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**MEMORANDUM**

September 19, 2002

To Our Clients and Friends

Re: FinCEN's Proposed Rule on Anti-Money Laundering  
Programs for Insurance Companies

Section 352(a) of the USA Patriot Act amended the Bank Secrecy Act ("BSA") to require every financial institution to establish an anti-money laundering program to prevent the financial institution from being used to facilitate money laundering or the financing of terrorist activities. Given the possibility that certain insurance products may be used in connection with money laundering and terrorist activities, the Treasury's Financial Crimes Enforcement Network ("FinCEN") has proposed a rule requiring life insurance companies and other insurance companies that offer products with similar investment features, or features of stored value and transferability, to establish and maintain anti-money laundering programs. Comments on the proposed rule are due in late November.

**WHO IS AN INSURANCE COMPANY UNDER THE RULE**

The proposed rule defines an insurance company as any person engaged in the U.S. in:

- issuing, underwriting, or reinsuring a life insurance policy;
- issuing, granting, purchasing, or disposing of an annuity contract; or
- issuing, underwriting, or reinsuring any insurance product with investment features similar to those of a life insurance policy or an annuity contract, or which can be used to store value and which can be transferred to another person.

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An insurance agent or broker is not an insurance company because FinCEN believes the insurance company is in the best position to design an effective anti-money laundering program based upon a risk assessment of its business.<sup>1</sup>

### **ANTI-MONEY LAUNDERING PROGRAM REQUIREMENTS**

Every insurance company is required to develop and implement a written anti-money laundering program reasonably designed to prevent the company from being used to facilitate money laundering and terrorist activities. The program must be in writing, approved by senior management, and available to the Treasury Department upon request. While the proposed rule is intended to give an insurance company the flexibility to design its program to meet its specific risks, the program must contain the following minimum requirements:

- Incorporate policies, procedures and internal controls based upon the insurance company's assessment of the money laundering and terrorist financing risks associated with its products, customers, distribution channels, and geographic locations.
- Incorporate policies, procedures and controls integrating its agents and brokers into its program.
- Obtain all relevant information necessary to establish and maintain an effective anti-money laundering program. The program must insure compliance with BSA requirements.<sup>2</sup> If an insurance company delegates responsibility for aspects of its program to an agent or third-party service provider, it will remain fully responsible for the program.
- Designate a compliance officer (single person or committee) to be responsible for administering the program. The compliance officer is responsible for ensuring that (1) the program is being implemented effectively; (2) the program is updated as necessary; and (3) appropriate persons are trained and educated.

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<sup>1</sup> Insurance companies registered or required to register with the Securities and Exchange Commission ("SEC") shall be deemed to have satisfied the requirements for an anti-money laundering program for those activities regulated by the SEC to the extent they comply with the anti-money laundering program requirements applicable to such activities that are imposed by the SEC or a self-regulatory organization registered with the SEC.

<sup>2</sup> The only BSA regulatory requirement currently applicable to insurance companies is the obligation to report on Form 8300 the receipt of cash or certain non-cash instruments totaling more than \$10,000 in one transaction or in two or more related transactions.

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- Provide for on-going education and training of appropriate persons concerning their responsibilities under the program.
- Provide for independent testing to monitor and maintain an adequate program. An employee of the company may perform the testing as long as the employee is not the compliance officer or involved in administering the program. The frequency of the testing will depend upon the company's risk assessment.

The proposed rule can be found at <http://www.schwartzandballen.com/WhatsNew.htm>.

If you have any questions concerning the proposed rule, please call Gilbert Schwartz, Robert Ballen or Tom Fox at (202) 776-0700.