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IPMI

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via email to: regcomments@fincen.treas.gov
cc: charles.klingman@treas.gov

United States Treasury
Financial Crimes Enforcement Network

Attn: Section 352--Jewelry Dealer Regulations
USA PATRIOT Act
Proposed Regulations 68 FR 8480, February 21, 2002

Dear Sir or Madam:

The International Precious Metals Institute (IPMI) is an association of producers, refiners and users of precious metals. We submit this comment on behalf of persons who Treasury proposes to classify as a type of financial institution – a "dealer in precious metals" – required to create and implement an anti-money laundering (AML) program.

Members of the precious metals industry fully support the purpose and intent of Section 352 of the USA PATRIOT Act, and fully intend to guard against their being unwittingly used by criminals to launder money and other assets, or by terrorists to finance their activities. We appreciate the approach taken by Treasury, granting flexibility to each dealer in precious metals to assess the risks associated with its actual transactions, and then to minimize those risks in ways that are compatible with good industry and business practices. Such an AML program should serve to protect the value of our assets and services, and could function quite well within a larger business management system.

Our principal concerns with the proposed regulation are with its clarity. We need to be sure that members of the precious metal industry understand precisely who is a "dealer in precious metals" and thus required to have an AML program, and precisely what transactions are required to be covered by that program.

The definition of "precious metal" is clear – gold, silver and the platinum group metals, or any alloy of these metals – at a threshold purity of 500 parts per thousand. We approve of this purity distinction, because we believe that "low grade" precious metal-bearing scrap is less likely to be used for money laundering and terrorist finance than "high grade" bullion and similar recognizable precious metal forms. (We recognize that any traded material, of any value, can be used to launder money, but we believe that attention and resources are appropriately focused upon higher risks. It is also likely that Congress, when it defined a "dealer in precious metals" to be a "financial institution," intended to encompass dealers in high grade materials.)

Applying that definition, we then understand that a "dealer in precious metals" is a person who is in business, and who engages in a threshold level of that business in "precious metals" as defined by this regulation. That is, a dealer must first be a person who deals with precious metals for business purposes, not for personal purposes. We appreciate that "purchasing and selling .. precious metals" need not be a dealer's only business, or even its primary business, but understand that the "purchasing and selling" must nevertheless be a business activity.

And the business of "purchasing and selling .. precious metals" must be above a threshold level; the business must have: "(A) Purchased more than $50,000 in .. precious metals, .. or (B) Received more than $50,000 in gross proceeds from transactions in .. precious metals." We do not have any objection or concern with the amount of that threshold. However we need some clarity, to be sure that we understand the scope of transactions that constitute "purchasing and selling .. precious metals." We understand that "purchasing and selling" apply only to transactions in "precious metal" as defined, i.e. with a purity of .500 or greater. Thus, for

example, a business that engages in "low grade" precious metal-bearing scrap transactions, such as purchasing and selling electronic circuit boards, would not count such transactions in determining if it met the $50,000 threshold.

And if, after counting only "high grade" purchases and sales of precious metals, a person determines that it is a "dealer in precious metals" and required to create an AML program, we understand that such a program would be required to encompass only the "high grade" transactions, i.e. those that involve "precious metals" as defined by the proposed regulation. So if a business that engages in both "low grade" transactions, e.g. electronic scrap, and also in "high grade" transactions, e.g. 14 karat gold, its AML program would be required to cover only the "high grade" transactions. If our understanding is not correct, we believe that the regulation should be changed to reflect our understanding. (This is not to say that members of this industry do not identify all customers, or do not properly record all transactions, but we need to ensure that our legal requirements are equally clear and understood.)

We also believe that covered transactions should be limited to those in which precious metal is exchanged for cash or other monetary consideration, and should not encompass metal that is exchanged for metal. It is not uncommon within the industry to engage in precious metal transactions that are purely exchanges of metal, rather than in purchases and sales. Some precious metal refining transactions, for example, provide for toll refining, in which the refiner does not buy the customer's metal, but performs a refining service upon it, and returns metal to the customer. For example, a company which uses precious metal in jewelry fabrication always sends its manufacturing scrap to a refiner. The jewelry fabrication customer wants the same precious metals back, in a refined state, for use in its continuing production operations. The refiner will sample and assay the received batch of manufacturing scrap, and will return the assayed amount of precious metal content to the customer, after taking a fee for refining services. We believe that a toll refining transaction, in which refined metal is returned to the original customer without purchase or sale, should not be considered a purchase or sale of precious metals. We believe that the regulation should expressly provide that a purchase or sale of precious metals includes only transactions in which precious metals are exchanged for cash or other monetary consideration, and does not include an exchange of metal.

We agree with the proposed exemption for fabricated finished goods with minor amounts of precious metals. A business that fabricates products in which precious metals are minor components is not likely to be a target for abuse in money laundering or terrorist finance activities, and would not be thought of as a "dealer in precious metals."

We also agree with the proposed retailer exemption. Retail sales to the public, made by retailers who must be identified and verified by suppliers who are themselves regulated as dealers in precious metals, are less likely to be a target for abuse by money launderers and terrorists. And this exemption will permit a better focus of industry and Treasury resources upon more likely targets.

We believe that the regulation, or the preamble, should make explicit reference to transactions involving foreign companies. The purchasing and selling of precious metals is an international business. While the regulation does not expressly state that it applies to foreign companies that purchase and sell in the United States, we understand that it does apply, and we therefore assume that a foreign company is subject to the proposed AML regulation in the same way that a domestic company is subject. We also assume, of course, that the required AML program of such a foreign company would encompass only such transactions as occur, at least in part, within the United States.

Finally, we note that Section 314 of the USA PATRIOT Act provides for cooperative exchanges of information between governments and financial institutions. A common source of relevant anti-money laundering information, hopefully available on the internet, would be very useful to "dealers in precious metals," especially those that are small. Also in this regard, it would be useful if Treasury would clarify the rights and obligations of dealers in precious metals to such information as is reasonably appropriate and necessary to fulfill our AML obligations. If there is not a federal preemption of state laws which prohibit or restrict access to such information, a Treasury statement in the final rule, or in the preamble of the final rule, would assist dealers in seeking permission from state agencies to obtain background information.

If you have questions regarding this comment, or would like additional information, please contact either me or John Bullock, who represents the IPMI on this issue. We would welcome the opportunity to contribute further.

Very truly yours,

Larry Manziek, Ph.D.
Executive Director