

July 25, 2005

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

Via E-mail: [regcomments@fincen.treas.gov](mailto:regcomments@fincen.treas.gov)

ATTN: Section 352 – Jewelry Dealer Regulations

Re: RIN 1506-AA58

This letter responds to the request for comments included by FinCEN in its June 9, 2005 publication of the Final Interim Rules for dealers in precious metal, precious stones and jewels pursuant to Section 352 of the USA PATRIOT Act of 2001. This response is submitted on behalf of the undersigned trade associations. These associations represent all sectors of the trade, including large and small retail organizations selling millions of dollars in jewelry to the public, manufacturers of mass-produced jewelry products, gemstone traders (loose diamonds and color gemstones), diamond manufacturers, precious metal refiners, and small businesses which manufacture individual jewelry items based on craftsmanship and artistry.

The undersigned associations appreciate the opportunity afforded by the Treasury Department to provide these comments in response to the questions posed. We are committed to work with the Treasury Department and other law enforcement agencies to ensure that our businesses are not exploited for the purposes of laundering funds to or to support terrorism. The goal of implementing programs to detect and prevent such efforts is one in which we are eager to join. We are further committed to assisting your efforts to develop the rules to best serve their goals and to improve implementation.

A. Silver

1. Should silver be defined as a precious metal for purposes of the final rule?

Silver has long been accepted in the jewelry industry as a precious metal. However, given its current level of value (approximately \$7.00 per ounce), the risk it presents for being used as a mechanism for laundering money is extremely remote. Therefore, it is the position of the undersigned trade associations that dealers or others subject to the provisions of the final

rule should be permitted to exclude from the application of their compliance program any transactions pertaining to the purchase or sale of silver. However, in the jewelry industry, silver will always be considered a precious metal, along with gold and platinum (and other platinum group metals).

2. Should finished goods containing silver be covered by the final rule?

For the reasons stated above in section A.1, we urge FinCEN to exclude finished goods containing silver be excluded from the application of the final rule. Finished goods containing silver often represent very low value at the retail level. Under the current rule, the type of finished goods which will be covered include low value goods which often contain low value precious stones and/or synthetic or imitation gemstones. The value of the silver included could be in excess of the 50% threshold of value of the finished item as a whole, but the overall value of the finished item remains low.

Wholesalers, distributors, and retailers would probably know whether the value of the silver represents 50 per cent or more of the value of the item, but this knowledge would not always be very relevant to the wholesale price they pay or the retail price they charge for the goods. These finished goods are targeted to a price sensitive market sector. Therefore, given the very low wholesale price of the constituent parts of the finished goods, and the low margins charged in the retail sector for these goods, as a practical matter, the risk of such goods being used for the purposes of laundering money or financing terrorism is virtually non-existent. We recommend that finished goods consisting of 50% or more in value of silver be excluded from the application of the rules.

3. Should the final rule include an overall minimum price-per-ounce level at which silver (or any other metal) would be deemed a "precious metal" for purposes of the rule?

The approach suggested in this question would not be recommended, given the price fluctuations of precious metals, which are traded in public markets as a commodity. These metals have historically been traded at prices that rise and decrease depending on the economics and financial status of the world markets. Therefore, setting a minimum price-per-ounce for silver (or any other precious metal) would artificially set a level of value that might not be supported by actual trade in that commodity in the market place. Therefore, we recommend that the 50% value of precious metals contained in alloys remain the benchmark for coverage under the rule.



B. Jewels and Precious Stones

In this section, FinCEN asks whether the definition of jewels and precious stones should be altered from specific characteristics to one based instead on an overall minimum price-per-carat or another objective threshold indicating at which point the jewel or stone would be deemed a "jewel" or "precious stone".

In discussions with retailers, diamond traders and color gemstone dealers, there was universal agreement that any "objective" threshold used to define a jewel or precious stone would not be any better than the definition already included in the rules. Both the identification of the stones and jewels listed in the interim rule, and the phrase "gem quality market-recognized beauty, rarity and value" are well understood and accepted in the industry. Any attempt at setting a minimum price-per-carat would have to include so many variables (color, clarity, size, cut, etc.) that the price would be subject to debate and dispute. Therefore, we recommend maintaining the current definition.

