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From: Fred Tarter [mailto:[REDACTED]]
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To: Dr. Henry Jarecki
Subject: AIG

The fact that settlements will soon be regulated by the SEC -- see below -- is good for the AIG deal, they conform to all of the regulations being discussed, once this asset class is recognized as a security it will be much easier to sell groups of them as bonds.... did you connect with Jeffrey?

Fred

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Life Settlement Investments Need to be Regulated

Should sales of life settlements be regulated as sales of securities? After eighteen months of a comprehensive review, the SEC's Life Settlements Task Force thinks so, and has asked the SEC to urge Congress amend the federal securities laws to bring this about, according to a September 12 InvestmentNews article called "Point/Counterpoint: Are life settlements essentially securities?"

A life settlement is a contract in which an insurance policyholder sells the insurance policy to someone else, who then assumes responsibility for paying the premiums. From the policyholder's point of view, the purpose of the transaction is to allow a policyholder to cash out of the policy for an amount greater than the cash surrender value but less than the death benefit. From the purchaser's point of view, it is an investment in the promise of a death benefit payout, similar to a zero coupon bond with an uncertain "maturity" date, and the key is not to pay too much for it.

Proponents of amending the federal securities laws to define a life settlement as a security point to the following benefits:

- It would allow the SEC to monitor brokers to determine whether appropriate standards of conduct are being met.
- It would facilitate the creation of a secondary market for life policies by giving participants confidence that it is not a "rigged game," which the present lack of uniform regulation and abusive industry practices are preventing.
- While courts and regulators have found investments in life settlements to be securities, a clear statutory definition and regulatory scheme would close legal loopholes that are being exploited by unscrupulous promoters.

According to the article: "Registering equities hasn't prevented the stock markets from becoming efficient. In fact, the presence of securities laws has been a major force in making equity markets more efficient and reliable over time." (Anti-regulation hawks should ponder that.)

Opponents argue that:

- The SEC already has the authority to treat life settlements as securities in "appropriate situations."
- It will "increase significantly transaction costs and diminish investor interest in the asset class."
- The law is already settled that "fractionalized interests" – sales of a policy to more than one investor – are securities. In the last fourteen years, "every court since, whether state or federal, has concluded that fractionalized interests in life settlements are securities."
- The sale of one policy to a single investor should be looked at differently than sales of fractionalized interests. The one-policy-one-investor situation should be analyzed under existing law pertaining to "investment contracts," which is known as the "catch-all" portion of federal definition of a security. Whether an investment is an "investment contract" and, thus a security, depends (and ought to depend) on a number of factors, including whether the investor is sophisticated (many investors are "institutional," therefore, sophisticated, according to opponents), and whether the investor expects to receive profits solely from the efforts of others.

It will be interesting to see whether the SEC adopts or rejects the recommendation of its Task Force in making recommendation to Congress about possible amendments to the securities laws.

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