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December 2, 2016

Office of Chief Counsel
Division of Investment Management
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Attn: Ms. Nadya B. Roytblat, Esq.
Mr. James M. Curtis, Esq.
Mr. Kieran G. Brown, Esq.

Re: **Liquidating Trust and Related Entity to be Created in Connection with
Bankruptcy-Related Dissolution of Life Partners Holdings, Inc., Life
Partners, Inc. and LPI Financial Services, Inc.**

Dear Ms. Roytblat and Messrs. Curtis and Brown:

On behalf of H. Thomas Moran II, as the Chapter 11 trustee (the "*Trustee*") for Life Partners Holdings, Inc. ("*LPHI*") and the sole director of Life Partners, Inc. ("*LPI*") and LPI Financial Services, Inc. ("*LPIFS*") and, collectively with LPHI and LPI, the "*Debtors*"), we respectfully request that the staff of the Division of Investment Management (the "*Staff*") confirm that it will not recommend any enforcement action to the Securities and Exchange Commission (the "*SEC*") if (i) a liquidating trust (defined elsewhere herein as the Position Holder Trust) and (ii) a related entity (defined elsewhere herein as the IRA Partnership) to be created pursuant to the reorganization transactions contemplated by the Revised Third Amended Plan of Reorganization, dated October 27, 2016 (the "*Plan*"),¹ filed by the Trustee, the Debtors and the Official Committee of Unsecured Creditors (the "*Committee*") appointed in the Debtors' bankruptcy cases (collectively, the "*Plan Proponents*") under Chapter 11 of the United States Bankruptcy Code (the "*Bankruptcy Code*"), do not register as investment companies under the Investment Company Act of 1940, as amended (the "*1940 Act*"), in reliance on the exemptions in Sections 7(a) and 7(b) of the 1940 Act for "transactions which are merely incidental to the dissolution of an investment company."

¹ A copy of the Plan is attached hereto as Exhibit A.

I. Background

A. **The Debtors, the Bankruptcy Proceedings and Related Matters**

The Debtors

LPHI is a holding company and the parent company of LPI, which is a specialty financial services company. From 1991 until 2014, LPI was engaged in the business of: (i) acting as a life settlement provider in purchasing individual life insurance policies from third parties (the “*Policies*”) and (ii) raising money to purchase the Policies by selling investment contracts to investors (the “*Investors*”), including investors who purchased their investments through their individual retirement accounts (the “*IRA Holders*”). The investment contracts were denominated as “fractional interests” in the Policies (“*Fractional Interests*”) or promissory notes relating to Fractional Interests (“*IRA Notes*” and, together with the Fractional Interests, the “*Fractional Positions*”). LPIFS, which is wholly-owned by LPI, was formed as a vehicle to bill and collect certain fees charged to Investors in connection with LPI’s activities.

Prior to the bankruptcy filings described herein, LPHI and LPI were defendants in numerous lawsuits commenced by the SEC, the State of Texas and certain Investors who purchased Fractional Positions, which alleged that LPHI and LPI had violated various federal and state securities laws in connection with the Debtors’ activities, including with respect to the sale of Fractional Positions to the Investors. In December 2014, the SEC obtained a \$38.7 million judgment against LPHI in connection with its lawsuit.

The Bankruptcy Proceedings

On January 20, 2015, LPHI filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas (the “*Bankruptcy Court*”) to avoid enforcement of the SEC’s judgment. On March 19, 2015, the Bankruptcy Court granted a motion filed by the SEC and supported by the U.S. Trustee’s Office, and appointed H. Thomas Moran II as the Trustee for LPHI.

Pursuant to further orders of the Bankruptcy Court, Mr. Moran was appointed as the sole director of each of LPI and LPIFS. On May 19, 2015, LPI and LPIFS filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court, and with the approval of the Bankruptcy Court, the Debtors’ cases are being jointly administered.

Related Matters

In May 2015, the Texas Supreme Court issued an opinion holding that the Fractional Positions sold by LPI are securities under Texas law, and that LPI is the legal owner of the Policies. Based in part on that decision, the Trustee has asserted that the Policies are assets of the Debtors’ estates. However, in the earlier proceedings of the Debtors’ Chapter 11 cases, many parties in interest vigorously contested that position and, as a result, there has been uncertainty as to the extent of LPI’s equitable (or beneficial) ownership of the Policies. The resulting issue has been referred to as the “*Ownership Issue*.”

B. The Plan and the Entities to be Created Pursuant to the Plan

The Plan

The Debtors' Chapter 11 bankruptcy cases have been designated by the Bankruptcy Court as complex Chapter 11 cases. The Debtors have over 90,000 creditors and parties in interest and control almost 3,400 Policies with an aggregate face amount of approximately \$2.3 billion. There are approximately 22,000 Current Position Holders (as defined below) and over 100,000 outstanding Fractional Positions.

During the course of the Debtors' Chapter 11 bankruptcy cases, the Trustee has been in negotiations with numerous parties over numerous issues, including the Ownership Issue and the path to reorganization. To resolve the Ownership Issue, the Trustee and the Debtors have negotiated a settlement agreement of pending class action litigation (the "**Class Action Settlement**"), pursuant to which Investors who currently hold Fractional Positions (collectively, the "**Current Position Holders**") will be provided with choices under the Plan for the treatment of their claims against the Debtors relating to their Fractional Positions. The Class Action Settlement has been approved by both the Bankruptcy Court and the U.S. District Court for the Northern District of Texas.

