AMERICAN BANKERS INSURANCE ASSOCIATION
An affiliate of the AMERICAN BANKERS ASSOCIATION

1120 Connecticut Avenue, NW
Washington, DC 20036

202-663-5163
Fax: 202-828-4546
www.theabia.com

#9

Beth L. Climo
Executive Director
bclimo@aba.com

December 16, 2002

regcomments@fincen.treas.gov

Financial Crimes Enforcement Network
Department of the Treasury
P.O. Box 39
Vienna, VA 22813

ATTN: Section 352 – Insurance Company Regulations (Suspicious Transactions)

Dear Sir or Madam:

The American Bankers Insurance Association (ABIA) provides the following comments on the proposed rule concerning the reporting of suspicious transactions by insurance companies. ABIA's members include banking organizations and insurance companies that underwrite and sell insurance products.

ABIA generally supports the proposal to require insurance companies to report suspicious transactions. The preamble to the proposed regulation recognizes that the policy issues raised in this rulemaking are basically the same as those raised in the proposed rule concerning anti-money laundering programs of insurance companies.[1] On November 25, 2002, ABIA filed comments in the related anti-money laundering rulemaking applicable to insurance companies, in which we raised the same concerns. Attached is a copy of those comments (here after referred to as "the attached letter"). This letter highlights those related comments in the context of this rulemaking, and we urge FinCEN to coordinate all policy issues between the two rulemakings to ensure consistency in the final rules' regulatory coverage.

Captive Reinsurance Companies

The proposal defines "insurance company" to include captive reinsurance companies. A captive reinsurance company, however, only has contact with the affiliated insurance company whose policies it is reinsuring. Normally, the captive is not involved in any aspect of the underwriting process that would likely turn up evidence of a suspicious transaction with a customer. A captive reinsurance company is not situated to look for the "red flags," as listed in the preamble to the proposed rule, which might be associated with insurance transactions involving existing or potential insurance customers and which

[1] 67 Fed. Reg. 60,625 (Sept. 26, 2002).

warrant the filing of a suspicious transaction report. Captive reinsurance companies should be excluded from the proposed definition.

Credit Life Insurance

As suggested in the attached letter, credit life insurance should be excluded from the scope of the regulation for the following reasons:

- Credit life insurance differs from other life insurance because it is connected to a loan. A money launderer would have to obtain a loan to purchase credit life insurance, so the lender would most likely observe any suspicious transaction associated with the related loan.
- Credit life insurance premiums do not involve significant amounts of money.
- Credit life insurance benefits decline with the loan payments. An insured would have to die early for the money launderer to benefit significantly, which would be unlikely.

Because of these differences in credit life insurance and other life insurance, there is very little possibility of any suspicious transaction occurring in the context of credit life insurance.

Term Life Insurance

Term life insurance products also should be excluded. They do not have elements of stored value. Moreover, it would be difficult for a money launderer to use an elderly or ill individual to obtain a term life insurance policy, because most high-value term life insurance policies require a health examination as a condition of policy issuance. There is also the requirement in most states that there be an "insurable interest" between the insured and the policyholder, a requirement that is difficult to satisfy in non-family situations.

Granting, Purchasing or Disposing of an Annuity Contract

For the reasons stated in the attached letter, we recommend deletion of the phrase "granting, purchasing or disposing" in relation to annuity contracts (Section 103.16(a)(2)(i)(B)).

We also draw your attention to the section in the attached letter concerning treatment of insurance agents and brokers. Consistent with what we said in that letter, we agree that there should not be any independent requirement for agents or brokers to report suspicious transactions. We also agree that insurance companies should contractually require agents and brokers to report to the insurance company any circumstances in their dealings with customers that could warrant reporting of a suspicious transaction. Agents and brokers can be an excellent source of information during the underwriting process that could assist insurance companies in spotting suspicious activity. Although we do not believe that an agent or broker would work only for those companies that have the least burdensome reporting requirements (a concern raised by some of our members), FinCEN should monitor compliance with the final regulation to determine if that becomes a problem.

Consistent with the attached letter, we also recommend that to avoid confusion, the term "producer" be substituted for the terms "agent " and "broker" throughout the regulation.

