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AMERICAN COUNCIL OF LIFE INSURERS

ANTI-MONEY LAUNDERING AND CRITICAL INFRASTRUCTURE COMMITTEE

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Introduction

Good morning. It is a privilege to be joining you today for this meeting of the American Council of Life Insurers Anti-Money Laundering and Critical Infrastructure Committee. I would like to first thank Governor Frank Keating for his warm introduction and for his leadership not only as president and CEO of ACLI, but throughout his very distinguished career in the law enforcement community as well. I'd also like to thank Carl Wilkerson of the ACLI, who has been actively engaged for quite some time in these issues, as well as Lisa Tate, for having me here to speak with you today. I was particularly pleased to have been able to listen in on the previous session with Amy Rudnick and Linda Noonan, and I am looking forward to this afternoon's panel as well. Engaging in forums such as these is one of the best ways to learn from each other and discuss issues of mutual concern.

Along those lines, next week will mark my first year as the Director of FinCEN. I had made a personal commitment not long after I arrived to conduct outreach to each of the industries that FinCEN regulates within my first year, and this event brings that commitment to fruition. While I have on a number of occasions engaged in dialogue with representatives of the insurance industry and state regulators, the insurance industry is the last group with which I've had the opportunity to meet with in a broader forum such as today. I certainly don't want you left with the impression that this is somehow reflective of how I regard the role you play within the Bank Secrecy Act (BSA) and Anti-Money Laundering (AML) regime. Quite the contrary. In fact, FinCEN has been hard at work on a [study](#) of the first year of Suspicious Activity Report (SAR) filings by the insurance industry. This study is FinCEN's first product resulting from the commitment we made last June to provide quality written feedback to industries affected by new or changed regulations and will serve as a model for providing similar feedback for other industries going forward. I'd like to focus my remarks today on the results of that study, as well as other work we are doing within the insurance industry.

First, some background. As all of you know, the USA PATRIOT Act expanded the definition of financial institutions, and authorized FinCEN to adopt regulations imposing AML program and SAR filing requirements on certain segments of the insurance industry. The SAR regulation for insurance companies, which became effective on May 2, 2006, does not apply to all insurance companies.¹ The regulation established a SAR filing requirement only for those insurance companies that issue or underwrite specified “covered” products - a term defined to include: a permanent life insurance policy, other than a group life insurance policy; an annuity contract, other than a group annuity contract; and any other insurance product with cash value or investment features.²

The sound public policy choices made over time relating to our BSA regulatory regime reaffirm the significance of an effective partnership between the government and private sector that Congress intended. We both have essential roles to play as we work together to fight money laundering, terrorist financing and other illicit activity.

The insurance industry is one of the most recent industries to come under AML and SAR reporting requirements, and as we’ve seen with other entities, there is an understandable learning curve for everyone involved: For FinCEN, the insurance companies and employees, internal auditors, as well as the IRS examiners, who must structure their exams with a focus on insurance *products* vulnerability as opposed to the vulnerability of the *business*. We have worked closely with both the ACLI and National Association of Insurance Commissioners in our education and outreach efforts as they relate to the new regulatory requirements and plan to continue to do so in the future.

I’d like to turn now to the [study](#) we are releasing today. While FinCEN previously issued brief reports concerning SARs filed by the insurance industry in February 2003 and again in May 2007, the report issued today provides a more in-depth review of insurance company SAR filings and will serve to provide a baseline for future comparisons. Since SAR reporting in certain segments of the insurance industry is a relatively new reporting requirement, we feel that it also provides an opportunity for an early evaluation of the quantity, quality and substance of existing filings.

The report highlights key findings of an assessment of SAR filings in the one-year period from May 2, 2006 through May 1, 2007 by insurance companies regarding suspected money laundering and other financial crimes. FinCEN conducted its assessment of filings by this industry to identify typologies, trends and patterns relating to filing volume, filer location, subject location and occupation, characterizations of suspected crimes, and other factors relevant to the reporting of suspicious activity on a variety of insurance products.

The report includes summaries of actual SAR narratives, revealing potential money laundering typologies and frequently reported money laundering schemes. This type of analysis and feedback is consistent with FinCEN’s mission to provide beneficial information to law enforcement, regulators and regulated industries. The report presents indicia of possible illicit

¹ 31 C.F.R. § 103.16.

² 31 C.F.R. § 103.16(a)(4).

activity that some insurance companies have identified and, hence, raise awareness of possible risks and vulnerabilities.

Typologies

Overall, from our initial review of the 641 filings during that one year period, the quality of narratives furnished on the SARs was good. It is also clear that some of the typologies evidenced in the narratives appear to be very similar to classical examples of money laundering layering and integration, where the filer indicates that there appears to be no business or lawful purpose for the transaction. In brief, some of the potential trends exhibited:

- A significant number of filings involved individuals paying into policies or annuities, some with cash equivalents from multiple sources. Repeated loans were taken against the policies or annuities, or the policies and annuities were surrendered to the economic detriment of the annuity owner.
- Some filings reflected large dollar withdrawals made shortly after the policy/contract was issued.
- Insurance companies filed several SARs related to the surrenders of annuities, which had return-of-premium guarantees. The only penalties were tax related.

