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April 21, 2003

Financial Crimes Enforcement Network
Post Office Box 39
Vienna, VA. 22183-0039

RE: Section 352-Jewelry Dealer Regulations

The American Association of Exporters and Importers thanks the Financial Crimes Enforcement Network ("FinCEN") for this opportunity to comment on FinCEN's Notice of Proposed Rulemaking ("NPRM") in the Federal Register of February 21, 2003 re. *Anti-Money Laundering Programs for Dealers in Precious Metals, Stones, or Jewels.*

As noted in the NPRM, the Bank Secrecy Act ("BSA") includes dealers in precious metals, stones, or jewels in its definition of financial institutions. Section 352(a) of the so-called USA Patriot Act (Pub. L. 107-56), effective April 24, 2002, requires every financial institution to establish an anti-money laundering program that includes, at a minimum (1) development of internal policies; (2) designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs.

A dealer in precious metals, stones, or jewels ("dealer") is defined as a party that in the previous calendar or tax year (i) purchased more than $50,000 in jewels, precious metals, precious stones, or jewelry; or (2) received more than $50,000 in gross proceeds from the sale of jewels, precious metals, precious stones, or jewelry. The definition also provides for two exceptions. The first exception provides 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 in the prior calendar or tax year. The second exception is not relevant for the purpose of our comments on the proposed rule.

(1) <u>Interested parties should be given an opportunity to review and comment on any changes to the definition of the term "dealer" that would limit the application of the exemptions</u>.

As noted, the rule as proposed would exempt from the requirements of section 5318(h) of the BSA those retailers of jewelry who purchase primarily from dealers. Although the NPRM does not in any way distinguish between dealers domiciled in the United States and those domiciled abroad, we now understand from discussions with attorneys in FinCEN's Office of Chief Counsel that FinCEN intends that the "dealer" exemption in the proposed rule apply only to purchases from domestic dealers. We are concerned that FinCEN may make this change in the final rule without an additional period of public review and comment. Failure to make this distinction in the proposed rule or in a subsequent notice misleads the public as to the actual effect of the rule and deprives many parties of the opportunity to comment on that point and on the proposed rule as a whole. We strongly recommend that FinCEN republish the rule for an abbreviated comment period, to avoid legal and fairness issues created by significant defect in the NPRM.

(2) <u>FinCEN should include dealers in FATF countries within the scope of the exemption</u>.

Whether or not FinCEN republishes the NPRM for additional comment, it should in the Final Rule include within the scope of the dealer exemption those dealers located in and subject to the laws of countries that are participants in the Financial Action Task Force ("FATF"). There are several good reasons for doing this:

- An exclusion for dealers in FinCEN countries creates a strong incentive for jewelry retailers to do business only with dealers in FATF countries and effectively makes retailers partners with FinCEN in advancing the objectives of the FATF and the Bank Secrecy Act. The Bureau of Customs and Border Patrol has two programs that serve as useful models for FinCEN: the Business Anti-Smuggling Coalition (BASC) and the Customs-Trade Partnership Against Terrorism (C-TPAT). These programs encourage companies to implement security measures that prevent exploitation of trade by drug smugglers and terrorists, and to enter into alliances with other companies that have established similar measures. The effect is to create a secure zone within which companies can voluntarily support the government's anti-smuggling and anti-terrorism programs and receive preferential treatment in the form of expedited clearance and reduced inspections. AAEI urges FinCEN to create a similar incentive for retailers of jewelry by extending the dealer exemption to dealers in FATF countries.

- An exclusion for dealers in FATF countries would also create an incentive for countries not participating in FATF to join. This is a factor that FinCEN should recognize in this and future similar rulemaking. If U.S. companies are seen to be transacting business primarily if not exclusively with companies in FATF countries the U.S. Government will have a significant advantage in recruiting countries to participate in FATF *and* in setting higher standards for FATF participation.

- On the other hand, failure to include dealers in FATF countries within the scope of the dealer exclusion will raise fair questions about the viability of FATF and its utility in combating money laundering. The clear message will be that the U.S. Government perceives little meaningful difference between FATF and non-FATF countries with respect to the effectiveness of their anti-money laundering programs. Such a manifestation of unilateralism in dealing with a global problem such as money laundering would be particularly awkward at a time when other countries, fairly or not, are questioning the commitment of the U.S Government to cooperative approaches to global problems.

- If FinCEN agrees to our proposal that retailers that do business with dealers in FATF countries should be exempted, we recommend that the final rule provide for automatic termination of the rule in the event that FATF expires, to avoid an ambiguity about the obligations and liabilities of retailers in that circumstance.

AAEI members fully understand the reasoning behind the NPRM and we support FinCEN's efforts to monitor and suppress monetary transactions generated by unlawful activities. However, interested parties should be given an opportunity to comment on the unofficially proposed changes to the dealer exemption, which may be significantly more limited than it appears in the NPRM; and, at the very least, such changes should recognize and give value to money laundering programs in other FATF countries.

Again we appreciate the opportunity FinCEN has given us to comment on the proposed rule.

Sincerely,

John P. Simpson
President