$5,000 Reporting Threshold

Section 103.16(b)(2) of the proposed rule provides that “[a] transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through an insurance company, and *involves or aggregates at least $5,000 in funds or other assets*. . . .” (emphasis added) The meaning of the italicized phrase is unclear. We read the provision to mean that a report is required if either (1) the policy face amount “involves” at least $5,000 or (2) the premiums when “aggregated” are at least $5,000, but the language needs to be clearer.

ABIA supports the proposed rule and urges adoption of the modifications we have suggested. Because this proposal raises policy concerns similar to those raised in the anti-money laundering proposal for insurance companies, we strongly recommend that both final regulations deal with coverage issues in exactly the same manner.

Sincerely,

Beth L. Climo
Executive Director

AMERICAN BANKERS INSURANCE ASSOCIATION
An affiliate of the AMERICAN BANKERS ASSOCIATION

1120 Connecticut Avenue, NW
Washington, DC 20036

202-663-5163
Fax: 202-828-4546
www.theabia.com

Beth L. Climo
Executive Director
bclimo@aba.com

November 25, 2002

Financial Crimes Enforcement Network
Department of the Treasury
Post Office Box 39
Vienna, Virginia 22813

ATTN: Section 352 – Insurance Company Regulations

Dear Sir or Madam:

The American Bankers Insurance Association (ABIA) appreciates the opportunity to comment on the proposed minimum anti-money laundering standards for insurance companies. ABIA's members include banking organizations and insurance companies that underwrite and sell insurance products.

As a threshold matter, ABIA supports adoption of minimum anti-money laundering standards for insurance companies. We recognize the important public policy benefits that flow from such standards.

At the same time, we respectfully recommend that FinCEN modify the proposed regulation in several respects to ensure that it is directed at entities and activities that pose a risk of money laundering and terrorist financing. Our recommended modifications are described below.

Proposed Modifications to the Term "Insurance Company"

ABIA appreciates the attempt by FinCEN to target the regulation on those entities and products that pose the most significant money laundering and terrorist financing risks. However, we believe that the proposed definition of an "insurance company" captures entities and products that pose little, if any, risk of money laundering and terrorist financing. Specifically, we propose that the definition of insurance company be revised to exclude captive reinsurance companies, as well as underwriters of credit life insurance and term life insurance.

Captive Reinsurance Companies

We recommend that the regulation exclude "captive" reinsurance companies. Captive reinsurance companies insure the risks of an affiliated company. For example, many bank holding companies have formed captive reinsurance companies to insure the risks of credit insurance written by a subsidiary bank or a subsidiary credit insurance company. In such situations, the parties are both sophisticated corporations, subject to common ownership. Moreover, the captive reinsurance company does not participate in the underwriting of the insurance policy nor does it have any contact with an insurance policyholder. Therefore, in our opinion, captive reinsurance companies present little, if any, risk of money laundering.

Credit Life Insurance

The regulation recognizes that certain forms of insurance do not present a risk of money laundering because they cannot be used to store or move illicit funds. We believe that credit life insurance falls into this category, and, therefore, should be excluded from the scope of the regulation. Credit life insurance policies are issued to a lender or an individual borrower and are structured to pay off a loan in the event of the borrower's death. In other words, the benefit under a credit life insurance policy is equal to the outstanding balance of a loan. Also, the premium is proportional to the size of the loan; that is, the greater the amount of the loan the higher the premium.

Credit life insurance is an unlikely prospect for money laundering for several reasons. First, since credit life insurance is sold in connection with an extension of credit, a money launderer would have to take out a loan in order to acquire the insurance. Presumably, this would dissuade most money launderers from even considering the use of such products to launder funds. Moreover, even if a money launderer decides to take out a loan, the lender would have an anti-money laundering program in place, including policies and procedures that would prevent high-risk customers from obtaining a loan.

Second, credit insurance premiums do not afford money launderers an opportunity to store significant amounts of money. Premiums are not only limited by state law, but also are limited by the size of the loan. Thus, premiums are not significant on policies issued in connection with credit card loans and consumer installment loans, such as auto loans. Furthermore, in response to state and federal legislative and regulatory actions, most lenders are moving away from up-front premiums on larger real estate loans.

Third, most policies name the lender as the beneficiary, not the borrower. As such, the borrower's estate does not collect any payment in the event of the borrower's death.

Finally, these policies are structured so that the benefits decline with loan payments. Therefore, in order for a money launderer to use credit life insurance to launder any significant amount of funds, the borrower would have to die shortly after taking out the loan, a highly unlikely event.

