



DEPARTMENT OF THE TREASURY
FINANCIAL CRIMES ENFORCEMENT NETWORK

**FinCEN Ruling 2004-3 – Definition of Money Services Business
(Money Transmitter/Currency Dealer or Exchanger)**

August 17, 2004

Dear []:

This letter responds to your request for an administrative ruling with respect to whether your client, [], is required to register with FinCEN as a Money Services Business (“MSB”) pursuant to 31 C.F.R. § 103.41. Pursuant to 31 CFR § 103.82, FinCEN declined to provide [] with such a ruling in light of an ongoing proceeding in which [] was engaged with another department of the federal government relating to the subject of the request. Upon notification of termination of that proceeding, FinCEN responded to []’s request by letter dated October 28, 2003, explaining that [] had not provided sufficient information to enable FinCEN to make a definitive ruling as to whether [] is an MSB. By letters dated December 9, 2003, and February 23, 2004, as supplemented on June 15, 2004, you provided additional information about the services offered by []. Based on the representations contained in your letters, FinCEN has determined that [] is not an MSB for BSA regulatory purposes to the extent it engages in international courier operations that originate or terminate in the United States, or armored truck transportation services to and from U.S. financial institutions for local U.S. customers, described in your letters. However, to the extent that [] engages in trans-shipment transactions through the United States as described below, FinCEN would deem [] a money transmitter as defined at 31 CFR § 103.11(uu)(5).

Background

According to your representations, [] is located in Florida, and provides world-wide transportation of currency, monetary instruments, and other valuables for financial institution clients, such as domestic and foreign banks and currency exchange houses. [] engages in the following activities:

- International courier operations in which [] either transports valuables from a U.S. financial institution to a foreign-located business, or from a foreign-located business to a U.S. financial institution. In some cases, [] is hired to transport funds for exchange, and to return new, or differently-denominated, currency to the original sender.¹

¹ [] also conducts international courier operations between foreign-located financial institutions. Information that you have submitted on behalf of [] indicates that [] has offices located in foreign countries. From your letters, it is not clear whether such international courier operations are performed by

- Local armored truck transportation of valuables for U.S. customers such as local governments and merchants, to and from the customers' local banks. Each of these local armored truck deliveries either originates, or terminates, with U.S. banking institutions subject to BSA regulation.

Your original ruling request indicated that [] engaged in the trans-shipment of currency between foreign-located banks or currency exchange houses, through a U.S. airport. In the course of trans-shipment transactions, currency was flown into the U.S. for purposes of making travel connections, and in some cases, [] took the currency out of the U.S. airport's international terminal to recount and repackage the currency. Your letter of February 23, 2004 represents that [] is no longer engaged in this activity. You have represented that, to the extent [] may conduct trans-shipments through the United States in the future, []'s couriers will remain in the international terminal until they can transfer to connecting flights departing the United States.

Analysis

Money services businesses, a category of financial institution for purposes of regulations implementing the Bank Secrecy Act ("BSA"), are defined at 31 CFR 103.11(uu) and include currency dealers and exchangers, check cashers, issuers, sellers, and redeemers of traveler's checks, money orders, or stored value, money transmitters, and the United States Postal Service. Among the BSA provisions to which MSBs (other than issuers of stored value, and agents of an MSB) are subject is the requirement to register with FinCEN. Based on the representations contained in your letters, the MSB categories into which [] could potentially fall include money transmission and currency dealing/exchange.

For BSA regulatory purposes, the term "money transmitter" is defined at 31 CFR 103.11(uu)(5). Subparagraph (B) of the definition, "[a]ny other person engaged as a business in the transfer of funds," is broad enough to encompass various types of money transmission including physical transportation of funds. Whether a person falls within this subparagraph is a fact-based determination. As explained in my October 28, 2003 letter, FinCEN does not treat as a money transmitter an armored car business that solely engages in providing secure transport services, including currency and other valuables, for the Federal Reserve, the U.S. Mint, banks, and private companies, so long as the armored car business cannot be viewed as participating, or having a stake, in a financial transaction.² Factors that FinCEN would consider in determining whether an armored car business has participated, or had a stake, in a financial transaction include: whether the

a foreign-located branch or office of []. Accordingly, we have not considered it in making our determination. For your information, FinCEN's definition of money transmitter applies only to an "agent, agency, branch, or office within the United States" of a money transmitter. See 31 CFR 102.11(uu). For reasons of jurisdiction, FinCEN does not generally treat a foreign-located branch of a U.S. money transmitter as an MSB.

