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Via E-Mail

FinCEN
ATTN: Section 352-Insurance Company Regulations
P.O. Box 39
Vienna, VA 22183

December 16, 2002

Re: Amendment to the Bank Secrecy Act Regulations – Requirement that Insurance Companies Report Suspicious Transactions, Notice of Proposed Rulemaking

Ladies and Gentlemen:

Swiss Re Life & Health America Inc. (Swiss Re) appreciates this opportunity to comment on the Financial Crimes Enforcement Network's ("FinCEN") proposed regulations implementing Section 352 of the USA PATRIOT Act (the "Act") with respect to insurance companies. Swiss Reinsurance Company, through its life insurance affiliates, is the largest life reinsurance company in the world. Its U.S. operations are headquartered in Armonk, New York.

As we have noted in other submissions relating to the implementation of the USA Patriot Act, Swiss Re fully supports the goals of the Act. We believe, however, that application of the proposed reporting requirement to reinsurance companies would impose a significant administrative burden, while achieving no offsetting benefit in the fight against money laundering and terrorist financing.

Swiss Re has submitted a comment letter on FinCEN's parallel proposal made pursuant to Section 352 of the USA Patriot Act, which would require insurance companies to establish anti-money laundering programs. Because we believe the concerns highlighted therein are equally applicable to

this latest proposal, we will not repeat that analysis here. Instead, we have also attached a copy of our November 25, 2002 letter for your convenience and review. As that letter explains in more detail: 1) reinsurance products pose little risk of money laundering abuse; 2) reinsurance companies have no direct contact with insured consumers; and, 3) the rule's coverage of direct insurers provides adequate protections against the use of insurance products as vehicles for money laundering.

In addition, we note that none of the examples provided in the preamble to the proposed regulation involve the use of reinsurance products as a vehicle for money laundering. The preamble discussion does not explain how reinsurance products exhibit the characteristics identified in the preamble that pose the greatest risks of money laundering abuse (i.e., investment features and the ability to store and transfer value). Furthermore, no evidences is provided to indicate that money laundering risks posed by reinsurance products is sufficient to warrant the burden that would be imposed on reinsures under the proposed regulation.

It may also be important to note that Treasury Department's Office of Foreign Assets Control ("OFAC") already provides a defined list of specially designated entities with which U.S. businesses (including Swiss Re) must screen their customers and block illicit transactions. Suspicious activity reporting may be useful for entities that have a direct relationship with parties that could engage in money laundering, but reinsurance companies lack direct consumer contact and are in a poor position to provide meaningful suspicious activity reporting.

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In conclusion, we respectfully urge that FinCEN amend the scope of the proposed rule to exclude its application to reinsurance companies. Please contact the undersigned if you wish to discuss these comments further.

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Respectfully submitted,

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FinCEN
ATTN: Section 352-Insurance Company Regulations
P.O. Box 39
Vienna, VA 22183

November 25, 2002

Re: Proposed Regulations Under Section 352 of the USA PATRIOT Act Requiring Insurance Companies to Establish Anti-Money Laundering Programs

Ladies and Gentlemen:

Swiss Re Life & Health America Inc. (Swiss Re) appreciates this opportunity to comment on the Financial Crimes Enforcement Network's ("FinCEN") proposed regulations implementing Section 352 of the USA PATRIOT Act (the "Act") with respect to insurance companies. Swiss Reinsurance Company, through its life insurance affiliates, is the largest life reinsurance company in the world. Its U.S. operations are headquartered in Armonk, New York.

Swiss Re fully supports the goals of the Act. Swiss Re has a first hand appreciation for the devastating impact that can be caused by acts of terrorism and strongly supports efforts to curtail money laundering and terrorist financing. In this regard, we appreciate the thrust of the proposed rule but believe that, with respect to its application to reinsurance companies, the proposal is unnecessarily broad.[1] As explained in greater detail below, reinsurance companies do not present

[1] Although we anticipate filing a separate comment letter, we note that FinCEN's proposal to require reinsurance companies to report suspicious transactions raises many of the same concerns presented by the current proposal. See Requirement That Insurance Companies Report Suspicious Transactions, 67 Fed. Reg. 64,067 (to be codified at 31 C.F.R. part 103) (proposed Oct. 17, 2002).

the type of money laundering risks that the rule is intended to address. In addition, reinsurance companies are not in a position to address the types of money laundering risks identified in the preamble. Given the extremely low likelihood that reinsurance products could be used to facilitate money laundering, Swiss Re believes that the requirements of the final rule should not be imposed on reinsurance companies.

1.1 Reinsurance Products Pose Little Risk of Money Laundering Abuse.

The preamble to the proposed rule recognizes that all insurance products do not present the same level of risk for being used as vehicles for money laundering and terrorism financing.

> FinCEN believes that the most significant money laundering and terrorist financing risks in the insurance industry are found in 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.[2]

The preamble goes on to explain that, "the identified instances of money laundering through insurance companies generally have been confined to life insurance products."[3] Accordingly, FinCEN explained that the proposed rule was designed to "capture[] only those insurance products with investment features, and insurance products possessing the ability to store value and to transfer that value to another person."[4] This rationale justified the exclusion of property and casualty, health and title insurers.

Yet the proposed definition of "insurance company" includes entities which reinsure life, annuity and investment products. The inclusion of reinsurance companies within the scope of the proposed rule is inconsistent with FinCEN's stated intent. Moreover, reinsurance products do not possess investment features "with the ability to store value to transfer that value to another person"

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[2] Anti-Money Laundering Programs for Insurance Companies, 67 Fed. Reg. 60,625, 60,626 (2002) (to be codified at 31 C.F.R. pt. 103) (proposed Sept. 26, 2002).

