

CONSECO INC  
Form SC TO-I/A  
October 30, 2009

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**SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**  
**SCHEDULE TO**  
**(Amendment No. 2)**  
**Tender Offer Statement Under Section 14(d)(1) or Section 13(e)(1)**  
**of the Securities Exchange Act of 1934**  
**CONSECO, INC.**  
**(Name Of Subject Company (Issuer) and Filing Person (Offeror))**  
**3.50% Convertible Debentures due 2035**  
**(Title of Class of Securities)**  
**208464BH9**  
**208464BG1**  
**(CUSIP Number of Class of Securities)**  
**Karl Kindig**  
**Corporate Counsel and Corporate Secretary**  
**11825 N. Pennsylvania Street**  
**Carmel, Indiana 46032**  
**(317) 817-6100**  
**(Name, address and telephone number of person authorized to receive notices**  
**and communications on behalf of filing person)**  
***With copies to:***  
**Gary I. Horowitz**  
**Roxane F. Reardon**  
**Simpson Thacher & Bartlett LLP**  
**425 Lexington Avenue**  
**New York, New York 10017**  
**(212) 455-2000**  
**Calculation of Filing Fee**

<b>Transaction valuation (1)</b>	<b>Amount of filing fee (2)</b>
<b>\$294,196,417</b>	<b>\$16,417</b>

- (1) Calculated solely for purposes of determining the amount of the filing fee. The transaction valuation was calculated based on the purchase of all of the outstanding \$293,000,000 aggregate principal amount of the issuer's 3.50% Convertible Debentures due September 30, 2035 at the purchase price of \$1,000 per \$1,000 principal amount of such debentures plus accrued and unpaid interest to, but not including, November 13, 2009.
- (2) The amount of the filing fee was calculated at a rate of \$55.80 per \$1,000,000 of transaction value.
- Check box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: \$16,417

Filing Party: Conseco, Inc.

Form or Registration No.: Schedule TO-I

Date Filed: October 15, 2009

Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer. Check the appropriate boxes below to designate any transactions to which the statement relates:

- third-party tender offer subject to Rule 14d-1.

- issuer tender offer subject to Rule 13e-4.
- going private transaction subject to Rule 13e-3.
- amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer:

\*If applicable, check the appropriate box(es) below to designate the appropriate rule provision(s) relied upon:

- Rule 13e-4(i) (Cross-Border Issuer Tender Offer)
  - Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)
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EX-99.(A)(1)(III)

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**INTRODUCTION**

This Amendment No. 2 (this *Amendment No. 2* ) amends the Tender Offer Statement on Schedule TO originally filed on October 15, 2009 by Conseco, Inc., a Delaware corporation (the *Company*, *Conseco*, *we* or *us* ), as amended by Amendment No. 1 to the Schedule TO filed on October 19, 2009 (as amended, the *Schedule TO* ), in connection with Conseco's offer to purchase for cash, upon the terms and subject to the conditions set forth in the Offer to Purchase dated October 15, 2009 (as it may be amended or supplemented from time to time, the *Offer to Purchase* ) and in the related Letter of Transmittal (the *Letter of Transmittal* ), any and all of its outstanding 3.50% Convertible Debentures due September 30, 2035 (the *Debentures* ).

This Amendment is being filed to reflect the fact that the Company is delivering to holders of the Debentures a supplement (the *Supplement* ) to the Offer to Purchase, dated October 30, 2009. The full text of the Supplement is filed herewith as Exhibit (a)(1)(iii). Corresponding amendments to the Letter of Transmittal reflecting the terms set forth in the Supplement are set forth below.

The Schedule TO is amended by the information contained in this Amendment No. 2. Only those items amended are reported herein. Except as specifically provided herein, this Amendment No. 2 does not modify any of the information previously reported in the Schedule TO. The information in the Offer to Purchase and the Letter of Transmittal is incorporated by reference herein.

**Item 1. Summary Term Sheet**

The information set forth in Item 1 of the Schedule TO is hereby amended and supplemented by the information set forth in the Supplement under Summary Term Sheet, which is incorporated herein by reference.

**Item 4. Terms of the Transaction.**

(a) *Material Terms.*

The Offer to Purchase is amended and supplemented as provided in the Supplement. The information set forth in Item 4(a) of the Schedule TO is hereby amended and supplemented by the information set forth in the Supplement under Important Information, Summary Term Sheet, The Offer, Expiration Date; Extension; Waivers and Amendments; Termination and Certain United States Federal Income Tax Consequences, which is incorporated herein by reference.

The Letter of Transmittal is amended and supplemented by deleting the penultimate sentence of the last paragraph on page 2 and the first sentence of Paragraph 4 (Partial Tenders) on page 13 and replacing each such sentence with the following text: Valid tenders of Debentures pursuant to the Offer by any holder in any principal amount will be accepted.

**Item 7. Source and Amount of Funds or Other Consideration.**

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(a) and (d). The information set forth in Item 7(a) and 7(c) of the Schedule TO is hereby amended and supplemented by the information set forth in the Supplement under Concurrent Transactions Private Placement of New Debentures, which is incorporated herein by reference.

**Item 10. Financial Statements.**

(c) *Summary Information.* The information set forth in Item 10 of the Schedule TO is hereby amended and supplemented by the information set forth in the Supplement under Summary Historical Consolidated Financial Data, which is incorporated herein by reference.

**Item 12. Exhibits.**

Item 12 of the Schedule TO is amended and supplemented to include the following exhibits.

**Exhibit**

**Number Description**

(a)(1)(iii) Supplement to Offer to Purchase, dated October 30, 2009, filed herewith.

