

## **FinCEN Ruling 2001-2**

August 23, 2001

Dear [ ]:

This letter responds to your letter dated June 4, 2001, on behalf of [ ] (the "Bank"), requesting a determination whether the Bank is required under 31 U.S.C. § 5313, and its implementing regulations found at 31 C.F.R. § 103.22, to aggregate multiple currency transactions for purposes of filing a Currency Transaction Report ("CTR") based on the facts outlined below.

### **FACTS**

Mr. Smith is the primary owner of several businesses (Business 1, Business 2, and Business 3) that are engaged in the activities of selling and servicing ATMs. Each business has a separate tax identification number, and maintains a bank account (Account 1, Account 2, and Account 3) at the Bank. Various employees of these businesses make withdrawals throughout the day as follows: Employee 1 makes a withdrawal from Account 1 for Business 1; Employee 2 makes a withdrawal out of Account 2 for Business 2; Employee 3 makes a withdrawal out of Account 3 for Business 3. However, if any of the accounts do not have sufficient funds to cover the withdrawal amount, funds are taken from any one, or a combination of the three accounts, to cover the amount of the withdrawal regardless of what business or employee will actually receive the funds. The payroll for the employees from all three businesses is paid out of Account 2. The Bank knows that Mr. Smith is the primary owner of all of the businesses, and that Mr. Smith has primary signature authority with respect to each account.

### **ANALYSIS**

A financial institution must treat multiple transactions in currency as a single transaction if the financial institution "has knowledge that [the multiple transactions] are by or on behalf of any person and result in either cash in or cash out totaling more than \$10,000 during any one business day." See 31 CFR § 103.22(c)(2). Whether separate transactions should be deemed to be conducted "by or on behalf of any person" depends upon all of the facts and circumstances involved.

The mere fact that separately incorporated businesses are owned by the same person does not itself trigger the requirement to aggregate currency transactions involving multiple businesses for purposes of 31 CFR § 103.22. However, common ownership of corporations or other types of businesses may be relevant to a determination that aggregation is required if combined with other factors indicating that the corporations or businesses are not operated separately and independently. The conclusion that multiple businesses are not operated separately and independently may be based on such indications, for example, that the corporations or businesses are staffed by the same

employees, the bank accounts of one corporation or business are used to pay the expenses of another corporation or business, or the corporation/business bank accounts are used to pay the personal expenses of the owner. A determination that multiple corporations or businesses are not operated separately and independently may lead to the conclusion that their transactions in currency should be aggregated.

Based on the facts presented in your letter and subsequent telephone conversations, which are summarized above, FinCEN believes the businesses are operated in a manner other than as separate and independent businesses and that the multiple transactions conducted in the accounts should be deemed to be conducted by or on behalf of one person. (31 CFR § 103.22(c)(2)). Consequently, the cash transactions should be aggregated. This determination is limited to the facts you provided. Should any of the facts as described above change, a different conclusion may result.

We remind the Bank that our advice in this letter does not affect the Bank's continuing obligation to file a suspicious activity report, under 31 CFR §103.18, when it knows, suspects, or has reason to suspect that, among other things, a transaction is intended to circumvent any requirement under the Bank Secrecy Act, or any reporting requirement under federal law or regulation, or has no lawful or apparent business purpose.

Should you have any questions, please contact Dawn Adams of my staff at (202) 354-6417.

Sincerely,

Christine E. Carnavos  
Executive Associate Director  
Office of Compliance and Regulatory Enforcement