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AMERICAN COUNCIL OF LIFE INSURERS
FINANCIAL SECURITY FOR LIFE

#10

December 16, 2002

Via E-Mail

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

Re: Amendment to the Bank Secrecy Act Regulations – Requirement That Insurance Companies Report Suspicious Transactions, Notice of Proposed Rulemaking ("*Proposed Rule*")

To FinCEN:

We write on behalf of the American Council of Life Insurers ("ACLI"), the largest trade association in the United States representing the life insurance industry. Our members consist of three hundred ninety-nine (399) legal reserve life insurance companies operating in the United States. Of these companies, seven (7) are domiciled in Canada. These 399 companies account for 76 percent of the life insurance premiums, 75 percent of annuity considerations, 46 percent of disability premiums, and 65 percent of long-term care premiums in the United States among legal reserve life insurance companies. ACLI member company assets account for 75 percent of legal reserve life company total assets.

Summary

The ACLI submitted an extensive comment letter dated November 25, 2002 in response to the proposed rulemaking under section 352 of the USA PATRIOT Act (requirement for anti-money laundering programs). Rather than repeat the analysis from that letter in this letter on the *Proposed Rule*, we wish to incorporate that text by reference in this letter. We appreciate Treasury's outreach to our industry in developing the *Proposed Rule*, for it gives us valuable guidance on regulatory expectations. Our comments on the *Proposed Rule* are in six areas: exemption for four areas in the definition of insurance company, obligations on distributors concerning suspicious activity reporting, a time period for the $5,000.00 aggregate reporting trigger point, an SAR form for insurance companies, request for clarification for Broker-Dealers already subject to suspicious activity reporting, and, a requested revision to the Supplementary Information section of the *Proposed Rule*.

Finally, we wish to raise again, as we did in our November 25th comment letter, the compliance difficulties the *Proposed Rule* presents to the life insurance industry when we lack the regulations covering section 326 of the USA PATRIOT Act (verification of accountholder identification). We strongly urge Treasury to issue the regulations governing sections 352, 326, and the *Proposed Rule* at the same time with the same effective dates so compliance efforts may be coordinated and implemented in a timely as well as efficient manner.

Proposed Rule - section 103.16 (a)(2) Definition of Insurance Company

The ACLI strongly advocates here, as in our November 25th letter, exemption of four categories (reinsurance, group insurance, term life insurance, and, credit life insurance) from the purview of the *Proposed Rule*. We believe the analysis to be sound in our November 25th letter and will not repeat that analysis here. It is important that the regulations emanating from the USA PATRIOT Act be consistent. For example, a life insurance company must be aware of the types of lines to which the myriad regulations apply in order to develop the internal policies and procedures necessary to comply with the regulations. Therefore, if certain lines indeed become exempt from the section 352, then those lines must also be exempt from the SAR requirement.

Distribution Channels

The many different types of distribution channels in the life insurance industry were fully explored and explained in our November 25th letter. As explained in that letter, any cure to the issue of distribution channel cooperation with a life insurance company cannot include amendment to distribution contracts. Such an approach is unworkable and incredibly burdensome on the life insurance company. Indeed, it is not unusual for life insurance companies to have thousands of these distribution contracts, all individually negotiated. To revisit these arrangements for the purpose of compliance with the *Proposed Rule* is not an acceptable solution for the life insurance industry. As advocated in our November 25th letter, a much more meaningful exercise would be to assure that distributors have continuing education ("CE") training in the USA PATRIOT Act to accomplish the goal of understanding the importance of and compliance with this federal law.

The ACLI proposes a solution to the distributor issue. First, it is important for the overall goals of the USA PATRIOT Act that suspicious activity be reported to federal regulatory authorities. Second, the realities of liability exposure in our country also dictate that entities reporting such activity be protected for such reporting. Third, insurance is unique to other financial services products in that suspicious activity detected by a distributor may occur in a situation which has not matured to the point where an application for a policy is completed. Therefore, the ACLI respectfully suggests that the *Proposed Rule* do the following: (1) ensure that distributors are able to avail themselves of the liability protections and immunities for reporting found in the Bank Secrecy Act and in section 314 of the USA PATRIOT Act; (2) obligate the distributor to report the suspicious activity directly to federal regulators when no application for insurance is completed; (3) obligate the distributor to report the suspicious

activity to the insurance company for which an application was completed, and the insurance company becomes obligated to undertake any investigation and reporting necessary to comply with the SAR requirement; and (4) if the distributors report directly to FinCEN, obligate the distributors to also inform the insurance company for whose policy an application was completed that the distributor has reported the suspicious activity and provide that the insurance company would not need to make an additional SAR. This solution provides a much more efficient resolution to the distributor issue, addresses the situation when an application is not completed, and achieves the reporting goals of the USA PATRIOT Act.

Proposed Rule – section 103.16 (b)(2) Transactions Requiring Reporting

As currently drafted, the *Proposed Rule* provides a $5,000.00 threshold amount triggering a report of suspicious activity. However, the *Proposed Rule* does not provide any direction concerning the time frame for aggregation. We respectfully request a time frame not to exceed one year for any aggregating requiring suspicious activity reporting. Such aggregation guidance will greatly assist with compliance and will ease any burden on the obligation to track insurance policy activity.

Proposed Rule – section 103.16 (c) Filing Procedures/What to File

The ACLI is pleased to see the *Proposed Rule* mention a specific SAR for insurance companies. We heartily endorse the creation of a form specifically designed for the insurance industry. We would very much like to work with Treasury to provide assistance needed to create the form so it is in a workable format and easily understood by life insurance companies.

Proposed Rule – section 103.16 (c)(i) Filing Procedures

As with this same language in the proposed rule to section 352, the *Proposed Rule* intent appears to avoid compliance redundancy. That is, it is our understanding that the intent of this section is to avoid placing a burden on the life insurer by requiring duplicative suspicious activity reporting if the life insurer is selling through a registered representative who is already subject to a suspicious activity reporting program implemented by his or her Broker-Dealer. Therefore, we respectfully request adding clarifying language to this section to state: "An insurance company or a Broker-Dealer with a suspicious activity reporting program distributing the insurance company's products that is registered or required to register . . . to the extent that the company or a Broker-Dealer distributing the company's products complies with the suspicious activity reporting requirements applicable to such activities that are imposed under §103.19".

Supplementary Information – Sec. II, 67 Fed. Reg. 64,072

It is very helpful for the *Proposed Rule* to list examples of "red flags" concerning the types of events generating suspicious activity reporting. We appreciate Treasury's recognition that whether activity is reported is based upon "all the facts and circumstances relating to the

transaction and customer of the insurance company in question". We wish to offer one comment,

however, to revise one of the "red flags". In the fourth "red flag" listed in the *Proposed Rule*, reference is made to payment to a third party. In credit life insurance, payment is indeed at times made to a third party and therefore such a payment would not raise suspicions. We respectfully request a revision to this phrase to state " . . . directed to an unrelated third party". The addition of "unrelated" more accurately describes a suspicious circumstance under a life insurance policy situation.

We appreciate your attention to our views. Kindly address any questions concerning our submission to our attention (carlwilkerson@acli.com)(202-624-2118) (victoriafimea@acli.com) (202-624-2183).

Cordially,

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