On June 24, 2016, the Bankruptcy Court approved the Disclosure Statement for the Plan (the "**Disclosure Statement**") and authorized the Plan Proponents to solicit votes on the Plan. A copy of the Disclosure Statement is enclosed herewith as Exhibit B. On November 1, 2016, the Bankruptcy Court entered its order confirming the Plan (the "**Confirmation Order**"), and a copy of the Confirmation Order is enclosed herewith as Exhibit C.

Entities to be Created Pursuant to the Plan

Under the Plan, the following three (or four) new legal entities will be created to implement the provisions of the Plan and to take required actions under the Plan:

- (1) **The Position Holder Trust** – Life Partners Position Holder Trust (the "**Position Holder Trust**") is a liquidating trust which will:
 - Own legal title to, and all beneficial and equitable title not represented by Continuing Fractional Interests (as defined below) in, almost 3,400 Policies purchased by LPI in life settlement transactions using the proceeds from LPI's sale of Fractional Positions; preserve and liquidate those Policy assets,²

² With respect to the liquidation of the Policies (or any Fractional Interests in any of the Policies), it is important to highlight that the Position Holder Trust will not be actively seeking to sell the Policies (or any Fractional Interests) and in most cases will likely have to hold the Policies (and its Fractional Interests therein) until maturity (i.e., the death of the insured). The reasons for this relate to the following factors:

- The fractional ownership model for life settlement policies makes it impossible to sell an entire Policy without the consent (and participation) of all owners of Continuing Fractional Interests, thus making the sale process very cumbersome and expensive.

including through a servicing contract with, or its ownership of, the Servicing Company (as defined below), and its ownership of the stock of LPI as a reorganized Debtor³ (“*Reorganized LPI*”) after the Plan becomes effective; and distribute the liquidating proceeds of those assets to holders of Position Holder Trust Interests (as defined below);

- Issue beneficial interests in the Position Holder Trust (the “*Position Holder Trust Interests*”) in satisfaction of claims against LPI to (a)(i) the current holders of Fractional Positions denominated as Fractional Interests who make

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- Under the Class Action Settlement and the Plan, the Position Holder Trust will not have the right to sell a Policy “out from under” the Continuing Fractional Holders.
 - In most liquidations, ownership of the assets held by the liquidating trust are not in question (i.e., the liquidating trust can sell 100% of the assets held by it without anyone else’s consent). Here, absent the Class Action Settlement (and the compromise of the Ownership Issue embodied therein), there would remain an active adversarial dispute over ownership of the Policies, making it virtually impossible to sell most Policies and, in turn, the Debtors’ Chapter 11 bankruptcy proceedings would likely have to be converted into a Chapter 7 liquidation (which would lead to the lapse of many Policies and the concomitant loss of significant value).
 - The key benefit of being a holder of a Fractional Interest is the possibility of a payout of 100% of the death benefit (“face amount”) associated with the Fractional Interest upon maturity of the Policy. Preserving the fractional ownership model (the right to continue to hold such a “lottery ticket”) is a cornerstone of the Class Action Settlement, and the Plan.
 - The Plan Proponents’ believe that the best way to maximize recoveries by the defrauded Investors who make up the vast majority of the creditors of the Debtors’ bankruptcy estate is to allow the portfolio of Policies to liquidate through maturity (i.e., a portfolio run-off), which will maximize the cash flow available to provide returns to the Investors.
 - Sales of life settlement policies never generate 100% of face amount, and many policies generate less than 10% of face amount, some only 1% or 2%, if they can be sold at all.
 - Although the Position Holder Trust will have authority to sell its fractional share of beneficial ownership in a Policy (i.e., the Fractional Interest), it will not be actively seeking to sell Fractional Interests for the same reasons it will not be actively seeking to sell Policies. Fractional Interests can be even harder to sell than entire Policies, and when they can be sold, they generally sell at an even greater discount to face amount thereof, given they are minority interests and subject to additional risks (e.g., the risk of lapse if any of the other fractional owners decides to stop paying its share of premiums; the inability to communicate with the insurance company regarding the Policy (as only the owner of legal title to the Policy has that right); etc.).
 - The Trustee’s projections (included in the Disclosure Statement) reflect that over time it is anticipated that the Position Holder Trust will return more than 50% of face value to those Investors who make Position Holder Trust Elections, which will amount to approximately 90% of invested capital. The recovery will be increased by any litigation recoveries in excess of the amount needed to pay general unsecured creditors, and any cost savings from the reserves included in the projections (primarily, savings in expenses reserved for securities compliance and investor protections).

³ Certain activities conducted in servicing the Policies can only be performed with a life settlement license from the Texas Department of Insurance, and similar licenses from comparable regulatory bodies in other states, and LPI currently possesses the required licenses. To the extent necessary after the Plan becomes effective, Reorganized LPI will continue to conduct those activities pursuant to its licenses while the new Servicing Company obtains its own, to the extent required.

either a Continuing Holder Election or a Position Holder Trust Election (each as defined below), and (ii) IRA Holders who make a Conversion Election (as defined below) to receive a Fractional Interest, and (b) the IRA Partnership (as defined below) with respect to Investors who (i) are IRA Holders, and (ii) make a Continuing Holder Election or a Position Holder Trust Election;

