



Department of the Treasury Financial Crimes Enforcement Network

Ruling

FIN-2008-R009

Issued: September 18, 2008

Subject: Administrative Ruling on Whether a Company that Offers a Loan Acceleration Product for Consumer Financing is a Money Services Business

Dear []:

I am responding to your letter, dated September 11, 2007, to the Financial Crimes Enforcement Network (“FinCEN”). You have asked us to determine whether [] (the “Company”) is a money services business, specifically a money transmitter as that term is defined in our regulations.

As you described, the Company proposes to offer a loan acceleration product for consumers financing the purchase of a vehicle under a motor vehicle retail installment contract (“installment contract”) with a dealer. Every two weeks, the Company will electronically debit a consumer’s account at a financial institution in an amount that is equal to one half the consumer’s monthly payment under the installment contract. The Company will deposit these funds in the Company’s account at a third-party financial institution. The Company then will transmit these funds on a monthly basis to the installment contract creditor on the consumer’s behalf. The payments made by the Company on behalf of the consumer allow the consumer to make an extra monthly payment, thirteen payments per year as opposed to twelve payments per year, which therefore will accelerate the payment of the installment contract.

Money services businesses are defined in our regulations to include money transmitters.¹ Our regulations define the term “money transmitter” to include “any 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[.]”² 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.”³ Money transmitters that are not merely agents of other money services businesses are required to register with us, implement and maintain

¹ See 31 C.F.R. § 103.11(uu)(5).

² 31 C.F.R. § 103.11(uu)(5)(i)(A).

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

anti-money laundering programs, and report certain suspicious activities and currency transactions.⁴

According to your description, the Company provides consumers with a loan acceleration program that allows them to build equity in their vehicles more quickly than they otherwise would. Under this program, the Company accepts funds from its customer and transmits these funds to the installment contract creditor. The Company conducts this funds transmission on the customer's behalf,⁵ and solely for the purpose of accelerating the pay-off of the customer's installment contract in a manner that involves no other activity other than the acceptance and transmission of funds.⁶ Because the Company's acceptance of the customer's funds and transmission of these funds to the customer's creditor is not an integral part of the execution and settlement of any transaction other than the funds transmission itself, the Company is a money transmitter as that term is defined in our regulations to the extent that it accepts and transmits funds in this manner.

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 and the names of its parent and affiliates, 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 questions regarding this letter, please contact FinCEN's regulatory helpline at (800) 949-2732.

Sincerely,
//signed//

Jamal El-Hindi
Associate Director
Regulatory Policy Programs Division

⁴ See 31 C.F.R. §§ 103.41, 103.125, 103.20, 103.22.

⁵ The identity of the person directing the transmission constitutes a significant difference from the circumstances of the merchant payment processor in FinCEN Ruling 2003-8, which was accepting and transmitting funds on behalf of merchant payees, not on behalf of consumer payors.

⁶ This constitutes a significant difference from the activity of the debt management company in FinCEN Ruling 2004-4, which was instrumental in negotiating a payment plan that adjusted the total amount of debt, was binding on both the creditor and the debtor, and required the participation of the debt management company as payment processor.

⁷ See 31 C.F.R. §§ 103.81-87.