THE FINANCIAL SERVICES ROUNDTABLE

805 FIFTEENTH STREET, NW
SUITE 600
WASHINGTON, DC 20005
TEL 2102-289-4322
FAX 202-289-1903

Richard Whiting
Hwww.fsround.orgH

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Via E-Mail

Financial Crimes Enforcement Network (FinCEN)
U.S. Department of the Treasury
Section 352 Insurance Company Regulations
P.O. Box 39
Vienna, VA 22183
Attention: Section 352 Insurance Company Regulations

Re: Anti-Money Laundering Programs for Insurance Companies Under Proposed Rule for section 352 of the USA PATRIOT Act

To FinCEN Staff:

The Financial Services Roundtable ("FSR") is a national association representing 100 of the largest integrated financial services companies in the U.S. providing banking, insurance, securities, and investment products and services to American consumers. We write to suggest that several areas of the Proposed Rule under Section 352 of the USA PATRIOT Act ("the Proposed Rule") merit further consideration.

Insurance Agents and Training

Companies that are traditionally perceived as either banks or insurance companies may be considered "insurance companies" under the Proposed Rule since they actually provide financial products – (insurance and annuity products) described in Proposed Rule 103.137(a)(2). The insurance and annuity products are often ultimately sold to consumers through agents. Even if an agent represents only one entity, the agent may need to participate in multiple anti-money laundering training programs that are tailored for the various products sold. This can be magnified as one entity's business may encompass insurance products, bank products, mutual funds and credit unions. These training programs may conflict with each other. Likewise, an agent that represents multiple insurance companies may face a compounded problem. This creates confusion for the agent(s) and it is questionable whether resources allocated to training will actually produce the desired result.

Banks Acting as Agents or Brokers

In addition, banks may act as insurance agents or brokers. Under the proposed rule, the definition of an insurance company does not include insurance agents or brokers.

According to FinCEN, it is the insurance company that is in the best position to design an effective anti-money laundering program for its products, based on the risk of money laundering presented.

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

<u>Insurance Products That Are Not Money-Laundering Risks</u>
In addition to the above, some of the products that appear to be included within the scope of the Proposed Rule do not represent true money laundering risks. FinCEN has indicated at page 7 that it does not believe that money laundering risks should be "predicated solely on the existence of an ability to obtain a refund on a purchased financial product." FinCEN has also indicated that money laundering risks are believed to be associated with products with investment features or features of stored value and transferability.

A number of life insurance products, including group life insurance, credit life insurance, term life insurance products without stored value and reinsurance do not fit FinCEN's profile of a product that carries money laundering risk and they would be excluded from the final rule.

Group Life Insurance
Group life insurance can be issued to statutorily defined groups. This restriction on purchases presents an obstacle to money-laundering. The most common group life insurance setting is probably the employer group, in which a policy is usually issued to an employer for the benefit of employees. Typically there are limitations on who is eligible to purchase insurance and the amount that may be purchased. The employer or the employee may pay premiums, and the ownership of the policy is not transferable nor is there typically any cash value. Hence, the elements of stored value and transferability are not met, nor are there investment features.

Credit Life Insurance
Credit life insurance is usually offered through a bank or another lending institution, and provides protection against default on a loan. The death benefit is typically equal to the balance due on the loan and the bank is usually the beneficiary and may also be the policyholder. Again, there are no elements of stored value or transferability, nor are there investment features.

Term Life Insurance
Term life insurance typically does not build cash value nor does it pay dividends. Most term life insurance can be thought of as a pure protection product with no investment features, and in that respect it is actually similar to a property and casualty policy. The primary means of engaging in a true money-laundering scheme, as with a property or casualty policy, is to obtain a refund of premium, which FinCEN has indicated should not be the sole determinant of a money-laundering risk. Accordingly, the conclusion in the Proposed Rule that term life insurance poses a significant money laundering risk because of elements of stored value and transferability does not obtain.

With respect to term life insurance, special comment is warranted regarding footnote 8 of the Supplementary Information to the Proposed Rule. In the footnote, there is a description of a transaction in which a narcotics trafficker purchases a term policy on an elderly or ill front person and collects the cleansed proceeds when the insured dies. Although money laundering has in effect occurred in that transaction, it is important to note that the transaction is really insurance fraud, and the purpose of the transaction was more to collect additional money from the insurance company than to cleanse existing funds. An analogous transaction would occur if the drug trafficker in this example instead purchased an auto insurance policy and intentionally became involved in a car wreck and submitted a claim for injury and disability. The true purpose is insurance fraud, although illicit funds may have been used to purchase the policy.

An anti-money laundering program is unlikely to prevent this type of money laundering scheme. In the case of the term life insurance example, the insurance company can check the requisite government lists and file an SAR if warranted, but if the Company receives sufficient proof of loss and if the evidence does not support contesting the validity of the policy, there may be little that can be done by the insurance company, even with an anti-money laundering program, to prevent the fraudulent result and the incidental money laundering that accompanied it.

Reinsurance

Reinsurance is the purchase of insurance by one insurance company (ceding company) from another insurance company (reinsurer) in order to mitigate large losses or catastrophic exposure or to enable the ceding company to free up surplus and write more insurance. The contract governing the transaction only involves the ceding company and reinsurer.

Reinsurance does not have a cash surrender value or permit the transfer of any stored value to a third party for the purposes of laundering money. There is no direct contract between the policyholders of an insurer and the reinsurer, and the reinsurance company in most cases never has any direct contact with an insured person.

The transactions that would be required to use reinsurance as a money-laundering vehicle are complex and constitute a natural barrier to money-laundering. In order for reinsurance to be used for money laundering purposes, the money launderer would have to establish an agency to sell the insurance, establish or work with an insurance company to underwrite the coverage, and then contract with a reinsurance company with whom the ceding company would reinsure its business.

Exclusion Requested

For these reasons, we respectfully suggest that group life insurance, credit life insurance, term life insurance products without stored value, and life reinsurance are not high risk vehicles for money laundering and should be specifically excluded from the Proposed Rule.

Consistency for Products Not Excluded, (De Minimis Standard)

The proposed rules regarding insurance company Suspicious Activity Reports (SARs) include a standard for reporting transactions that involve or aggregate at least $5,000 in funds or other assets. We respectfully request that consideration be given to incorporating a similar $5,000 threshold for applicability of the anti-money laundering programs for insurance companies under the proposed rule for Section 352 of the USA PATRIOT Act.

This would help establish a more uniform standard (De Minimis) and may somewhat reduce confusion for those attempting to comply with the regulations.

Thank you for your attention to these matters. Should you have questions concerning this matter, please contact me at (202) 289-4322. The key staffer at the Roundtable on this issue is Irving Daniels who can be reached at the same number.

Sincerely,

Richard M. Whiting