

## Corporate & Financial Weekly Digest

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### **SEC Report Recommends Defining Life Settlements as "Securities"; GAO Releases Separate Study**

On July 22, the Securities and Exchange Commission released a staff report recommending that life settlements be clearly defined as "securities" for purposes of the federal securities laws in order to better protect investors.

The report was prepared by the Commission's Life Settlements Task Force, which had been created in August 2009 to examine emerging issues in the life settlements market and to advise the Commission on the need to improve market practices and regulatory oversight. The Task Force is comprised of members from multiple divisions of the Commission, including Corporation Finance, Enforcement, Investment Management, and Trading and Markets.

In its report, the Task Force noted that while a total of 45 states have adopted some form of life settlement legislation under their insurance laws, and 48 states treat life settlements as securities, these laws vary considerably. The Task Force also pointed out that life expectancy underwriters are not subject to significant regulation at the state level.

Accordingly, the report recommends that the full Commission consider proposing to Congress amendments to the definition of "security" in the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940 to include life settlements. By clarifying the legal status of life settlements, the Commission would help ensure more consistent treatment under both federal and state laws.

The classification of life settlements as "securities" would result, under the Exchange Act, in bringing market intermediaries under the jurisdiction of the Commission and Financial Industry Regulatory Authority; these intermediaries would be required to be registered in order to sell or trade life settlements and would be subject to a comprehensive set of requirements designed to protect investors from abusive practices and to promote business conduct that facilitates fair, orderly and efficient markets.

Making life settlements "securities" for purposes of the Securities Act would require that offers and sales be registered with the SEC unless an exemption from registration were available. This classification would mean that misstatements in offering materials, whether distributed in connection with a public transaction or a private sale, would be covered by the antifraud provisions of the act.

Under the Investment Company Act, amending the definition of "security" would mean that a pool of life settlements in which interests were offered to investors would be an "investment company" unless it qualified for an exemption. Pool investors would benefit from the comprehensive federal regulatory framework established by the act for investment companies.

For the SEC's press release, click [here](#); for the full task force report, click [here](#).

Also on July 22, the General Accounting Office (GAO) released its own study of life settlements addressing how the market is organized and regulated, and the challenges faced by policy owners, investors and others. Consistent with its effort to modernize the financial regulatory system, the GAO concluded that two key elements—consistent consumer and investor protection and consistent financial oversight for similar institutions and products—have not been achieved with respect to the life settlements market. Consequently, the GAO suggests that Congress consider taking steps to address these issues, including the possibility of creating a federal insurance regulatory entity.

For highlights of the GAO study, click [here](#); for the full study, click [here](#).

Katten Muchin Rosenman LLP  
Charlotte Chicago Irving London Los Angeles New York Washington, DC