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#6

December 12, 2002

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

Requirement that Insurance Companies report Suspicious Transactions

Dear Sir or Madam:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to comment on FinCEN's proposal to require insurance companies to report suspicious transactions.

After careful analysis, FinCEN has correctly concluded that "the most significant money laundering 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 origins."

FinCEN accurately notes that "the focus 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." Since the property/casualty insurance and health insurance sectors pose minimal risk for abuse by money launderers, those sectors are excluded from the proposed definition of an insurance company, which focuses on life insurance and annuities.

The ICBA agrees with FinCEN that life insurance and annuities pose the greatest risk for abuse by money launderers, due to the structure of those products. And, we also agree that property/casualty insurance and health insurance pose very little risk.

¹ ICBA is the nation's leading voice for community banks and the only national trade association dedicated exclusively to protecting the interests of the community banking industry. ICBA has 5,000 members with branches in 17,000 locations nationwide. Our members hold nearly \$511 billion in insured deposits, \$624 billion in assets and more than \$391 billion in loans for consumers, small businesses, and farms. They employ more than 231,000 citizens in the communities they serve.

ICBA: *The Nation's Leading Voice for Community Banks*

Credit Life Insurance

The ICBA strongly recommends that the final rule clarify that credit life insurance is excluded from the definition of insurance under the requirements.² Lacking an investment component, credit life policies are much more like casualty insurance than life insurance policies for money laundering purposes. Typically, a credit life insurance policy is offered to a borrower at the time a loan is originated. The insurance coverage is tied to the loan, with premiums typically paid by the borrower as an additional fee.³ On the occurrence of a specified event, usually the death or disability of the borrower, the insurance provides funds to satisfy the terms of the debt.

The beneficiary in this instance is the bank that made the loan, and the insurance company either satisfies the outstanding debt in its entirety or makes loan payments during the period that the borrower is covered by disability. While the borrower may indirectly benefit from eliminated or reduced payment on the debt, the actual beneficiary is the creditor, thereby making this form of insurance unappealing from a money laundering aspect. The lack of an investment component also makes credit life insurance unappealing for money laundering purposes, since it does not offer the ability to move illicit funds through the financial system. And, as with casualty or property insurance, there is a precipitating factor that prompts payment; since the precipitating factor is outside of the control of the borrower, it makes credit life insurance a minimum risk for abuse by money launderers.

Therefore, since credit life insurance policies are not subject to the manipulation or abuse that raises concerns about money laundering or terrorism, credit life should be excluded from the definition of insurance in the final rule.

Insurance Agents

Under the proposal, the definition of an insurance company does not include insurance agents or brokers. However, insurance companies will be responsible to obtain all relevant information needed from agents and brokers for purposes of filing suspicious activity reports, since it is insurance agents who are in the best position to observe unusual or suspect actions.

The ICBA agrees that this is appropriate. However, banks have long been subject to anti-money laundering and suspicious activity reporting requirements and already have programs in place to meet the mandates of the Bank Secrecy Act. Since banks may act as either insurance agents or brokers, the ICBA recommends that FinCEN incorporate a provision in the final rule to make it clear that bank compliance with existing anti-money laundering and suspicious activity reporting requirements established by the appropriate federal banking agency meets the requirements of this proposal when a bank acts as an insurance agent. Otherwise, banks serving as agents

² Similarly, debt cancellation contracts and debt suspension agreements, which are similar to credit life policies, should be excluded.

³ As a general rule, the fees are relatively nominal.

will file one report under their own requirements, while simultaneously passing that same information along to the insurance company for a duplicate filing by the company.

Training and Education

The ICBA strongly encourages FinCEN to establish training guidance for insurance companies. While it is true that many insurance companies have fraud detection mechanisms in place and that such mechanisms will help detect instances of money laundering or suspicious activity, the ICBA also believes that it would be very helpful if FinCEN distributed information about the kinds of activities or transactions that indicate a suspicious activity report should be filed. For example, in the proposal, FinCEN lists a series of "red flags" that would indicate further investigation to determine whether the transaction merits reporting. The ICBA recommends that information about these red flags be distributed to insurance commissioners and insurance companies as a tool to educate and alert brokers and agents. In addition, FinCEN publishes the quarterly *SAR Activity Review-Trends, Tips and Issues*. This offers helpful guidance, and it may be appropriate to add a special section with guidance and cases focused specifically on the insurance industry and insurance products.

Since this is a new requirement, the ICBA also recommends that FinCEN consider establishing a set of best practices or question-and-answers for insurance companies to offer guidance on communication with insurance agents and brokers, methods for reporting suspicious activities, and transactions for which agents and brokers should be alert. This could be posted in a special section of the FinCEN Web site designed for insurance companies (implementation of a separate but similar section for banks would also be useful).

Should you have any questions or need any additional information, please feel free to contact ICBA's regulatory counsel, Rob Rowe, at 202-659-8111 or robert.rowe@icba.org.

Thank you for the opportunity to comment.

Sincerely,



A. Pierce Stone
Chairman