- Issue new, secured promissory notes (“*New IRA Notes*”) in satisfaction of claims against LPI to IRA Holders who make a Continuing Holder Election; and
 - In addition to distributing the liquidating proceeds of the assets contributed to it as provided in the Plan, distribute to the holders of Position Holder Trust Interests any funds received by it as the residual beneficiary of the Creditors’ Trust (as defined below) and proceeds of any Fractional Interests assigned to the Position Holder Trust as a result of the prosecution of the causes of action assigned to the Creditors’ Trust (“*Recovered Assets*”) or as part of any contribution to be made to the Creditors’ Trust by the SEC as a result of its actions against the former management of the Debtors and other parties involved in the pre-bankruptcy fraud scheme (“*Fair Funds*”).
- (2) **The IRA Partnership** – Life Partners IRA Partnership, LLC (the “*IRA Partnership*”) will (a) issue limited liability company interests (the “*IRA Partnership Interests*”) in satisfaction of claims against LPI to IRA Holders who make a Continuing Holder Election or a Position Holder Trust Election, and (b) hold Position Holder Trust Interests issued under the Plan with respect to those elections.
- (3) **The Creditors’ Trust** – Life Partners Creditors’ Trust (the “*Creditors’ Trust*”) will (a) pursue litigation and other causes of action assigned to it under the Plan and (b) distribute the net proceeds collected by it to the holders of interests in the Creditors’ Trust (the “*Creditors’ Trust Interests*”), which will consist of the current holders of Fractional Positions who make a Creditors’ Trust Election (as defined below) and other holders of allowed general unsecured claims against LPI, including the SEC in satisfaction of its judgment claim against LPHI.⁴ As discussed above, the Position Holder Trust will have a residual interest in the Creditors’ Trust, including with respect to any Fair Funds contributed to the Creditors’ Trust by the SEC from its actions against the former management of the Debtors and other parties involved in the pre-bankruptcy fraud scheme.
- (4) **The Servicing Company** – The Plan contemplates that a third party, Vida Capital, Inc. (“*Vida*”), will act as the servicing company (the “*Servicing Company*”) to (a) provide services in connection with the maintenance and collection of benefits of the Policies after the effective date of the Plan (the “*Effective Date*”) and (b) provide investor account and other administrative

⁴ Under the Plan and Creditors’ Trust Agreement, distributions allocated to the SEC’s Creditors’ Trust Interest will be reallocated and distributed to Investors who are holders of Creditors’ Trust Interests, and after those Investors receive a full recovery, to the Position Holder Trust for distribution to its beneficiaries, all of whom are Investors.

services to the Position Holder Trust and the Continuing Position Holders relating to the Continuing Fractional Interests and New IRA Notes outstanding after the Effective Date (together, the “*Continuing Positions*,” with the holders thereof referred to as the “*Continuing Position Holders*”), as well as the outstanding Position Holder Trust Interests and IRA Partnership Interests, including maintaining or engaging a third party to maintain the ownership registers for the Continuing Fractional Interests, Position Holder Trust Interests and IRA Partnership Interests (collectively, “*New Interests*”) and the New IRA Notes. If for any reason Vida does not act as the Servicing Company, a new subsidiary wholly owned by the Position Holder Trust (“*Newco*”) will be formed to act in that capacity, and until Newco’s formation is completed and it has obtained all necessary licenses, Reorganized LPI will act as the Servicing Company.⁵

Election Options under the Plan

The Plan contains a feature that allows Current Position Holders to elect which treatment they would like under the Plan for their claims related to their Fractional Positions. For each Fractional Position held, a Current Position Holder generally may choose one of three (or four with respect to IRA Holders) alternative elections, to be effective on the Effective Date, as summarized below.⁶

Option 1: Continuing Holder Election – A Current Position Holder may elect to become a Continuing Position Holder with respect to a Fractional Position. The holder of a Fractional Interest that elects this option will (a) receive confirmed status as the owner of 95% of the Fractional Interest with respect to which the election was made (a “*Continuing Fractional Holder*” of a “*Continuing Fractional Interest*”), (b) make a contribution of the remaining 5% of the Fractional Interest (a “*Continuing Position*”).

⁵ During the bankruptcy proceedings, the Plan Proponents negotiated a term sheet with Vida, a copy of which is attached to the Disclosure Statement as Exhibit G (the “*Vida Term Sheet*”). Since then, they have negotiated a definitive Vida Plan Collaboration Agreement (the “*Vida Plan Collaboration Agreement*”) providing for the transactions contemplated by the Vida Term Sheet, and the Vida Plan Collaboration Agreement was approved by the Bankruptcy Court in the Confirmation Order. Under the Vida Plan Collaboration Agreement, Vida has committed to provide the financing necessary to implement the transactions contemplated by the Plan to occur on the Effective Date. If the transactions under the Vida Plan Collaboration Agreement are not completed for any reason, such financing will be provided in the form of the Maturity Funds Facility as provided for in the Plan, which is the same source of financing previously approved by the Bankruptcy Court, unless replaced by another source of exit financing provided by a third-party other than Vida. The financing provided by Vida will accelerate distribution of pre-Effective Date maturity proceeds following the Effective Date, a result argued for by several interested parties. In addition, Vida will purchase the right to provide services as the Servicing Company in exchange for the servicing fee provided for under the Plan. Vida has all life settlement licenses required to conduct all of the activities necessary in providing services under the servicing agreement with the Position Holder Trust. As a result, if Vida is the Servicing Company as anticipated, it will not be necessary to form Newco or obtain life settlement licenses for it.

⁶ Under the Plan, current holders of Fractional Interests who make no election will be treated as having made a Continuing Holder Election. Current IRA Holders who make no election will be treated as having made a Position Holder Trust Election.

