



April 21, 2003

VIA E-MAIL

Financial Crimes Enforcement Network
PO Box 39
Vienna, Virginia 22183

Re: Attention: Section 352 - Jewelry Dealer Regulations

Dear Sirs/Mesdames:

On behalf of Barrick Goldstrike Mines, Inc. ("BGMI"), a U.S. company that owns and operates gold mines in Nevada, we appreciate the opportunity to comment on the proposed rule (the "Proposed Rule") published on February 21, 2003, by the Department of Treasury and the Financial Crimes Enforcement Network (collectively, "FinCEN") to implement Section 352 of the USA PATRIOT Act¹ (the "Act") with respect to dealers in precious metals, stones, or jewels ("dealers"). 68 Fed. Reg. 8480.

BGMI appreciates the U.S. government's concerns with money laundering and commends FinCEN's efforts to create a risk-based approach in preventing and detecting money-laundering activity. Our comments seek further refinement in the Proposed Rule to reflect the limited risks of money laundering arising from the activities of BGMI. Specifically, BGMI requests that the Final Rule implementing Section 352 exempt from the definition of dealers those entities that do not sell or purchase precious metals, stones, or jewels to or from the general public but deal only with other industry professionals in a closed system. Alternatively, BGMI seeks an exemption for entities that sell precious metals, stones, or jewels solely to entities that can demonstrate that they maintain an anti-money laundering compliance program in accordance with U.S. or international standards.

¹ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

Either approach would bring the Proposed Rule into line with the risk-based approach FinCEN has adopted in implementing the PATRIOT Act generally.² It would also be consistent with other exemptions set forth in the Proposed Rule for certain classes of retailers. Finally, such an approach would be most consistent with the approach taken by other relevant countries, which generally do not reach the activities of entities such as BGMI. This is particularly important given that U.S. jurisdiction only extends to a limited number of transactions in an industry that, especially at the levels of trade in which BGMI operates, is much more global than national.

The first part of this letter provides an overview of BGMI's mining operations and gold sales, and sets forth our understanding of how the Proposed Rule would apply to BGMI. The second part explains why, in accordance with a risk-based approach, an exemption to the Proposed Rule for entities trading in the circumstances of BGMI is appropriate. The third part sets forth additional reasons why an exemption represents the most appropriate regulatory response.

I. BGMI's Operations and Applicability of Proposed Rule to BGMI

A. BGMI's Operations

At its U.S. mining operations, BGMI extracts gold from the rock to produce doré bars. Doré bars do not possess the purity level that is typically required for the international gold trade.³ BGMI sells the doré bars to an affiliated entity located outside the United States. The affiliated entity contracts for the refining of the gold by qualified unrelated refiners outside of the United States to whom the gold is directly delivered for refining. After refining, the affiliated entity sells the gold to financial institutions (including banks and commodities dealers) known in the industry as "bullion banks". These bullion banks retain the gold as part of their assets, or, in their capacity as market makers, resell the gold to manufacturers, gold traders, and the general public. These bullion banks, most of which are non-U.S. entities, include: AIG International, Inc., Bank of Nova Scotia, Barclays Bank PLC, Canadian Imperial Bank of

² For example, in crafting proposed regulations under Section 352 for insurance companies, FinCEN limited the definition of "insurance companies" to the sectors of the industry offering life insurance, annuity products, and other insurance products with an investment feature. *See* 67 Fed. Reg. 60625 (September 26, 2002). In doing so, FinCEN's supplementary information accompanying the proposed rule for insurance companies acknowledged that limiting the definition served a risk-based approach: "an anti-money laundering requirement should be imposed on those sectors of the insurance industry that pose the most significant risk of money laundering and terrorist financing." 67 Fed. Reg. at 60627. The supplementary information also noted that this risk-based approach corresponded with the international community's approach, which had similarly regulated only life insurance policies and insurance products with investment features. *Id.*

³ The gold content in doré bars, however, significantly exceeds the purity level of 500 parts per thousand and therefore satisfies the definition of gold found in the Proposed Rule. *See* Proposed Rule, Section 103.140(a)(3)(i).

