Department of the Treasury
Financial Crimes Enforcement Network

Guidance

FIN-2008-G003
Issued: March 10, 2008
Subject: Guidance for Dealers, Including Certain Retailers, of Precious Metals, Precious Stones, or Jewels, on Conducting a Risk Assessment of Their Foreign Suppliers

The Financial Crimes Enforcement Network ("FinCEN") is issuing this guidance clarifying the risk assessment required to be performed under the Interim Final Rule requiring anti-money laundering programs for dealers in precious metals, precious stones, or jewels ("Interim Final Rule").[1] Specifically, this guidance will assist dealers,[2] including certain retailers,[3] 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 would impact a dealer's exposure to risk.[4] *This guidance does not impose any additional requirements on dealers, but rather provides information that dealers may want to consider when conducting their risk assessment.*

Background

The Interim Final Rule requires dealers to implement an anti-money laundering program ("AML program") that includes policies, procedures, and internal controls that would afford them reasonable confidence that transactions with foreign suppliers do not 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. For purposes of making this risk assessment, a dealer must consider all relevant factors, including the specific factors contained in the rule.

It is important to highlight that while retailers are generally excluded from the definition of a dealer,[5] 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

[1] 31 CFR § 103.140.
[2] 31 CFR § 103.140(a)(2).
[3] 31 CFR § 103.140(a)(2)(ii)(A).
[4] This guidance is limited to a dealer's use of foreign sources of supply and does not apply to other Bank Secrecy Act requirements.
[5] 31 CFR § 103.140(a)(7).

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 AML program.[6] A retailer's AML program only needs to address purchases from persons not covered by the Interim Final Rule; the program would not be required to address sales.[7] Throughout this guidance, reference to dealers also includes those retailers required to establish an AML program under the Interim Final Rule.

Assessing the Risk of a Foreign Supplier

The Interim Final Rule reflects FinCEN's understanding that not all dealers incur the same risks or face the same level of threat from money launderers and terrorist financiers. Although risks associated with dealing with foreign suppliers are different from those associated with domestic suppliers, in some cases, 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 assessing the risk level associated with conducting business with a foreign supplier, a dealer should look at the foreign supplier's and foreign jurisdiction's susceptibility to money laundering or terrorist financing. Below are suggested factors a dealer may consider when determining the susceptibility of a supplier or jurisdiction to money laundering and terrorist financing. FinCEN acknowledges that there is no single agreed upon method to regulate the precious metals, precious stones and jewels industry, and other jurisdictions have taken different regulatory approaches to shield their industries from money launderers and terrorist financiers. Therefore, no one factor listed below is determinative of the effectiveness of a jurisdiction's anti-money laundering program. Moreover, this list is not intended to be exhaustive, but rather to demonstrate the types of factors a dealer may wish to consider when evaluating its own exposure to risk.

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.

   Some jurisdictions have enacted regulations that govern the conduct of businesses involved in the trade of precious metals, precious stones, or jewels. Such regulations would require the industry to implement controls to reasonably protect itself from the abuse of money laundering or terrorist financing. Dealers could consider the following potentially relevant factors:

   - Whether the supplier is required to incorporate policies, procedures, and internal controls that assist in identifying transactions that may involve use of the dealer to facilitate money laundering or terrorist financing;
   - Whether the supplier is subject to "know your customer" requirements;

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

- Whether the supplier is required, or is permitted to voluntarily file with the government reports on suspicious transactions;
- Whether the supplier is required to file with the government reports on large cash transactions;
- Whether the supplier, suspecting a transaction involves money laundering or terrorist financing, is required to inform an administrative authority of its suspicion prior to executing the transaction.
- Whether the supplier is required to have policies and procedures for refusing to consummate, withdrawing from, or terminating transactions that the dealer reasonably suspects use the dealer to facilitate money laundering or terrorist financing; or
- Whether the supplier is required to designate a compliance officer responsible for ensuring effective implementation of an AML program, regularly updating its AML program, and providing sufficient anti-money laundering training for appropriate personnel;

Each of these elements could serve to protect the industry from money laundering or terrorist financing by increasing transparency, reducing anonymity, or otherwise establishing a record that would assist with the investigation and prosecution of illicit financial activity.

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

After reviewing the specific risks of their own precious metals, precious stones, and jewels industry, some jurisdictions have determined a need to issue regulations that impose requirements or place limitations on who may obtain entrance into the precious metals, precious stones, or jewels industry. These regulations are designed to protect the industry from undesired participants for economic, criminal, or other reasons particular to the jurisdiction. When assessing the risk of money laundering and terrorist financing, dealers could consider the following potentially relevant factors:

- Whether the jurisdiction has implemented regulations that require businesses to obtain membership in a government-approved organization, to register with or obtain a license from the jurisdiction, or to otherwise take steps that assist in identifying and limiting who has access to the industry.
- Whether the jurisdiction has established a central supervisory agency for overseeing industry compliance with anti-money laundering regulations.

3. <u>The dealer's relationship with the supplier.</u>

A historical relationship in which the dealer both knows and trusts a foreign supplier also may reduce the risk of money laundering or terrorist financing by or through that supplier. It should be emphasized that such trust in a supplier should not be based solely on the longevity of the business relationship, but also on the dealer's knowledge, to the extent reasonably possible, of that supplier's lawful practices and compliance with anti-money laundering requirements. In the absence of other risk

factors, a longstanding relationship with a well-known and trusted foreign supplier may pose risks that are no greater than purchasing from domestic dealers covered by the anti-money laundering provisions of the Interim Final Rule.

Identifying Suspicious Transactions from a Foreign Supplier

The Interim Final Rule provides that a dealer's policies, procedures, and internal controls must be reasonably designed to detect transactions that may involve money laundering or terrorist financing.[8] A dealer that suspects that a transaction may involve money laundering or terrorist financing should take reasonable steps to determine whether its suspicions are justified and take reasonable efforts to mitigate potential risks. After a reasonable inquiry, if the dealer's suspicions are justified, the appropriate response may be to refuse to enter into or complete the transaction.

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. For example, a dealer may appropriately determine that a reasonable inquiry with respect to a transaction conducted with a new or high risk supplier requires considerable scrutiny, above and beyond verifying the supplier's identity or determining the purpose of the transaction. In contrast, a reasonable inquiry with respect to an established or low risk supplier may not necessitate taking any additional steps beyond those normally required to complete the transaction.

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:[9]

- 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; and
- Whether the transaction is not in accordance with established industry norms.

Dealers are under no obligation, nor are they encouraged, to automatically refuse to engage in or terminate transactions simply because the transactions raise suspicion. Rather, dealers should develop procedures for identifying transactions involving potential money laundering or terrorist financing and for reasonably mitigating the risk posed by such transactions if they appear to be unusual or suspicious.[10]

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[8] 31 CFR § 103.140(c)(1)(ii).

[9] *Id*.

[10] Dealers are not currently required to file suspicious activity reports but are encouraged to do so voluntarily. *See* Anti-Money Laundering Programs for Dealers in Precious Metals, Stones, or Jewels, 70 FR 33,702 33,716 (June 3, 2005) (Question 6: Am I required to file Suspicious Activity Reports as part of

Conclusion

After evaluating the available information, a dealer may determine that an individual foreign supplier has implemented 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. Conversely, the risks associated with purchases from a foreign supplier with inadequate internal controls, or located in a jurisdiction with an inadequate anti-money laundering regime, may be substantial.

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my anti-money laundering program?) *also available at* http://www.fincen.gov/faq060305.pdf.