

Recommended Change in the Rule re Anti-Money Laundering Programs for Dealers in Precious Metals, Stones, or Jewels

Background and Introduction:

Precious metals are covered under the Bank Secrecy Act¹ because, in concentrated forms and uses, they are inherently vulnerable to use in money laundering and terrorist finance. The AML Rule for Dealers in Precious Metals,² Stones or Jewels (the "AML Rule")³ specifies characteristics of precious metals, stones and jewels that subject persons dealing in them to vulnerability to money laundering and terrorist finance.

Precious metals, precious stones, and jewels are easily transportable, highly concentrated forms of wealth and can be highly attractive to money launderers and other criminals, including those involved in the financing of terrorism.⁴

The proposed rule made the same statement with somewhat more elaboration.

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.⁵

The final AML Rule then, in trying to add precision to these characteristics, set two standards under which precious metals are considered "covered goods":

1. Metal containing precious metals of "...at least 500 parts per 1000"⁶ (the "50% by weight standard")
2. "...finished goods that derive 50 percent or more of their value from jewels, precious metals and precious stones contained in or attached to such finished goods. ...Such finished goods include, but are not limited to, jewelry, numismatic items and antiques."⁷ (the "50% of value standard")

¹ 31 USC Section 5318(a)(2)(N)

² Although the regulatory classification is "dealers in precious metals, stones, or jewels," the recommendations below are directed at only precious metals; not at "stones or jewels."

³ 70 Fed. Reg. 33702, June 9, 2005

⁴ 70 Fed. Reg. 33703

⁵ 68 Fed. Reg. 8481, February 21, 2003

⁶ "31 CFR 103.140(a)(4) defines "precious metal" to include gold, silver, and the platinum group of metals, at a level of purity of 500 parts per 1000 (50 percent) or greater, singly or in any combination." 70 Fed. Reg. 33708. The decision as to whether silver should be considered a precious metal under the Rule remains pending.

⁷ 31 CRR 103.140(a)(1)(iv)

The 50% by weight standard is sufficiently inclusive to cover precious metals goods and transactions with high exposure to money laundering. It excludes lower value goods and transactions without unusual exposure to money laundering. We recommend that the 50% weight standard remain unchanged.

The 50% of value standard, on the other hand, causes lower value, low risk precious metal-bearing goods and transactions to be covered even though they are not particularly vulnerable to money laundering and terrorist finance. The 50% of value standard should be amended so that it does not apply to precious metals.⁸

Discussion:

In formulating the AML Rule, Treasury considered standards that would both:

1. Include persons dealing in concentrates, transportable, world-standard forms of precious metals that are vulnerable to money laundering exposure, and
2. Exclude persons dealing in low value materials, in which the threat of money laundering did not warrant an anti-money laundering program requirement.

The AML Rule is thus directed at materials and persons such as high karat, high value jewelry manufacturers, precious metals refiners, minters of precious metals coins and medallions, certain precious metals alloys and compounds and the intermediaries that buy and sell them. These are persons that commonly deal in precious metals above the 50% by weight threshold and have the greatest exposure to money laundering. The 50% by weight standard is a clearly defined, workable threshold.

Treasury devoted significant effort to arrive at the 50% weight standard to draw this line. An important question was whether to include 10 karat gold jewelry, an important grade in the United States but little used in other countries. 10 karat gold is 41.67% gold by weight. After much deliberation, Treasury decided to set the threshold at 50% precious metals, and thus to exclude 10 karat gold, because it is neither “highly concentrated” nor an “international medium of exchange that can be converted into cash anywhere in the world.”

The 50% of value standard, however, effectively lowers the 50% by weight threshold, causing finished goods to be covered even though they present no particular money laundering threat. The value of precious metals is often so high compared to base metals or to other materials in a finished product that even a very small amount of precious metal may result in a value well over 50% of its sales price. For example, 10 karat gold, which Treasury decided is not vulnerable to money laundering, is only 41.67% pure and not covered by the 50% by weight standard. However, 10k gold derives far more than 50% of its value from its gold content.

⁸ It is common practice to evaluate and categorize precious metals according to metal contained by weight. In the case of gemstones—“precious stones and jewels”—evaluation measures are more subjective, so evaluation according to the percentage value of a finished good is the norm.

The overreach of the 50% value is even more evident in the case of industrial intermediates. Here are two examples:

1. Gold-clad copper sheet is used in manufacturing computers and jewelry. The gold layer might range from one-half percent to seven percent by weight, but would still constitute more than 50% by value.⁹ Coils of gold-clad copper sheet for manufacturing purposes present no money laundering threat. They can serve only a single purpose, the gold is not “highly concentrated,” the coils cannot be readily melted and poured into different forms, the gold layers cannot be removed without complex metallurgical processes, and a gold refiner would suspect an unfamiliar source. Thus gold-clad copper coils are not vulnerable to money laundering.
2. Thick film precious metal is used in manufacturing electronic components. The paste contains 2% to 20% precious metals, primarily silver but also small amounts of platinum and palladium. The platinum and palladium are by far the most valuable constituents, and constitute more than 50% of the value. But the paste can be used for no purpose other than specialized manufacturing, and is not easily exchanged anywhere in the world. Thick film paste is thus a highly unlikely money-laundering or terrorist finance risk.

Conclusion:

For these reasons, precious metals should be removed from the provision of the AML Rule that designates finished goods deriving more than 50% of their value from precious metals. Covering finished items containing precious metals above 50% by weight is sufficient to encompass the intent to protect against money laundering and terrorist finance through precious metals transactions.

⁹ At a gold price of \$700/ troy ounce and a copper price of \$3.50/lb., even a minimum gold content of one-half percent would constitute the primary value.