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**M E M O R A N D U M**

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To Our Clients and Friends

Re: Anti-Money Laundering Programs for Insurers

The Treasury Department's Financial Crimes Enforcement Network ("FinCEN") has issued final rules that require insurance companies to establish anti-money laundering ("AML") programs and to report suspicious transactions to FinCEN. The AML rule prescribes minimum standards and defines the types of insurance companies and insurance products that are subject to the rule. While the rules are effective December 5, 2005, insurers must implement an AML program by May 2, 2006. The requirement to report suspicious transactions applies to transactions occurring after May 2, 2006.

**AML PROGRAM**

The Bank Secrecy Act ("BSA"), as amended by the USA Patriot Act, requires financial institutions to implement AML programs pursuant to regulations adopted by the Secretary of the Treasury to detect money laundering and to prevent financing of terrorism. Until now, insurance companies were not regarded as financial institutions for purposes of the Treasury's AML regulations. After studying how best to apply AML programs to the insurance industry, FinCEN has determined to apply the rule to companies offering certain products that are susceptible to being used for improper purposes. These products include life insurance policies that have a cash surrender value, annuity contracts and any other insurance product with features of cash value or investment. However, group life insurance and group annuity contracts are not covered products.

By May 2, 2006, each insurance company<sup>1</sup> is to develop and implement a written AML program applicable to its covered products that is reasonably designed to prevent the company from being used to facilitate money laundering or the

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<sup>1</sup> The term "insurance company" does not include an insurance agent or insurance broker.

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financing of terrorist activities. The AML program must be approved by the company's senior management. The program must include policies, procedures and internal controls based upon the company's assessment of the risk of money laundering associated with its covered products. The company must integrate its agents and brokers into its AML program and obtain all relevant customer-related information necessary for an effective program. The company is required to designate a compliance officer who is responsible for ensuring that the AML program is implemented effectively and updated as necessary, and that appropriate employees are educated and trained. The program is also to provide for independent testing to monitor and maintain an adequate program, including compliance of the company's agents and brokers with their obligations under the program.

An insurance company that is registered with the Securities and Exchange Commission as a broker-dealer is regarded as satisfying its requirements under the new rule for its broker-dealer activities to the extent that it complies with the rules FinCEN had previously established for broker-dealers.

### **SUSPICIOUS ACTIVITY REPORTS**

FinCEN has also adopted a rule that requires an insurance company to file with FinCEN a suspicious activity report ("SAR") of any suspicious transaction involving a covered product that is relevant to a possible violation of law. The circumstances under which a SAR is required are set forth in the rule. However, a company is not required to report transactions involving false or fraudulent applications for a policy or submissions for a claim unless the company has reason to believe that the transaction relates to money laundering or terrorist financing. The company is responsible for reporting suspicious transactions conducted through its agents and brokers.

FinCEN has also issued guidance in the form of Frequently Asked Questions to assist insurance companies in understanding the rules.

A copy of the final rules and frequently asked questions can be found on our web site at [http://www.schwartzandballen.com/whats\\_new.html](http://www.schwartzandballen.com/whats_new.html).

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