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December 16, 2002

Financial Crimes Enforcement Network
Department of the Treasury
ATTN: Section 352 Insurance Company Regulations
P.O. Box 39
Vienna, Virginia 22183

Re: Requirement that Insurance Companies Report Suspicious Transactions
67 FR 64067 (October 17, 2002)

Dear Madam or Sir:

America's Community Bankers ("ACB")¹ is pleased to comment on the Financial Crimes Enforcement Network's ("FinCEN") proposed rule implementing section 5318(g) of the Bank Secrecy Act (the "BSA"), which authorizes the Department of the Treasury ("Treasury") to require financial institutions, including insurance companies, to report suspicious transactions.² The proposal would require insurance companies offering life insurance policies, annuities, or any other insurance products containing similar investment features to identify and report suspicious activity that 1) may involve funds derived from or intended to disguise illegal activity; 2) is designed to evade BSA reporting requirements; or 3) has no business or apparent lawful purpose.

ACB Position

ACB's membership includes banks and savings associations owned by insurance companies, and we recognize the important role that all financial institutions play in the fight against money laundering. ACB generally supports Treasury's expansion of suspicious activity reporting requirements to include insurance products containing investment features, although we are concerned that a regulation that does not take the particular features of the operations of insurance companies into account will not result in useful information. We understand that terrorists and another groups that engage in money laundering can be very creative, and we know that insurance companies have required anti-money laundering programs pursuant to section 352 of the USA PATRIOT Act ("Patriot Act"). We suggest that Treasury work with the insurance

¹ ACB represents the nation's community banks of all charter types and sizes. ACB members, whose aggregate assets exceed \$1 trillion, pursue progressive, entrepreneurial and service-oriented strategies in providing financial services to benefit their customers and communities.

² 67 Fed. Reg. 64067 (October 17, 2002).

industry and its regulators to develop a workable comprehensive anti-money laundering requirement to prevent and detect terrorist financing and other financial crimes.

ACB continues to reiterate its concern about the cumulative cost of the regulations being issued to implement the Patriot Act. We support government efforts to effectively track financial transactions by terrorists and criminals, but financial institutions, including insurance companies, should not be burdened by extraneous information requirements. Promulgating unnecessary regulations and reporting requirements ultimately diminishes the quality of information given to regulators and law enforcement.

Scope

We agree that life insurance and annuities pose the greatest risk for abuse by money launderers because such products allow a customer to place funds into the financial system and seamlessly transfer such funds to disguise their true origins. ACB supports Treasury's focused approach to suspicious transaction monitoring rather than a blanket SAR requirement placed on the entire insurance industry. We also agree that suspicious activity reporting regulations should focus on the ability of a money launderer to use a particular financial product to store and move illicit funds through the financial system. Accordingly, the property/casualty insurance and health insurance sectors should be excluded from the proposed definition of "insurance company" because these segments of the industry pose little risk of money laundering.

While ACB generally supports the scope of the proposed regulation at this time, we urge the Treasury to monitor products developed by insurance companies, including property and casualty and health, to ensure that such products will not have an investment or other feature that will render them vulnerable to money laundering.

Insurance Agents and Brokers

It is appropriate to place the responsibility for obtaining relevant information necessary for effective compliance with suspicious reporting requirements on the insurance company, however much of the information necessary to file SARs is obtained by agents and brokers. We urge Treasury to require that insurance companies be required to develop detailed and specific procedures to ensure that they receive all relevant customer information from agents and brokers. For example, the lump-sum purchase of a life insurance policy with multiple money orders or the purchase of annuity contracts by customers who express little or no interest in the details of such products may not be known by the insurance company but the broker will see that activity first hand. We suggest that a review of these procedures and whether they are followed be part of the enforcement of these requirements for insurance companies.

Enforcement and Parity

The proposal indicates that compliance with suspicious activity reporting requirements will be "audited by the Department of the Treasury, through FinCEN or its delegees." ACB urges Treasury to work with the regulators of insurance companies to ensure that the level of enforcement given to suspicious activity reporting parallels the level of scrutiny given to banks and savings associations. Furthermore, insurance companies will be required to comply with

customer identification and anti-money laundering program requirements in the future, and ACB encourages the Treasury to develop comparable regulations and enforcement in these areas as well.

Insurance Company and Agencies as Operating Subsidiaries

Banks have long been subject to anti-money laundering requirements and already are subject to the suspicious activity reporting requirements of the BSA. Because banks may act as either insurance agents or brokers, we urge FinCEN to clarify that bank compliance with existing anti-money laundering requirements, established by the appropriate federal banking agency, meets the requirements of this proposal when a bank acts as an insurance agent. The federal banking regulators have already asserted that insurance companies and insurance agencies that are operating subsidiaries of an insured depository institution are subject to the rules and regulations of the federal banking agencies. However, affiliates that are not operating subsidiaries should be required to establish programs that will be enforced by their functional regulator.

Guidance and Education

To increase the regulation's usefulness, the Treasury should coordinate an educational campaign informing insurance companies how insurance products may be used for money laundering and describing the role suspicious activity reporting plays in disrupting financial crime. This guidance should include examples of suspicious activity and a description of the methods that can be used to launder money through insurance companies using specific products.

Conclusion

ACB stands ready to work with the Treasury throughout the remainder of the Patriot Act rulemaking process to ensure that regulations are effective without being unduly burdensome. Thank you for the opportunity to comment on this important matter. Should you have any questions, please contact the undersigned at 202-857-3121 or via e-mail at cbahin@acbankers.org, or Krista Shonk at 202-857-3187 or via e-mail at kshonk@acbankers.org.

Sincerely,



Charlotte M. Bahin
Director of Regulatory Affairs
Senior Regulatory Counsel