



Anti-Money Laundering

Dealers in Precious Metals, Stones, or Jewels

By Laura Goldzung

Overview

Money laundering isn't just a worry for banks – many small businesses are touched by money launderers. Dealers in precious metals, stones or jewels are especially vulnerable.

Precious gems are often smuggled, stolen and traded in the black market in countries around the world and then used in money laundering schemes. "The characteristics of jewels, precious metals and precious stones that make them valuable," warns the U.S. Department of Treasury, "also make them potentially vulnerable to those seeking to launder money."

Money laundering begins with the commission of a crime that produces ill-gotten funds. The perpetrator then processes this "dirty" money through a series of transactions intended to "cleanse" it so that it appears to have resulted from legal activities.

There is no one single method of laundering money – it may involve other individuals, businesses and companies. However, one constant remains: The funds need to be washed.

Dealers of precious metals, stones or jewels can be drawn into money laundering schemes, for example, by criminals who use dirty money to buy gold coins, diamonds or other gems. The money launderer then resells the coins or gems and introduces the proceeds into the financial system as supposedly clean money.



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It is critical to understand how it can happen to your business and how to avoid it. Here are factors that may indicate a transaction is designed to involve a dealer in money laundering:

- Payment is made with large amounts of cash; multiple or sequentially-numbered money orders, traveler's checks or cashier's checks; or through third-parties;
- The customer or supplier is unwilling to provide complete or accurate contact information, financial references, or business affiliations;
- The customer or supplier attempts to maintain a high degree of secrecy about a transaction, such as requesting that normal business records not be kept;
- Purchases or sales are unusual for the particular customer or supplier, or type of customer or supplier;
- Purchases or sales don't conform to industry practice.

The USA PATRIOT Act and the U.S. Bank Secrecy Act requires all dealers in precious metals, stones, or jewels to have a comprehensive Anti-Money Laundering program.

A dealer is defined as a person or entity that purchases at least \$50,000 worth of covered goods AND sells at least \$50,000 worth of covered goods during the preceding calendar or tax year. The Financial Crimes Enforcement Network (FinCEN) defines covered goods as:

- Jewels
- Precious metals
- Precious stones
- Finished goods that derive 50 percent or more of their value

from jewels, precious metals or precious stones contained in or attached to the finished goods. ("Finished goods" include, but are not limited to, jewelry, numismatic items, and antiques.)

In addition to AML compliance, dealers are subject to Office of Foreign Assets Control (OFAC) sanctions screening as required by the U.S. Treasury. Failure to comply with AML or OFAC requirements may result in criminal and civil penalties. Both the IRS and the state where you conduct business will perform periodic examinations, and a review of your AML compliance program will be included.

Dealers are expected to have a reasonably designed compliance program tailored to their business. It should begin with a risk assessment and then meet the "four pillar" requirements:

1. Written policies, procedures and internal controls.
2. Appointment of a compliance officer.
3. Provision of ongoing AML training for appropriate personnel.
4. Independent testing on a periodic basis.

Common Problems

It is often difficult to understand and monitor the risks inherent to dealers in precious metals, gems and jewelry.

It is critical that a risk assessment be completed to keep up with AML regulations as well as changes in the business or customer activity. A risk-based approach should be built on sound foundations; effort must first be made to ensure that the risks are well understood. As such, a risk-based approach should be based on an assessment



of threats. This is true whenever a risk-based approach is applied, at any level.

Developing a risk assessment of a firm's customer market will provide the foundation for designing the compliance program. Both the risk assessment and the compliance program should be reviewed and updated according to risk – no less than annually.

Dealers in precious metals, gems and jewelry often struggle to keep up with regulatory change.

It's simply not enough to establish an AML compliance program and have a compliance officer manage it. No AML program can remain static. It is a regulatory expectation that AML compliance programs will be modified and updated in response to changes in regulations and the business of the firm.

