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VIA ELECTRONIC MAIL TO REGCOMMENTS@FINCEN.TREAS.GOV

FinCEN  
P.O. Box 39  
Vienna, VA 22183

ATTN: Section 352 - Insurance Company Regulations

Dear Madam or Sir:

We represent several U.S. domiciled life reinsurance companies or reinsurers. The purpose of this letter is to provide, on behalf of these clients, to FinCEN comments on the proposed regulation 31 C.F.R. Part 103 issued pursuant to Bank Secrecy Act, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, regarding anti-money laundering programs for insurance companies (the "Proposed Regulation").

Life reinsurers or reinsurance companies ("Reinsurers") provide reinsurance to life insurance companies, also known as ceding companies, cedants or direct writers ("Ceding Insurance Companies"). In its simplest form, Reinsurers insure Ceding Insurance Companies. Reinsurance is effected through a reinsurance agreement between one or more Reinsurers and a Ceding Insurance Company whereby the Ceding Insurance Company transfers, or cedes, to the Reinsurer(s) some portion of the Ceding Insurance Company's risks under life insurance policies or annuities (all references herein to life insurance policies apply equally to annuities) that the Ceding Insurance Company has issued to its policyholders. The Reinsurer(s) promises to indemnify the Ceding Insurance Company for the ceded risk in exchange for the Ceding Insurance Company's promise to pay the Reinsurer(s) a reinsurance premium. Thus, a Reinsurer's customer is a Ceding Insurance Company, and there is no privity of contract between a Reinsurer and the Ceding Insurance Company's policyholder whose risk is ceded to the Reinsurer. A Reinsurer does not have any contact with the policyholders of a Ceding Insurance Company, and policyholders normally are unaware of whether any of the risks under their policies are reinsured and, if so, by whom. In most instances, only a portion of the mortality risks of the lives insured under the Ceding Insurance Company's life insurance policies are transferred to the Reinsurer. In the case of term life insurance policies, which do not contain any investment feature, this is especially true. Even in the case of whole life insurance policies, the Reinsurer usually does not assume from the Ceding Insurance Company the investment risk

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associated with the Ceding Insurance Company's crediting of values to a life insurance policy's cash value.

We believe that Reinsurers should not be subject to the Proposed Regulation for several reasons.

*Reinsurers Receive Funds Only from Regulated Financial Institutions, Ceding Insurance Companies*

First, Reinsurers' customers are the Ceding Insurance Companies, which are financial institutions regulated by state insurance departments and subject to the Proposed Regulation. Moneys that Ceding Insurance Companies pay to Reinsurers as reinsurance premiums originate from the Ceding Insurance Companies' operating bank accounts. Reinsurers do not receive funds from individuals or the Ceding Insurance Companies' policyholders. Moreover, the types of assets in which Ceding Insurance Companies may invest are strictly regulated to protect the Ceding Insurance Companies' policyholders against the insolvency of the Ceding Insurance Companies. Thus, the risk of money laundering or terrorist financing by a Ceding Insurance Company, which is subject to many forms of regulation, through its payment of reinsurance premiums to a Reinsurer is remote.

*Ceding Insurance Companies have Already Performed AML Analysis before Reinsurers Receive Funds*

Before Reinsurers receive any funds from the Ceding Insurance Companies, the Ceding Insurance Companies have already performed their anti-money laundering and terrorist financing compliance obligations with respect to the Ceding Insurance Companies' sources of insurance premiums, their policyholder customers. Thus, because the Ceding Insurance Companies have already performed their anti-money laundering and terrorist financing obligations, imposing the same obligation upon Reinsurers with respect to the *same* monies would be redundant and is unnecessary. Because Reinsurers are completely removed from the customer relationship between Ceding Insurance Companies and their policyholders, Reinsurers are not in a position to bear the responsibility for obtaining all relevant information necessary to establish and maintain an effective anti-money laundering program for purchasers and beneficiaries of life insurance policies issued by Ceding Insurance Companies.

*Reinsurers Do Not Sell Investment Products or Products with Stored Value*

Reinsurance agreements are not the type of product with a risk profile for money laundering or terrorist financing, which the Proposed Regulation is designed to address. Reinsurers make payments to Ceding Insurance Companies for reinsured claims only (i) upon the death of an

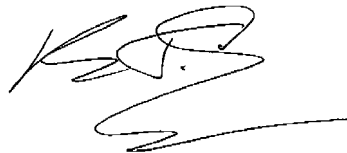
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individual whose life is insured under a policy issued by the Ceding Insurance Companies and (ii) after the Ceding Insurance Companies have paid the beneficiary the policy's benefit. Thus, Reinsurers merely indemnify, or reimburse, Ceding Insurance Companies for policy benefits paid to beneficiaries under life insurance policies that have been reinsured. Reinsurance agreements do not provide for stored value of transferability. Ceding Insurance Companies cannot access cash or other investment assets owned by the Reinsurers. Ceding Insurance Companies cannot borrow money from Reinsurers under reinsurance agreements. Thus, Reinsurers do not participate in the investment features of life insurance policies issued by Ceding Insurance Companies or transfer stored financial values to Ceding Insurance Companies.

