



Department of the Treasury Financial Crimes Enforcement Network

Ruling

FIN-2008-R003

Issued: March 18, 2008

Subject: Whether a Person That is Engaged in the Business of Foreign Exchange Risk Management is a Currency Dealer or Exchanger or Money Transmitter

Dear []:

I am responding to your letter of September 2, 2005 to [the Financial Crimes Enforcement Network]. You seek a determination as to whether your client, [] (the "Company") is a money services business, specifically a currency dealer or exchanger or a money transmitter, as those terms are defined at 31 C.F.R. § 103.11(uu). You additionally have requested regulatory relief if we determine that the Company is a money services business according to our regulations.

You have described that the Company "is engaged in the business of foreign exchange risk management for 'internet seller' clients engaged in international commerce that are exposed to foreign exchange risk either on the sale side or the supply side of their business operations." The Company manages exchange rate risk for internet seller clients operating in currency A who (1) offer products for purchase by customers who operate in currency B ("sale transactions"), and (2) purchase supplies offered by suppliers who operate in currency C ("supply transactions") by conducting foreign exchange or "hedging" transactions in the relevant currency for the client. The Company also settles supply transactions for its clients by moving funds from its clients to its clients' suppliers through the Company's own accounts.

Our regulations define the term "currency dealer or exchanger" to include every person who deals in or exchanges currency as a business "other than a person who does not exchange currency in an amount greater than \$1,000 in currency or monetary or other instruments for any person on any day in one or more transactions."¹ Our definition of currency dealers or exchangers has always included dealers in foreign exchange, without any limitation to businesses that physically exchange currency of one country for currency of another country.² According to your description of the Company's business

¹ 31 C.F.R. § 103.11(uu)(1).

² See 31 C.F.R. 103.11 (1972) (published at 37 FR 6912 (Apr. 5, 1972)) (defining "financial institution" to include without limitation "a person who engages as a business in dealing in or exchanging currency as, for example, a dealer in foreign exchange"). While the language of the definition and its place in FinCEN's

operations, the Company “converts funds denominated in the currency of one country to funds denominated in the currency of another country.” We understand these activities to be encompassed within the ordinary meaning of the term “dealing in foreign exchange.” In consequence, to the extent that the Company exchanges funds denominated in the currency of one country for funds denominated in the currency of another country in an amount greater than \$1,000, for any of its affiliates or unaffiliated business customers on any day in one or more transactions, the Company would be a currency dealer or exchanger according to our regulations.

In addition, our regulations define the term “money transmitter” to include “[a]ny person... who engages as a business in accepting currency, or funds denominated in currency, and transmits the currency or funds, or the value of the currency or funds, by any means through a financial agency or institution... or... [a]ny other person engaged as a business in the transfer of funds.”³ The regulations also provide that “[g]enerally, the acceptance and transmission of funds as an integral part of the execution and settlement of a transaction *other than the funds transmission itself*... will not cause a person to be a money transmitter.”⁴

The Company settles sale transactions for its clients by submitting the bank card information of a client’s customer, which it has received from the client, to the card processor for authorization and payment. This payment is made into the Company’s own account, and the Company ultimately remits those funds to the client. To the extent that the Company settles sale transactions in this manner, it would not be a money transmitter.⁵

With respect to supply transactions, the Company does not limit its business activity to accepting and transmitting funds for the purpose of executing and settling its clients’ hedging transactions, but additionally settles supply transactions by moving funds

regulations have changed over the years, the scope of the definition has been narrowed only by exempting banks, persons registered with, or regulated and examined by, the Securities and Exchange Commission and the Commodity Futures Trading Commission, and those who qualify for a *de minimis* exception. See 51 FR 30233, 30234 (Aug. 25, 1986) (proposing to define “financial institution” to include “a currency dealer or exchanger, including a check casher,” with no notice that this change in language would constitute a change in the scope of the definition); 52 FR 11436, 11439-11440 (Apr. 8, 1987) (adopting the proposed language changes); 62 FR 27890, 27892 (May 21, 1997) (proposing to define “financial institution” to include “money services businesses,” which in turn would include “any person doing business... [as] a currency dealer or exchanger,” and asserting that such proposed change was not intended to narrow any definition); 62 FR 45438, 45442 (Aug. 20, 1999) (adopting the current definition of “money services business” and reiterating that “the changes made to the definitions ... merely clarified the scope of the coverage already inherent in the existing language of the Bank Secrecy Act definitions”).

³ 31 C.F.R. § 103.11(uu)(5)(i).

⁴ 31 C.F.R. § 103.11(uu)(5)(ii) (emphasis added).

⁵ See, e.g., FinCEN Ruling 2003-8 – Definition of Money Transmitter (Merchant Payment Processor) (Nov. 19, 2003) (“to the extent that [one’s role] is limited to submitting payment instructions obtained from a merchant to a bank for ACH processing, and remitting funds received through the ACH process to the merchant... [one would not be] a money transmitter for the purposes of 31 CFR 103.11(uu)(5)”).

between its clients and the clients' suppliers through its own accounts. The settlement of a foreign exchange hedging transaction does not require the transmission of funds between a client and the clients' supplier, but rather may be settled between the Company and its client by delivering the proceeds of the hedging transaction to the client directly. After conducting a hedging transaction, the client may settle a supply transaction by making payments to the supplier directly by payment mechanisms other than funds transmissions through the Company. Because the Company's acceptance of funds from its client and transmission of funds to the client's supplier does not constitute an integral part of the execution and settlement of any transaction other than the funds transmission itself, the Company is a money transmitter according to our regulations.

Finally, as we have determined that your client is a currency dealer or exchanger and a money transmitter, and thus is a money services business according to our regulations, you have asked us to except or exempt the Company from our regulations applicable to money services businesses.⁶ After careful consideration of your description of the Company's operations, we have determined that the Company offers cross-border transactional services that may be exploited by financial criminals engaged in money laundering and terrorist financing. Therefore, we must deny your request.

This ruling is provided in accordance with the procedures set forth at 31 C.F.R. § 103.81. In arriving at our conclusions in this letter, we have relied upon the accuracy and completeness of the representations made in your letter. Nothing precludes us from reaching a different conclusion or taking further action if circumstances change or any of that information provided is inaccurate or incomplete. We reserve the right, after redacting your name and address and the Company's name, to publish this letter as guidance to financial institutions in accordance with our regulations for requesting an administrative ruling.⁷ You have fourteen days from the date of this letter to identify any other information you believe should be redacted and the legal basis for redaction.

If you have any questions about this letter, please contact [FinCEN's regulatory helpline at (800) 949-2732].

Sincerely,

//signed//

Jamal El-Hindi
Associate Director
Regulatory Policy and Programs Division

⁶ See 31 C.F.R. § 103.55 (permitting the Secretary of the Treasury, by his designee the Financial Crimes Enforcement Network, to grant exceptions or exemptions to any particular person or classes of persons subject to the requirements of 31 C.F.R. Part 103).

⁷ 31 C.F.R. §§ 103.81-87.