C. Finished Goods

1. Is the 50% of the value of the precious metal, precious stones or jewels contained or attached to an item of finished jewelry an appropriate threshold to determine value of goods? Should jewelry be subject to a threshold different from that of other finished goods?

For the majority of finished jewelry items, the value of the labor, the design element and the profit margin attached to a particular item of finished jewelry will amount to substantially less than 50% of the overall value of the finished piece. The value of the precious metal, stones or jewels contained in or attached to the item will usually be in excess of 50% of the overall value of the item. Therefore, to set the threshold at 50% seems appropriate.

2. In the ordinary course of business, will wholesalers, distributors and retailers of finished goods know whether the goods they are dealing in derive 50% or more of their value from jewels, precious metals or precious stones?

The simple answer to this question is, generally, yes. Most dealers in these finished goods have a very exact idea of the value of each element of the item they sell, including the precious stones or jewels contained in or attached to the item, as well as the value of the precious metal contained in the item. Manufacturers routinely negotiate prices for the purchase of the precious metal, precious stones and jewels that they set into finished jewelry, and will carefully calculate labor costs and profits in

setting the price. If for some reason they do not know these prices, they will make the inquiry. Retailers will also make this inquiry, if they do not already know these values, in order to set retail market prices that are appropriate. Persons engaged in the purchase and sale of these goods are price sensitive at all levels of the trade, and consequently will be aware of the value of the precious metal, precious stones and jewels contained in or attached to the items they sell.

In a few cases, there might be a need for expertise and appraisal skills to set the value of the precious stones, jewels or precious metal that comprise an item of jewelry. This might cause additional burdens on the industry participant in determining whether they meet the \$50,000 threshold. But these circumstances will be rare.

D. Effects on Small Dealers

FinCEN requests views on the impact on small businesses arising from compliance with the rule.

Creating, implementing and administering anti-money laundering programs is an unprecedented area of legal compliance in the jewelry industry. Many small businesses will be impacted, because most manufacturers, wholesalers and distributors will be required to comply since their purchase and sale of covered goods exceeds the financial threshold.

The burdens of compliance are not high. Once dealers have determined they must comply, and have identified the areas of risk their business model presents, they need only design a program addressing those areas of risk. Their written programs and monitoring of business practices and transactions for "red flags" will be narrowly drawn to address only those identified risks. Thus, the scope of their programs will not be outweighed by the risks identified. Instead, the compliance burden for dealers will be tailored to their own assessment of the risks actually presented by their business practices.

This is a measured and practical approach to addressing perceived risks for exploitation of our businesses for terrorist financing and money laundering. Because fulfilling the required steps to address the elements of the rule can easily be self-implemented; most businesses will not incur extraordinary expenses related to compliance. Some businesses will be able to comply with no outside guidance and will simply rely on guidance they find from trade associations or from FinCEN itself. In sum, the undersigned associations agree that the impact of the rule on small businesses is appropriate to the risks at hand. We again assert our willingness to cooperate with all efforts by the government to detect and



prevent exploitation of our businesses or products by those intending to commit crimes. Instituting these programs in compliance with the rule seems to us to be an effective and practical means to engage our community in that process, and we do so as part of our general commitment to a safe community and sound business practices.

Thank you for your attention to these comments. We look forward to a continuing dialogue with Fin CEN and to cooperating fully with the Treasury Department to ensure full implementation of the final rule.

Signed:

Cecilia L. Gardner, Executive Director and General Counsel  
Jewelers Vigilance Committee  
25 West 45<sup>th</sup> Street, Suite 400  
New York, New York 10036

Matthew Runci, President and CEO  
Jewelers of America  
52 Vanderbilt Avenue – 19<sup>th</sup> Floor  
New York, New York 10017

James Marquart, President and CEO  
Manufacturing Jewelers and Suppliers of America  
45 Royal Little Drive  
Providence, Rhode Island 02904

Douglas Hucker, Executive Director  
American Gem Trade Association, Inc.  
3030 LBJ Freeway #840  
Dallas, TX 75234

Ruth Batson  
Executive Director and CEO  
American Gem Society  
8881 W. Sahara Avenue  
Las Vegas, Nevada 89117

Ronnie Friedman, President  
Diamond Manufacturers and Importers of America  
P.O. Box 5297  
Rockefeller Center Station 10185