Designating a compliance officer who is familiar with the regulatory requirements will go a long way to protecting you from regulatory risk. Simply appointing personnel with no experience will not serve you well in the long run.

You must protect your firm from all risk -- reputational, operational, credit and regulatory. Your AML compliance program should inform your overall risk management program.

Dealers in precious metals, gems and jewelry may not be prepared to demonstrate their AML program to banks.

Banks typically require their dealer-clients to provide a copy of their AML program and policies in order to continue their banking relationship. The U.S. Commerce Department has determined that

the jewelry business is "high risk," triggering certain obligations on banks, including monitoring jewelry and precious metal dealer clients for compliance.

Banks will ask to see dealers' documented AML Program and Policy and may even require the review of the dealer's independent test report. This will ensure to them that the dealer is meeting its regulatory obligations.

The AML Program fails to offer adequate training.

An AML compliance program must contain four pillars, which includes policies, procedures and internal controls; designation of a compliance officer; training; and independent testing. Training is a key driver that advances the ability to detect unusual activity. Front-line personnel are often the first point of contact with potential money laundering and fraud, and it is essential they be educated on red flags common to dealers. Having controls in place that include any red flags or suspicions is the first important step to maintaining an effective AML program.

Dealers in precious metals, gems and jewelry may be confused as to whether they are subject to regulations.

Regulatory rules apply to "dealers" in "covered goods." Covered goods include jewels, precious metals and precious stones, and "finished goods" (including but not limited to, jewelry, numismatic items, and antiques) that derive 50 percent or more of their value from jewels, precious metals, or precious stones contained in or attached to such finished goods.



Key Trends

Technology advancements and innovations have increased the size and sophistication of criminal enterprise.

These changes have created the need for new regulations and risk mitigation efforts by institutions and organizations subject to AML. For example, the use of international ACH transfers, remote deposit capture, mobile phone payments and the changing payments landscape, along with other technology innovations, present potential risks that require careful and thoughtful consideration.

If you conduct business using advanced payment systems, for example, be sure these processes are reflected in your risk assessment and that the controls to mitigate such risk are among your AML compliance policies.

Regulatory changes continue and compliant dealers must be prepared to meet the changes.

Regulatory changes and modification of existing rules – whether from FinCEN, OFAC or others– require close attention and the fine tuning of systems, training personnel and other compliance program elements. FinCEN's guidance indicates there many institutions subject to AML compliance programs that are not maintaining adequate AML programs and are subsequently facing sanctions by regulators.

Dealers are facing Title 31 examinations by the IRS.

The IRS is the examining authority for AML compliance programs for dealers. The IRS will notify a dealer that it plans to examine the business, a process commonly known as the Title 31 exam. Examiners will visit for a period commensurate with the size of the institution.

Examiners will request documentation supporting your program including but not limited to:

- AML compliance manual containing policies, procedures and internal controls; designation of and resume of compliance officer;
- AML training program materials and proof of training for appropriate personnel;
- Report from independent audit and testing performed;
- Customer due diligence;
- Reporting requirements;
- Record keeping and other documentation as requested.

Of particular interest will be reporting of large cash/cash equivalent transactions – those over \$10,000. The IRS reviews receipts of cash payments that require the filing of the Form 8300 form. They review books and records, including bank statements, to make this determination. Failure to file the 8300 can result in fines, penalties and, in extreme cases, criminal prosecutions.

When all is said and done, the IRS will submit a report of its findings and the dealer must resolve any outstanding matters while tracking any corrective actions until complete.

Dealer to dealer transactions are considered low risk.

It stands to reason that dealers doing business with other dealers are low risk. Why? Because each dealer, as required by law, is required to have a reasonably designed AML compliance program. As long as each has an AML program in place, each dealer can be confident that internal controls are in place to identify and mitigate any potential money laundering risk.



Before conducting business with any dealer, be sure to request an AML Certification Letter, one that states the dealer is in full compliance with the regulatory requirements under the law requiring the AML compliance program.

