

# GARDERE

attorneys and counselors ■ [www.gardere.com](http://www.gardere.com)

Direct: 713-276-5963  
Direct Fax: 713-276-6963  
[selison@gardere.com](mailto:selison@gardere.com)

April 22, 2003

Financial Crimes Enforcement Network  
P.O. Box 39  
Vienna, Virginia 22183-0039

Attn: Section 352 – Jewelry Dealer Regulations

To Whom It May Concern:

We represent a company (the “Company”) which manufactures items of jewelry from gold and other metals. When the Company purchases gold, the gold is sufficiently pure as to be classified as a “precious metal” under 31 CFR §103.140(a)(3)(i) of the proposed regulations. After manufacturing the jewelry, however, the finished products contain less than five hundred parts per thousand of gold and would not satisfy the definition of precious metal. The jewelry fabricated by the Company is not sold as high-quality jewelry, nor is the cost of the gold a significant part of the value attributable to the jewelry.

The proposed definition of “dealer” in 31 CFR § 103.140(a)(1)(ii)(B), excludes “[a] person who engages in transactions in jewels, precious metals, or precious stones for purposes of fabricating finished goods that contain minor amounts of, or the value of which is not significantly attributable to, such precious metals, precious stones, or jewels.” This language would apparently provide an exemption from the definition of “dealer” for manufacturers like the Company who engage in transactions in precious metals for the purpose of fabricating finished goods which contain only minor amounts of the precious metals. This seems to be a reasonable and justified conclusion. Based on the exemption language, however, I have two primary concerns for manufacturers like the Company.

First, the proposed regulations do not clarify what is meant by a “minor amount” of the precious metals, precious stones or jewels. Does minor amount refer to content alone? If the finished jewelry does not meet the definition of “precious metal” in 31 CFR §103.140(a)(3)(i) because it is less than 50% pure, can one assume that it is therefore a “minor amount”? Also, there is no guidance as to what is meant by “value ... not significantly attributable such precious metals.” By value, are you referring to the cost of the raw materials incorporated into the finished product? As the language currently

HOUSTON 682840v1

GARDERE WYNNNE SEWELL LLP

1000 Louisiana, Suite 3400, Houston, Texas 77002-5007 ■ 713.276.5500 Phone ■ 713.276.5555 Fax

April 22, 2003

Page 2

stands, it would be difficult to conclusively advise the Company whether or not it was required to comply with the anti-money laundering provisions of the USA Patriot Act.

Second, the example cited on page 8481 on the February 21, 2003 edition of the Federal Register indicates that FinCEN was attempting to exclude from the definition of "dealer", those persons who use minor amounts of jewelry, gemstones and precious metals for industrial applications. Although I am certain the example cited in the Federal Register was not meant to be exhaustive, it does leave the impression that the exclusion was meant for industrial uses only.

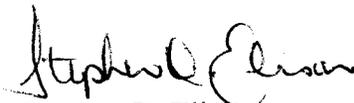
You have indicated that precious metals, precious stones, and jewels are of particular concern to FinCEN in its efforts to combat money laundering and terrorism because (i) they constitute easily transportable, highly concentrated forms of wealth, (ii) they serve as international mediums of exchange that can be converted into cash anywhere in the world and (iii) precious metals, in particular, can be melted down, obliterating refinery marks and making the metal virtually untraceable. The jewelry fabricated by manufactures such as the Company cannot reasonably be classified as a highly concentrated form of wealth, nor can it be converted into cash anywhere in the world, and finally, it cannot be melted down without destroying its value. The value of the jewelry as produced by the Company, does not lie in its minor precious metals content, but rather in its beauty as a finished product.

Consequently, I would ask you please to revise 31 CFR §103.140(a)(1)(ii)(B) as indicated below, to provide a safe-harbor for manufacturers of low-cost jewelry:

“(B) A person who engages in transactions in jewels, precious metals, or precious stones for purposes of fabricating finished goods that contain less than 50% by content of, or the value of which is less than 50% attributable to, such precious metals, precious stones, or jewels.”

I would be pleased to answer any questions you may have concerning this matter.

Best regards,



Stephen D. Elison

cc: Jane Ferguson (firm)