

October 17, 2006

Ms. Deborah A. Garza
Chair, Antitrust Modernization Commission
1120 G Street, NW
Suite 810
Washington, DC 20005

Re: Comments regarding October 18, 2006 public hearing on the McCarran-Ferguson Act

Dear Chairwoman Garza,

This letter is submitted on behalf of the American Council of Life Insurers (ACLI), which is the principal trade association of the life insurance industry, representing 377 member companies that account for 91 percent of the industry's total assets in the United States. ACLI member companies further account for 90 percent of the life insurance premiums, and 95 percent of annuity considerations in the United States.

Our comments are limited to the Commission's consideration of the McCarran-Ferguson Act, and the implication of that consideration for life insurers and its supporting organizations. As a threshold matter, ACLI has long-supported McCarran-Ferguson, and believes it has served the public interest well. Given the current discussions occurring in both Congress and the states concerning regulatory modernization of the insurance industry, we believe the Commission should demur from making any specific recommendations with respect to McCarran-Ferguson. Instead, we support, in concept, the Commission's "Framework" or "Template" approach, which provides a roadmap for Congress to assess all future federal antitrust exemptions and immunities.

Why the McCarran-Ferguson Act is important for life insurers

The life insurance industry is extremely competitive.¹ There are many healthy companies, innovative products and independent pricing that does not rely on any exemption from federal antitrust law. Also, life insurance has always been fully exposed to state antitrust enforcement pursuant to the many existing state antitrust laws. It is important to bear in mind, however, that McCarran-Ferguson remains the statutory foundation for state regulation of insurance. As that regulation has developed it has been understood that certain ancillary life insurance activities are not subject to federal antitrust laws.² Whether the availability of the McCarran-Ferguson exemption is really necessary today or not can be debated. But the bar has accustomed itself to this state of affairs, and any change could result in substantial legal uncertainty and resultant litigation that could take years to resolve itself.

¹ According to industry statistics the average annual premium for a \$500,000 term policy purchased by a 40 year-old non-smoker is less than half of what it was in 1994. Bad news, good news: millions need life insurance; its getting cheaper USA Today.com, October 9, 2006, citing a survey of the Insurance Information Institute.

² The prevalence of state-authorized rating plans and certain data sharing mechanisms result in McCarran-Ferguson being of greater importance to the property & casualty industry. However, reinsurance and certain other aspects of the insurance business that may have McCarran-Ferguson implications are common to all lines.

Insurance Regulatory Modernization

As you are aware, the insurance industry is undergoing the most significant debate regarding its regulatory future since the Armstrong Committee Report of 1906,³ which ushered in the modern state of insurance regulation that has persisted for the past one-hundred years. This healthy debate concerning insurance regulation is taking place in Congress in the form of several proposals: S. 2509 “The National Insurance Act of 2006” (Johnson (D-SD) and Sununu (R-NH)); and H.R. 6225 “The National Insurance Act of 2006” (Royce (R-CA)). In addition, the House Financial Services Committee has exposed the SMART (State Modernization and Regulatory Transparency) Act for public comment. These proposals would all allow for some form of federal regulation of insurance with obvious implications for the continued role of McCarran-Ferguson.

On the state side, the National Association of Insurance Commissioners (NAIC) has made a commitment to unifying state regulatory processes and improving operational efficiencies. The modernization of the state-based system of insurance regulation is supported by ACLI, and is an integral part of the evolving debate over how best to oversee the insurance industry and protect the public it serves. The confluence of these state and federal legislative and regulatory activities provides even more reason to defer consideration of McCarran-Ferguson until these developments have taken shape. Although not specifically germane to the Commission’s review of McCarran-Ferguson, we wish to express our support for the existing state action immunity doctrine. As a state-regulated industry we believe that requiring some form of “sovereign compulsion” could invite a host of unforeseen negative consequences.

McCarran-Ferguson will be a part of the consideration of the Future of Insurance Regulation

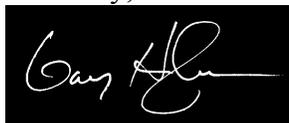
Any consideration of McCarran-Ferguson should not be divorced from the wider federal and state reviews of insurance regulation. To do so would run the risk of making recommendations in a vacuum, without evaluating the fuller implications brought about by the form and type of regulation that ultimately will emerge. The discussion of whether or not to allow for the chartering of National insurers will necessarily include consideration of McCarran-Ferguson. A federal insurance law might obviate the need for McCarran-Ferguson, but that will not necessarily be the case for insurers that choose to remain regulated by the states. In addition, there may be (limited) circumstances involving collective activities that Congress will wish to address with specific statutory language. In all events, the future of McCarran-Ferguson will likely be decided by Congress over the course of the next several years in the broader context of the future of insurance regulation. Given the timing of these legislative developments, we urge the Commission to refrain from making a specific recommendation concerning McCarran-Ferguson at this time.

³ Report of the Joint Committee of the Senate and Assembly of the State of New York Appointed to Investigate the Affairs of Life Insurance Companies (1906). The Committee was named after State Senator William W. Armstrong. Charles Evans Hughes, later Chief Justice of the United States Supreme Court served as the Committee’s Counsel.

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Thank you for excellent work of the Antitrust Commission and its staff. We appreciate the opportunity to comment, and look forward to the Commission's final work product. Please let me know if there is any additional information we can provide.

Sincerely,

A black rectangular box containing a white handwritten signature that reads "Gary Hughes".

Gary Hughes

cc: Andrew J. Heimert, Executive Director & General Counsel