

Box 39, Vienna, VA 22183-0039, "Attn: section 352—Jewelry Dealer Regulations." Comments should be sent by one method only. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m., in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354-6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT:

Office of Chief Counsel, FinCEN, (703) 905-3590; the Office of the General Counsel, (202) 622-1927; or the Office of the Assistant General Counsel (Banking and Finance), (202) 622-0480 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (U.S.A. Patriot Act) of 2001 (Pub. L. 107-56) (the "Act"). Title III of the Act makes a number of amendments to the anti-money laundering provisions of the Bank Secrecy Act ("BSA"), which are codified in subchapter II of chapter 53 of title 31, United States Code.¹ These amendments are intended to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism.

Section 352(a) of the Act, which became effective on April 24, 2002, amended section 5318(h) of the BSA. As amended, section 5318(h)(1) 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. Section 352(c) of the Act directs the Secretary of the Treasury ("Secretary") to prescribe regulations for anti-money laundering programs that are "commensurate with the size, location, and activities" of the financial institutions to which such regulations apply.

Although a dealer "in precious metals, stones, or jewels" ("dealer") is defined as a financial institution under the BSA, 31 U.S.C. 5312(a)(2)(N), FinCEN has not previously defined the

term or issued regulations regarding dealers. On April 29, 2002, FinCEN deferred the anti-money laundering program requirement contained in 31 U.S.C. 5318(h) that would have applied to the industry. The purpose of the deferral was to provide FinCEN with time to study the industry and to consider how anti-money laundering controls could best be applied to the industry.² This rule defines the term dealer and provides guidance, tailored to the industry, to such entities in complying with section 352.

The industry of dealers encompasses various segments, including: (1) Those who trade in precious metals, including large scale metal suppliers and large and small scale refiners; (2) those who trade loose gemstones; (3) large and small scale manufacturers of jewelry; and (4) retail stores, including independent and chain stores of varying sizes, selling jewelry products to, and buying jewelry products from, the consuming public. The size of businesses in each segment of the industry varies substantially from a single artisan goldsmith to publicly traded commercial manufacturers employing hundreds of people and producing millions of finished pieces every year. The sources of supply vary as well, from large scale producers of fabricated precious metals materials to small dealers selling unique and rare gemstones on an individualized basis. Further, there is an active secondary market for jewelry, loose gemstones, and precious metals, with small firms selling used or antique pieces for scrap value or as unique works of art.

Because dealers are not generally regulated as financial institutions, the industry traditionally has been subject to limited federal financial regulation. Federal laws governing this industry, such as the National Gold and Silver Stamping Act (15 U.S.C. 291-300) and the Lanham Act (15 U.S.C. 1117, 1125), are generally intended to protect consumers against misleading descriptions of the fineness of precious metals or the identity and quality of precious stones and jewels. Similarly, state regulation of the industry is focused on consumer protection.

II. The Anti-Money Laundering Program

The Congressional mandate that all financial institutions establish an anti-money laundering program is a key element in the national effort to prevent and detect money laundering and the

financing of terrorism. The mandate recognizes that financial institutions other than depository institutions (which have long been subject to BSA requirements) are vulnerable to money laundering. The legislative history of the Act explains that the anti-money laundering program is not a one-size-fits-all requirement. The general nature of the requirement reflects Congress' intent that each financial institution have the flexibility to tailor its program to fit its business, taking into account factors such as size, location, activities, and risks or vulnerabilities to money laundering. This flexibility is designed to ensure that all firms subject to the anti-money laundering program requirement, from the largest to the smallest firms, have in place policies and procedures appropriate to monitor for anti-money laundering compliance.³

Although dealers do not perform the same functions as banking institutions, the industry presents identifiable money laundering risks. Precious metals, precious stones, and jewels constitute easily transportable, highly concentrated forms of wealth. They serve as international mediums of exchange that can be converted into cash anywhere in the world. In addition, precious metals, especially gold, silver, and platinum, have a ready, actively traded market, and can be melted and poured into various forms, thereby obliterating refinery marks and leaving them virtually untraceable. For these reasons, precious metals, precious stones, and jewels can be highly attractive to money launderers and other criminals, including those involved in the financing of terrorism.

In addition, significant incentives currently exist for dealers to minimize financial losses caused by fraud in connection with the valuable products in which they deal. By their very nature, precious metals, precious stones, and jewels are extremely valuable by weight and volume, and fraud perpetrators attempt to incorrectly identify the mass, quality, or fineness of these products. Theft of such items, through the use of counterfeit checks, forged signatures, or other means, is likewise a risk. As such, this industry has long been aware that rigorous anti-fraud measures are a necessity in order to remain economically viable. This proposed rule

¹ Regulations implementing the BSA appear at 31 CFR part 103. The authority of the Secretary the Treasury to administer the BSA and its implementing regulations has been delegated to the Director of FinCEN.

² See 31 CFR 103.170, as codified by interim final rule published at 67 FR 21110 (April 29, 2002), as amended at 67 FR 67547 (November 6, 2002) and corrected at 67 FR 68935 (November 14, 2002).

³ See U.S.A. Patriot Act of 2001: Consideration of H.R. 3162 Before the Senate (October 25, 2001) (statement of Sen. Sarbanes); Financial Anti-Terrorism Act of 2001: Consideration Under Suspension of Rules of H.R. 3004 Before the House of Representatives (October 17, 2001) (statement of Rep. Kelly) (provisions of the Financial Anti-Terrorism Act of 2001 were incorporated as Title III in the Act).