

Financial Crimes Enforcement Network
FinCEN
P.O. Box 39
Vienna, VA 22183-0039
#27

Via E-mail: regcomments@fincen.treas.gov

ATTN: Section 352 – Jewelry Dealer Regulations

Dear Sir or Madam:

This letter commenting on the proposed rules implementing those sections of the USA PATRIOTS Act applicable to “dealers in precious metals, gemstones and jewels” are submitted on behalf of the American Gem Trade Association. This association represents natural colored gemstone dealers, dealers of cultured pearls, jewelry manufacturers who produce natural colored gemstone jewelry, and retail jewelers who do a significant business in natural colored gemstone set jewelry.

We appreciate the opportunity afforded by the Treasury Department to submit these comments. 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 support terrorism. The goal of implementing programs to detect and prevent such efforts is one in which we are eager to join.

The jewelry industry in the United States is complex, consisting of many sectors. Some companies deal only with loose color gemstones, others, only pearls. Some companies trade diamonds only; others are large retailers, selling all varieties of jewelry. Some retail establishments operate from small booths in jewelry exchanges around the country, other have many high-end retail stores, selling high priced items to a select clientele.

Thus, the proposed rules requiring “dealers in precious metals, gemstones and jewels” will apply to a wide variety of people and business entities with widely varying levels of organization and business infrastructure. The challenge of implementation to achieve the goals of the regulations (establishing a program to detect and prevent exploitation of businesses by those seeking to launder funds used to support terrorism) therefore is substantial. The rule as proposed suggests a system that is generally applicable to a wide array of business models, but will present a variety of challenges to those seeking to comply.¹

I. Definition of “dealer”

The proposed rule is applicable to “dealers” in precious metals, gemstones and jewels. The scope of the definition and the applicable exemptions from its provisions has raised some concerns.

a. “Dealers” not subject to these rules

Under the proposed rules, an exemption states that a retailer need not institute an anti-money laundering program unless they purchase more than \$50,000 in precious metals, gemstones or jewels from persons other than dealers (defined as those in the business of buying, selling and/or manufacturing precious metals, gemstones or jewels.) The suggested rationale is that retailers who purchase only from dealers need not institute AML programs since the dealers from who they purchase already have such programs in place. Risks are therefore minimized.

As currently proposed, this provision does not address purchases from dealers (those in the business of

¹ The proposed rules apply to risks associated with both with money laundering and terrorist financing (which may or may not include money laundering.) It proposes the implementation of an anti-money laundering program (“AML”) to address both risks. It is therefore understood that by implementing such a program, a dealer would be in full compliance with the rules.

buying, selling and/or manufacturing precious metals, gemstones and jewels) not subject to the jurisdiction of the Treasury Department, namely, companies located outside the United States who may not have AML programs in place. The risk for abuse of those companies by money launders is theoretically more acute.

The purchase of jewelry items by retailers from suppliers located outside the United States is a routine and growing practice. This is especially true of retail jewelers who purchase loose gemstones and cultured pearls. The most common marketplace for major purchases of these items is in trade show environments where suppliers from outside the United States, not subject to the jurisdiction of the Treasury Department, compete directly with United States firms for their sales. This could force United States firms who are required to establish and maintain AML programs to compete directly with non-United States based firms who have no such requirements. This scenario establishes a competitive disadvantage for the United States dealers. Transactions from dealers outside the United States may be viewed by Treasury as higher risk transactions for purposes of money laundering funds, since those dealers with no presence in the United States may not be subject to the provisions of these rules for jurisdictional reasons.² Should Treasury opt to address this issue, which is not currently addressed in this proposal, the American Gem Trade Association would look forward to commenting on Treasury's suggested regulatory approach.

One possible way to address this issue is to require retailers who buy from dealers not subject to the provisions of these regulations receive written assurance that they have taken steps to prevent and detect money laundering. If this approach is adopted, it is suggested that an additional provision be added to the definition of dealer as follows: "A dealer includes any retailer that purchases in an amount in excess of \$50,000 jewels, precious metals, or precious stones, or jewelry composed thereof, from dealers that have not represented in writing that they either are in compliance with the provisions of this rule or, if not subject to this rule, have programs in place designed to prevent and detect money laundering. Further, retailers shall require in all cases the provision of a U.S. Tax Identification number from all dealers otherwise obligated to acquire such U.S. Tax Identification number."

Such written assurances are already in place in the jewelry industry addressing the legitimate source of the diamonds or jewelry containing diamonds that are supplied to retailers. The additional assertion might be a framework to ensure that all dealers, whether or not in the United States, are implementing programs that further the goal of protecting this industry from exploitation for the purposes of funding terrorism. Furthermore, the establishment of these requirements for non-United States based dealers is critical to maintain a level playing field in which United States based dealers are not subject to regulatory requirements that again place them at a competitive disadvantage.

II. Factors indicating transactions facilitating money laundering

Section (c) of the rule sets out the minimum requirements for AML programs. In c (ii), several factors that may indicate that a transaction is designed to involve the use of a dealer to facilitate money laundering or terrorist financing are suggested. To this list of factors should be added as follows: "(F) Lack of, or refusal to provide a U.S. tax identification number."

Companies doing business in the United States but domiciled outside the United States by law must acquire a tax identification number from the Internal Revenue Service. The compliance of a company to this provision of US law is a good indicator of their legitimate status. The failure of a company to provide such a number when asked is an important indicator of the legitimacy of the company, and its participation in programs to prevent money laundering or terrorist financing. This factor should be added.

² We take no position on this jurisdictional issue and recognize that Treasury may consider foreign dealers covered by the rules based solely on minimal communications with a person (e.g. a retailer or a dealer) in the U.S.

III. Extension of time to comply

The proposed rules state that dealers must develop and implement and AML no later than 90 days after the date a dealer becomes subject to the requirements of this section (presumed to be the date the regulations become final.) Unlike traditional financial institutions, the gem and jewelry industry will be instituting anti-money laundering programs for the first time. Given the complexities of our industry and the wide application of the rule, the period of time for implementation should be extended to 180 days.

Thank you for your attention to these comments. We look forward to cooperating in full with the Treasury Department to insure full implementation of the final rule when published.

Sincerely,

Douglas K. Hucker
Executive Director
AMERICAN GEM TRADE ASSOCIATION