Holder Contribution)⁷ to the Position Holder Trust in exchange for a Position Holder Trust Interest, and (c) have responsibility to pay all premiums and other charges (including servicing fees) related to the Continuing Fractional Interest after the Effective Date. An IRA Holder that elects this option (a **“Continuing IRA Holder”**) will (a) receive a New IRA Note issued by the Position Holder Trust in exchange for the Investor’s allowed claim against the Debtors relating to the Fractional Position, (b) make a Continuing Position Holder Contribution to the IRA Partnership (which will in turn be contributed by the IRA Partnership to the Position Holder Trust), and (c) be relieved of all future obligations to pay any premiums or other required charges after the Effective Date related to the Fractional Position or any of the Policy interests pledged as collateral for the New IRA Notes.

Option 2: Position Holder Trust Election – A Current Position Holder may elect to become the holder of a Position Holder Trust Interest or IRA Partnership Interest (an **“Assigning Position Holder”**) by contributing 100% of a Fractional Position to the Position Holder Trust (directly or through the IRA Partnership). A holder electing this option for a Fractional Position will (a) either (i) exchange a Fractional Interest for a Position Holder Trust Interest (an **“Assigning Fractional Holder”**) or (ii) exchange an IRA Note for an IRA Partnership Interest (an **“Assigning IRA Holder”**), and (b) be relieved from responsibility to pay premiums or other required charges related to the Fractional Position exchanged.

Option 3: Creditors’ Trust Election – A Current Position Holder may elect to rescind the purchase of a Fractional Position and thereby become the holder of a Creditors’ Trust Interest (a **“Rescinding Position Holder”**), and be entitled to share in distributions from the Creditors’ Trust.

Option 4: Conversion Election – In addition to the three options listed above, a current IRA Holder will have a fourth option (the **“Conversion Election”**), which entails (a) a distribution of the IRA Note to the individual owner thereof in exchange for a Fractional Interest owned outside of an individual retirement account and (b) a Continuing Holder Election by the individual owner with respect to the Fractional Interest (who will thereby become a Continuing Fractional Holder).⁸

Management Structure of the Position Holder Trust and the IRA Partnership

The trustee of the Position Holder Trust (the **“PHT Trustee”**) will administer and manage the assets of the trust consistent with the terms of the Plan and the Position Holder Trust Agreement (the **“PHT Agreement”**). The Plan Proponents proposed Mr. Eduardo S. Espinosa to

⁷ The 5% Continuing Position Holder Contribution is an integral part of the Plan and the Class Action Settlement, which is incorporated into the Plan.

⁸ By making the Continuing Holder Election, the individual owner will be subject to the same consequences as a Current Position Holder, as described above, including making the 5% Continuing Position Holder Contribution.

serve as the PHT Trustee.⁹ The PHT Trustee will also serve as the sole manager of the IRA Partnership. The Confirmation Order approves Mr. Espinosa serving as both PHT Trustee and manager of the IRA Partnership.

The Position Holder Trust will also have a trust board (the “*Trust Board*”) composed of five members who are not “interested persons” of the Debtors or the Position Holder Trust as defined in Section 2(a)(19) of the 1940 Act, with duties and obligations as specified in the PHT Agreement. The initial members of the Trust Board, as approved in the Confirmation Order, include the three individual Investors who currently serve as the members of the Committee and two other individuals designated by the Plan Proponents, both of whom have relevant experience in the life settlement industry. In addition to meeting and consulting with the PHT Trustee regarding the administration of the trust, the Trust Board will have authority to approve certain “Major Decisions” specified in the PHT Agreement, including among other things, approval of proposed monthly budgets, proposed disposition of any Policy interest or other assets, distributions to beneficiaries, borrowings, and decisions to stop paying premiums on any Policy.

Compensation to be Paid by the Position Holder Trust and the IRA Partnership

The table below sets forth a description of the compensation for services and other expenses that the Position Holder Trust and the IRA Partnership would pay subsequent to the Effective Date, the general amounts thereof, to whom such amounts would be paid and who would be responsible for approving the payment of such amounts.¹⁰

| <u>Payer</u> | <u>Obligation</u> | <u>Amount</u> | <u>Payee</u> | <u>Approval</u> |
|-----------------------|--|---|----------------------------|--|
| Position Holder Trust | Premiums on the Policies ¹¹ | As required by the Policies | Various insurance carriers | Insurance carriers and state regulatory authorities, as applicable |
| Position Holder Trust | Servicing fees ¹² | 2.65% of maturity proceeds of each Policy, paid upon maturity thereof | Servicing Company | Bankruptcy Court, by confirmation of the Plan |
| Position Holder | Compensation of the | \$400 per hour, plus | The PHT Trustee | Bankruptcy Court, |

⁹ Mr. Espinosa was selected after an interview process conducted by the Plan Proponents. He is currently serving as the receiver in the Retirement Value, LLC receivership proceeding, which also involves a life settlement portfolio. For more information about Mr. Espinosa and the Retirement Value, LLC receivership proceeding, please see www.rvllcreceivership.com.

¹⁰ The fees and expenses of the Position Holder Trust and the IRA Partnership will be funded out of the Position Holder Trust’s share of the portfolio cash flow produced by the Policies, as detailed in Exhibits C and D to the Disclosure Statement. Projected cash flows have been updated to reflect actual elections made by Current Position Holders and other events that have occurred since the Disclosure Statement was filed in June 2016, and introduced into evidence during the confirmation hearing. The projected cash flows are not materially different from those set forth in the Disclosure Statement exhibits.

¹¹ Continuing Fractional Holders will be obligated to pay their pro rata share of premiums, which will be collected by the Servicing Company.

