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FinCEN
P.O. Box 39
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ATTN: Section 352 – Insurance Company Regulations

To Whom It May Concern:

We appreciate this opportunity to comment on the recent regulations proposed by the Financial Crimes Enforcement Network ("FinCEN") regarding Anti-Money Laundering Programs for Insurance Companies, which are published at 67 Fed. Reg. 60,625 (Sept. 26, 2002) ("proposed regulations"). FinCEN has invited comments on all aspects of the proposed regulations and specifically on "[w]hether the scope of the definition of an insurance company is appropriate in light of the money laundering risks in the industry." 67 Fed. Reg. at 60,629.

We applaud the purpose of the new law and regulations against terrorism. Our comment is simply to point out the existence of an unusual insurance company that has no brokers, accepts no discretionary funds, and so can not possibly be used to launder money. This company benefits only players in the National Football League, and accepts only contributions from NFL Clubs as fixed by collective bargaining.

We respectfully submit that this unusual insurance company should be exempted from the new anti-money laundering provisions. The proposed regulations wisely exempt entire industry sectors, such as property and casualty insurance companies, from these provisions, because there is little or no risk of illegal money laundering.

We therefore request that FinCEN change the final rule to exempt the NFL Player Annuity & Insurance Company, either individually or by providing an exemption for a class of similarly situated entities. For example, the final rule might exempt entities that only accept fixed contributions from employers and are part of an employee benefit plan. Alternatively, we would be interested in applying for an individual or class exemption through any formal application process. We would be pleased to discuss this subject with you at your convenience or to provide any other relevant information you might desire.

Background

Our firm, Groom Law Group, Chartered, is counsel to the NFL Player Annuity Program and its wholly-owned subsidiary, the NFL Player Annuity & Insurance Company. Each is a product of a 1998 collective bargaining agreement ("CBA") between the NFL Management Council and the NFL Players Association (together, the "collective bargaining parties").

NFL Player Annuity Program ("Program"). The Program is a non-qualified, multiemployer, individual account employee benefit plan that provides tax-deferred savings opportunities to Program participants, all of which are professional football players in the National Football League ("NFL") and their beneficiaries. Program benefits, set by the CBA and specified with particularity in the Program's plan document, are paid to vested NFL players beginning at age 45. If a vested player dies before he elects a distribution, his beneficiaries are entitled to his account balance. Contributions to the Program are made only by the NFL Clubs as specified in

the CBA. Most of the Club contributions are invested through the annuity contract discussed below. Contributions not so invested are used to pay income taxes and administrative expenses of the Program. No player or any other individual or entity (other than a NFL Club) may contribute to the Program. The Program is administered by a six-member Annuity Board appointed by the collective bargaining parties. As an employee benefit plan, the Program is subject to several parts of Title I the Employee Income Security Act of 1974, as amended ("ERISA"). As relevant here, these include the Reporting and Disclosure provisions of Part 1 of ERISA (29 U.S.C. §§ 1021-1031), the Fiduciary Responsibility provisions of Part 4 of ERISA (29 U.S.C. §§ 1101-1114), and the Administration and Enforcement provisions of Part 5 of ERISA (29 U.S.C. §§ 1131-1147).

NFL Player Annuity & Insurance Company ("Company"). The Company is a Vermont captive insurance company wholly owned by the Program. The Company's sole business is to manage the investments of a separate account for the Program and to pay Program benefits to NFL players or their beneficiaries. The Company has no employees and its sole customer is the NFL Player Annuity Program. Other than the annuity contract issued to the Program, the Company does not – either directly or through any agent or broker – engage in marketing or offer or sell insurance or annuity products (or any type of product) to any person or entity. While holding the Program's investment assets for the ultimate goal of paying Program benefits, the Company, through an independent professional institutional investment manager, invests the Program's account in a diversified portfolio of stocks and bonds much like the manner in which most employee benefit plans in the United States are invested. That is, the account is invested in open-ended investment companies (i.e., mutual funds) or other commingled investment vehicles, treasuries, and money market funds. The Company is governed by a seven-member Board of Directors comprised of the six members of the Annuity Board and, as required by Vermont law, a seventh member resident in Vermont. Because the Company is wholly-owned by an ERISA-covered employee benefit plan, all of the Company's assets are considered to be "plan assets" for purposes of the fiduciary responsibility provisions of ERISA.

