



Department of the Treasury Financial Crimes Enforcement Network

Ruling

FIN-2008-R011

Issued: December 11, 2008

Subject: Whether a Company that Engages in Microfinance is a Money Services Business

Dear []:

I am responding to your letter, dated May 12, 2008, to the Financial Crimes Enforcement Network (“FinCEN”), in which you seek an administrative ruling as to whether your client, [] (the “Company”), is a money services business, specifically a money transmitter, as that term is defined by our regulations. Additionally, you have asked what provisions of the Bank Secrecy Act apply if the Company is a money services business.

As described in your letter, the Company’s business is to facilitate “microfinance” or “micro-lending” between lenders (“Lenders”) and entrepreneurs in the developing world (“Borrowers”).¹ The Company does this by acting as a clearinghouse between Lenders and Borrowers.² The Company approves microfinance partners in the developing world based on the Company’s criteria. These microfinance partners, operating locally, pre-qualify Borrowers and send their profiles to the Company. The Company performs an additional evaluation of Borrowers, then posts on its website the profiles of those Borrowers that meet Company standards.

A Lender chooses a Borrower from the profiles on the Company’s website. The Lender makes a loan to its chosen Borrower by sending funds to the Company using PayPal or a credit card. The Company sends the funds to the microfinance partner, which in turn disburses the funds to the Borrower as loan proceeds. The Borrower makes payments on the loan to the microfinance partner, which sends the funds to the Company, which in turn credits the funds to the Lender’s account. After a Lender has been repaid, the Lender can re-lend the money in its account to someone else, donate its funds to the Company, or withdraw its funds. The Company does not permit or enable Lenders to loan money to anyone that is not a Borrower on the Company’s website. If a Lender chooses to withdraw its funds following repayment, the Company will not transmit the funds to any party but the Lender.

¹ The Company defines microfinance as “the supply of loans, savings, and other basic financial services to the poor” that “usually involve small amounts of money.”

² According to the Company’s website, its microfinance partners are “organizations that provide microfinance services, ranging from small non-profit organizations to large commercial banks.”

Money services businesses are defined in our regulations to include: check cashers; currency dealers and exchangers; issuers, sellers, and redeemers of traveler's checks, money orders, or stored value; and money transmitters.³ 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... or... [a]ny other person engaged as a business in the transfer of funds."⁴ 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."⁵ Money services businesses, other than issuers of stored value and agents of a money services business, are required to register with FinCEN.⁶

The Company accepts funds from Lenders and transmits those funds to Borrowers through its microfinance partners. However, the Company accepts and transmits funds solely in connection with the making of a micro-loan from a Lender to a Borrower. The Company acts as an intermediary or clearinghouse between the Borrower and the Lender and establishes the terms of participation in the Company's clearinghouse. The transmission of funds is not a separate and discrete service that the Company provides in addition to its loan clearinghouse services. Rather, transmission of funds is an integral part of the loan clearinghouse services that the Company is providing.⁷ Therefore, provided that the Company transmits funds solely in the manner which you have described, the Company would not be a money transmitter as that term is defined in our regulations.

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, to publish this letter as guidance to financial institutions in accordance with our regulations for requesting an administrative ruling.⁸ 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.

³ 31 C.F.R. § 103.11(uu).

⁴ 31 C.F.R. § 103.11(uu)(5)(i)(A).

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

⁶ 31 C.F.R. § 103.41.

⁷ The Company's transmission of funds is thus analogous to the transmission of funds by a debt management company in connection with a debtor's payment plan. See FinCEN Ruling 2004-4, Definition of Money Services Business (Debt Management Company).

⁸ 31 C.F.R. §§ 103.81-87.

If you have any questions about this letter, please contact FinCEN's regulatory helpline at (800) 949-2732.

Sincerely,

//signed//

Jamal L. El-Hindi
Associate Director
Regulatory Policy and Programs Division