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**SIGNATURE**

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated: October 30, 2009

CONSECO, INC.

By: /s/ John R. Kline

Name: John R. Kline

Title: Senior Vice President and Chief  
Accounting Officer

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**EXHIBIT INDEX**

Exhibits filed as a part of the Schedule TO, as amended, are listed below.

**Exhibit**

**Number      Description**

- (a)(1)(i)      Offer to Purchase, dated October 15, 2009.\*
- (a)(1)(ii)     Letter of Transmittal (including Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9).\*
- (a)(1)(iii)    Supplement to Offer to Purchase, dated October 30, 2009, filed herewith.
- (a)(2)          None.
- (a)(3)          None.
- (a)(4)          None.
- (a)(5)(i)      Press Release, issued October 13, 2009, relating to the private offering of new convertible debentures (incorporated by reference to Exhibit (a)(5)(i) to the Schedule TO-C (first filing) filed with the Commission on October 14, 2009).\*
- (a)(5)(ii)     Press Release, issued October 13, 2009, relating to the proposed registered offering of common stock (incorporated by reference to Exhibit (a)(5)(ii) to the Schedule TO-C (first filing) filed with the Commission on October 14, 2009).\*
- (a)(5)(iii)    Press Release, issued October 13, 2009, relating to the private placement of our common stock and warrants (incorporated by reference to Exhibit (a)(5)(iii) to the Schedule TO-C (first filing) filed with the Commission on October 14, 2009).\*
- (a)(5)(iv)     Recent Developments from Preliminary Offering Memorandum dated October 13, 2009 (incorporated by reference to Exhibit (a)(5)(iv) to the Schedule TO-C (first filing) filed with the Commission on October 14, 2009).\*
- (a)(5)(v)      Risk Factors from Preliminary Offering Memorandum dated October 13, 2009 (incorporated by reference to Exhibit (a)(5)(v) to the Schedule TO-C (first filing) filed with the Commission on October 14, 2009).\*
- (a)(5)(vi)     Capitalization from Preliminary Offering Memorandum dated October 13, 2009 (incorporated by reference to Exhibit (a)(5)(vi) to the Schedule TO-C (first filing) filed with the Commission on October 14, 2009).\*
- (a)(5)(vii)    Press Release, dated October 14, 2009 (incorporated by reference to Exhibit (a)(5) to the Schedule TO-C (second filing) filed with the Commission on October 14, 2009).\*



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**Exhibit**

<b>Number</b>	<b>Description</b>
(a)(5)(viii)	Press Release, dated October 15, 2009.*
(b)(1)	Purchase Agreement, dated as of October 14, 2009, by and between Conseco and Morgan Stanley & Co. Incorporated.*
(b)(2)	Indenture, dated as of October 16, 2009, between Conseco, Inc. and The Bank of New York Mellon Trust Company, N.A., as trustee (incorporated by reference to Exhibit 4.2 to our Current Report on Form 8-K filed on October 19, 2009).*
(b)(3)	Form of 7.0% Convertible Senior Debentures due 2016 (included in the Indenture filed as Exhibit (b)(2) hereto).*
(d)(1)	Indenture, dated as of August 15, 2005, between Conseco and The Bank of New York Trust Company, N.A., as trustee (incorporated by reference to Exhibit 4.4 to our Current Report on Form 8-K filed on August 16, 2005).*
(d)(2)	Registration Rights Agreement dated as of August 15, 2005 among Conseco and Goldman, Sachs & Co., Morgan Stanley & Co. Incorporated and J.P. Morgan Securities, Inc., as representatives of several purchasers of the Debentures (incorporated by reference to Exhibit 4.5 to our Current Report on Form 8-K filed on August 16, 2005).*
(d)(3)	Conseco, Inc. Amended and Restated Long-Term Incentive Plan (incorporated by reference to Annex B to our Proxy Statement filed on April 23, 2009).*
(d)(4)	Form of performance unit award agreement under the Conseco, Inc. Amended and Restated Long-Term Incentive Plan (incorporated by reference to Exhibit 10.22 of our Quarterly Report on Form 10-Q for the quarter ended June 30, 2006).*
(d)(5)	Form of executive stock option agreement under Conseco, Inc. Amended and Restated Long-Term Incentive Plan (incorporated by reference to Exhibit 10.14 of our Annual Report on Form 10-K for the year ended December 31, 2005).*
(d)(6)	Form of executive restricted stock agreement under Conseco, Inc. Amended and Restated Long-Term Incentive Plan (incorporated by reference to Exhibit 10.15 of our Annual Report on Form 10-K for the year ended December 31, 2004).*
(d)(7)	Section 382 Rights Agreement, dated as of January 20, 2009, between Conseco and American Stock Transfer & Trust Company, LLC, as Rights Agent (incorporated by reference to Exhibit 1 of our registration statement on Form 8-A filed on January 20, 2009).*

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**Exhibit**

**Number Description**

- (d)(8) Stock and Warrant Purchase Agreement, dated as of October 13, 2009, by and between Conseco and Paulson (incorporated by reference to Exhibit 10.1 of the Paulson 8-K filed on October 13, 2009).\*
- (d)(9) Form of Investor Rights Agreement by and among Conseco and Paulson (incorporated by reference to Exhibit 10.2 of the Paulson 8-K filed on October 13, 2009).\*
- (d)(10) Form of Warrant Certificate (incorporated by reference to Exhibit 10.3 of the Paulson 8-K filed on October 13, 2009).\*
- (g) None.
- (h) None.

\* Previously filed