



Financial Crimes Enforcement Network Department of the Treasury

FinCEN Ruling 2003-8 – Definition of Money Transmitter (Merchant Payment Processor)

November 19, 2003

Dear []:

This letter responds to your letter dated February 5, 2003, requesting an administrative ruling with respect to whether [] is required to register with FinCEN as a Money Services Business in accordance with 31 CFR 103.41 by virtue of operating []. Based on the representations contained in your letter, FinCEN has determined that [] is not a Money Services Business as defined in 31 CFR 103.11(uu), by virtue of the ACH processing services provided by [], and is therefore not required to register with FinCEN.

According to your letter, [] operates a service called [] that provides third-party origination services for Automated Clearing House (“ACH”) transactions on behalf of merchants. Through [], merchants can accept customer payments for purchases made through a merchant’s web site, or by telephone, in the form of a checking account debit. []’s merchant customers obtain payment instructions to debit a customer’s checking account and submit these payment instructions to [] through []. [] batches and submits the debit information to []’s bank for processing through the ACH system. Once []’s bank initiates the ACH, the depository institution at which the merchant’s customer maintains a checking account debits the account of the customer, and sends a credit instruction through ACH to []’s bank, which then credits the amount to an operating account maintained at the bank by []. After a temporary holding period to ensure that the transaction initiated by the merchant is not returned, [] remits the funds to the merchant. Through [], merchants are also able to initiate credits to provide refunds to customers. You have asked whether [] would be deemed a money transmitter in accordance with 31 CFR 103.11(uu)(5) by virtue of providing this service.

The definition of money transmitter for purposes of BSA regulations found at 31 CFR 103.11(uu)(5) includes:

(A) [a]ny person, whether or not licensed or required to be licensed, 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, a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the

Board of Governors of the Federal Reserve System, or both, or an electronic funds transfer network; or

(B) [a]ny other person engaged as a business in the transfer of funds.

FinCEN does not currently interpret the definition of money transmitter to include the third-party origination service that is described in your letter. The nature of the transactions you describe is the transfer of funds through the ACH system from a customer to a merchant as payment for goods and services. []'s role in the transactions is to provide merchants with a portal to a financial institution that has access to the ACH system. [] acts on behalf of merchants receiving payments rather than on behalf of customers making payments. For these reasons, the service that [] provides through [] more closely resembles payment processing/settlement than money transmission. Therefore, to the extent that the role of [] in such transactions is limited to submitting payment instructions obtained from a merchant to a bank for ACH processing, and remitting the funds received through the ACH process to the merchant (or in some cases, refunding money to the merchant's customer through an ACH transaction), FinCEN would not deem [] a money transmitter for purposes of 31 CFR 103.11(uu)(5).

In arriving at our decision in this matter, FinCEN relied upon the accuracy and completeness of the representations made in your February 5, 2003 letter. Nothing precludes FinCEN from seeking further action should any of this information prove inaccurate or incomplete. Finally, we note that you have requested that certain information contained in your letter 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 you, [], [], 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. Should you have any questions, please telephone Christine Del Toro of my staff at (703) 905-3590.

Sincerely,

//signed//

Judith R. Starr
Chief Counsel

cc: David M. Vogt, Executive Associate Director, Office of Regulatory Programs
Deborah Silberman, Chief, MSB/Casinos/IRS Programs