIFE INSURERS
Michael Lovendusky
Vice President & Associate General Counsel

Appendix

STATEMENT OF THE ACLI REGARDING SECURITIZATION OF LIFE SETTLEMENTS

The American Council of Life Insurers (ACLI) recommends that the securitization of life settlements be prohibited by legislation or regulation.

Securitization may encourage promoters of these packages to prey upon senior citizens urging seniors to settle their life insurance policies even if a settlement is not in their economic best interests.

Insurers are also concerned about public policy implications of stranger-originated life insurance (STOLI), where promoters of life settlements induce seniors to buy life insurance policies that they would not otherwise purchase in anticipation of profit from the sale of the policy to investors at the end of the policy contestability period. Since there are only a limited number of insured individuals who want or need to sell their existing insurance policies and are of an age and expected mortality profile to be of interest to settlement providers, promoters of life settlement artificially manufacture new life insurance sales to generate an inventory of policies for investors. Seniors are offered a variety of inducements, including cash payments and promises of "free insurance" obtained through the use of forgivable premium financing, to participate in the fraudulent origination of policies.

Securitization of life settlements will exacerbate the STOLI problem. Securitization is a very effective means of market-making and encouraging rapid expansion of a "product", in this case, life settlement contracts. Promoters will use capital generated from securitization to create larger inventories of life settlement contracts which, in turn, will fuel more securitizations and more STOLI.

Life settlement securitization also poses risks for the investors purchasing settlement securities, sometimes referred to as "death bonds", "blood pools" and "collateralized death obligations". This is true for at least two reasons.

First, securitization divorces the life settlement provider from the ultimate risk associated with the purchase. The provider which purchases a senior's policy should be responsible for accurate settlement risk assessment and not insulated by securitization from such responsibility. This is

comparable to what happened with the mortgage securitization market, which facilitated and fueled the proliferation of subprime and "no-doc" mortgages. The ultimate risk to life settlement investors is that the senior will live longer than expected and hence "ruin" the investment return.

- Investing in a life settlement contract only makes economic sense when the insured person has a relatively predictable -- and shortened -- life span. The life settlement investors must pay premiums to keep the policy in force until the pay-day death of the insured. This cost, combined with the amount paid to acquire the rights to the death benefit and related broker fees, can exceed the death benefit if the insured lives "too long." Medical innovation, cures for disease and better elder care are detrimental to the value of the investment.
- Unlike the residential mortgage market, where there was a credible argument that securitization of mortgages freed capital for additional consumer lending, there is no capacity issue when it comes to the resale of existing life insurance policies. In fact, even without securitization, some promoters of life settlements have created artificial insurance transactions (STOLI) in order to fuel the demand for life settlement contracts. Investors in life settlement securitizations will have no hard assets as security for the inevitable default and fraud losses that attach to these investments with alarming regularity. This is unlike mortgage securitization, where there is at least some tangible asset base guaranteeing some value.
- Rating agency experts advise that there is no standard method and no common set of assumptions used by life settlement providers to predict the life expectancies of the insured seniors whose policies are being purchased, either at the time of the elderly owner's entry into the life settlement contract or at the time of a contract resale. They advise that, if there are no restrictions on the pooling and securitization of life settlement contracts, there is little incentive for life settlement providers to "get it right" in terms of medical underwriting and respect for insurable interest requirements.

Second, there is a lack of transparency for investors in the securitization since they are not permitted to perform due diligence by examining the settlement underwriting files. While protection of the personal medical information about the person whose life is insured is important, other details about individually settled policies and the senior lives which are insured are needed by investors for risk evaluation. This information includes the current age of each insured and his/her life expectancy, the amount paid to the policy owner for purchase of the life policy, future annual premium amounts, the date of each policy's issuance and when it was transferred (sold) to the life settlement provider. The amount and quality of information that will be made available to investors in life settlement securitizations is insufficient for any respectable securitization. This was a factor in some rating agencies declining the opportunity to rate life settlement pools.

In summary, securitization of life settlements presents dangers to the insured public and to the investors who buy the securities. The only constituencies without risk on securitization will be the life settlement brokers and providers, security underwriters and middlemen lawyers, accountants and rating agencies who will enjoy fee income. Inevitably, life settlement-backed securities will be contaminated with STOLI policies, which will then be passed on to unsuspecting pension funds and other far-removed investors. Since STOLI is prohibited or

statutorily restricted in over half the states and violates state insurable interest laws, these securities may be subject to regulatory enforcement actions or lengthy and costly litigation. The fact that there are now over 200 lawsuits involving life settlements – many filed by disgruntled investors – sounds a warning.

Securitization of life settlement contracts does not satisfy any consumer or societal need. Securitization will foster the proliferation of STOLI which undermines long-standing public policy that life insurance policies be supported by insurable interest at their inception. For these reasons, ACLI recommends that the securitization of life settlements be prohibited by law.

January 2010