¹² Continuing Fractional Holders will be obligated to pay servicing fees on their pro rata share of maturities, which will be paid to the Servicing Company out of the maturity proceeds when collected.

| <u>Payer</u> | <u>Obligation</u> | <u>Amount</u> | <u>Payee</u> | <u>Approval</u> |
|-----------------------|--|--|--|---|
| Trust | PHT Trustee | reimbursement for reasonable and necessary business expenses | | by confirmation of the Plan |
| Position Holder Trust | Compensation to Trust Board members | \$40,000 to \$50,000 annually, in the aggregate | Trust Board members | Bankruptcy Court, by confirmation of the Plan |
| IRA Partnership | Compensation to the manager of the IRA Partnership | \$400 per hour, plus reimbursement for reasonable and necessary business expenses | Manager of IRA Partnership This position will also be filled by the PHT Trustee | Bankruptcy Court, by confirmation of the Plan |
| Position Holder Trust | Fees and expenses for trust accounts, securities intermediary services, trust indenture trustee services, etc. | To be determined (arms' length terms after request for proposal process, which is ongoing) | Third-party depositories, custodians and intermediaries | Plan Proponents initially, PHT Trustee and Trust Board for any new arrangements going forward |
| Position Holder Trust | Bankruptcy costs (administrative claims, professional fees, etc.) | To be determined (Exhibit D to Disclosure Statement has current estimate) | Trustee and professionals engaged by the Debtors | Bankruptcy Court |

II. Discussion

Section 8 of the 1940 Act requires companies that are “investment companies” to register with the SEC thereunder. Pursuant to relevant provisions of Section 3(a) of the 1940 Act, an entity is an investment company if it:

- (1) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities or
- (2) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 percent of the value of such issuer’s total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

Based on our discussions with the Staff, we understand that the Position Holder Trust and the IRA Partnership may trigger the second prong set forth above and, as a result, be deemed to be an investment company under Section 3(a) of the 1940 Act. Assuming that is the case, it is our view that the Position Holder Trust and the IRA Partnership would be exempt from the registration requirement of the 1940 Act pursuant to Sections 7(a) and 7(b) thereof. These sections of the 1940 Act set forth prohibitions applicable to investment companies that are not registered under the 1940 Act. Such prohibitions are, however, specifically inapplicable to transactions of an investment company that are merely incidental to its dissolution. Because the

principal purpose of the Position Holder Trust and the IRA Partnership will be to effect the liquidation of the Policies to be held of record by the Position Holder Trust, and distribution of the liquidating proceeds, they should be exempt from 1940 Act registration under Sections 7(a) and 7(b) thereof.

A. No-Action Letter Precedent for Requested Relief

On numerous occasions, the Staff has taken the position that it would not recommend enforcement action to the SEC if a liquidating trust, created pursuant to a plan under Chapter 11 of the Bankruptcy Code, proceeded to liquidate its assets without registering under the 1940 Act in reliance on the exemptions provided by Sections 7(a) and 7(b) of the 1940 Act. The Staff appears to have based its prior grant of no-action relief in these circumstances on the existence of the following factors:

- (1) the sole purpose of the trust is to liquidate assets and distribute the proceeds thereof;¹³
- (2) the trust will not conduct a trade or business and will be limited to making temporary investments in short-term government securities, certain time deposits, certificates of deposit, bankers' acceptances, commercial paper and money market funds;¹⁴
- (3) interests in the trust will not be listed on an exchange and the trust will not take steps designed to facilitate the development of a secondary market in the interests;¹⁵

¹³ I.C.H. Corporation (pub. avail. Feb. 26, 1997); Integrated Resources, Inc. (pub. avail. Aug. 5, 1994); MPC Liquidating Trust (pub. avail. Mar. 10, 1994); Oppenheimer Landmark Properties (pub. avail. Mar. 9, 1993); VHA Enterprises, Inc. (pub. avail. Jan. 7, 1993); Grubb & Ellis Realty Income Trust (pub. avail. May 26, 1992); Graphic Scanning Corporation (pub. avail. Aug. 31, 1991); Newhall Investment Properties (pub. avail. Sept. 31, 1988); Timber Realization Company (pub. avail. May 14, 1987); ASI Communications, Inc. (pub. avail. Feb. 12, 1987); United Western Corporation (pub. avail. Sept. 27, 1984); Heizer Corporation (pub. avail. Feb. 8, 1984); Pasco, Inc. (pub. avail. Oct. 8, 1976).

¹⁴ See Integrated Resources, Inc. (permitting the liquidating entities to maintain going concern businesses acquired from Integrated Resources, Inc. pending sale and liquidation, and to make temporary investments in money market instruments, government short-term securities, or other investment grade short-term debt securities pending the distribution of liquidation proceeds to beneficiaries); MPC Liquidating Trust (permitting the trust to make temporary investments in government securities, pending the distribution of liquidation proceeds to beneficiaries); Newhall Investment Properties (providing that the trust is restricted from engaging in any ongoing trade or business except to the minimum extent necessary to safeguard and maintain trust assets); Timber Realization Company (providing that the trust is restricted from engaging in any ongoing trade or business except to the minimum extent necessary to safeguard and maintain trust assets).

¹⁵ Although a majority of the no-action letters stated that the interests in the trust would be non-transferable, certain no-action letters permitted interests in the trust to be transferable based on certain representations, such as that an active trading market in the interests would not develop, interests in the trust would not be listed on any national securities exchange or quoted on the Nasdaq Stock Markets, and neither the trustees nor the trusts would take steps designed to facilitate the development of a secondary market in the interests. See I.C.H. Corporation; MPC Liquidating Trust.

