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Financial Crimes Enforcement Network: Anti-Money Laundering Programs for Dealers in Precious Metals, Stones, or Jewels

The Industry Council for Tangible Assets (ICTA) is the national trade association for precious metals, rare coin, and currency dealers. Many ICTA members are small business entities who operate shops or offices with fewer than 5 employees in total. We appreciate this additional opportunity to respond to the Financial Crimes Enforcement Network's Interim Final Rule (31 CFR Part 103; RIN 1506-AA58) as it relates to dealers in precious metals.

As specified, our comments will address 1) whether silver should be removed from the definition of "precious metal" for purposes of the final rule and 2) the potential impact of the rule on small businesses.

1) Should silver continue to be defined as a precious metal for the purposes of the final rule?

No. Silver should be removed from the list of defined "precious metals" in the rule. The value, bulk, and weight of silver items commonly transacted by coin and precious metals dealers make these items extremely low risks for money laundering and terrorist financing activities.

Coin dealers most commonly transact silver items qualifying as "covered goods," as follows:

1 troy ounce .999 fine silver bars and rounds. Approximate value: Under \$10 each*.

1 troy ounce .999 fine or better legal tender coins (American Silver Eagles, Canadian Maple Leaf, etc.). Approximate value: \$10 each.*

10 troy ounce .999 fine silver bars. Approximate value: \$75 each.*

100 troy ounce .999 fine silver bars. Each bar weighs almost 7 avoirdupois pounds and is very bulky. Approximate value: \$720*. A typical 10 bar transaction (\$7,200.) weighs almost 70 pounds before packaging.

1000 troy ounce silver bars (exact weight will vary) are also transacted. However these are too heavy to ship via USPS and other "normal" means.

"Junk" silver coin bags (US 90% silver coinage dated 1964 and earlier) are transacted primarily based on net silver content. Allowing for loss of silver during circulation in commerce, these bags are generally accepted to contain a net of 715 troy ounces of pure silver. These bags are usually traded in a "bag" quantity comprised of \$1,000 face value of dimes, quarters and/or half dollars. (Fractional bags of 1/2, 1/4, and 1/10 may also be transacted retail.) Current value: Approximately \$5,000* for each \$1,000 face value bag. A bag has a gross weight of approximately 55 pounds avoirdupois. These can be shipped via USPS only if divided into two packages. The high cost of shipping further reduces the desirability for money laundering and terrorist financing purposes.

US 40% silver circulated half dollars (1970 and earlier). Traded in \$1,000 face value "bags" primarily based on net silver content, generally accepted to contain 290 ounces of pure silver. Current value is approximately \$2,000* per bag. Gross weight is approximately 50 pounds avoirdupois.

Average circulated US silver dollars (1935 and earlier.) Traded in \$1,000 face value "bags." Current value approximately \$5,500* per bag. Gross weight is approximately 58 pounds avoirdupois.

*Valuations based on current spot silver price of approximately \$7 per troy ounce.

2) ... potential impacts of the rule on small businesses... that may be "dealers" subject to the provisions of the rule.

A number of ICTA's member dealers are sole proprietorships or "mom & pop" operations. In some cases, these companies are staffed solely by a husband and wife team. Other small entities may employ a bookkeeper or sales helpers on either a part-time or full-time basis; often these other employees are family members, such as sons and daughters.

Coin and precious metals dealers are very different entities than jewelers. A retail jeweler usually sells *new goods* to the public. A jeweler has either created these new products or purchased them (or elements of them) from a wholesale source. One component of the selling price of these products is the craftsmanship and labor that goes into creating them. Often this labor component will be a significant factor, rendering any precious metals or precious stones a lesser value in determining the ultimate selling price, and eliminating these jewelry items from the category of "covered goods." The profit margin on jewelry items is usually much higher than on coin-type precious metals products (the retail price, or keystone price, is often 2 or 3 times the jeweler's cost of the item). With the exception of items such as loose precious stones, most often jewelry items are sold to the public as a consumer, not investment, product.

