#30 Received Via Email

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To: regcomments@fincen.treas.gov

From: John H. O'Byrne
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New York Life Insurance Company

ATTN: Section 352 - Insurance Company Regulations

I am writing on behalf of New York Life Insurance Company and its affiliated insurance companies ("New York Life") with regard to the Notice of Proposed Rulemaking that would mandate Anti-Money Laundering ("AML") Programs for Insurance Companies under Section 352 of the USA PATRIOT Act (the "Proposed Rule"). New York Life, a Fortune 100 company, is the largest mutual life insurance company in the United States and one of the largest life insurers in the world. Founded in 1845 and headquartered in New York City, New York Life offers a variety of life and health insurance products, including life insurance, annuities, and long-term care insurance. New York Life strongly supports the policy objectives represented by the USA PATRIOT Act and commends FinCEN for its efforts towards carrying out the mandates of that landmark legislation.

As applicable to traditional (non-securities) insurance products, New York Life submits comments relating to seven aspects of the Proposed Rule:

- The absence of a requirement that insurance agents and brokers comply with the AML programs of the insurance companies by which they are appointed.
- Customer identification programs for insurance companies.
- The inclusion of term life insurance products.
- The status of group life insurance, group annuities, corporate-owned life insurance, and bank-owned life insurance.
- The need for a de minimis exemption.
- Structured settlement annuities.
- The need for the rule to specifically permit an insurance company to rely on the AML program of another covered financial institution.

1. The absence of a requirement that insurance agents and brokers comply with the AML programs of the insurance companies by which they are appointed

FinCEN has invited comments on whether the final rule should require insurance agents and brokers, or any subsets of agents or brokers, to establish and maintain AML

programs. We believe that the final rule should not require insurance agents or brokers to establish and maintain AML programs, and that any such requirement would be costly and inefficient, monumentally difficult for FinCEN or another agency to effectively regulate, and would not materially advance the objectives of the USA PATRIOT Act.

New York Life recognizes the pivotal role that an insurance company's agents play in an effective AML program. As the Release accompanying the Proposed Rule ("Release") states, "[b]ecause of their direct contact with customers, insurance agents are in a unique position to observe the kind of activity that may be indicative of money laundering." We also observe that agents are more often than not in a better position than the life insurance company itself to "know the customer." New York Life believes that two of the basic pillars of the requisite policies, procedures, and controls of a satisfactory AML program are (i) suspicious activity monitoring (FinCEN's point above); and (ii) a customer identification (or know-your-customer ("KYC")) program. Given that insurance agents are critical to the suspicious activity monitoring and KYC aspects of any worthwhile AML program, the question arises as to how best to ensure that agents carry out critical AML compliance duties.

We believe that the scope of the Proposed Rule should be expanded to include a specific requirement that insurance agents and brokers comply with the AML programs of the insurance companies by which they are appointed. The Release properly discusses the importance of insurance companies, in developing their AML programs, assessing the risks associated with the sales activities carried out by and through their distribution channels and the need to integrate agents into their AML programs. Absent a legal or regulatory mandate on the point specifically directed at agents and brokers, we are concerned that the process of integration would be destined to frequently fall short of FinCEN's objectives and the mandates of the USA PATRIOT Act. As diligently as they might try to establish and enforce the requisite procedures, and to integrate the disparate distribution channels into the execution of those procedures, insurance companies in the end typically lack sufficient control over their independent distribution channels (which under virtually any approach will be responsible for carrying out critical AML functions) to justify a regulatory scheme that places the entire burden of AML compliance solely on the insurer. We would anticipate that no contractual amendment that companies and agents would find mutually agreeable could adequately establish and memorialize the important AML role carried out by agents and brokers absent some regulatory backing. Our experience suggests that only by FinCEN including agents and brokers within the scope of the Proposed Rule, in one form or another, will insurance companies have the means necessary to carry out their own serious responsibilities thereunder.

2. Customer identification programs for insurance companies

New York Life believes that FinCEN's approach of releasing draft regulations designed to implement Section 352 of the USA PATRIOT Act, and soliciting comments thereon, at a time when the regulations under Section 326 (relating to customer identification programs) have not yet been released, is one that will render unlikely an

optimal regulatory result in the insurance context. We recommend that FinCEN delay the implementation date of the Section 352 regulations until a reasonable time after the Section 326 regulations have been finalized.

Prior to the enactment of the USA PATRIOT Act in October 2001, United States-based life insurance companies were not required to have AML compliance programs. Life insurance companies, particularly since the issuance of the Proposed Rule, have been diligently working towards the development of compliant AML programs. As discussed above, the Proposed Rule places no direct responsibility on life insurance agents or brokers to participate in the AML compliance process. We believe that the limited ability of life insurance companies to control the actions of various "components" of their distribution channels ? particularly the independent agent, or brokerage channel - only complicates further the task of establishing a workable and effective AML program.

