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November 25, 2002

Office of the General Counsel  
U.S. Financial Crimes Enforcement Network (FinCEN)  
P.O. Box 39  
Vienna, VA 22183  
ATTN: Section 352-Insurance Company Regulations

**Re: Comment on Section 352 AMLP Proposed Regulation**

This letter is written on behalf of Fortis, Inc. Fortis, Inc. is part of Fortis, a global financial services firm that employs some 70,000 people worldwide. With assets in excess of \$400 billion, Fortis is among the largest financial institutions in the world. In the U.S., Fortis, Inc. includes companies that provide individual, temporary and small group health insurance, group disability, life and dental insurance, pre-need funeral insurance, affinity marketing and credit-related insurance products and services to millions of U.S. businesses and consumer customers. We provide this letter in response to the request for comments on the proposed regulation published in the Federal Register on September 26, 2002 that would implement Section 352(a) of the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001" (Public Law 107-56) ("Patriot Act").

Fortis strongly endorses the efforts of the federal government to combat money laundering and terrorist finance and the goals of the Patriot Act. The proposed regulation would exempt certain sectors of the insurance industry and certain insurance products under the Patriot Act because they pose little to no money laundering or terrorist finance

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risk. We believe these exemptions could usefully be extended in a few areas that offer no more money laundering or terrorist finance risk than those exempted under the proposed regulation. We also believe that clarification of some of the principles set forth in the commentary accompanying the proposed regulation, and the possible inclusion of these principles in the text of the regulation itself, would assist insurance companies in meeting their obligations under the Patriot Act.

In light of this approach, we request that reinsurance of credit life insurance, funeral insurance and group life insurance be exempted in a final regulation. Should group life insurance not be exempted, we seek language in the commentary that would acknowledge that the customers of group insurance are the businesses purchasing such insurance, not the individuals insured under such policies. We also request that language contained in the commentary to the proposed regulation exempting from coverage certain kinds of life insurance deemed of low risk for money laundering be included in the text of the final regulation. Finally, we seek adoption of a minimum threshold for the insurance policies to be covered by the final regulation.

#### **1. Reinsurance Companies Should Be Exempt From the Scope of Definition of Insurance Company**

*The Definition of Life Insurance Company Under the Proposed Regulation Is Overly Broad.* The commentary accompanying the proposed regulation states that “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.” It specifies that such risks exist in three forms of products: (a) permanent life insurance policies with a cash surrender value; (b) term life insurance policies because they possess elements of stored value and transferability; and (c) annuity contracts because they allow a money launderer to exchange illicit funds for an immediate or deferred revenue stream. Accordingly, the commentary states that the proposed regulation only covers insurance companies offering such products. However, the text of the proposed regulation adds to the definition of covered companies in the commentary in one area: it defines “insurance company” to include not only issuers and underwriters of life insurance but also those in the business of *reinsuring* life insurance. Reinsurers of life insurance should be deleted from the above definition, as they are at extremely low risk of being used for money laundering or terrorist finance, and covering them would not help meet the goals of the Patriot Act or U.S. money laundering laws.

*The Nature of U.S. Reinsurance of Life Insurance.* U.S. reinsurance companies purchase risk-based pools of life insurance at risk-based prices. They receive funds in return for accepting pooled risk of particular losses from groups of people who have life insurance. The funds move through this mechanism in two directions: to the U.S. reinsurance companies for their purchase of pools of insurance, and from the U.S. reinsurance companies to the insurance companies that the U.S. entity has agreed to reinsure for that particular pool of risk. Generally, these funds could not be used for money laundering or terrorist finance, as payments are only made by the reinsurance

company to the primary insurance company or companies when an agreed upon level of loss on the life insurance has already been reached. This is not a scenario that can reasonably involve either money laundering or terrorist finance.

*Criminal Use of Reinsurance.* To be used for money laundering, a reinsurance agency is ordinarily affiliated with the money launderer, operating as a partner in money laundering with financial criminals.<sup>1</sup> In such cases, the reinsurance company receives funds from a money launderer for phony or intentionally falsely priced life insurance, on which it then makes payments back to the money launderer, usually through a front company. In this scenario, the reinsurance company is a knowing participant in the money laundering. Notably, the anti-money laundering obligations set forth in the proposed regulation are not intended to combat willful, intentional criminal activity by U.S. financial institutions, but to ensure that the U.S. financial institutions they cover are in the position to prevent and detect abuses of their institutions by their customers.

