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Via E-Mail

Subject: Anti-Money Laundering Programs for Dealers in Precious Metals, Stones, or Jewels. Submission of Comments. **RIN 1506-AA58**

Dear Sir,

Last year the Director of FinCEN inspired and challenged the international diamond industry to join the worldwide fight against money laundering and the financing of terrorism. During an important presentation to international diamond industry leaders, the Director of FinCEN stressed "the importance of the ongoing dialogue and partnership between the diamond industry and governments of the world. This partnership is critical to identifying the possible ways in which criminals or terrorists may seek to exploit the most precious of stones, the diamond." It is in this spirit that we respectfully submit these comments on the Interim Final Rule (***IFR*** or the ***Rule***).

At the outset, we would like to compliment FinCEN on its overall approach. It has clearly heard the many comments and dialogue provoked by the Notice of Proposed Rulemaking. It obviously sought to balance many competing concerns in drafting the IFR. In doing so, however, it has bent too far in favor of the interest of one sector of the business to the detriment of consumers, retailers and non-US diamond suppliers.
In the Request for Comments, FinCEN solicits comments on the potential impact of the Rule on small businesses (including manufacturers, dealers, wholesalers, distributors, and retailers) that may be "dealers" subject to the provisions of the rule.

From the feedback that foreign polished diamond suppliers received from several retailers in the United States, we can state unequivocally that:

1. The Rule negatively impacts the competitive position of many diamond jewelry retailers in the United States, as the retailer will be "exempt" from the rules only if he purchases his polished diamonds from a domestic middleman. **If the same retailer purchases *directly* from his trusted, and generally far more competitively priced, overseas source of polished diamonds, he becomes a "dealer" under the Rule** and is required to maintain a compliance program.

2. The Rule has created a non-tariff trade barrier discriminating against overseas polished diamond suppliers (a trade which we estimate to be in the $500 million to $1 billion range annually). The Rule provides a competitive and highly arbitrary advantage to middlemen – U.S. "dealers." **The small retailer is faced with a stark choice: purchase diamonds at likely greater cost from an expensive domestic "dealer" or lose his exempt status and bear the costs of a compliance program.** Either way, the Rule is likely to have devastating effects on his competitiveness. It is probably illegal under GATS and the WTO commitments of the United States and would seem unjustified at least in cases where the supplier abroad is subject to anti-money laundering rules that are as strict, or have similar effects, as the US rules. A possible trade conflict with countries that have enacted such tough rules would actually be counterproductive as regards the prevention of money laundering.

3. Annually some $13.9 billion (2004 figure) worth of polished diamonds are imported into the United States (HTS tariff number 71023900) and **virtually all polished diamonds sold by retailers (either loose or set in jewelry) originate from overseas**. The diamond jewelry value chain (from mine to retailer) has become infinitely more efficient and transparent in recent years. As part of that transformation process, the so-called "middlemen", those traders who buy and resell (without adding any value to the product itself), justifiably fear that they may well become redundant. These polished distributors have seen, in recent years, that more and more US small jewelry retailers have become more cost-efficient in their polished diamond sourcing and, consequently, have established direct purchase relationships with overseas suppliers, something that hitherto had been mostly the privilege of the large jewelry chains. **The Rule will cause many small retailers to "reconsider" their relationship with foreign suppliers and also discourage the establishment of new direct supply relationships in the future.**

FinCEN clearly errs when it dismisses all overseas anti-money laundering/counter-terrorist financing (AML/CTF) compliance systems as inadequate when compared to the system established by FinCEN. 70 Fed. Reg. 33705 n.9. (While FinCEN politely expresses its concerns as being about "differences" in overseas compliance regimes, it is clear from its resolution of these concerns that it considers the overseas regimes to be unacceptable). In fact, the scheme established by FinCEN in this Rule is far from the strongest AML/CTF regime applicable to diamond dealers. For example, the AML/CTF laws that apply to diamond dealers in Belgium (the world's largest diamond trading center) are much more intrusive and restrictive than FinCEN's regulations. To illustrate, among other things:

- **Identification of Clients**: The US Rule says that a dealer *may* determine that doing business with a *new* customer or supplier requires considerable scrutiny, etc., while there are no identification requirements for *existing* clients. In Belgium, diamond dealers *must* identify their principals and verify their identity by means of supporting documentation, of which a copy is made. The identification requirements apply to *new* and to *existing* clients as well as to certain occasional clients. In Belgium the identification requirements are mandatory and far stronger than those applicable to US dealers.

