



Financial Crimes Enforcement Network Department of the Treasury

FinCEN Ruling 2003-2

April 3, 2003

Dear []:

You have requested a ruling on behalf of your client, [], regarding one of its customers, []. [] requests a ruling pursuant to 31 CFR 103.81 that [] be considered neither a “foreign shell bank,” nor a “foreign bank” for purposes of 31 CFR 103.175 and 103.177, or, alternatively, that it receive an exemption from the requirements of these rules.

According to your representations, [] maintains a demand deposit account in the United States for []. [] is licensed in Barbados as an offshore bank. [] is an indirect, wholly owned subsidiary of the [] Corporation and functions only for the limited purpose of facilitating transfers of funds between and among [] Companies. At the time of your initial request for an exemption, [] did not have its own offices in Barbados, and was instead represented by an agent. However, your subsequent letter dated March 19, 2003, states that, in response to the requirements of the Barbados International Financial Services Act of 2002, as of March 31, 2003, [] Corporation will locate [] to its [] offices in Barbados and staff the bank with at least two employees.

31 CFR 103.177 imposes certain responsibilities on banks and broker-dealers operating in the United States if they maintain correspondent accounts for foreign shell banks and foreign banks. Specifically, section 103.177 prohibits covered financial institutions from maintaining correspondent accounts for foreign shell banks; it also requires covered financial institutions which maintain correspondent accounts for foreign banks to obtain records of the owners of those foreign banks and of their agents who are authorized to accept service of legal process. Section 103.175 defines a foreign shell bank as “a foreign bank without a physical presence anywhere in any country.” Foreign bank as defined under 31 CFR 103.11(o) is “a bank organized under foreign law,” but not including its agents, branches, or offices located in the United States.

Based on your representation that the [] Corporation plans to locate [] to its [] offices in Barbados and staff the bank with at least two employees effective March 31,

2003, we do not believe that [] can be considered a foreign shell bank for purposes of 31 CFR 103.175 and 103.177. We do believe, however, that [] is a foreign bank within the meaning of 103.11(o), because it is licensed to operate as an offshore bank in Barbados. As such, [] would be required under section 103.177 to obtain from [] information regarding its ownership and its agents authorized to accept service of legal process.

We have considered your request that [] be exempted from the requirements of section 103.177 because of the limited functions it performs in transferring funds for the [] Corporation and its affiliates. Upon consideration, we have decided to deny your request for an exemption. The record-keeping requirements of section 103.177 implement the statutory requirement contained in section 319(b) of the USA PATRIOT Act (Public Law 107-56). Section 319(b) is an important tool for regulators and the law enforcement community, allowing them to quickly obtain ownership information about these foreign institutions and to identify individuals who can accept legal process when a subpoena for financial records is to be served. FinCEN and the Department of Treasury (Treasury) specifically adopted a broad definition of the term correspondent account for purposes of section 103.177 because the costs of complying with this provision did not outweigh the benefits to law enforcement of having ownership and process serving information on foreign banks that have entered the United States banking system. Furthermore, you have not demonstrated that [] would be unduly burdened by having to comply with section 103.177. In fact, on the facts you have represented, obtaining ownership information and the identity of an agent for service of process of [] should be relatively simple.

Please note that this ruling is expressly based on the representations contained in your letter. Should the facts regarding []'s structure and organization change materially, this ruling will cease to apply to [].

Finally, we note that your initial letter seeking a ruling from FinCEN requests that information identifying [] and its affiliation with [] be held in confidence and exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552. FinCEN reserves the right to publish this letter as guidance to financial institutions with all identifying information about your client, [] and [] redacted. You will have 14 days after the date of this letter to identify any other information you believe should be redacted and the legal basis for the redaction.

Sincerely,

Judith R. Starr
Chief Counsel, FinCEN