[3] Id. at 60,626-27.

identified by FinCEN as creating the greatest money laundering risk among insurance products. No indication is given that instances of money laundering have been accomplished through reinsurance companies.

Reinsurance is the process by which a reinsurance company, such as Swiss Re, takes on all or part of a direct insurer's risk in exchange for the payment of a premium. The liability of the reinsurance company is solely to the direct insurer – not to the underlying insured party. In the case of annuity contracts, permanent life policies with cash surrender values and term life policies, reinsurers generally have no contact with the underlying insured party or role in setting the terms of the underlying contracts. Because reinsurers are not involved in setting the terms of the insurance contracts they reinsure, the availability of reinsurance to a pool of annuity or permanent life contracts has no bearing on whether an insured party would exercise options under those contracts (at substantial financial penalty) to launder money or to further a scheme of terrorist financing. The preamble's absence of an explanation for the connection of reinsurance to money laundering suggests that the proposed imposition of anti-money laundering obligations on reinsurers lacks a reasonable basis. Accordingly, the definition of "insurance company" should be amended to make clear that it does not include reinsurers.

1.2 Reinsurance Companies Have No Direct Customer Contact.

FinCEN emphasizes the importance of customer information in assessing the money laundering risks associated with a particular insurance company. The preamble to the proposed rule provides a number of customer-related factors that should affect an insurance company's money

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[4] Id. at 60,626.

laundering risk profile.[5] None of these factors is applicable to reinsurance companies because reinsurers have little or no direct customer contact. As noted above, a reinsurer's "customers" are direct insurance companies – not individuals. Furthermore, life reinsurance treaties are typically written on a portfolio basis – not on the basis of individual contracts. Although the reinsurer may receive copies of original documentation in connection with its reinsurance of a particular portfolio, it does not have contact with the underlying insured.

FinCEN's inclusion of reinsurance companies within the scope of the proposed rule is inconsistent with the approach taken by FinCEN in imposing the same provisions of the Act to unregistered investment companies.[6] That proposal excludes from its scope "all types of entities whose interests are sold only on a secondary market…."[7] Explaining this exclusion, FinCEN notes that "[t]hese entities generally do not have an account relationship or otherwise deal directly with investors and therefore are not in a position to monitor for money laundering."[8] In their relationship with direct writing companies, reinsurance companies are generally analogous to the secondary market participants excluded from FinCEN's investment company proposal. Like the excluded investment companies, reinsurers do not "have an account relationship with or otherwise deal directly with" the underlying insured. This lack of customer contact places reinsurance companies in a poor position to monitor for money laundering and terrorism financing risks. With regard to anti-money laundering requirements, reinsurance companies should be accorded treatment equivalent to that proposed for unregistered investment companies whose shares are traded on secondary markets.

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[5] These factors include: 1) whether the company permits customers to use cash or cash equivalents to purchase an insurance product; 2) whether the company permits customers to purchase an insurance product with a single premium or lump-sum payment; and 3) whether the company permits customers to take out a loan against the value of an insurance product. See id. at 60,628.

[6] See Anti-Money Laundering Programs for Unregistered Investment Companies, 67 Fed. Reg. 60,617 (2002) (to be codified at 31 C.F.R. pt. 103) (proposed Sept. 26, 2002).

[7] Id. at 60,619 n.20.

[8] Id.

1.3 The Rule's Coverage of Direct Insurers Provides Adequate Protections Against the Use of Insurance Products as Vehicles for Money Laundering.

Excluding reinsurance companies from the scope of the rule would have little impact on preventing money laundering. All funds flowing to a reinsurance company necessarily flow through a direct insurer, who would be required by the rule to maintain anti-money laundering programs. Requiring reinsurance companies to oversee direct insurers' anti-money laundering programs in effect requires reinsurance companies to assume a regulatory role over direct companies. It is inappropriate to impose such a regulatory burden on reinsurers – particularly given the nature of reinsurance products and the reinsurer's lack of customer contact.

Under the proposal, insurance companies are obligated to assess the risks associated with, among other things, their distribution channels. In this regard, the proposal makes clear that an insurance company must incorporate policies and procedures that address the role of a company's agents and brokers in its anti-money laundering program. However, the relationship of reinsurer to direct insurer is not equivalent to that of direct insurer to broker or agent. Direct insurers are not elements of a reinsurance company's distribution channels, but rather the purchasers of products sold by reinsurers. Reinsurance companies and direct insurers do not have the type of agency relationship that could be a basis for holding reinsurers responsible for the anti-money laundering compliance of the direct insurers whose policies they reinsure.

1.4 Conclusion

If reinsurers are required to comply with this proposal, they must adopt anti-money laundering programs that are "reasonably designed" to address their money laundering risks. We believe that reinsurers are unlikely to confront or have knowledge of money laundering activities. The proposal nevertheless mandates that all reinsurers formulate written policies and procedures, periodically

update such policies and procedures, designate a compliance officer, provide on-going education and training to their employees, and arrange for independent testing of their anti-money laundering program. Reinsurance companies, should not be subjected to such burdensome requirements in the absence of a strong correlation between reinsurance and money laundering or terrorist financing. Lacking such a correlation, we respectfully urge that FinCEN amend the scope of the proposed rule to exclude reinsurance companies.

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Please feel free to contact the undersigned if you wish to discuss these comments further.

Respectfully submitted,

Cosette R. Simon