- (4) the bankruptcy court will retain non-exclusive jurisdiction over the trust, including jurisdiction to resolve controversies and disputes arising in connection with the liquidation of the trust;¹⁶
- (5) the trust will terminate on the earlier of (a) the liquidation of all of the trust's assets or (b) a term generally ranging from three to fifteen years from its effective date, subject to extension to the extent approved by the bankruptcy court;¹⁷
- (6) the trust will be required to provide periodic reports containing financial statements and certain other information to beneficiaries of the trust;¹⁸ and
- (7) the trust will not hold itself out as an investment company.¹⁹

¹⁶ See MPC Liquidating Trust.

¹⁷ See I.C.H. Corporation (three years from the effective date of the reorganization plan); MPC Liquidating Trust (three years from the effective date of the liquidation plan); Integrated Resources, Inc. (five years from the effective date of the plan of liquidation); Marbella Founders Trust (three years from the date the interests are transferred to the liquidating trust); VHA Enterprises, Inc. (three years from the date the interests are transferred to the liquidating trust); Oppenheimer Landmark Properties (three years from the date of the formation of the liquidating trust); Grubb & Ellis Realty Income Trust (three years from the date the assets are first transferred to the liquidating trust); Graphic Scanning Corporation (three years after the effective date of the merger of the Company and a wholly-owned subsidiary); Newhall Investment Properties (six years from the date of the transfer of assets and liabilities from the partnership to the trust); Timber Realization Company (fifteen years from its formation); ASI Communications, Inc. (three years from the date of the trust's formation); United Western Corporation (three years from the transfer of assets to the liquidating trust); Heizer Corporation (three years from its formation).

In addition, certain no-action letters permit the trust to extend its term based on certain circumstances. See I.C.H. Corporation (permitting the trust to continue in existence for an additional period determined to be necessary by the bankruptcy court in order for the trust to complete the distribution of its assets); MPC Liquidating Trust (permitting the trust to extend its term if the bankruptcy court grants an extension for cause and additional no-action assurance is obtained from the Staff); Integrated Resources, Inc. (explaining that the liquidation of the trust's assets are subject to significant uncertainties, such as general business and economic conditions and illiquidity of certain assets, which may result in the liquidation of certain assets exceeding the expected five year period); Newhall Investment Properties (providing that the trustee may extend the life of the trust if, on the date set for termination, the trustee has received written notice of a claim of liability that may be asserted against the partnership or the trust); Heizer Corporation (stating that the trust may continue to a maximum of twelve years for the limited purposes of dealing with missing beneficiaries and collecting any uncollected assets or defending any known or contingent claims).

¹⁸ See Integrated Resources, Inc.; Marbella Founders Trust; Oppenheimer Landmark Properties; Grubb & Ellis Realty Income Trust; Graphic Scanning Corporation; Newhall Investment Properties; ASI Communications, Inc.; Timber Realization Company; United Western Corporation; Heizer Corporation.

¹⁹ See I.C.H. Corporation; MPC Liquidating Trust; Integrated Resources, Inc.

B. Analysis of Application of Factors Cited in No-Action Letter Precedent to the Position Holder Trust and the IRA Partnership

Set forth below is an analysis of the factors cited by the Staff in connection with its grant of no-action relief to liquidating trusts under Sections 7(a) and 7(b) of the 1940 Act to the facts in the case at hand.

Sole Purpose Requirement

The sole purpose of the Position Holder Trust is to:

- liquidate the Policies to be held by it in a manner calculated to conserve, protect and maximize their value to holders of the New Interests and New IRA Notes (i.e., the defrauded Investors)²⁰ in accordance with the terms of the Plan and the PHT Agreement,²¹ which will govern the Position Holder Trust's administration and operations; and
- distribute the proceeds from liquidation of the Policies, along with any distributions received as the residual beneficiary of the Creditors' Trust and the proceeds of any Recovered Assets assigned to the Position Holder Trust as a result of prosecution of the causes of action assigned to the Creditors' Trust or as part of any Fair Funds contributed by the SEC, to the holders of the Position Holder Trust Interests, including the IRA Partnership.²²

The sole purpose of the IRA Partnership is to support the aforementioned purpose of the Position Holder Trust by allowing IRA Holders to participate in the distribution of proceeds of the liquidation of the Policies, and thereby participate in the benefits of the Plan, without violating certain federal tax rules which prohibit individual retirement accounts from directly holding investments in life insurance policies.

²⁰ As discussed in footnote 2 above, the Position Holder Trust will not actively seek to sell the Policies (or its Fractional Interests in any Policies) and in most cases will likely hold its Fractional Interests in the Policies until maturity. The Position Holder Trust is effectively a "run-off" trust that will self-liquidate as Policies mature. The Position Holder Trust is designed to hold the Policies until maturity because selling the Policies (or Fractional Interests relating thereto) before maturity will generate a lower recovery for Investors. Investors who make a Position Holder Trust Election and thus participate in all of the distributions by the Position Holder Trust are projected to receive a recovery of over 50% of the face amount attributable to their Fractional Positions, which would represent approximately 90% or more of the invested capital that they have at risk (and this is after payment of bankruptcy costs and projected future premiums and other expenses of the Position Holder Trust). In contrast, the sale of the entire Policy portfolio today would be estimated to generate less than 13% of the aggregate face amount of the Policies (about 21% of invested capital), after payment of all related expenses of the bankruptcy and the sale. See Exhibits C and E to the Disclosure Statement, attached hereto as Exhibit B hereto, and as noted in footnote 2 above, sales of some individual Policies would generate less than 10% of face amount. A sale of all of the Position Holder Trust's Fractional Interests, if it could be completed, would generate far less in net sale proceeds, as also noted in footnote 2.

²¹ The PHT Agreement is Exhibit D hereto, and a copy of the PHT Agreement is included as Exhibit A to the Plan attached hereto as Exhibit A.