Commerce, Citibank N.A., J.P. Morgan Chase & Co., Credit Suisse First Boston, Deutsche Bank AG, Dresdner Bank AG, J. Aron & Company, Mitsui & Co. (U.S.A.), Inc., Morgan Stanley Capital Group, Inc., N.M. Rothschild & Sons, Ltd., Royal Bank of Canada, Société Générale, UBS AG, Commerzbank International S.A., HSBC, and Macquarie, Inc. BGMI's affiliate does not sell gold to any other person. All of these entities are market professionals. As required by applicable law, the affiliated entity maintains a comprehensive anti-money laundering compliance program that incorporates "Know Your Customer" ("KYC") standards, record keeping and reporting elements, training, and audit review provisions. The affiliated entity vets each bullion bank before entering into a contracted sales relationship. BGMI understands that the bullion banks, as "financial institutions," maintain similar anti-money laundering compliance programs pursuant to U.S. or foreign law, depending on the jurisdiction. BGMI's trading activity therefore takes place entirely within a closed system of market professionals. All of these professionals are subject to strict compliance standards.

B. Application of the Proposed Rule to BGMI

As currently drafted, the Proposed Rule covers the activities of BGMI, which is the second largest gold producer in the United States. The proposed rule broadly defines dealers to include "a person engaged in the business of purchasing and selling jewels, precious metals, or precious stones, or jewelry composed of jewels, precious metals, or precious stones, and who, during the prior calendar or tax year: (A) Purchased more than \$50,000 in jewels, precious metals, or precious stones, or jewelry composed of jewels, precious metals or precious stones; or (B) Received more than \$50,000 in gross proceeds from transactions in jewels, precious metals, precious stones, and jewelry composed of jewels, precious metals, or precious stones." Proposed Rule, Section 103.140(a)(1) (emphasis added). BGMI's activities fall within this definition. Although it does not purchase gold, BGMI receives more than \$50,000 in gross proceeds from the sale of gold, which is defined as a precious metal under the Proposed Rule.

FinCEN's supplementary information accompanying the Proposed Rule acknowledges that the definition of "dealer" in the Proposed Rule captures the activities of various entities that do not pose significant money laundering risks sufficient to require the implementation of an anti-money laundering compliance program. The Proposed Rule therefore excludes: (1) dealers that buy or sell value-added fabricated goods containing minor amounts of precious metals or gemstones; and (2) retailers (defined as person engaged in the business of selling to the public jewels, precious metals, or precious stones or jewelry composed of jewels, precious metals, or precious stones) who purchase \$50,000 or less from non-dealers (that is, the public) during the tax year. *See* Proposed Rule, Section 103.140(a)(1)(ii). The exemptions as we read them do not extend to the activities of BGMI.

II. An Exemption Should Apply to Entities Such as BGMI Selling Exclusively in a Closed System

In reference to the exemption for retailers that do not generally purchase from the public, the supplementary information accompanying the Proposed Rule states: "The rationale for this

limited exception is that, in order to abuse this industry, a money launderer must be able to sell as well as purchase the goods. Therefore, there is substantially less risk that a retailer who purchases goods exclusively or almost exclusively from dealers subject to the proposed rule will be abused by money launderers.” 68 Fed. Reg. at 8482. This stated rationale is even more applicable to the activities of entities such as BGMI who sell only in closed systems than retailers who engage in sales to the public.

As noted above, BGMI does not purchase gold. It sells only to an affiliated entity located outside the United States. In turn, the affiliated entity only sells to various bullion banks. The banks and the affiliated entity are subject to significant anti-money laundering compliance obligations (including the maintenance of compliance programs) either in the United States or under other governing jurisdictions. As such, BGMI’s sales are conducted in a closed system, with sales only to regulated institutions and not the general public. This arrangement is akin to retailers that only purchase product from other dealers. Indeed, BGMI’s activities are even less susceptible to money laundering or terrorist financing than are those of retailers, in that they do not conduct any sales with the public, nor do they purchase any subject items from the public. Furthermore, because of the nature of large-scale gold sales, only highly qualified, well-known and well-established entities can engage in such transactions.