Risks & Opportunities

Risks

- Criminal and civil penalties for the institution as well as for individuals
- Reputational and financial risk to the institution

Opportunities

- Harnessing efficiencies by combining resources and IT systems to monitor for anti-money laundering and anti-fraud
- Protecting the integrity of the financial system
- Helping to protect your business from financial losses and reputational exposure
- Protecting your customers from falling prey to criminal activity

Skills

- Experience working in the Compliance Department of a financial institution
- Other related compliance or oversight experience
- Regulatory experience
- Certification from an AML association

Defined Terms

Bank Secrecy Act

The Bank Secrecy Act of 1970 (or BSA, or otherwise known as the Currency and Foreign Transactions Reporting Act) requires financial institutions in the United States to assist U.S. government agencies to detect and prevent money laundering.

Specifically, the act requires financial institutions to keep records of cash purchases of negotiable instruments, and file reports of cash purchases of these negotiable instruments of more than \$10,000 (daily aggregate amount), and to report suspicious activity that might signify money laundering, tax evasion, or other criminal activities. (Source: Wikipedia http://en.wikipedia.org/wiki/Bank_Secrecy_Act)

FinCEN

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IRS

The Internal Revenue Service (IRS) is charged with examining non-bank financial institutions including Precious Gems Dealers. The examination is known as a Title 31 exam, and is conducted periodically to ensure compliance with AML obligations under the BSA and its promulgated regulations. (Source: IRS http://www.irs.gov/irm/part4/irm_04-026-005.html#d0e1657)

OFAC

The Office of Foreign Assets Control (OFAC) of the US Department of the Treasury administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States.



OFAC acts under Presidential national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze assets under US jurisdiction. Many of the sanctions are based on United Nations and other international mandates, are multilateral in scope, and involve close cooperation with allied governments. (Source: Treasury.gov website <http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>)

Resources – Recommended Websites

- AML Audit Services, LLC
<http://www.amlauditservices.com>
- Financial Crimes Enforcement Network (FinCEN) Precious Metals/Jewelry Industry Home
http://www.fincen.gov/financial_institutions/pmj/
- Internal Revenue Service (IRS) Anti-Money Laundering Compliance Program
http://www.irs.gov/irm/part4/irm_04-026-005.html#d0e1657
- Internal Revenue Service (IRS) Penalties for Form 8300
<http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Form-8300-Penalties-Increase>
- Jewelers Vigilance Committee (JVC)
<http://www.jvclegal.org/index.php?categoryid=347>

Learn More

If you are a dealer in precious metals, stones or jewels, and want to learn more about the requirements and best practices to maintain an Anti-Money Laundering Compliance Program, or need information about independent testing services or custom training or keynote presentations, drop an email to info@amlausitservices.com or call 800-870-8076. ☒



About the Author

Laura H. Goldzung, CFE, CAMS, CFCs, CCRP is President and Founder of AML Audit Services, LLC ("AMLAS"), a boutique consultancy specializing in independent testing for anti-money laundering compliance programs for bank and nonbank institutions, and serves as its principal examiner. In addition, her expertise includes custom training, and compliance

consulting services, which includes design and development of Bank Secrecy Act/Anti-Money Laundering and Anti-Fraud compliance programs, risk assessment and analyses, remediation and corrective action programs, and expert witness services. Ms. Goldzung has worked with financial institutions that have been referred to enforcement for BSA/AML violations, helping them to bring their AML programs into compliance.

In a career spanning more than more than 35 years across multiple sectors of the financial services industry, Ms. Goldzung has worked in a variety of executive leadership roles. Since founding AMLAS, she has co-created sector-specific compliance officer certification programs and tours internationally presenting various AML/Fraud topics for industry-leading organizations, and has authored a number of articles on the topic of AML. Ms. Goldzung serves on a variety of industry task forces and committees, and contributes to a number of compliance, industry and university education programs.