



GIA

GEMOLOGICAL INSTITUTE OF AMERICA®

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August 1, 2005

Financial Crimes Enforcement Network
(FinCEN)

Department of Treasury
PO Box 39
Vienna, VA 22183-0039

RE: Comment on the Interim Final Rule Issues June 9, 2005
RIN 1506-AA58

Dear Sir/Madam:

The Gemological Institute of America (“GIA”) requests your consideration of the following comments regarding FinCEN’s interim final rule issued June 9, 2005 regarding the applicability of the anti-money laundering program requirements to dealers in precious metals, precious stones, or jewels. GIA provided comments previously regarding the notice of proposed rulemaking issued February 21, 2004 (68 Fed. Reg. 8480). GIA appreciates the opportunity to update those comments in light of the changes made in the interim final rule which address some, but not all, of GIA’s previous comments.

About GIA

GIA is the world’s foremost authority in gemology. Established in 1931 as a nonprofit entity, GIA’s mission is to ensure the public trust in gems and jewelry by upholding the highest standards of integrity, academics, science, and professionalism through education, research, laboratory services, and instrument development. GIA’s business is not the buying and selling of jewels, precious metals, or precious stones, or jewelry composed of jewels, precious metals, or precious stones for profit. Rather, GIA’s Gem Trade Laboratory provides diamond grading services and GIA’s educational arm provides programs in Gemology, Jewelry Manufacturing Arts, and related business programs. In addition, GIA’s research and laboratory programs further understanding and knowledge in the ever-changing field of gemology. Although not in the business of purchasing and selling jewels, GIA will from time to time have occasion to either buy or sell certain gems in the furtherance of its mission to ensure the public trust in gems and jewelry. For example, GIA spends approximately \$100,000 in any given year to purchase gems or precious stones for its educational programs, including programs in the US, including its Carlsbad and Los Angeles locations, as well as for its foreign locations such as Hong Kong, India, and London. These purchases are used to provide sets of examples for students to review and examine. GIA may also spend similar amounts to purchase stones for its laboratories for research purposes, and GIA’s library and museum also purchase small quantities of stones from time to time. In addition, although GIA is not in the business of buying and selling gems, it may, from time to time, sell stones that are redundant or not otherwise useful for research, educational, or exhibition purposes. Historically,

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GIA has not sold more than \$50,000 in gems in any one year. Yet, there may come a time in the future in which such a sale is prudent, although no such sale is currently planned.

USA PATRIOT Act

The USA PATRIOT Act requires every financial institution to establish an anti-money laundering program that includes, at a minimum: “i) the development of internal policies, procedures, and controls; (ii) the designation of a compliance officer; (iii) an ongoing employee training program; and (iv) an independent audit function to test programs.”¹ Title III of the USA PATRIOT Act amends the anti-money laundering provisions of the Bank Secrecy Act in order to “promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism.” Application of the requirements to establish an anti-money laundering program to non-profit, educational organizations such as GIA will not further the goals set forth in the Act.

Definition of Dealer

The proposed definition of “dealer” in the Act is as follows:

- (i) Except as provided in paragraphs (a)(2)(ii) and (a)(2)(iii) of this section, the term “dealer” means a person engaged within the United States as a business in the purchase and sale of covered goods and who, during the prior calendar or tax year:
 - (A) Purchased more than \$50,000 in covered goods; and
 - (B) Received more than \$50,000 in gross proceeds from the sale of covered goods.
- (ii) For purposes of this section, the term “dealer” does not include:
 - (A) A retailer (as defined in paragraph (a)(7) of this section)², unless the retailer, during the prior calendar year or tax year, purchased more than \$50,000 in covered goods from persons other than dealers or other retailers (such as members of the general public or foreign sources of supply): or
 - (B) A person licensed or authorized under the laws of any State (or political subdivision thereof) to conduct business as a pawnbroker, but only to the extent such person is engaged in pawn transactions (including the sale of pawn loan collateral).

¹ 68 Fed. Reg. 8481; 70 Fed. Reg. 33703.

² “Retailer means a person engaged within the United States in the business of sales primarily to the public of covered goods.” 31 C.F.R. §103.140(a)(7). This definition does not appear to fit GIA.

(iii) For purposes of paragraph (a)(2) of this section, the terms “purchase” and “sale” do not include a retail transaction in which a retailer or a dealer accepts from a customer covered goods, the value of which the retailer or dealer credits to the account of the customer, and the retailer or dealer does not provide funds to the customer in exchange for such covered goods.

(iv) For purposes of paragraphs (a)(2) and (b) of this section, the terms “purchase” and “sale” do not include the purchase of jewels, precious metals, or precious stones that are incorporated into machinery or equipment to be used for industrial purposes, and the purchase and sale of such machinery or equipment.

(v) For purposes of applying the \$50,000 thresholds in paragraphs (a)(2)(i) and (a)(2)(ii)(A) of this section to finished goods defined in paragraph (a)(1)(iv) of this section, only the value of jewels, precious metals, or precious stones contained in, or attached to, such goods shall be taken into account.

Application of the Definition to GIA and Similar Organizations is Ambiguous

It appears that non-profit, educational organizations such as GIA are not intended to be swept under the definition of “dealer” set forth above. The language of the proposed regulations, however, leave some ambiguity which FinCEN has the opportunity to eradicate through its response to these comments provided with respect to the interim final rule. The ambiguity arises because the definition purports to apply only to “a person engaged within the United States as a business in the purchase and sale of covered goods...” An entity that purchases and sells more than \$50,000 in jewels, precious metals or precious stones could arguably fall within the definition even though that entity only uses those purchased jewels for laboratory testing, education and research, such as is the case with GIA.

Further, the definition provides two express exemptions (retailers and pawnbrokers), neither of which applies to non-profit and/or educational entities that purchase and sell jewels, precious metals, or precious stones solely for purposes consistent with the educational, research and testing missions of those entities.

Opportunity to Clarify Applicability of Regulation to GIA and Similar Organizations

GIA requests that FinCEN revisit the definition of “dealer” and clarify the scope of the definition in at least one of the following ways:

1. Expressly exempt non-profit entities, or entities primarily engaged in research, grading, testing and education missions from the definition of “dealer”; and/or
2. Clarify that the language “*person engaged ... as a business in the purchase and sale of covered goods*” does not include entities that use jewels, precious metals, and/or precious stones in the context of education, research, laboratory services (e.g. grading) or development

GIA's existence and mission is consistent with FinCEN's goals of ensuring the public trust. Requiring organizations such as GIA to institute the policies and procedures set forth in the USA PATRIOT Act and its implementing regulations is a costly imposition which achieves no greater assurance of the "prevention, detection, and prosecution of international money laundering and the financing of terrorism" sought by the Act.

Thank you for your consideration of these comments. If you have any questions regarding these comments or about the mission and work of GIA, please do not hesitate to contact me directly.

Sincerely,

A handwritten signature in blue ink, appearing to read "D.M. Baker", written in a cursive style.

Donna M. Baker
Vice President, General Counsel