² See FinCEN Letter Ruling dated June 11, 2002.

currency is transported for and/or to an entity that falls within the definition of financial institution for purposes of BSA regulations (31 CFR 103.11(n)), the beneficiary of the funds, and the nature and extent of the services provided by the armored car business.

In my October 28, 2003 letter, I explained that, to the extent that [] contracts with a U.S. financial institution to transport currency, [] is not a money transmitter for purposes of the BSA.³ To enable FinCEN to determine whether [] is a money transmitter with respect to transportation of currency other than for a U.S. financial institution, we requested additional information including whether [] transports currency other than to a U.S. financial institution subject to BSA regulations, and whether [] has knowledge that the beneficiary of the funds it transports is a person(s) other than the person with which [] has contracted to transport the funds.

Your letter of December 9, 2003 states that, with respect to its international courier operations that originate, or terminate, in the United States, [] will only originate or terminate transactions at a U.S. financial institution. In regard to our question whether [] ever transports currency to or for a third-party beneficiary, your letter states that []'s services are offered only to domestic and foreign banks and currency exchange houses, and that [] does not knowingly transport any of the funds it receives for deposit into the account(s) of any person or entity other than the entity that provided the funds, or requested their transportation. According to your letter, [] does not provide its courier services to third-party beneficiaries, including of financial institutions. Rather, []'s courier services are exclusively limited to the domestic and foreign banks and currency exchange houses with which it contracts to transport currency. Based on your representations that [] does not transport funds on behalf of third-party beneficiaries, FinCEN would not deem [] a money transmitter by virtue of its international courier operations originating, or terminating, at a U.S. financial institution.

With respect to []'s transportation of funds for non-financial institution U.S. customers such as local governments and merchants, to and from the customers' local banks, your supplemental letter of June 15, 2004, contains representations that [] does not engage in transportation of funds for third-party beneficiaries. FinCEN would not deem [] a money transmitter by virtue of physically transporting currency for a U.S. customer, to and from the customer's U.S. financial institution, on the customer's own behalf. Thus, to the extent that []'s local currency transportation consists of transactions either originating, or terminating, with a U.S. financial institution, and that are not conducted for third-party beneficiaries, FinCEN would not deem [] a money transmitter by virtue of such transportation.

By letter dated February 23, 2004, you have represented that [] no longer engages in trans-shipment through the U.S. as described above. Therefore, we have not considered this activity in making the determination that [] is not a money transmitter

³ When a BSA financial institution contracts with an armored car service to conduct transactions that trigger BSA requirements, the financial institution itself is required to ensure that such BSA requirements are met. See Ruling 88-5 (August 2, 1988) 31 CFR Part 103 Appendix A.

under our rules. However, the definition of money transmitter at 31 CFR 103.11(uu) applies to each “agent, agency, branch, or office within the United States of any person doing business” as a money transmitter. As explained above, this definition is broad, and applies to the physical transportation of currency. FinCEN would treat as a money transmitter a U.S. business that engages in trans-shipment as described in your letters. The relevant factor in this analysis is not whether or not the money that is trans-shipped by the U.S. business leaves the international terminal, but rather the fact that a U.S. business is engaged in the business of money transmission. Therefore, to the extent that [] engages in trans-shipment transactions, FinCEN would deem [] a money transmitter, subject to all applicable BSA requirements, including the requirement to register with FinCEN

In order for FinCEN to make a determination whether [] is a currency dealer or exchanger under 31 CFR 103.11(uu)(1), we requested a more complete description of the extent of the currency exchange services that [] provides beyond mere physical transportation of currency (including involvement in determining the place and date of exchange, having a financial stake in the transaction based on the rate of exchange obtained, and any other involvement in a currency exchange transaction). According to the representations contained in your December 9, 2003 letter, when transporting money for the purpose of currency exchange, []’s only role is the physical delivery of currency to the destination designated by its client, and the return of new currency or currency of a different country, to the original sender. [] does not select the place or date of exchange, and does not have any financial stake based on the rate of exchange obtained. Based upon your representations, FinCEN would not deem [] a currency exchanger because in physically transporting currency for exchange, [] does not participate in, or have a stake, in a financial transaction, and therefore is not engaged in the business of currency exchange within the meaning of our rules.

In arriving at our decision, FinCEN relied upon the accuracy and completeness of the representations made in your letters. Nothing precludes FinCEN from seeking further action should any of this information prove inaccurate or incomplete. Should you have any questions about this letter, please telephone Christine Del Toro of my staff at (703) 905-3590.

Sincerely,

//signed//

Judith R. Starr
Chief Counsel

cc: William D. Langford, Jr., Associate Director, Regulatory Policy, Programs, and Enforcement