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MEMORANDUM

October 17, 2002

To Our Clients and Friends

Re: FinCEN's Proposed Rule on Suspicious
Activity Reporting for Insurance Companies

The Financial Crimes Enforcement Network ("FinCEN") is proposing to amend regulations implementing the Bank Secrecy Act ("BSA") to require insurance companies to report suspicious transactions.

The proposed rule uses many of the same definitions as the proposed rule issued by FinCEN in September concerning the establishment of anti-money laundering programs by insurance companies. Thus, the proposed rule applies primarily to life insurance companies or other insurance companies that offer annuities and other insurance products with investment features, and insurance products possessing the ability to store value and to transfer that value to another person.¹ Comments on the proposed rule are due December 16th.

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 that can be transferred to another person.

¹ Insurance companies registered or required to register with the Securities and Exchange Commission ("SEC") shall be deemed to have satisfied the requirements of this proposed rule for those activities regulated by the SEC to the extent they comply with the suspicious activity reporting requirements applicable to such activities that are imposed under 31 CFR 103.19.

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An insurance agent or broker is not considered an insurance company under the proposed rule. However, because agents and brokers have direct contact with customers and may have access to information that may not be known by the insurance company, an insurance company is to obtain from any agent or broker involved in the transaction all relevant information necessary to ensure compliance with the suspicious activity reporting requirements.

SUSPICIOUS ACTIVITY REPORTING REQUIREMENTS

An insurance company is required to file a Suspicious Activity Report by Insurance Companies (“SAR-IC”) with FinCEN for any suspicious transaction that is conducted or attempted by, at, or through an insurance company, which involves or aggregates at least \$5,000 in funds or other assets, and which the insurance company knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

- Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;
- Is designed, whether through structuring or other means, to evade any requirements of this part or of any other regulations promulgated under the BSA;
- Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the insurance company knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or
- Involves use of the insurance company to facilitate criminal activity.

A report is not required to be filed for submission of false or fraudulent information to obtain a policy or make a claim, other than where such submission relates to money laundering or terrorist financing. However, a report may be filed to report any suspicious transaction that is believed to be relevant to a possible violation of any law or regulation.

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Transactions do not have to involve currency to be reported. An insurance company is to evaluate customer activity and relationships for money laundering risks, and design a suspicious transaction monitoring program that is appropriate for the particular insurance company. Such a program must ensure that the company is provided with customer information from its agents and brokers.

SAR-ICs are to be filed with FinCEN within thirty (30) days of the insurance company initially detecting a suspicious transaction, unless a suspect cannot be identified in which case the filing may be delayed for an additional thirty days. The insurance company is to maintain separately any supporting documentation for a period of five years. Situations requiring immediate attention, such as ongoing money laundering schemes, are to be reported immediately by telephone to an appropriate law enforcement authority.

An insurance company, director, officer, employee or agent of an insurance company, is prohibited from notifying anyone involved in a suspicious transaction that it has been reported. The SAR-IC or supporting documentation cannot be disclosed to anyone except where such disclosure is requested by FinCEN or another appropriate law enforcement or regulatory agency.

An insurance company, and any director, officer, employee, or agent of such insurance company, is not liable under any Federal or state law or regulation or under other legally enforceable agreement for a disclosure made in filing an SAR-IC or for failure to disclose that such a report has been filed.

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.