JEWELERS OF AMERICA

#21

April 22, 2003

Financial Crimes Enforcement Network **Electronically Delivered**
FinCEN
Attn: Section 352 – Jewelry Dealer Regulations
P.O. Box 39
Vienna, VA 22183-0039

Re: Anti-Money Laundering Programs for Dealers in Precious Metals, Stones, or Jewels

Dear Sir or Madam:

This letter offers comments on behalf of Jewelers of America on the proposed rules implementing those sections of the USA PATRIOTS Act applicable to "dealers in precious metal, gemstones, and jewels". Jewelers of America appreciates the opportunity afforded by the Treasury Department to submit these comments. We remain fully committed to work with the Treasury Department and other law enforcement agencies to ensure that our members' businesses are not exploited for the purpose of laundering money to finance terrorism. As we have previously indicated, the goal of implementing programs to detect and prevent such activity is one in which we are eager to join.

Jewelers of America, Inc. (JA) is the national trade association for retail jewelers. JA is a 501(c)(6) tax exempt organization headquartered in New York City. Since its founding in 1906, JA has served as a center of knowledge for retail jewelers and as an advocate for professionalism and social and ethical standards in the retail jewelry trade. Today JA represents more than 11,000 member retail jewelry stores located throughout the fifty United States. About 70 percent of JA's membership is small independent stores, while the balance is comprised of large specialty retail jewelry chains. Through the offices of its Washington counsel, JA routinely monitors federal government activity as it pertains to the retail jewelry industry.

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Section 352 of the USA Patriot Act sets forth minimum standards for the establishment of anti-money laundering programs by covered financial institutions. These standards have been codified in the form of amendments to the Bank Secrecy Act, 31 U.S.C. §§ 5311 *et seq.*, specifically § 5318(h). The new requirements include the following: (a) development of internal policies, procedures, and controls; (b) the designation of a compliance officer; (c) an ongoing employee-training program; and (d) an independent audit function to test programs. Financial institution is defined to include "a dealer in precious metals, stones, or jewels." 31 U.S.C. § 5312(a)(2)(N).

The phrase "dealer in precious metals, stones, or jewels" is not defined or explained in the USA Patriot Act or in any other federal statute or administrative rule. The Proposed Rule provides a definition of the types of "dealers" covered. The definition is fairly broad and covers virtually all entities involved in the jewelry business provided they purchase and sell precious metals, stones, or jewels. The application of the definition only to entities that purchase as well as sell precious metals, stones, or jewels is based on the reasoning that a money launderer must be able to sell as well as purchase the goods.

While "dealer" is defined broadly, the Proposed Rule excepts certain entities from the definition. Specifically, the Proposed Rule exempts from the definition of "dealer" a retailer that does not "purchase more than $50,000 in jewels, precious metals, precious stones or jewelry composed of jewels, precious metals, or precious stones, from persons other than dealers (such as members of the general public or persons engaged in other businesses) . . . ." In explaining this exemption, the supplementary information to the Proposed Rule states that:

> a retailer is a dealer only if it purchased more than $50,000 in jewels, precious metals, precious stones, or jewelry from persons other than dealers during the prior calendar or tax year. Thus, a retailer that purchases jewels, precious metals, precious stones, or jewelry from a dealer (for example, from a wholesaler), would not fall within the definition of "dealer," even if its gross sales of jewels, precious metals, stones, and jewelry exceeded $50,000 in the prior calendar or tax year. However, a retailer that, in the prior calendar or tax year, purchased more than $50,000 in jewels, precious metals, precious stones, or jewelry from sources other than a dealer (for example, from the general public), would be a dealer for purposes of the rule. *The rationale for this limited exception is that, in order to abuse this industry, a money launderer must be able to sell as well as purchase the goods.* Therefore, there is substantially less risk that a retailer who purchases goods exclusively or almost exclusively from dealers subject to the proposed rule will be abused by money launderers.

68 Fed. Reg. 8480, 8482 (Feb. 21, 2003) (emphasis added). This language clearly explains that the rationale for the limited exemption for retailers is that a retailer does not pose a significant risk of being abused by a money launderer if the money launderer is not able to both sell and purchase jewelry from the retailer. Because there is less risk that a retailer that sells but does not purchase jewelry from non-dealers would be used to launder money, there is no need to burden operators of retail jewelry stores with the requirements of the Proposed Rule.

While the Proposed Rule states that a retailer is not a dealer if it does not purchase more than $50,000 in jewels, precious metals, precious stones, or jewelry from sources other than dealers, it is not clear in all cases what was intended by use of the word "purchase." Most retailers do not purchase with cash, or cash equivalents, jewelry from retail customers. Many retailers do, however, permit consumers to trade in jewelry as part of a purchase. Assuming cash is not paid for trade-ins, retailers that accept trade-ins from consumers should not be deemed to be "purchasing" jewelry from persons other than dealers.

The Department of Treasury ("Treasury") should understand when considering the definition of purchase that the retail industry already takes steps to further diminish the risk of abuse of trade-in transactions. For example, a retailer may permit its customers to trade in jewelry provided the item they wish to purchase is worth at least twice as much as the value of the trade-in jewelry. The trade-in may be used only to reduce the amount of money the consumer must pay to purchase the desired item. The consumer should not receive any cash in connection with the trade-in. In such cases, this form of trade-in should be excluded from treatment as a purchase.

