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ATTN: Section 352 – Insurance Company Regulations

Ladies and Gentlemen:

We are pleased to submit this comment regarding the Financial Crimes Enforcement Network's ("FinCEN's") proposed rule to implement § 352 of the USA PATRIOT Act of 2001 ("§ 352"), which prescribes minimum standards applicable to insurance companies pursuant to the revised provisions in the Bank Secrecy Act.[1] Our comments, detailed below, focus on three modifications, that in our view, FinCEN should make to the proposed rule regarding: (1) the third prong of the definition of an insurance company; (2) the exclusion of brokers and agents from coverage under the rule; and (3) the $5,000 threshold amount for filing suspicious activity reports ("SARs").

Stored Value Should Not Include the Return of Premium Due to Cancellation of a Property and Casualty Insurance Policy

The language of the third prong of the definition of "insurance company" in proposed sections 103.137 and 103.16, could be interpreted, if read literally, to include any insurance company which issues insurance products that can be cancelled in exchange for a return of premium. Virtually all insurance products sold in the United States, if cancelled, generate return premium. As currently drafted, that language provides: "… (C) The issuing, 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 value and transfer that value to another person*." (Emphasis added). We do not believe that the drafters intended to include standard automobile or homeowners policies or other conventional or commodity insurance policies in the definition simply because a portion of the premium may be returned in the event of cancellation prior to the natural term expiration. Because of their character, these policies are poor vehicles for storing value.

In sections 103.137 and 103.16, FinCEN specifically mentions life insurance and annuity products in the definition of "insurance company" and does not mention health or property and casualty products. We believe the intent of FinCEN in using such language is to exclude health and property and casualty insurers from the definition of "insurance company," except in cases where health or property and casualty insurers issue insurance products, which fall within the

[1] Proposed §103.137 amends 31 CFR 103 and defines "insurance company" for purposes of the requirement in the Bank Security Act that financial institutions establish anti-money laundering programs. Proposed §103.16 amends 31 CFR 103 and defines "insurance company" for purposes of the requirement in the Bank Security Act that financial institutions report suspicious activities and requires the reporting of transactions conducted or attempted by, at, or through an insurance company which involve or aggregate at least $5000 in funds or other assets.

third prong of the definition. Otherwise, FinCEN would have explicitly provided that an "insurance company" includes an insurance company that issues property and casualty insurance products.

We suggest that FinCEN intended to exclude health and property and casualty insurers from the definition of "insurance company" except in cases where health or property and casualty insurers issue insurance products which, *because of the particular nature of the product and not because the product can be cancelled in exchange for return premium*, possess the ability to store value and to transfer value to another person. These products often involve unique and unusual insurance deals, such as risk finance or the posting of collateral, which can allow the concealment of funds for the purpose of laundering money. Thus, we think that the definition of "insurance company" should be clear to capture only those general insurance companies that sell insurance products where the features of stored value or transferability of value is inherent in the product itself, but not general insurance companies that sell commodity insurance products, like automobile and homeowners insurance policies, which allow the storing of value or the transfer of value simply because the insurance policy can be cancelled in exchange for a return of premium.

We suggest that the exclusion from the definition of "insurance company" of insurance companies that sell commodity insurance products which allow the storing of value or the transfer of value simply because the insurance policy can be cancelled in exchange for a return of premium only apply to health and property and casualty insurance companies and not to life insurance companies. Such an application is appropriate because the nature of health and property and casualty products does not lend itself easily to money laundering activities. A potential money launderer is unlikely to form a business as a front and acquire property to insure or employ workers to insure for the purpose of buying an insurance policy and then canceling the policy in exchange for return premium. Such a scenario, however, is more likely to occur with life insurance and annuities because the potential money launderer can insure any life or make an investment in an annuity and cancel the same for the cash value without having to establish a property risk or a liability as a front for buying an insurance policy.

To accomplish this distinction, we propose that the third prong of the definition of "insurance company" in sections 103.137 and 103.16 provide: "… (C) The issuing, underwriting, or reinsuring of any insurance product with investment features similar to those of a life insurance policy or an annuity contract, or with features of stored value or transferability of value inherent in the type of product, including property and casualty insurance policies having features which facilitate the storage of value."

To the Extent that Property and Casualty Insurance Companies are Included within the Definition of "Insurance Company," Agents and Brokers Must Also Be Included

To the extent property and casualty insurance companies are included within the definition of "insurance company" in sections 103.137 and 103.16, agents and brokers must also be included. FinCEN has stated that insurance companies are required to assess the money laundering and terrorist financing risks posed by their distribution channels. Such a requirement is onerous and in certain circumstances, impossible. Agents and brokers are in direct contact with potential insureds and therefore are in the best position to assess money laundering and terrorist financing risks and to implement "know your customer" procedures. Therefore, they should be charged with the responsibility of assessing money laundering red flags.

Property and casualty insurance companies generally do not have any contractual right or any market influence to direct or control the activities of brokers. Property and casualty insurance companies do not contract with brokers and brokers generally act as agents of the insured. Further, the property and casualty insurance market is dominated by a handful of brokers. As a result, these brokers can choose the property and casualty insurance companies with whom they place business. If property and casualty insurance companies attempt to direct brokers' activities by requesting that they follow certain anti-money laundering guidelines, such brokers could have an incentive to place business with other insurance companies that will not request the adherence to policies, procedures and controls established to fight money laundering. FinCEN mentions that insurance companies can "incorporate policies, procedures and internal controls integrating agents and brokers into its anti-money laundering program." In the case of property and casualty insurance companies this is not true with respect to brokers because property and casualty insurance companies have no control or influence over brokers.

Although property and casualty insurance companies can contractually impose certain restrictions on agents' activities, they should not have the burden of ensuring that agents follow anti-money laundering procedures. Agents often play the role of an insurance company and do all the functions with respect to the issuance of an insurance policy that an insurance company might do, such as appoint and remove subagents, issue and cancel contracts of insurance and reinsurance, accept and decline risks, collect premiums, reject, adjust, compromise and pay losses, enter into reinsurance agreements and pay premiums, taxes and fees. Because agents are an integral part of the insurance selling process, to the extent insurance companies are included within the definition of "insurance company," agents should also be included.

The Threshold for Insurance Companies Filing Suspicious Activity Reports Must be Raised

The threshold for financial institutions to report suspicious activities, which involve transactions conducted or attempted by, at, or through an insurance company, must be raised to $10,000. A $10,000 threshold would be consistent with the requirement that banks report suspicious activities upon receipt of $10,000 or more in a cash deposit. Insurance companies have historically been less at risk of being used as money laundering facilities than banks. Thus, the threshold for reporting suspicious activities should not be lower when the transaction involves an insurance company than it is when it involves a bank.

We appreciate the opportunity to comment on the proposed rules.

Sincerely,

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