In sum, we request that credit life insurance be excluded from the definition of covered products because it cannot practically be used as a means to store and move illicit funds.

Term Life Insurance

We also recommend that term life insurance products and similar products having no cash value not be subject to the loan because these products cannot easily be used as a means to store and move illicit funds. Unlike permanent life insurance policies, term life insurance policies do not possess elements of stored value. A policyholder cannot surrender the policy for any payment.

Moreover, contrary to the hypothetical abuse of a term policy that is given in the preamble to the proposed regulation, we do not believe a money launderer could easily use an elderly or ill person as a front to obtain a term policy.[1] Most insurers require a potential policyholder to complete a health questionnaire or submit to a physical examination before entering into a term life insurance policy, unless the policy is for just a nominal amount. Therefore, as a practical matter, it would be difficult, if not impossible, for an elderly or ill person to obtain a life insurance policy, even with the payment of a significant up-front premium. Furthermore, if the policy is to be owned by someone other than the insured, state insurance laws generally require that there be an "insurable interest" between the insured and the policy owner. This requirement is not easily satisfied in non-family situations, and insurance companies review applications to ensure that it is met.

In sum, we urge that all term life insurance products be excluded from the regulation. Alternatively, we recommend that the regulation exclude policies sold for small premiums. Such small premium policies cannot be used to store or move significant amounts of illicit funds.

Granting, Purchasing or Disposing of an Annuity Contract

Proposed Section 103.137(a)(2)(B) provides that an insurance company includes any person engaged in the "issuing, granting, purchasing, or disposing of any annuity contract." We understand and support the application of the regulation to persons engaged in the "issuing" of annuity contracts. We do not, however, understand the meaning or scope of the terms "granting, purchasing or disposing," as they appear in this section of the regulation. The terms "purchasing or disposing," in particular, seem to relate to actions by other parties, not an insurance company. Accordingly, we suggest that the phrase "granting, purchasing or disposing" simply be eliminated in the final regulation. Alternatively, we ask that these terms be further defined.

Treatment of Agents and Brokers

ABIA supports the proposed treatment of agents and brokers.[2] As FinCEN has recognized, insurance companies are in the best position to design an effective anti-money laundering program because they have the economic and legal relationship with policyholders. Agents and brokers act as representatives of insurance companies or policyholders, not as principals to the transaction. Also, agents and brokers frequently sell forms of insurance that are outside the scope of the proposed regulation. Thus, we believe it is appropriate to place the primary responsibility for establishing and maintaining effective anti-money laundering programs on insurance companies, and not to require agents or brokers to establish their own anti-money laundering programs.

---

[1] Footnote 8 suggests that a narcotics trafficker based in a foreign jurisdiction could use an elderly or ill person as a front to purchase a term policy from a U.S. insurer, pay a large, up-front premium consisting of illicit funds, and then collect cleansed proceeds when the elderly or ill person dies.

[2] In order to avoid any confusion over the meaning of the terms "agent" and "broker," we recommend that you substitute the term "producer" for those terms and separately define a "producer" as "an individual or entity licensed to sell, solicit or negotiate insurance." This proposed definition is taken from the NAIC's model producer licensing statute.

At the same time, we recognize that some elements of a company's anti-money laundering program may be performed best by agents and brokers. In such cases, it seems appropriate for an insurance company to contractually delegate certain aspects of the implementation of its anti-money laundering program to an agent or a broker. Failure of the agent or broker to adequately perform under the terms of its contract could, presumably, be grounds for the termination of the agency relationship.

Finally, some of our member insurance companies are concerned that some agents may decide not to do business with companies that have adopted overly rigorous anti-money laundering programs. At this point, this is a hypothetical concern. Moreover, we believe that there are many other considerations that enter into the establishment of a relationship between a company and an agent or an agency. Therefore, we do not recommend that FinCEN take any formal action to address this concern at this time. We do believe, however, that FinCEN and the industry should monitor compliance with the final regulation to determine if this hypothetical concern is real.

Conclusion

In conclusion, ABIA supports the establishment of minimum anti-money laundering standards for insurance companies, but suggests certain modifications to ensure that those standards are directed at companies and products that pose the most significant money laundering and terrorist financing risk.

Sincerely,

Beth L. Climo

Beth L. Climo
Executive Director