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AJM Magazine

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April 21, 2003

Financial Crimes Enforcement Network
United States Department of the Treasury
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Via: regcomments@fincen.treas.gov

Attn: section 352 – Jewelry Dealer Regulations

On behalf of the Manufacturing Jewelers and Suppliers of America (MJSA), we wish to comment on the proposed rules on Anti-Money Laundering Programs for Dealers in Precious Metals, Stones or Jewels, published in the Federal Register on February 21, 2003.

Our members engage in almost all levels that would be described as the jewelry industry, including manufacturing, wholesale and retail businesses. Many of them will meet the definition of "dealer" under the proposed regulations.

Others in the jewelry industry have made comments about the application of the regulations for traditional money laundering transactions, that is, the purchase of precious metals, stones or jewels from one of our members by a party for cash or unusual payment method. We wish to be associated with those comments, but we have other serious concerns.

It appears these proposed rules will cover many more members of our industry than have needed to be concerned with the Bank Secrecy Act's (BSA) traditional cash reporting rules. Most of MJSA's members are not familiar with the BSA since they seldom engage in "outbound" transactions in which the buyer is paying with cash or other unusual method of payment. We are concerned about what we describe as the "inbound" transaction, that is, our members buy precious jewels, stones or metals from individuals or companies to produce a new product. As we understand it, rather than traditional money laundering, these have the potential to be "terrorism financing" transactions. The proposed rules appear to paint both traditional money laundering and terrorism financing with the same brush. Throughout the proposed rules and the preamble, at times there are references to the entire program as anti-money laundering in nature and yet, at other times there are references to "money laundering OR terrorism financing." Clarification of the relationship between money laundering and terrorism financing under the proposed rules would be extremely helpful.

In the majority of traditional money laundering cash reporting transactions, the transaction is based on an objective on one side of the transaction to "dispose of" cash or its equivalent. While those wishing to achieve this objective have developed creative ways to accomplish this, it is still possible to identify such as a questionable transaction for the purposes of the BSA. Indeed, the BSA requirements have

traditionally been structured around some readily identifiable objective criteria. On the other hand, it is not necessarily the goal of an individual seeking to finance terrorism that the ultimate outcome be payment in cash or by unusual payment method. Therefore, assessing the purposes of a transaction is far more subjective and determining whether the new requirements of the USA PATRIOT ACT are applicable is far more difficult, when evaluating a transaction for its potential as "terrorism financing" in the absence of an unusual payment method request. We believe it will be difficult for "dealers" to establish programs to meet the requirements of Section 103.140 (b) and (c) for conducting the risk assessment for so-called "terrorism financing."

Our members have raised questions about the process of risk assessment. If there is one thing businesses owners, particularly small businesses owners, say time and time again, "whatever you do, provide us with certainty." Under the proposed rule, "dealers" will not know with certainty whether they have done enough to comply with the risk assessment of subsection (c)(1)(i) and (ii). Even if there are no specific reporting requirements or sanctions, experience has taught them potential liability remains.

In the preamble to the proposed rules, there are frequent references to "reasonable." In an industry where security is already a concern since we do deal in transactions of significant value with items that are easily concealed, stolen or otherwise put at risk, we can tell you that the term "reasonable" has been largely rendered meaningless by the civil justice system. While we applaud the flexible nature of the regulations, business owners take great comfort in "safe harbors." We believe a "safe harbor" compliance program has to be set forth so that "dealers" do not have to rely solely on their own determination of "reasonableness." Dealers could still make their case that a particular set of actions and assessments were reasonable when they were at variance with the safe harbor, but at least there would be some degree of certainty with a safe harbor. We would be happy to work with the Department to identify a possible written program that would constitute a "safe harbor" for compliance. In addition, it would be helpful if the agency provided additional information on specific types of questionable transactions.

The second most frequent comment we have heard from members related to a specific component of what might constitute a "reasonable" risk assessment is that they have very few available sources to verify the purposes of individuals or companies from which they are purchasing precious jewels, metals or stones. At minimum, the industry needs a safe harbor that if certain available public references are consulted, a dealer will be in compliance with the risk assessment requirements. In the alternative, an agency-provided database that can be consulted by "dealers" would be helpful. Again, we would be happy to work with the Department to identify the components of a "safe harbor."

Finally, we believe a long implementation period is necessary. Many MJSA members have not engaged in traditional BSA transactions, and are not even aware yet that the USA PATRIOT ACT includes "terrorism financing" transactions. Under the best of circumstances, it will take some time to educate the industry on compliance with any final proposal. Certainly, the effective date should be at least 180 days from publication.

The members of MJSA are willing to do their part to ensure the security of all Americans but it is difficult to impose upon them the responsibility for making the subjective determination that a transaction has the potential for financing terrorism. They need more certainty and more reliable resources to do so.

Thank you.

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JFM/mlm/L4719