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JEWELERS VIGILANCE COMMITTEE AML SEMINAR

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Good morning ladies and gentlemen. It is a real pleasure for me to be with you here at this Jewelers Vigilance Committee AML seminar. This is a great opportunity for us to engage in a fruitful dialogue about still relatively new anti-money laundering responsibilities for the dealer industry.

I want to thank Cecilia Gardner, Executive Director of the JVC, for inviting me to be here with you this morning. I also want to thank all of you, as top executives and leaders in the dealer industry, for your constructive and helpful comments, insight and assistance during the development of the anti-money laundering program rule for dealers in precious metals, stones or jewels. I want you to know that I understand the commitment your industry has made to this effort, on both a domestic and global level, and I want you to know that I appreciate it.

I'd like to focus my remarks on guidance we are publishing today to assist in your BSA compliance responsibilities, as well as FinCEN's other efforts to provide feedback to the financial institutions subject to our regulations. As you know, the sound public policy choices made over time relating to our BSA regulatory regime reaffirm the significance of an effective partnership between the government and private sector that Congress intended. We both have essential roles to play as we work together to fight money laundering, terrorist financing and other illicit activity.

As you know, FinCEN issued an Interim Final Rule requiring AML programs for dealers in precious metals, precious stones, and jewels ("covered goods"), on June 9, 2005. The Interim Final Rule requires dealers, among other things, to implement an anti-money laundering program that includes policies, procedures, and internal controls to prevent themselves from being used to facilitate money laundering or terrorist financing. In order to develop an effective program tailored to their business, dealers are required to assess the vulnerabilities of their operations to money laundering and terrorist financing, thus emphasizing a risk-based approach to AML program management.

The Risk-Based Approach

I'd like to spend a few moments speaking in more detail about the importance of this risk-based approach. FinCEN has long recognized that not all financial institutions are subject to the same risk. This is certainly not a new revelation. As you know, we are committed to a risk-based approach to effectively and efficiently implement BSA requirements in the dealer industry and across all of the diverse industries we regulate. We approach industry regulation on a risk-assessed basis, and we expect industry to implement their anti-money laundering programs on a risk-assessed basis.

AML programs notably require the development and implementation of policies, procedures, and controls that are reasonably designed to protect against the use of the financial institution for financial crime and terrorist financing, and that are reasonably designed to comply with BSA obligations. These policies, procedures, and controls should be based on an identification and assessment of the risks associated with the unique products and services offered and the customers and geographic locations served by each institution subject to our rules.

The reasons for this are simple. We recognize that financial crime is insidious, and that there are finite compliance resources to devote to the problem. To be effective and efficient, these finite resources should be focused first and foremost on the greatest risks. Accordingly, our rules recognize that one size does not fit all. We do not expect, for example, that firms will implement policies, procedures, and controls that address business lines in which a firm is not engaged or client bases the firm doesn't handle. Rather, based upon a risk assessment, a firm should focus its AML program, and thus its finite AML compliance resources, most significantly on the areas of greatest risk.

We used similar reasoning when developing our rules to generally exclude retailers from the definition of dealer.[1] We found that, in most circumstances, 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. However, the exclusion does not apply to a retailer who, during the prior calendar or tax year, purchases over $50,000 of covered goods from a person not covered by the Interim Final Rule (including **foreign suppliers** and members of the general public) and sells more than $50,000 of covered goods over the same time. Such retailers are considered dealers under the regulations and are required to establish an anti-money laundering program.[2] A retailer's anti-money laundering program needs to address only its purchases from persons not covered by the Interim Final Rule; the program would not be required to address sales.[3]

Guidance

The public policy choice requiring government and private industry to work together to fight money laundering, terrorist financing and other illicit activity is not unique to the United

[1] 31 CFR § 103.140(a)(7).
[2] *See* 31 CFR § 103.140(a)(2)(ii)(A).
[3] *See* 31 CFR § 103.140(b)(2).

States, but rather represents a global consensus of the need to be vigilant in these areas. So, we are also looking internationally to see how our foreign counterparts approach the same challenges.

While there is a longer tradition in the field of banking, there is recognition that any type of simple financial intermediation or other easy means of transferring value can be abused by criminals. Of course, I could more easily conceal a handful of high-grade, multi-caret, almost flawless diamonds in my pocket then a suitcase full of the equivalent value in cash. It's in recognition thereof that the Financial Action Task Force (FATF) called for vigilance with respect to precious metals and jewelry dealers and this is followed through in the United States under the BSA.

Since the issuance of the Interim Final Rule, some foreign suppliers have expressed concern that U.S. retailers will forgo purchases from foreign suppliers of covered goods in an effort to avoid coming within the rule's parameters. Therefore, we are issuing guidance today to assist dealers in tailoring their anti-money laundering programs to address risks of money laundering and terrorist financing posed by their relationship with foreign suppliers, including identifying certain jurisdictional characteristics that could impact a dealer's exposure to risk. I'd like to spend the next few minutes discussing this guidance in more detail.

The Dealer's Risk Assessment

Risks associated with dealing with foreign suppliers are different from those associated with domestic suppliers. FinCEN recognizes, however, that in certain circumstances the risks of money laundering or terrorist financing associated with purchases from an individual foreign source of supply may not necessarily be greater than those associated with purchases from a domestic supplier. The rule, accordingly, allows dealers ample flexibility to design programs that fit their individually assessed risks when doing business with foreign suppliers.