If trade-ins generally are treated as purchases, the intended effect of the exemption for retailers that purchase less than $50,000 in jewels, precious metals, precious stones or jewelry composed of jewels, precious metals, or precious stones, from persons other than dealers (such as members of the general public or persons engaged in other businesses) would be frustrated. Most national retail jewelers and many small retail jewelers accept trade-ins in any given year of $50,000 or more. Therefore, despite the exemption provided for retail jewelers in the Proposed Rule, the vast majority of retail jewelers likely would fall outside the exemption.

Exempting retailers that accept trade-ins from the definition of "dealer" would not hinder the objectives of the anti-money laundering provisions of the USA Patriot Act. The vast majority of trade-ins retailers accept do not involve jewelry of significant value. It is difficult to imagine how a criminal could successfully engage in any significant money-laundering scheme through the use of trade-ins worth less than $1,000. If a criminal develops a money-laundering scheme that involves the trade-in of jewelry, the scheme would create a substantial risk of money laundering only if the criminal makes repeated trade-ins. Numerous trade-ins from the same person should cause a retailer to be concerned that the trade-ins are related to some criminal activity under existing law. In such a case, the retailer should submit IRS Form 8300 to report the suspicious activity. Because the typical trade-in transaction does not involve a substantial risk of money laundering, amending the Proposed Rule to make it clear that a trade-in is not a purchase, provided no cash is given to the consumer, would not frustrate the goals of the anti-money laundering provisions of the USA Patriot Act.

There would be severe consequences for retailers if trade-ins were treated as purchases. Subjecting retailers to the Proposed Rule would create *de novo* burdens on retailers, as they have never been subject to money laundering rules in the past. Retailers would be forced to spend a significant amount of money to train employees, including branch employees, and to implement the anti-money laundering policy.

Based on the arguments above, we suggest that the Proposed Rule be amended to specifically exclude trade-ins as purchases. While we believe the Proposed Rule should not apply to trade-ins, to the extent the Treasury disagrees, we have the following two comments to ensure that any regulatory response to this industry practice is appropriately measured.[1]

First, we suggest that Treasury exempt from the Proposed Rule those transactions involving trade-ins that pose even less risk of money laundering. For example, exempt trade-ins only to the extent the trade-in is less than 50% of the value of the total purchase and requiring that returns of any exempt trade-ins not be in cash. Both of these limitations virtually nullify any concern of trade-ins being used to launder money. Another way to limit the impact of the application of the requirements of the Proposed Rule to retailers that accept trade-ins is to exempt trade-ins under a specified threshold amount from the $50,000 trigger. For example, trade-ins with a value of $10,000 or less could be excluded from the $50,000 trigger. Such a threshold is consistent with the threshold established by 18 U.S.C. § 1957.

[1] As explained in more detail below, we do not believe retailers should be subject to the Proposed Rule if they do not "purchase" jewelry from persons other than dealers. Given this position, we have not raised any issues about the $50,000 threshold for retailers to be exempt. However, if trade-ins were covered by the Proposed Rule, we would have significant concerns about the $50,000 threshold. National chain stores would reach the $50,000 threshold during the first week of every year, while a small retailer may never reach the $50,000 threshold although it regularly accepts trade-ins. Additionally, national chain stores could effectively increase the threshold amount by separately incorporating each branch. For example, if a large national retailer had more than 1,000 branch locations and separately incorporated each branch, the threshold amount would be increased to more than $50,000,000. Because of these issues, it seems more equitable to have a higher threshold amount, to base the threshold on a per-branch basis, or to base the threshold on a percentage of total sales.

Second, if Treasury determines that certain trade-ins, or trade-ins in general, should be treated as "purchases" for purposes of the Proposed Rule, the Treasury should amend the proposal to apply only to the retailer's transactions involving trade-ins, not to all of the retailer's transactions. As the Proposed Rule is currently written, if a retailer is a dealer, its anti-money laundering program arguably must apply to all transactions and the retailer must consider the nature of the retailer's "customers, suppliers, distribution channels, and geographic locations." It seems inappropriate that a retailer that is a dealer, simply because it accepted more than $50,000 in trade-ins from retail customers in the previous year, must then scrutinize its suppliers and distribution channels or scrutinize routine retail sales transactions as part of its anti-money laundering program. If a retailer is a dealer only because it accepted certain trade-ins, the Proposed Rule should be amended to require that the anti-money laundering program be implemented only with respect to those trade-ins.

To the extent the Proposed Rule is made to apply to trade-ins, we have the following additional comment. The Proposed Rule, as amended by 68 Fed. Reg. 12155 (March 13, 2003), provides that dealers must implement their anti-money laundering programs within ninety (90) days of the final rule being published in the Federal Register. While ninety (90) days is probably a sufficient amount of time to draft an anti-money laundering policy, it is not a sufficient amount of time for a retailer, particularly large national retail chains, to establish procedures and train its employees about the procedures. A more reasonable effective date would be 180 days after the final rule is published in the Federal Register.

Finally, the Proposed Rule does not address if any procedures should be taken when otherwise exempt retailers purchase jewelry from "dealers" that are not subject to the Proposed Rule (*e.g.*, when a retailer purchases jewelry directly from a foreign dealer that has no direct or indirect presence in the United States for jurisdictional purposes). Because the Proposed Rule does not address this issue, we have no comment to offer at this time. However, we look forward to reviewing any proposed language that is drafted to address this issue and will comment at that time.

Thank you for your attention to this matter. If you have any questions regarding the foregoing, please do not hesitate to contact me.

Very truly yours,

Matthew Runci

Matthew A. Runci
President & CEO