- **Suspicious Activities Reporting**: According to the US Rule suspicious activities reporting is purely a voluntary activity (though dealers are "strongly encouraged" to do so), while in Belgium such reporting is mandatory, must be in writing, must be reported immediately to the Financial Intelligence Processing Unit (***FIPU***), and must be kept for five years.

- **Completion of the Suspicious Transaction**: Under the US Rule, the dealer is left with the discretion to decide whether to complete the transaction that appears designed to further illegal activity or not. In Belgium, the dealer must inform the FIPU *before the transaction* (if he is aware or suspects that a transaction to be conducted is linked to money laundering or terrorism financing) or *immediately after the transaction* if the dealer cannot delay the transaction (either because such delay is not possible due to the nature of the transaction or because such delay could prevent prosecution of the individual). This, too, is a much stronger provision than in the United States.

- **Documentation**: Under the US Rule, record keeping is implied. In Belgium dealers must keep a copy of the documents relating to identification for a period of five years after the termination of the client relationship. Moreover, all documents must be kept to reconstruct each transaction at least for five years after the transaction takes place. That goes beyond just bookkeeping; all papers related to the transactions must be preserved.

- **Cash transactions**: Under US law cash transactions are allowed, although those in excess of $10,000 must be reported. In Belgium no cash transactions above the 15,000 EUR are permitted.

Conclusion: In many instances, the small retailer's level of comfort that he is not unwittingly supporting money laundering or financing of terrorism is far higher when dealing with a Belgian compliant supplier than with a domestic dealer. This merely underscores the discrimination between domestic and foreign compliance.

The Rule not only favors domestic "dealers" over overseas suppliers hereby limiting the small retailer's purchase choices, but the Rule also has an impact on the question of "availability" of diamonds. In the purchase of diamonds, the assortments of diamonds (there are thousands of categories and price points) are a key factor in both the price and purchase decision. The Belgium bourses, which have a $36 billion trade turnover, provide the world's most extensive assortments, not matched by middlemen distributors. The Rule may well deny the retailer access to this choice, or at least increase the costs of that access. In the end, it is the US consumer who will be affected by the added costs and decreased selection.

In almost all major US diamond and jewelry trading partner countries efforts are underway to greatly strengthen AML/CTF compliance regimes for diamond dealers. Indeed, as just demonstrated, at least one critical jurisdiction has already legislated rules that in virtually all respects are far more demanding and stricter than the Interim Final Rule.

As the Director of FinCEN so eloquently noted, the war against money laundering and terrorist financing is an international one. The United States cannot do it alone. It should be a source of pride and satisfaction that in the diamond industry FinCEN has countries and partners which see it as their own civic responsibility to join the fight.

As presently drafted, however, the Interim Final Rule will discourage this cooperation and aid those who would like to weaken the overseas regimes. The US market accounts for over 55% of the global demand for polished stones. If the Rule does not recognize the efforts of other jurisdictions to improve their controls, competitive demands among various diamond centers to gain an increased share of the US market may lead to a race for the bottom in an effort to reduce compliance costs. Surely, this is precisely the opposite of the intent of the Rule and US policy. Not to recognize some form of reciprocity will end up weakening the fabric of the international diamond and jewelry business community and the resolve of some to the fight against money laundering and terrorist financing.

Accordingly, to protect the interests of small retailers, consumers and the international diamond and jewelry industry, we urge you to amend the Interim Final Rule to allow US retailers to maintain their exemption from having an AML/CTF if they purchase only from other retailers, US dealers or dealers in jurisdictions with equivalent or stronger AML/CTF regimes.

Respectfully yours,

Chaim Even-Zohar
Managing Director

Note: **Tacy Ltd**. is an international consultancy specializing in the diamond industry. Chaim Even-Zohar is author of the 190-page *"Diamond Industry Strategies to Combat Money Laundering and the Financing of Terrorism",* published by ABN-AMRO Bank NV (Amsterdam, Belgium, New York). A Hebrew language edition was subsequently published by the Israel Diamond Institute. Among other relevant titles Chaim Even-Zohar authored the 560-page *"From Mine to Mistress: Corporate Strategies and Government Policies in the International Diamond Industry*," published by Mining Journal Books – London. He serves as Editor of *Diamond Intelligence Briefs,* and contributes to *IDEX Diamond Magazine* and a host of other industry publications. Chaim Even-Zohar is a member of the World Diamond Council (WDC) and a member of the Association of Certified Anti-Money Laundering Specialists (ACAMS).