See 29 C.F.R. § 2510.3-101(h)(3). Among other things, this means that the assets of the Company are subject to ERISA's "exclusive benefit rule" – they must be used for the exclusive purpose of providing benefits to Program participants and their beneficiaries and defraying reasonable Program administrative expenses. 29 U.S.C. § 1104(a)(1)(A).

Discussion

As noted, FinCEN specifically requested comments on whether the scope of the definition of an insurance company is appropriate in light of the money laundering risks in the industry.

FinCEN identified the money-laundering risks in the industry to be associated with issuers of life insurance, annuity contracts, or similar insurance products that can be used to store and transfer value:

> "FinCEN believes that the most significant money laundering and terrorist financing risks in the insurance industry are found on life insurance and annuity products because such products allow a customer to place large amounts of funds into the financial system and seamlessly transfer such funds to disguise their true origin. ... [Similar to life insurance policies], annuity contracts also pose a significant risk because they allow a money launderer to exchange illicit funds for an immediate or deferred income stream. ... [T]he focus [of the proposed rule] should be on the ability of a money launderer to use a particular financial product to store and move illicit funds through the financial system. Therefore, the proposed rule captures only those insurance products with investment features, and insurance products possessing the ability to store value and to transfer that value to another person.

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> The identified instances of money laundering through insurance companies generally have been confined to life insurance policies. ... The money laundering scheme involves the purchase, through several insurance brokers, of life insurance policies with cash surrender values in an offshore jurisdiction. The life insurance policies are funded by narcotics proceeds that are forwarded to the insurance companies by third parties from all over the world. ... [T]he beneficiaries soon elect to liquidate the policies for their cash surrender value ... [and] the funds received, in the form of insurance proceeds, are effectively laundered. ... Law enforcement also has seen similar attempts to launder funds through the purchase of variable annuity contracts. In addition, some financial institutions have reported to FinCEN suspicious transactions involving the structured purchase of life insurance and annuities, followed by the receipt of checks from life insurance companies, and the wiring of funds to foreign countries." 67 Fed. Reg. at 60,626 - 27 (footnotes omitted).

It seems clear that the Company would fall within the regulations' definition of an "insurance company." The Company has issued an annuity contract to its parent and sole customer and therefore presumably would be engaged in the business of "issuing, granting, purchasing, or disposing of any annuity contract" or its functional equivalent within the meaning of section 103.137(a)(2) of the proposed regulations. See 67 Fed. Reg. at 60,629. Notwithstanding that the Company likely would be subject to the requirements of the proposed regulation, there is absolutely no risk of money laundering with a captive insurance company – such as the Company – that is wholly owned by an employee benefit plan subject to ERISA. As noted, the Company has no customers other than its parent employee benefit plan and markets no products directly or through agents or brokers. While the Company manages an investment account for its sole client, the only way that money can come into that account is through contributions from NFL Clubs or

investment experience, and money is paid out only to pay Program to NFL players or their beneficiaries. While held in the investment account, the assets of the Company are "plan assets" for purposes of ERISA. Among other things, this means that a certified public accountant must issue an annual audit report that is filed with the U.S. Labor Department, and that the use of the assets are subject to strict fiduciary standards, ERISA's exclusive benefit rule, and a comprehensive civil enforcement mechanism.

The Secretary of Treasury has the authority, through regulations or otherwise, to exempt any financial institution from any requirement of the Bank Secrecy Act ("BSA"), including the new anti-money laundering provisions of section 5318(h)(1) of the BSA. See 31 U.S.C. § 5318(a)(6); and 67 Fed. Reg. at 60,625. The proposed regulations already exempted entire industry sectors, such as property/casualty and health insurers, on the grounds that they pose little or no risk of providing illegal money laundering opportunities. The same reasoning should apply to the NFL Annuity & Insurance Company.

Conclusion

For the reasons provided, we respectfully request an exemption for the NFL Player Annuity & Insurance Company, either individually or by defining a class of similarly-situated captive insurers. Toward that end, we can suggest specific regulatory language if that would be helpful. Alternatively, we request an opportunity to apply for an individual exemption for the NFL Player Annuity & Insurance Company through an appropriate application procedure.

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We are pleased to have this opportunity to comment on the proposed regulations. We also are willing to provide any additional information you

may need or to meet with you to further discuss these issues. The letterhead includes our contact numbers and email addresses.

Sincerely,

Theodore R. Groom

Douglas W. Ell