The legitimacy of these institutions is further established through the KYC provisions of the affiliated entity. Thus, the potential for money laundering or terrorist financing at the level of trade that occurs within this closed system is virtually nonexistent. As a result, requiring BGMI and similarly situated persons to institute compliance programs would create an unnecessary burden and would not reduce money-laundering or terrorist financing risks. We therefore propose that the final rule exempt those entities that do not sell or purchase jewels, precious metals, or precious stones to or from the public.

Alternatively, we propose that the rule exempt producers that sell subject items to dealers that can demonstrate the maintenance of an anti-money laundering compliance program in accordance with United States or comparable international standards. As noted, the entities to which BGMI’s affiliated entity sells are significantly regulated financial institutions. Furthermore, the purchasers have been vetted by the affiliated entity before it enters into any transactions with the bullion banks. Excluding from the compliance program requirement entities that sell only to regulated “financial institutions” or that maintain an anti-money laundering compliance program is consistent with FinCEN’s risk-based approach to money laundering detection and terrorist financing and prevention.

We would not object to a requirement that producers such as BGMI participating in a closed system dealing only with market professionals qualify for such an exemption by certifying to FinCEN that their transactions are so limited.

III. International Characteristics of the Gold Trade Dictates an Integrated International Approach

As noted above, BGMI's sales are to an affiliated entity located outside the United States. Likewise, most of the bullion banks to which BGMI sells are non-U.S. entities. This reflects the fact that the gold market for market professionals is not a national one, but a global one. This fact should not divest the United States of any jurisdictional interests, and we do not contend that the United States lacks jurisdiction over BGMI or that its transactions do not implicate U.S. commerce. Nonetheless, a prudential risk-based approach to regulation should take into account the appropriateness, in a global market situation, of the need to harmonize U.S. regulatory standards with those of other relevant jurisdictions.

At this time, the rules of other jurisdictions regarding dealers do not apply to sales activities of gold producers such as BGMI. For example, Canada (where BGMI's parent company is located) currently does not regulate the activities of dealers at all,⁴ whereas European Union Member Nations are required only to implement anti-money laundering regulations covering "dealers in high-value goods, such as precious stones or metals, or works of art, auctioneers, whenever payment is made in cash, and in an amount of EUR 15000 or more" (Art. 2 of Council Directive 91/308/EEC as amended by Council Directive 2001/97/EC) (emphasis added). It is not clear that gold producers are treated as dealers under this regulation; even assuming they are, the European Directive targets high-risk transactions and does not regulate low-risk activity such as sales to regulated financial institutions as conducted by BGMI.

Some gold producers may participate in channels of trade that are more open than those used by BGMI, including public trading activity. However, with respect to producers such as BGMI that trade only in a closed system, with other market professionals who maintain appropriate compliance programs consistent with U.S. and international standards, we believe there is no justification, from a risk-based standpoint, for imposing the obligation for such entities to maintain a compliance program. Nor would such a requirement make sense when this activity is viewed from a global perspective. We therefore respectfully request that the final regulations under Section 352 contain an exemption paralleling or expanding those included in the Proposed Rule, as described in this letter.

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⁴ Proceeds of Crime (Money Laundering) and Terrorist Financing Act. (S.C. 2001, c.41 s.48).

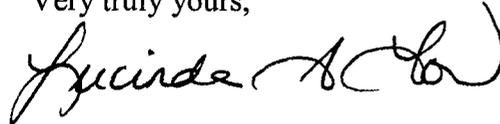
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BGMI appreciates the opportunity to comment on the Proposed Rule, and would be pleased to discuss any of the points made in this letter in more detail. Should you have any questions, please feel free to contact the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lucinda A. Low". The signature is fluid and cursive, with a large, stylized initial "L" and "A".

Lucinda A. Low

James G. Tillen

Miller & Chevalier Chartered

cc: Michael J. Brown, Vice President