*Reinsurance Companies In the U.S. Purchasing Life Insurance Products Do Not Sell Products Defined by Treasury As Useful For Money Laundering or Terrorist Finance.* Reinsurance of life insurance is not a product with a cash surrender value. It does not present stored value and transferability for the purposes of laundering money, except to the extent that similar reinsurance of casualty or property insurance, each of which are exempt under the proposed rule, might meet this test. U.S. reinsurance companies also do not provide annuity contracts that could allow a money launderer to exchange illicit funds for an immediate or deferred revenue stream.

*Reinsurance Companies In the U.S. Are Poorly Situated To Identify Money Laundering or Terrorist Finance.* When a U.S. reinsurance company is solely in the business of reinsurance, its customers are exclusively other insurance companies, and the company receives funds only from such companies. In the case of life insurance, the reinsurance company has no direct contact with the persons who are actually insured and who could report a loss for which the reinsurance company would have to make payment. Thus, the money laundering problem, if any, is one embedded in the underlying life insurance contracts, not the reinsurance. Accordingly, the risks would be fully captured by regulating the underlying issuer or underwriter of the life insurance, not the reinsurance company that has no direct relationship with the persons insured.

*Money Laundering and Terrorist Finance Through Reinsurance Can Best Be Covered Through Section 352 Regulations Covering Banks and Broker-Dealers.* As stated, reinsurance can be used to launder money when a reinsurance company is part of a criminal enterprise. In such a situation, the core risk of money laundering and terrorist finance is the character and identity of the reinsurance company itself. The most effective means of deterring and detecting such laundering is appropriate regulation under Section 352 of the financial institutions that might process such funds, such as banks and broker-dealers. These goals are met through the use of red flags, customer

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<sup>1</sup> International Association of Insurance Supervisors, Anti-Money Laundering Commentary Notes, Approved in Tokyo, January 9, 2002, paragraphs 19 and 30.

identification and Know Your Customer obligations by banks and broker-dealers at the time of account opening, and by monitoring customer accounts, including those of reinsurance companies. By contrast, requiring U.S. reinsurance companies that do business with other insurance or reinsurance companies to meet these obligations adds nothing to protecting against money laundering and terrorist finance risk. Unlike the banks and broker-dealers, the U.S. reinsurance companies do not manage accounts or investments for such criminal enterprises, but instead receive funds on their own behalf for purchasing risk on an actuarial basis.

*Suggested Language That Deletes Reinsurance.* To exempt the reinsurance of life insurance from the proposed regulation, the existing language in the proposed regulation at § 103.137(a)(2)(A), could be revised to read as follows:

“(A) *The issuing or underwriting of a life insurance policy.*”

## **2. Credit Life Insurance Providers Should be Exempted from the Final Regulation**

*Credit Life Insurance Is Not a Life Insurance Product Deemed At Money Laundering Risk Under the Proposed Rule.* The proposed regulation emphasizes the elements of “stored value” and “transferability” contained in most life insurance policies as attractive elements for would-be money launderers. It exempts those institutions that do not provide insurance products “with investment features,” as well as products that do not have the “ability to store value and to transfer that value to another person.” Life insurance companies that offer only credit life should also be exempted, because credit life insurance has no investment feature or ability to transfer value to another person and functions more like casualty insurance than like life insurance.

*Credit Life Insurance Products Fit Within The Rationale For Products and Companies Excluded Under the Proposed Regulation.* Credit life insurance is a product available to individual borrowers who have recently been issued new home, auto or personal loans. The credit insurance policy protects the outstanding balance of the original consumer loan for the life of that loan. Upon the death of the insured, the credit insurance policy pays only the remaining amount owed of the original loan to the beneficiary named in the policy. Because credit life insurance is issued in coordination with the lender or financial institution, that lender or financial institution is always named as the beneficiary of the consumer’s credit life policy. Credit life insurance does not have cash value, either before or at the time of a person’s death. By purchasing credit life insurance, consumers ensure payment of an *existing* loan upon the death of an insured, freeing family members of the burden of repaying such a loan. Notably, no individual gains access to new funds from credit life policies when an insured dies. In effect, the credit life insurance company acts as insurance to the credit issuer on the value of the loaned property, much as mortgage insurance provides protection to a mortgage lender against borrower default. Credit life insurance is in this respect more akin to casualty insurance than to life insurance and should be treated like casualty insurance in the final regulation.

*Beneficiaries of Credit Life Insurance Are Covered By Existing AML Obligations.* Should an insurable event occur, a credit life insurance policy provides benefits to U.S. financial institutions, not to the insured individual. Each such U.S. financial institution is regulated under the Patriot Act and already required to establish the four-step compliance and control procedure outlined in Section 352(h). As all such financial institutions are required to monitor and control all transactions, they are already obligated to monitor the incoming funds received from the payment by a credit life insurance policy. Requiring credit life insurance companies also to do so for the customers of those financial institutions would be burdensome and duplicative, with little or no additional reduction of money laundering risk.