Under the Proposed Rule, an insurance company must among other things "incorporate policies, procedures, and controls based upon [its] assessment of the money laundering and terrorist financing risks associated with its products, customers, distribution channels, and geographic locations." We submit that virtually any such risk assessment would naturally result in a company's establishing an AML program that focused squarely on a customer identification program and a suspicious activity monitoring process. Given that any worthwhile AML program relies to a great extent on KYC-related issues, we believe that FinCEN, rather than establishing the Section 352 requirements at this point in the process, ought to first provide guidance as to the nature and extent of the customer identification programs it expects life insurance companies to establish and enforce. While companies may and often do have KYC responsibilities independent of AML programs, we suggest that they can not realistically be expected to have meaningful, effective AML programs absent a clear understanding of the KYC component. Although the Release calls upon insurance companies to "obtain relevant customer information" collected by their agents and brokers, we submit that such guidance is not specific enough to permit the development of an adequate AML program under Section 352. Given the serious challenges associated with integrating all distribution channels into a company's AML program (as discussed above), to heighten the challenge by compelling firms to develop those programs in the absence of recognized KYC standards is an approach worthy of reconsideration.

3. The inclusion of term life insurance products

The Release asserts that "[t]erm life insurance policies also pose a significant risk of money laundering because they possess elements of stored value and transferability that make them attractive to money launderers." We request clarification from FinCEN as to the point that term policies "possess elements of stored value" or "transferability." While term policies have "stored value" in the sense that when the insured dies, a death benefit is paid, an insured can generally not "cash in" or take a loan against a term insurance policy in order to receive back so-called laundered funds.

The example in the Release of an apparent insurance fraud scheme involving a non-U.S. based drug trafficker who purchases a term policy on an elderly or ill front person as the insured, and then collects the proceeds when the insured dies, is not persuasive. The purchaser of an insurance policy is generally required under state insurance law to have an insurable interest in the insured. Even if the insured herself were complicit in the scheme (willingly or not), insurance companies today have in place fraud detection policies to prevent precisely the sort of conduct described in the hypothetical. Life insurance companies, moreover, are of necessity expert in ascertaining relevant medical information about proposed insureds and in making reasoned evaluations about the state of health of those insureds. In any case, any money laundering illustrated by the hypothetical would be strictly secondary to the obvious insurance fraud. We respectfully disagree with the proposition that term life insurance products present significant money laundering risks, and request that such products be expressly excluded from coverage under the Proposed Rule. In the alternative, we request that FinCEN reconsider its stated position that term life policies "possess elements of stored value and transferability," and expressly leave to the discretion of companies subject to the Proposed Rule the appropriate risk assessment to be accorded to term life business.

4. The status of group life insurance, group annuities, corporate-owned life insurance, and bank-owned life insurance

New York Life has concerns with the possible deleterious business impact of the Proposed Rule on group life insurance, group annuities, corporate-owned life insurance ("COLI"), and bank-owned life insurance ("BOLI"), and with the prospect of having to expend resources to ensure USA PATRIOT Act compliance with respect to those low-money laundering risk products, at a time when those resources may be better spent in fortifying other aspects of its AML program. The term "group life insurance" is generally defined as life insurance issued to an employer for the benefit of employees or to members of an association, while a "group annuity" is essentially a pension plan which provides an annuitized payment at retirement to a group of people (such as the employees of a corporation) under a master contract. COLI is a financial product that employers purchase to help them meet costs they will be responsible for paying in the future, while BOLI is a similar product which banks purchase for similar reasons. Under a COLI/BOLI arrangement, an employer purchases a policy or policies on some or all of its employees, either individually or as a group. As employees pass away, the death benefit paid on the life insurance to the employer can be used to fund future obligations such as retiree health care benefits.

Based upon our company's longstanding product knowledge and review of the USA PATRIOT Act and the Proposed Rule, we do not believe that group life and annuities, COLI, or BOLI products are susceptible in any material way to terrorist financing or money laundering schemes. With these products, the business relationship is essentially between the insurance carrier and the employer or association itself. In addition, only regular employees (in the case of a private company, for example) or members (in the case of an association) are generally eligible to be covered by these types of products. We believe that only under a strained analysis could

group life and annuities, COLI, or BOLI products be understood to possess the requisite elements of "stored value" and "transferability" indicated by the Proposed Rule.