To me, even these preliminary results support the earlier policy decision that there are money laundering risks through insurance products and that insurance industry SAR reporting can have a high degree of usefulness as contemplated by the Bank Secrecy Act for criminal, tax, regulatory and counterterrorism investigations. Although the insurance industry regulations became effective before I joined FinCEN, I have adopted a policy to conduct this type of preliminary study for all new or significantly changed reporting requirements to see if the regulations are achieving the intended purpose and to provide feedback to industry.

In terms of the overall quality of the reporting, in guidance issued in May 2006, FinCEN instructed insurance companies to file reports of suspicious activity using the SAR-SF (FinCEN Form 101). Filers correctly used the SAR-SF in approximately 94 percent of the reports submitted to FinCEN. The remainder used the SAR-DI form. Even when the correct form was used, some filers did not follow FinCEN guidance for identifying the report as an insurance SAR. It is important that filers continue to follow guidance previously published by FinCEN describing the proper method for correctly identifying the filing as an Insurance SAR.

As this is only the first year of recorded mandatory filings, FinCEN will continue to study these and future filings to identify more specific filing trends. FinCEN expects the level and quality of filings to increase in the future as more institutions become familiar with the reporting obligations and understand the importance of the information to law enforcement.

Finally, our experience with this study confirms what I know is our mutual interest in moving toward an industry-specific reporting format. Since characterizations are currently being provided on a form not tailored for the insurance industry, the future landscape of SARs might change when data is collected on a dedicated industry-specific SAR form.

Feedback for Industry

In addition to today's study, a few weeks ago FinCEN also released updated [Frequently Asked Questions](#) for the insurance industry. This guidance originally was issued on October 31, 2005 and has been updated to further coordinate the answer pertaining to in-house training on AML programs with guidance provided in the final anti-money laundering program rule for insurance companies that was published in the *Federal Register* on November 3, 2005.

Last fall, FinCEN published its twelfth [SAR Activity Review, Trends, Tips and Issues](#), which in addition to providing the latest information on trends we are seeing in the data, also includes law enforcement case examples on how SARs played important roles in a variety of different kinds of investigations.

While the case examples will continue to be a feature of this publication, I am pleased to report that we have also compiled the law enforcement cases from the previous twelve issues of the *SAR Activity Review* and consolidated them into one easy to find area on our website on the same page where the *SAR Activity Reviews* are posted. There are over [120 law enforcement cases](#) which can be sorted by SAR form, suspicious activity type and industry – with the insurance industry having its own [category](#). This compilation will make it easier to find and review cases of interest and we will continue to keep this information updated as new cases are identified and cleared by our law enforcement partners for public release.

I'd like to spend a few moments briefly summarizing these cases, which speak to the value to law enforcement of the information provided by the insurance industry. These cases also illustrate, as we've seen with other industries, how SARs are a useful reporting stream in cases of possible insider abuse.

Fraud Committed by Insurance Industry Insiders

- In a case initiated by the filing of a SAR, a former high-ranking officer of an insurance firm was sentenced to almost two years in prison for embezzling more than \$100,000 and filing false tax returns.
- SARs assisted in the investigation of an insurance executive who was found guilty on a single count of aggravated theft. The defendant admitted misappropriating funds intended to pay medical claims for the local government's self-insured health benefits plan. SARs identified two accounts held at two banks and reported check kiting from the individual's business account to a personal account.
- A network of insurance brokers in the United States, who solicited clients in foreign countries, deposited drug proceeds into investment accounts on behalf of narcotics traffickers. Financial institutions submitted three SARs to report structuring and suspicious activity by the insurance brokers. This investigation has resulted in the seizure of approximately \$9.5 million dollars.

Fraud Against the Insurance Industry

- Investigating authorities used BSA records to identify assets belonging to a contractor who misrepresented the number of workers in his temporary employment service. It was a scheme to defraud insurance companies of millions of dollars. The perpetrator was ordered to pay in excess of \$5 million in restitution to two insurance companies.
- Three SARs, nine CTRs and two CTR-Cs aided in the investigation and successful prosecution of a couple charged with 107 counts of conspiracy, including conspiracy to commit insurance fraud.