*Suggested Exemption for Credit Life Insurance.* To exempt credit life insurance from the proposed regulation, a new section could be added to the existing language in the proposed regulation at § 103.137(a)(2)(C), as follows:

*“(iii) An insurance company shall not mean an issuer of credit life insurance products in which the beneficiary of the policy is a financial institution required to develop and implement an anti-money laundering program under this section, unless the issuer offers insurance products otherwise covered under this section.”*

Alternatively, to exempt credit life insurance as a product, rather than exempt a provider of credit life insurance, a new sentence could be added to the existing language in the proposed regulation at § 103.137(a)(3), as follows:

*“This definition shall not cover life insurance products in which the beneficiary of the policy is a financial institution required to develop and implement an anti-money laundering program under this section and that do not have a cash surrender value.”*

### **3. Funeral Insurance Should Not Be Defined as Life Insurance**

*Funeral Insurance Is Not a Life Insurance Product Deemed At Money Laundering Risk Under the Proposed Rule.* The proposed regulation and the accompanying commentary do not address funeral insurance. It is not clear whether FinCEN intends that companies offering funeral insurance be covered as life insurance companies under the regulation. Funeral insurance does not have the features specified by FinCEN as creating money-laundering risk. Ordinarily, an individual or a member of the individual's family obtains funeral insurance to secure payment of the funeral expenses upon the death of a relative or spouse. Upon the death of the individual, the insurance policy pays the costs of the funeral and other related items to the funeral home. Thus, the beneficiary is in practice a commercial creditor who has agreed to perform a service for the deceased person, rather than the family of the deceased person. Although there are instances in which the policy pays an individual, such payment is ordinarily in reimbursement for the expenses associated with the funeral and related services. Funeral insurance is a low-premium product with a relatively low policy value, typically paying

\$10,000 or less for costs following a person's death. For actuarial reasons, insurance companies offering funeral insurance restrict purchase of such insurance in situations where a person is already terminally ill, preventing the possibility that a money launderer could abusively purchase such insurance. As a consequence, even in cases where small sums could be paid to an individual rather than a funeral home, funeral insurance lacks the characteristics of having investment features, stored value and transferability identified by FinCEN as key elements of making such policies suitable for money laundering. Accordingly, we request that the final regulation specify that funeral insurance issued in the amount of \$10,000 or less shall not be deemed to be a life insurance product for the purposes of Section 362(a). Alternatively, we request that such language be included in the commentary to the final regulation.

*Suggested Exemption for Funeral Insurance.* To exempt funeral insurance from the definition of life insurance, the existing language in the proposed regulation at § 103.137(a)(3), could be revised to read as follows:

*“(3) Life insurance policy means an agreement whereby the insurer is obligated to indemnify or to confer a benefit upon the insured or beneficiary to the agreement contingent upon the death of the insured, including any investment component of the policy, other than a policy for insurance in the amount of \$10,000 or less in which no investment component is present and whose terms require that the proceeds of the insurance be used solely for costs incurred in connection with a funeral.”*

#### **4. Group Life Insurance Should Be Exempted, Or Its Treatment Clarified**

Neither the proposed regulation nor the accompanying commentary addresses the treatment of group life insurance policies for the purposes of coverage under Section 352(a). Group life insurance does not have investment features. Premiums are paid not at the discretion of individuals, but through payroll deductions of each member of the group, or by the company, financial institution, association, or business associated with the members.<sup>2</sup> The group life insurance is issued to a company, financial institution, association, or business as an entity, which is the purchaser of the policy, rather than the individuals whose lives are insured under it. Requiring life insurance companies offering group life insurance to carry out detailed customer identification, verification, and Know Your Customer assessments of each individual affiliated with the entity that purchases group life insurance could be extremely burdensome. Fortis does not believe group life insurance is a very likely vehicle for money laundering, and supports the position taken by the American Council of Life Insurers (“ACLI”) that group life insurance could appropriately be determined to be a low-risk product requiring no action. However, in the event that Treasury does not choose to exempt group life insurance from coverage in the final regulation, it is requested that FinCEN provide commentary in the final

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<sup>2</sup> Group insurance policies may be contributory, where an employer or other entity pays a portion of the cost and the employee pays a portion of the cost, or non-contributory, where the employer or other entity pays the full amount.



regulation that to meet their obligations under Section 352(a) covered insurance companies should focus risk assessments and anti-money laundering programs pertaining to group policies on the entities taking out the policies, rather than the individual insured persons.