When conducting their individual risk assessment, we recommend that dealers consider some of the following factors, none of which is determinative (the list is not intended to be exhaustive):

1. The nature and scope of the regulatory efforts of the supplier's jurisdiction to prevent money laundering and terrorist financing in its precious metals, precious stones, and jewels industry.

2. The nature and scope of the regulatory efforts of the supplier's jurisdiction to prevent money launderers' and terrorist financers' entrance into, or exploitation of, the industry.

3. The dealer's relationship with the supplier.

After evaluating the available information, a dealer may determine that an individual foreign supplier has implemented the anti-money laundering controls sufficiently to mitigate the risk associated with purchases from that foreign supplier. In the absence of other risk factors, the

compliance obligations associated with the dealer's monitoring of purchases from such a foreign supplier should be minimal.

Identifying Suspicious Transactions Involving a Foreign Supplier

The Interim Final Rule provides flexibility to dealers in developing procedures for making reasonable inquiries to determine whether a transaction involves money laundering or terrorist financing. The rule does not differentiate between domestic and foreign suppliers.

When determining whether a transaction is designed to involve use of the dealer to facilitate money laundering or terrorist financing, dealers should consider the following potentially relevant factors laid out in the rule text:[4]

- Whether the transaction involves the use of unusual payment methods, such as the use of large amounts of cash, multiple or sequentially numbered money orders, traveler's checks, or cashier's checks, or payments from third parties;
- Whether the customer or supplier in a transaction is unwilling to provide complete and accurate contact information;
- Whether the customer or supplier attempts to maintain an unusual degree of secrecy;
- Whether the transaction is unusual for the particular customer or supplier or type of customer or supplier;
- Whether the transaction is not in accordance with established industry norms.

Suspicious Activity Reporting

Dealers are **not** currently required to file suspicious activity reports but are encouraged to do so voluntarily. To date, we have seen very few Suspicious Activity Reports (SARs) filed under the voluntary filing provision of the Interim Final Rule.

As in other industries, we understand there is a learning curve related to Suspicious Activity Report (SAR) filing, as institutions for the first time begin focusing in a new way on their expected customer activity, as well as the education and training of personnel. Additionally, on the government side, we seek to share red flags and typologies of potential abuse that will help industry participants better spot suspicious activity and thus file a SAR. Remember as well that there is a statutory safe harbor provision that protects the filing financial institution from civil or criminal liability arising from the filing of a SAR. In addition, a strong statutory confidentiality provision protects SARs from improper disclosures. These provisions are helpful to promote an open flow of information to the government on the basis of suspicion.

I would welcome hearing what might limit the expected increase in SAR filings, how we can better educate your industry, and if there are specific channels we should be using to conduct outreach to your industry. I recognize that many of the entities in this industry might be smaller and lightly regulated. This is even true of some components of the Money Services Businesses (MSB) industry that we regulate, which doesn't have the broad retail carve out and where we have devoted tremendous outreach resources that have been well received and appreciated.

[4] *Id.*

For instance, just last week, FinCEN and the IRS conducted the first ever MSB phone forum, where more than 1,200 MSBs from around the country were able to call in and learn about filing accurate and complete BSA reports, as well as have their regulatory questions answered by a panel of FinCEN and IRS experts. This type of forum allows us to reach a broader spectrum of the industry, and we'd be happy to pursue conducting similar outreach events for the dealer industry as well.

Feedback

I'd like to turn now for a few minutes to the importance of providing feedback to the financial industry. FinCEN also recognizes that a continuing dialogue with each of the industries we regulate is critical. Effective feedback mechanisms are iterative, and the financial community is a vital spoke in our efforts, particularly as it relates to the BSA guidance we develop to assist in your compliance efforts.

The majority of our guidance and administrative rulings are developed based upon our review of the questions we receive from the financial industry on our Regulatory Helpline and in writing. FinCEN's regulatory specialists review inquiries from financial institutions to proactively identify if we are seeing an increase in questions on a particular issue, helping us to determine where additional guidance or clarification might be needed. As a reminder, if you need assistance with a BSA regulatory question, FinCEN staff are available through our toll-free regulatory helpline number, also on our website under "Contact FinCEN," at **(800) 949-2732.**

Again, as part of this feedback cycle, your role in helping us refine our feedback products is crucial. If there is an area where additional clarity is needed, please let us know. Similarly, if you find a specific piece of guidance is particularly useful, we hope you would pass this feedback on to us as well.

Conclusion

As I emphasized at the beginning of my speech today, my personal view is that success in our AML/CFT efforts requires the strong partnership that Congress mandated under the BSA. Providing feedback is good government. It is also essential to our risk-based approach. Both the financial industry and the government have limited resources to devote to detecting and preventing illicit financial activity. As such, we need to work together to ensure these resources are directed where they will be most productive for AML/CFT purposes.

Additionally, by providing feedback about emerging risks and criminal typologies, and about how law enforcement uses the reports you file and what they are looking for, it helps you provide the information the government needs most. This in turn helps protect your financial institutions and your customers from criminal actors and perpetrators of fraud who may try to abuse them.

Thank you again for partnering with us and for all the work that you do on the frontlines to protect the financial system from abuse, thereby helping to ensure that the U.S. financial

system remains safe, sound and secure. Your efforts do not go unnoticed. You have my commitment that we will work equally as hard to understand the unique issues facing the precious metals and jewelry dealer industries in complying with the goals of the Bank Secrecy Act, and to continue providing you with meaningful guidance and feedback to further the goal of detecting and disrupting illicit money flows.

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