²² PHT Agreement, § 1.3.

No Trade or Business

The Position Holder Trust will be established as a liquidating trust treated as a grantor trust within the meaning of Treasury Regulations Section 301.7701-(4)(d). No objective or authority of the Position Holder Trust will be to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Position Holder Trust.²³ Among other limitations on the PHT Trustee's powers, Section 4.2 of the PHT Agreement provides that "[n]o part of the Position Holder Trust Assets or the proceeds, revenue or income therefrom shall be used or disposed of by the Trustee in furtherance of any business, except to the extent necessary to and consistent with the liquidating purpose of the Position Holder Trust."²⁴

Once the Plan has been substantially consummated, the Position Holder Trust will not acquire any additional assets or securities, other than as a consequence of its status as the payer of last resort for premiums on the Policies to preserve their liquidation value for the defrauded Investors (as a result of which it will receive Fractional Interests from Continuing Fractional Holders who default in payment of premiums after the Effective Date), or in its capacity as the designated assignee under the Plan for any Fractional Interests included in any Recovered Assets or Fair Funds. Except for issuing Position Holder Trust Interests in exchange for any such Fractional Interests, Recovered Assets, or Fair Funds, the Position Holder Trust will not issue any new securities.²⁵ The Position Holder Trust will not have authority to make the decision whether or not to allow a Policy to lapse or to sell it without the consent of 100% of any outstanding Fractional Interests in the Policy. In order to protect the interests of its beneficiaries,

²³ *Id.*

²⁴ Section 4.2 of the PHT Agreement reads in its entirety as follows:

Limitations on Trustee. The Trustee shall carry out the purposes of the Position Holder Trust and the directions contained herein, and shall not at any time, on behalf of the Position Holder Trust or the Position Holder Trust Beneficiaries, (a) enter into or engage in any business, (b) assume any liabilities, of any Person or entity, other than liabilities of Debtor expressly assumed by the Position Holder Trust as provided in the Plan, or (c) take any action requiring the consent of the Trust Board as provided in Section 7.6(c) without first obtaining such consent in accordance with this Position Holder Trust Agreement. No part of the Position Holder Trust Assets or the proceeds, revenue or income therefrom shall be used or disposed of by the Trustee in furtherance of any business, except to the extent necessary to and consistent with the liquidating purpose of the Position Holder Trust. The Trustee shall make continuing efforts to liquidate the Position Holder Trust Assets and maximize the distributions to Position Holder Trust Beneficiaries in accordance with the Plan and this Position Holder Trust Agreement, make timely distributions, and not unduly prolong the duration of the Position Holder Trust.

See footnotes 2 and 20 above for more detailed information regarding the likely liquidation activities of the Position Holder Trust.

²⁵ Under the Plan, Investors who made an election to be a Continuing Fractional Holder but owed money to the Debtors (for premiums or servicing fees) will have up to 90 days after the Effective Date to pay those amounts. If these Investors fail to pay such amounts, they will be deemed to have made a Position Holder Trust Election instead, and the Position Holder Trust will issue additional Position Holder Trust Interests in connection with any such de facto elections. The Position Holder Trust will also issue additional Position Holder Trust Interests in exchange for any Fractional Interests included in any Recovered Assets or Fair Funds, all of which will be issued to Investors.

the Position Holder Trust will have the authority to decide to stop paying its share of premiums on any Policy, so long as it gives notice to any holders of Continuing Fractional Interests in that Policy that they will have to take over 100% of the premium obligations on the Policy or it will be allowed to lapse.

The sole asset of the IRA Partnership will be its Position Holder Trust Interest, and all cash distributions received by the IRA Partnership from the Position Holder Trust will be distributed to its members (i.e., the holders of IRA Partnership Interests), net of any administrative expenses incurred in connection therewith. As discussed above, the sole purpose of the IRA Partnership is to serve as a tax blocker or barrier entity for IRA Holders and, as a result, it will not conduct any trade or business. The IRA Partnership also will not conduct any trade or business through the Position Holder Trust because, as described above, the Position Holder Trust will not conduct any trade or business.

No Secondary Market for Securities

The PHT Agreement restricts the Position Holder Trust from listing any of the New Interests on any securities exchange or taking any actions to develop a trading market for the New Interests, and the operating agreement of the IRA Partnership (the “*IRA Partnership Agreement*”)²⁶ contains similar restrictions with regard to IRA Partnership Interests. Moreover, the PHT Agreement and the IRA Partnership Agreement will prohibit the Position Holder Trust and the IRA Partnership from acting as a broker or dealer with respect to any New Interests or New IRA Notes or otherwise facilitating, accepting any commission or other compensation, or collecting and disseminating any information, in connection with any trading activities relating to the New Interests or New IRA Notes (other than overseeing maintenance of the transfer register and related processes).²⁷

Retention of Jurisdiction by the Bankruptcy Court

Under Sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding entry of the Confirmation Order in connection with the Debtors’ bankruptcy cases and occurrence of the Effective Date, the Bankruptcy Court will retain exclusive jurisdiction over all matters arising out of, or related to, the Debtors’ bankruptcy cases and the Plan to the fullest extent permitted by law, including, among other things, jurisdiction to: hear and determine any matters arising in connection with or relating to (i) the Plan, (ii) the Disclosure Statement, (iii) the Confirmation Order, (iv) the PHT Agreement, (v) the IRA Partnership Agreement, and (vii) the servicing agreement to be entered into with the Servicing Company or any other contract, instrument, release, or other agreement or document created in connection with the Plan, the Disclosure Statement and/or the Confirmation Order.²⁸ The Bankruptcy Court will also retain jurisdiction over any request to extend the duration of the Position Holder Trust.²⁹ If mediation does not

²⁶ A copy of the Limited Liability Company Agreement for the IRA Partnership is attached hereto as Exhibit E.