While we recognize and appreciate the fact that FinCEN has emphasized the need for insurance companies to assess the terrorist financing and money laundering risks associated with their products, and to design their AML programs accordingly, we also believe that more specific guidance from FinCEN, including express exemptions from coverage in the case of particular types of insurance products, such as those discussed here (as well as term life insurance, small face amount policies, and structured settlement annuities), are warranted. New York Life commends FinCEN for acknowledging the need for companies to allocate precious compliance resources in the direction of the areas of greatest risk. We note that FinCEN has the opportunity and responsibility through the rulemaking process to shape the direction of insurance company AML compliance programs for decades to come. We urge FinCEN to take advantage of this opportunity to ensure that the development of those programs can proceed unencumbered by concerns about what all parties should concede are extremely low-risk (as to terrorist financing and money laundering) areas of business. Of course, in the event experience teaches that group life and annuity, COLI, and BOLI products are for practical purposes susceptible to terrorist financing and money laundering schemes, the issue can be addressed through an amendment. In the meantime, however, as affected insurance companies are essentially in the formative stages of developing their AML programs, all parties would benefit from a specific recognition in the final rule that those programs should not be required to address such low risk areas as group life and annuity, COLI, and BOLI business.

5. The need for a de minimis exemption

We are concerned that the Proposed Rule would extend to essentially all life insurance business, notwithstanding the face amount of the policy, and believe that the rule could be substantially improved, without compromising its effectiveness, by including a de minimis (by face amount) exemption.

According to the most recently available statistics, approximately 35% of all life insurance policies sold in the United States were for face amounts of $25,000 or less, while approximately 20% were for face amounts of $10,000 or less (Life Buyer Study by LIMRA International). The premium amounts required to support policies with face amounts of $25,000 or less would in the vast majority of cases be well under $1,000 per year. Such policies, which often contain other characteristics that would make them unattractive to money launderers, are extremely unlikely vehicles for acts of terrorist financing or money laundering, and we therefore request that FinCEN include a provision exempting them from coverage under the Proposed Rule. Including a de minimis provision would advance FinCEN's regulatory objective of having life insurance companies focus their AML programs on their points of greatest vulnerability. A de minimis clause would also be consistent with existing laws and rules relating to anti-money laundering, such as those requiring currency transaction reports and Forms 8300 (which contain $10,000 thresholds) and the proposed suspicious activity reporting rules

(which have a $5,000 threshold). Absent the inclusion of such a provision, life insurance companies will be legally compelled to devote AML resources to low-risk but high volume areas of business, and thereby to undermine our shared objective of combatting terrorist financing and money laundering.

6. Structured settlement annuities

A "structured settlement" is an agreement between parties to a dispute involving one or more injury victims. Under a structured settlement, the wronged party, instead of receiving compensation in a lump sum, receives a stream of tax-free payments tailored to meet future medicalexpenses and basic living needs.

A structured settlement may be agreed to privately (e.g., in a pre-trial settlement) or required by court order (e.g., in judgments involving minors). When there is agreement on the benefits due to the injury victim (which can happen before, during, or after a law suit), the defendant will agree to fund a stream of payments that meet these needs. The defendant then assigns this obligation to an experienced third party, such as a life insurance company, that funds the damage payments with an annuity.

Annuities are the preferred way of funding because of their pricing and flexibility. In the Periodic Payment Settlement Act of 1982 (P.L. No. 97-473), Congress adopted specific tax rules to encourage the use of structured settlements to resolve physical injury cases. Section 104(a)(2) of the Internal Revenue Code clarifies that the full amount of the structured settlement payments is tax-free to the victim. (By contrast, the investment earnings on a lump sum payment are usually fully taxable.)

In light of the particular circumstances needed for parties to enter into a structured settlement (i.e., the resolution of a law suit or threatened litigation), we believe that requiring insurance companies to make structured settlement annuity products subject to their AML programs would be unnecessarily costly and inefficient. These types of annuities would appear to fit within the "stored value" and "transferability" parameters established under the Proposed Rule, yet we do not believe that it was Congress' or FinCEN's intention to mandate that they be subject to AML scrutiny. New York Life is a significant seller of structured settlement annuities and we do not perceive that this is the type of business in which money laundering is likely to arise. Accordingly, we request that structured settlement annuities be exempted from coverage under the final rule.

7. The need for the rule to specifically permit an insurance company to rely on the AML program of another covered financial institution

With respect to outside distribution, we request that the final rule specifically permit a life insurance company to rely on the written representation of another financial institution that it is also subject to the USA PATRIOT Act and the regulations thereunder. For instance, when annuities are sold through a financial institution such as a bank, such institution is required to have an AML program and is in a better position than the life insurance company to know the customer. It would appear to involve an

unnecessary duplication of efforts to also require that the insurance company's AML program serve as a complement or overlay of such program.

We appreciate this opportunity to share with FinCEN our concerns with the Proposed Rule. Please feel free to call me at (212) 576-6556 should you care to discuss this letter or any other matter.