Accordingly, Reinsurers should not be subject to the Proposed Regulation. Therefore, we have enclosed for your consideration a revised draft of the Proposed Regulation in which the term "reinsuring" has been deleted from the definition of the term "insurance company." In addition, our revised draft of the Proposed Regulation contains several technical changes designed to achieve consistent use of defined terms found in the Proposed Regulation.

If you have any questions, or wish to discuss, any of the above or the revisions contained in our revised draft of the Proposed Regulation, please do not hesitate to contact my by telephone at (404) 870-4638 or by electronic mail at [bcasey@lordbissell.com](mailto:bcasey@lordbissell.com). Thank you for your consideration of our comments on the Proposed Regulation.

Very truly yours,



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For the Firm

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**§ 103.137 Anti-money laundering programs for insurance companies.**

(a) Definitions. For purposes of this section:

(1) Annuity contract means any agreement between ~~the insurer~~an insurance company and ~~the insured~~annuitant whereby the ~~insurer~~insurance company promises to pay out a stipulated income or a varying income stream for a period of time.

(2) Insurance company. (i) Except as provided in paragraph (a)(2)(ii) of this section, the term “insurance company” means any person engaged within the United States as a business in:

- (A) The issuing, or underwriting, ~~or reinsuring~~ of a life insurance policy;
- (B) The issuing, granting, purchasing, or disposing of any annuity contract; or
- (C) The issuing, or underwriting, ~~or reinsuring~~ of any insurance product with investment features similar to those of a life insurance policy or an annuity contract, or which can be used to store financial value and transfer that value to another person.

(ii) An insurance company shall not mean an agent ~~or~~, broker or other similar intermediary of any business described in paragraph (a)(2)(i) of this section.

(3) Life insurance policy means an agreement whereby the ~~insurer~~insurance company is obligated to indemnify or to confer a benefit upon the ~~insured~~policyholder or beneficiary to the agreement contingent upon the death of the insured, including any investment component of the policy.

(4) United States has the same meaning as provided in § 103.11(nn).

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(b) Anti-money laundering program requirements for insurance companies.

Each insurance company, as defined by paragraph (a)(2) of this section, shall develop and implement a written anti-money laundering program reasonably designed to prevent the insurance company from being used to facilitate money laundering or the financing of terrorist activities [through a life insurance policy or annuity contact issued or sold by the insurance company](#). The program must be approved by senior management [of the insurance company](#). An insurance company shall make its anti-money laundering program available to the Department of the Treasury or its designee upon request.

(c) Minimum requirements. At a minimum, the program required by paragraph (b) of this section shall:

(1) Incorporate policies, procedures, and internal controls based upon the insurance company's assessment of the money laundering and terrorist financing risks associated with its [life insurance policy and annuity](#) products, customers, distribution channels, and geographic locations. For purposes of making the risk assessment required by this paragraph (c)(1), an insurance company shall consider all relevant information. Policies, procedures, and internal controls developed and implemented by an insurance company under this section shall include provisions for complying with the requirements of subchapter II of chapter 53 of title 31, United States Code and this part, and must ensure that the insurance company obtains all the information necessary to make its anti-money laundering program effective.

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(2) Designate a compliance officer who will be responsible for ensuring that:

- (i) The anti-money laundering program is implemented effectively;
- (ii) The anti-money laundering program is updated as necessary; and
- (iii) Appropriate persons are educated and trained in accordance with

paragraph (c)(3) of this section.

(3) Provide for on-going education and training of appropriate persons concerning their responsibilities under the program.

(4) Provide for independent testing to monitor and maintain an adequate program.

The scope and frequency of the testing shall be commensurate with the risks posed by the financial services provided by the insurance company. Such testing may be conducted by an officer or employee of the insurance company, so long as the tester is not the person designated in paragraph (c)(2) of this section.

(d) Anti-money laundering program requirements for insurance companies registered or required to register with the Securities and Exchange Commission. An insurance company or the parent company of an insurance company that is registered or is required to register with the Securities and Exchange Commission shall be deemed to have satisfied the requirements of this section for those activities regulated by the Securities and Exchange Commission to the extent that the company complies with the anti-money laundering program requirements applicable to such activities that are imposed by the Securities and Exchange Commission or by a self-regulatory organization registered with the Securities and Exchange

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Commission.