*Suggested Language for Commentary.* In the event that group life insurance is covered under the final regulation, to clarify the obligations of insurance companies issuing or underwriting group life insurance, the commentary could include the following additional language as follows:

*Commentary: “FinCEN recognizes that the customer for group life insurance policies will ordinarily be the business that purchases such policies on behalf of employees or another designated class of persons. In such cases, the anti-money laundering programs adopted by insurance companies under the rule should focus on the money laundering and terrorist financing risks that may be associated with the institutional purchaser of the group life insurance policy and the purposes and uses of the policy, rather than through assessing each of the individuals covered under the group life insurance policy for such risks.”*

#### **5. The Criteria Specified in the Commentary Should Be Included in the Text of the Final Regulation**

We endorse the approach taken by FinCEN in the proposed regulation to limit coverage to insurance companies engaged as a business in handling life insurance, annuity contracts, or products with investment features similar to those of a life insurance policy or which can be used to store value and transfer that value to another person. Of particular importance is the further limitation, expressed in the commentary to the proposed regulation, that the proposed rule “captures only those insurance products with investment features, and insurance products possessing the ability to store value and to transfer that value to another person.” The language within this commentary that specifies this limitation does not exist within the text of the proposed regulation. In the absence of such language in the text of the regulation, there might be ambiguity as to whether insurance companies covered by the regulation are required to review all of their products for money laundering risk, or only those with investment features or possessing the ability to store value and to transfer that value to another person. Accordingly, we request that this language from the commentary be included within the text of the regulation itself.

*Suggested Additional Language for Regulation.* To clarify the obligations of insurance companies concerning insurance products that do not have investment features, and insurance products that do not possess the ability to store value and to transfer value to another person, the existing language in the proposed regulation at § 103.137(c)(1) could be revised to read as follows:

*“(1) Incorporate policies, procedures, and internal controls based upon the insurance company’s assessment of the money laundering risks associated with its*

*products, customers, distribution channels and geographic locations. For purposes of making the risk assessment required by this paragraph (c)(1), an insurance company shall consider all relevant information. Insurance products that do not have investment features and which do not possess the ability to store value and to transfer value to another person, shall be deemed not to be suitable for storing and moving illicit funds through the financial system and therefore shall be excluded from the compliance obligations that otherwise apply under this section. Policies, procedures, and internal controls developed and implemented by an insurance company under this section shall include provisions for complying with the requirements of subchapter II of chapter 53 of title 31, United States Code and this part, and must ensure that the insurance company obtains all the information necessary to make its anti-money laundering program effective.”*

## **6. A Threshold Exemption For Life Insurance Policies With Small Face Values and No Cash Value Should Be Adopted**

Existing BSA regulations generally exempt from reporting requirements for financial institutions the obligation to maintain records regarding extension of credit in amounts of \$10,000 or less or transfers of funds in the amount of \$10,000 or less, except for banks, for which the threshold for an exemption is set at transactions involving \$3,000 or less. In addition, transactions involving currency must be reported unless they also involve \$3,000 or less.<sup>3</sup> In the commentary to the proposed regulation, FinCEN states 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.” Separately, FinCEN states that the most significant money laundering risks are found in products that “allow a customer to place large amounts of funds into the financial system and seamlessly transfer such funds to disguise their true origin.” Life insurance policies with a small face value, such as \$10,000 or less, are poor vehicles for customers to engage in money laundering or terrorist finance. The commentary describes one scenario where a narcotics trafficker based in a foreign jurisdiction purchases a term policy from a U.S. insurer with one large, up-front premium made up of illicit funds, using an elderly or ill front person as the insured. In that scenario, Treasury states that the trafficker could collect the cleansed proceeds when the insured dies. Were even small drug traffickers to use such a technique, it would make sense that the policy would be in a face value of some magnitude, otherwise the money laundering would be required to sign up multiple elderly or ill front persons for a money laundering scheme and then await their multiple deaths. We know of no money launderer who has used this approach in practice. In order to achieve the goal of the regulation to focus on the money launderer’s ability to move funds through the system, the regulation should exempt term life insurance policies with a small face value, as previous regulations have exempted small amounts of currency or extensions of credit, so long as such policies do not have a cash surrender value.

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<sup>3</sup> 31 CFR §103.33(b) and (e) and §103.29(a).



*Suggested Additional Language for Regulation:* To establish a threshold exemption from the general obligation to create anti-money laundering programs for insurance companies, a new section (5) could be added to the existing language in the proposed regulation at § 103.137. The new section (5) could read as follows:

*“(5) The obligations set forth in this section shall apply to all life insurance policies in the amount of more than \$10,000 and to all life insurance policies that have a cash surrender value in any amount.”*

We appreciate the opportunity to comment on the proposed regulation, and your consideration of these comments.

Sincerely,

s/s

Jonathan M. Winer