[Issue 11](#) of the *SAR Activity Review* also included FinCEN analysis of SARs filed from April 1, 1996 through June 30, 2006 to identify reporting trends and patterns. These SARs were filed by depository institutions, MSBs, securities and futures firms, and insurance companies, and related to suspected money laundering or other reportable financial crimes involving insurance companies, insurance agents, or insurance brokers (or their employees). Twenty-six percent of the sampled depository institution SAR narratives reported suspicious activity involving subjects employed in the insurance field; twenty-three percent of the sampled SAR-DI narratives reported suspicious activity involving accounts of insurance agencies or insurance brokers; twenty percent involved deposits of checks issued from insurance companies or checks used as payments to insurance companies; and five percent involved insurance annuities.

Almost half of the SAR-MSBs reported the suspicious use of money orders that were made payable to insurance companies. SAR-SF filings included reports of customers using numerous money orders to initially purchase insurance policies or annuities, or to pay annual premium payments; reports of suspicious actions by applicants during the insurance or annuity application process; and reports of insurance agents, broker-dealers, and/or registered representatives of insurance companies engaging in illegal activities concerning a customer's insurance products, to name but a few.

In separate analysis published in February 2003 in [Issue 5](#) of the *SAR Activity Review*, FinCEN conducted an analysis of all SARs submitted by depository institutions, affiliates of depository institutions, and those voluntarily filed by broker-dealers, MSBs, or gaming businesses from 1996-2002. It was conducted to provide a snapshot of what SAR filers were reporting regarding key terms related to the insurance industry. A search of the SAR database revealed 1,032 SARs containing the term "life insurance" in the narrative. Twenty percent of these SARs were randomly selected and reviewed. The most common scenario found involved fraud with respect to checks of life insurance companies. Another common scenario involved the suspicious transfer of funds to or from life insurance companies. A significant percentage described various types of loan fraud. A number of SARs were filed relating to the embezzlement or theft of insurance proceeds by bank employees.

In addition to analysis, ongoing, active engagement with the insurance community is a priority for FinCEN as well, particularly through forums such as the Bank Secrecy Act Advisory Group (BSAAG), FinCEN's own statutorily created forum where we have frank discussion

among representatives of law enforcement, regulators and all sectors of the financial services industry, and where we receive input on some of our clarifying guidance. Both the NAIC and ACLI are members of the BSAAG and your industry representatives are active on its subcommittees.

In fact, we have established a subcommittee within the BSAAG to focus exclusively on issues impacting the insurance industry. The subcommittee is taking a closer look at an issue I am sympathetic to, which is the idea of the insurance industry moving to the Currency Transaction Report form, in lieu of the Form 8300, to report large currency transactions exceeding \$10,000. I see the wisdom in exploring this possible change and am looking forward to reviewing the white paper currently being written by the subcommittee.

Next Steps

Continuing to look forward, the President's 2009 budget calls for new regulatory compliance positions within FinCEN that will have a specific emphasis on the insurance industry, and, subject to receiving funding, FinCEN is looking forward to expanding our staff with insurance industry expertise. Shortly we expect to be able to broaden our outreach and dialogue with individual industry members.

By way of background, FinCEN recently reached out to the fifteen largest depository institutions in the United States to determine their interest in meeting with FinCEN representatives in an effort to broaden our understanding of financial industry practices, as well as what information institutions need in order to effectively implement their AML programs. We are optimistic that the information gathered from these meetings will help inform our efforts to develop additional guidance for the financial industry as a whole, such as the identification of red-flag indicators useful in detecting and reporting suspicious activity of interest to law enforcement. While this is the first stage of this outreach effort, we expect to expand this initiative to the insurance industry and others as we move forward.

FinCEN will also continue conducting outreach to the insurance industry, regulators and trade groups such as the NAIC and ACLI to begin discussing how best to pursue information sharing agreements with appropriate supervisory entities that handle insurance AML compliance at the local level, similar to the Memorandums of Understanding (MOUs) we've established with our federal and state banking counterparts and law enforcement authorities.

In addition, we will continue pursuing additional channels to communicate efficiently and effectively with the insurance industry. For instance, about one month ago, FinCEN and the IRS conducted the first ever phone forum for money services businesses, where more than 1,200 MSBs from around the country were able to call in and learn about filing accurate and complete BSA reports, as well as have their regulatory questions answered by a panel of FinCEN and IRS experts. This type of forum allows us to reach a broader spectrum of the industry, and we'd be happy to pursue conducting similar outreach events for the insurance industry as well.

FinCEN is also working on its own new chapter of the Code of Federal Regulations that will include one general part and *separate and specific parts* for each covered industry. With

this change, the insurance industry will only need to look in two places to identify its regulatory responsibilities.

Thank you again for partnering with us and for all the work that you do on the frontlines to protect the financial system from abuse, thereby helping to ensure that the U.S. financial system remains safe, sound and secure. Your efforts do not go unnoticed. You have my commitment that we will work equally as hard to understand the unique issues facing the insurance industry in complying with the goals of the BSA, and to continue providing you with meaningful guidance and feedback to further the goal of detecting and disrupting illicit money flows.

I'd now be happy to answer any questions you may have.

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