Financial Crimes Enforcement Network
FinCEN
P.O. Box 39
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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 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 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 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. 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 jewelry industry 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,

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[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.

[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.

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.

b. Exclusion from definition of dealers in "minor amounts" of precious metals or gemstones

The rule currently excludes from the definition of dealer those who buy or sell products containing "minor amounts" of precious metals or gemstones. The term is undefined. Manufacturers of gold filled or electroplated jewelry manufacture jewelry items which employ only minor amounts of precious metals, but they might be otherwise included in the provisions of the rule under a separate definition. This definition should include the phrase "not more than 10% of the product value."

c. Exception from definition for retailers - "trade-ins"

For many retailers, buying from non-dealers often consists of a purchase of jewelry from members of the general public. These purchases can be a straight purchase of an item for cash. In many states, this engenders requirement to law enforcement to prevent the sale of stolen merchandise. Another routine practice in the retail community is to accept trade-in of jewelry items in exchange for the purchase of another (usually higher priced) jewelry item. In this transaction, the person who offers the trade-in then pays to the retailer the price difference for the item purchased in exchange. Some retailers will only accept trade-in of items documented to be previously purchased from their company. Others will accept a trade-in only if the person offering the trade-in purchases an item double in value of the item offered. Most of these transactions are in small dollar amounts, and happen with frequency. This practice provides a service which retail customers seek, and retailers wish to offer among the wide array of services provided to customers.

Trade-in transactions are distinguishable from purchases in that in most cases, the only payment is from the person offering the trade-in to the retailer for the item of higher value. The risk of this transaction being part of an effort to exploit the jewelry industry to launder funds for the purpose of funding terrorism is minimal, especially at lower values. Extending the exemption to the definition of "dealer" to retailers that accept trade-ins would therefore not hinder the objectives of the anti-money laundering provisions of the Act.

Trade-in transactions and purchases from the public are often already covered by federal, state or local laws. Local laws can require jewelers to file information about certain purchase transactions with local law enforcement about purchases from the public. If a particular transaction involves a payment in excess of $10,000 in cash, laws under the Bank Secrecy Act, which has been closely observed by members of the jewelry industry for some time, cover those transactions.

Providing a trade-in service is important to both retailers and their customers, and any regulation, which might discourage retailers from accepting trade-ins, could do harm to the industry. Moreover, including these transactions in the regulatory calculation which includes retailers in the definition of "dealer" essentially disqualifies all retailers from the exception and makes them subject to the regulation. This could not have been the intent and by so doing, the goals of the regulations are not advanced.

If Treasury disagrees with the above arguments and determines that certain trade-ins to jewelry retailers present a risk of abuse, a less burdensome way to accomplish the goals of the Proposed Rule is to make it apply only to trade-ins over a certain value threshold. In this case, we believe the rules should apply only to trade-ins with a value of $10,000 or more. Further, trade-ins originally purchased from the company or establishment to which it is returned as a trade-in should be exempted. If this approach is adopted, the Proposed Rule should be amended to require retail stores to apply the required anti-money laundering program only to the activity of accepting trade-ins with a value of $10,000 or more, if the trade-in was not originally purchased from the same retail establishment to which it is being offered as a trade-in.
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<u>II. Inconsistent definitions of terms</u>

The definitions provided under the regulations are not consistent with the definitions used in other regulatory schemes for jewelry. The regulations should state that "the definitions employed are for the purpose of this regulation only."

<u>III. Factors indicating transactions facilitating money laundering</u>

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.

IV. Extension of time to comply

The proposed rules state that dealers must develop and implement an 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 to180 days.

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

Signed:

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