Coins made of precious metals, such as gold or platinum, are primarily a financial product, rather than a consumer product. Precious metals bullion coins, such as the platinum and gold US Mint-produced American Eagles, Canadian Maple Leaf coins, etc., are qualified investments for IRAs and similar self-directed retirement accounts. Only certain large dealers who meet the strict qualifications set forth by the US Mint may buy these items directly from the manufacturer, the US Mint.

Coins made of precious metals, such as gold, that are no longer being produced and carry some collector premium are also a financial product as well as a consumer good. However, since these cannot be ordered from the manufacturer and have not been produced in the US since the 1930's, the supply is finite and decreasing. Hence, a coin dealer can *only* purchase these items from a current owner. The owner may be a dealer but often will be a retail client.

Coins such as common date US \$20 gold and \$10 gold, even in many of the uncirculated collector grades, are not valued in excess of the 50% over intrinsic value threshold that determines whether an item is a "covered good." A grade, or condition of the item, is directly related to the premium over intrinsic value. On coins such as these, the premium over gold is derived from collector value, not merely cost of distribution and fabrication as is the case with Eagles, Maple Leaf coins, etc.

Since all dealers, regardless of size, must buy these US legal tender coins in an after-market (not as new goods purchased directly from a manufacturer), even small dealers will very likely be a "dealer" under Section 352 and will be required to comply with its provisions.

Example: Based on a gold spot price of \$400:

US \$20 St. Gaudens – These coins are among the most popular coins for collectors.

Common dates, MS-60 (basic mint state or uncirculated condition) will sell for approximately \$450. Its value is only 12.5% over its intrinsic (melt) value. Clearly, under the regulation, these coins constitute "covered goods."

Even a small mom & pop shop, which cannot provide inventory for its business from a current manufacturer, will often qualify as a "dealer" under the regulations. Since US \$20 coins are a bread and butter item in the hobby/industry, to be exempted under the rule, mom & pop would have to purchase and sell no more than 10 of these coins per month with members of the public. While this firm can purchase these items from a wholesale source for retail sale to the public, a purchase of 10 or 20 coins *from* an investor/customer is not unusual.

Similarly, for transactions involving coins that are sold strictly based on their precious metals content, such as American Eagles, Canadian Maple Leafs, etc., as few as 10 coins bought and sold with the public each month qualifies mom & pop as "dealers" under the regulation.

While there may be some who will not meet this definitional threshold, it is unrealistic, especially in an even somewhat active precious metals market, to expect that most businesses, even those who only have mom & pop as the sole proprietors and "employees", would not meet the definition of dealer.

ICTA will be recommending to all of its members that they comply with Section 352 by January 1, 2006, since there is great likelihood that they meet or will meet the qualifications of "dealer." Although they can track purchases and sales throughout the year for mandatory compliance, it is simply safer to get all the parts in place now, most especially a written policies and procedures plan. Once a policies and procedures plan has been secured, the designation of a compliance officer is not a hardship.

ICTA plans to conduct seminars at least annually to educate our industry on any changes in the law or in the methodology of money launderers and those who might finance terrorist activities. We also plan to issue reminders in our quarterly newsletter regarding retraining of employees.

However, we once again must raise a concern on how this affects those businesses regarding their compliance with the "independent audit to test programs" element. Mom & Pop literally work side by side. Pop may be the designated compliance officer, but Mom usually helps him process transactions. It would be difficult to say that Mom is not "involved in the operation of the program" since Mom & Pop likely often perform "double check" duties on their transactions. Therefore, we must again raise the concern that these small entities will be forced to bear the expense of an outside auditor to perform the independent testing aspect of these regulations.

If a once-a-year test utilizing their existing professional tax advisor (such as an accountant or bookkeeper) when completing their annual tax return would be adequate, perhaps this will suffice. Since Mom & Pop would personally bear the consequences of any penalties, we suggest that the risk assessment of these small businesses is very low. To mandate **independent** testing of the smallest business entities will require those companies that pose the *least* risk to be the *only* entities required to bear the cost of hiring someone to review their program.

We urge FinCEN to exempt the smallest dealers from the requirement for **independent** testing of their program, which can pose a financial burden on these small businesses.

ICTA appreciates this opportunity to provide additional comments to refine the rule to allow for more effective compliance. We especially appreciate FinCEN's consideration of small "mom & pop" dealers.