²⁷ Plan, § 4.18(b).

²⁸ *Id.*, Article XVII, clause (j).

²⁹ Position Holder Trust Agreement, § 2.1.

result in an agreed resolution of a dispute (a “*Holder Dispute*”) involving a Current Position Holder or a Continuing Position Holder (including a dispute relating to the Policies), such Holder Dispute will be submitted to the Bankruptcy Court for resolution to give effect to the terms of the Plan and the PHT Agreement, and the Bankruptcy Court will retain jurisdiction for such purpose.³⁰ The PHT Trustee may be removed by an order of the Bankruptcy Court for good cause after application by one or more members of the Trust Board and after notice and a hearing, and the Bankruptcy Court will retain jurisdiction for such purpose.³¹

Finite Life of Liquidating Vehicle

The Position Holder Trust will terminate upon the first to occur of the following: (a) ten (10) years after the Effective Date or (b) upon the liquidation of all of the Policies and the distribution of all of the assets and other properties held by the Position Holder Trust in accordance with the PHT Agreement; provided, however, that the PHT Trustee may extend the duration of the Position Holder Trust one or more times (not to exceed a total of four extensions, unless the trustee receives a favorable ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the Position Holder Trust as a grantor trust for federal income tax purposes) for a finite period, not to exceed five (5) years for each extension, if the assets of the Position Holder Trust have not been liquidated or if the trustee determines that such extension is in the best interests of the Position Holder Trust and the holders of interests therein.³² Any extension will require approval from the Bankruptcy Court.

Exhibit D to the Disclosure Statement reflects the projected run off rate for the Policies, as determined by two different, nationally recognized actuarial firms, one retained by the Trustee and the other retained by the Committee to double check the analysis conducted by the first. Significant distributions are anticipated after the end of the initial ten (10)-year period,³³ and if Policy maturities lag the projections, even more of the projected distributions could be pushed out beyond ten (10) years. Thus, depending on economic conditions, the persistency of fractional ownership, and life settlement market conditions at the time, it is likely that it will be in the best interests of the beneficiaries of the Position Holder Trust, including the Continuing Fractional Holders, to extend the term at least once. The way that the Position Holder Trust is structured, extending the term is not projected to require any additional financing.

Periodic Reporting to Beneficiaries

The Position Holder Trust will be subject to the reporting requirements under the Securities Exchange Act of 1934 (the “*1934 Act*”). The Trustee’s counsel has discussed with the staff of the Corporate Finance Division the question of whether some or all of the securities issued by the Position Holder Trust should be deemed to be automatically registered on the

³⁰ *Id.*, § 4.6(b).

³¹ *Id.*, § 6.3(a)(ii).

³² *Id.*, § 2.1.

³³ See Exhibit D to the Disclosure Statement.

Effective Date of the Plan (by virtue of the facts of this case, which are that (i) the Position Holder Trust will be a successor-in-interest to the Debtors with regard to legal ownership of the Policies and management and administration of the “common enterprise” related to the Policies that the Texas Supreme Court has ruled exists among LPI and the Investors who purchased the outstanding Fractional Positions,³⁴ and (ii) all of the new securities to be issued under the Plan will be issued to those Investors in exchange for their claims against and investments in the Debtors relating to those Fractional Positions). In any event, all of the securities will be registered under the 1934 Act (to the extent required) and periodic reports will be provided to all holders of New Interests and New IRA Notes.

Not Holding Itself Out as an Investment Company

Neither the Position Holder Trust nor the IRA Partnership will hold itself out as an investment company. As noted above, the Position Holder Trust will be formed, and will act, as a liquidating trust for the Policies and the IRA Partnership will be formed as part of the Plan solely to serve as a tax blocker or barrier entity for IRA Holders.

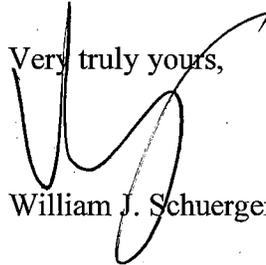
III. Conclusion

For the reasons set forth herein, we respectfully request that the Staff confirm to us that it will not recommend that the SEC take action against the Position Holder Trust or the IRA Partnership if neither the Position Holder Trust nor the IRA Partnership registers as an investment company under the 1940 Act in reliance on the exemptions in Sections 7(a) and 7(b) of the 1940 Act for “transactions which are merely incidental to the dissolution of an investment company.”

³⁴ *Life Partners, Inc. v. Arnold*, 464 S.W.3d 660 (Tex. 2015).

We appreciate your consideration of this request and look forward to further discussion with you, if that would be helpful to you. Please do not hesitate to contact me or Harry Pangas of Sutherland Asbill & Brennan LLP at 202.383.0805 if we may provide any additional information or assistance in any regard. If for any reason you have any concerns regarding your ability to grant this request, we would appreciate the opportunity to discuss the matter with you prior to your issuance of any negative response.

Very truly yours,

A handwritten signature in black ink, appearing to be 'WJ Schuerger', written over the typed name below.

William J. Schuerger

cc: Harry S. Pangas, Esq., Sutherland Asbill & Brennan LLP

Exhibit A

The Plan

Exhibit B
Disclosure Statement

Exhibit C

Position Holder Trust Agreement

[See Exhibit A to the Plan]

Exhibit D

IRA Partnership Agreement