



Financial Crimes Enforcement Network Department of the Treasury

FinCEN Ruling 2003-7 – Definition of Money Transmitter (Armored Car Companies)

October 28, 2003

Dear []:

This letter responds to your letter dated July 8, 2003, requesting an administrative ruling with respect to whether your client, [], is required to register with FinCEN as a Money Services Business in accordance with 31 CFR 103.41. FinCEN had previously declined to provide [] with such a ruling in light of an ongoing proceeding [] was engaged in with the Department of Homeland Security, Bureau of Customs and Border Protection (“Customs”) relating to the subject of the request. The proceeding was based on Customs’ determination that [], an armored car business, failed to register with FinCEN as a money transmitter. Since that time, your client and Customs have entered into a Stipulation and Settlement Agreement (“Agreement”) under which your client has agreed to pay a mitigated penalty in exchange for the return of the seized currency. Under the terms of the Agreement, should FinCEN make a determination that [] is not required to register, Customs will return the amount of the mitigated penalty to []. Given the termination of the proceeding, FinCEN has determined that it now would be appropriate to provide [] with a ruling. However, the representations set forth in your request are not specific enough concerning the nature of all the services [] provides to enable us to analyze whether [] performs any services that would require it to register with FinCEN; therefore, this letter is intended to provide you with general guidance as to the factors that apply to such a determination. To enable us to apply these factors to [] and make a definitive ruling on whether it is required to register, you will need to resubmit your request with the information described below.

By letter dated March 14, 2003, you provided the following representations with respect to your client, []:

[] is a Florida Corporation licensed by the State of Florida to do business as a Security Agency. [] provides world-wide transportation of currency, monetary instruments, and other valuables *exclusively* for financial institution clients, such as domestic and foreign banks and currency exchange houses. That is, [] physically moves currency from one location to another. . . . [] provides these services using security guards, couriers, and a fleet of armored vehicles. [] services are not available to the general public.

In response to our request for additional information, [] of your firm indicated by letter dated August 6, 2003 that foreign financial institutions often hire armored car businesses to transport currency into or out of the United States because it can be cheaper and faster to have currency physically transported to the foreign financial institution's account in the United States than to conduct a wire transfer. In addition, armored car businesses are hired by foreign financial institutions for purposes of exchanging worn or mutilated U.S. currency for new U.S. currency at a U.S. financial institution.

Money services businesses ("MSBs"), 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. Failure to register with FinCEN can result in the imposition of civil penalties under the BSA and criminal penalties pursuant to 18 U.S.C. 1960(b)(1)(B), which prohibits operation of an unlicensed money transmitting business, including a business that fails to comply with FinCEN's MSB registration requirement. For purposes of establishing whether a business is operating as an unlicensed money transmitting business by virtue of failure to register with FinCEN, the MSB definitions found in 31 CFR 103.11(uu), and the MSB registration requirement found in 31 CFR 103.41 specifying which MSBs are required to register must be applied.¹

FinCEN has previously ruled that an armored car business that solely engages in providing secure transport services of goods, including currency and other valuables, for the Federal Reserve, the U.S. Mint, banks, and private companies, is not a financial institution for BSA regulatory purposes, so long as the armored car business cannot be viewed as participating, or having a stake, in a financial transaction. (See Attached FinCEN Letter Ruling dated June 11, 2002) Thus, such an armored car business is not required to register with FinCEN.² Factors (each of which is discussed in more detail below) that FinCEN would consider in determining whether an armored car business has participated in, or had a stake, in a financial transaction, include whether the 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.

An armored car business would not be deemed a money transmitter for purposes of 31 CFR 103.11(uu)(5) by virtue of the transportation of funds for a person that meets the definition of financial institution for BSA regulatory purposes found at 31 CFR 103.11(n). You should note that the definition extends only to U.S. financial institutions. Entities that are financial institutions for BSA purposes are subject to a number of recordkeeping and reporting

¹ Although 18 U.S.C. 1960(b)(2) contains a definition of "money transmitting," that definition is not relevant in determining whether a person is required to register with FinCEN. As Section 1960(b)(1)(B) makes clear, the registration requirements arise from section 5330 of title 31 (the BSA) and its implementing regulations. The definition in section 1960(b)(2) is applicable to 18 U.S.C. 1960(b)(1)(C), which prohibits the transportation or transmission of funds that are known to have been criminally derived or are intended to be used for unlawful activity, and it is interpreted in the context of businesses engaged in illegal acts.

² It should be noted, however, that the requirement to report cross-border transportation of currency and monetary instruments found in 31 CFR 103.23 applies regardless of whether a person is a financial institution.

provisions, as well as the requirement to implement an anti-money laundering program, and they must apply these requirements to transactions that are conducted by the armored car businesses with which they contract. Thus, to the extent that [] contracts with a U.S. financial institution to transport currency, [] is not a money transmitter for purposes of the BSA. To the extent that neither the person for whom an armored car business transports funds, nor to whom the funds are transported, is a U.S. financial institution, the armored car business is a money transmitter for BSA purposes.

Whether an armored car business that transports funds for a person other than a U.S. financial institution (for example, a foreign financial institution or a private company) to a U.S. financial institution would be deemed a money transmitter depends on whether the armored car business has knowledge that the beneficiary of the funds is a person(s) other than the person with which the armored car business contracted. [] would not be deemed a money transmitter by virtue of physically transporting currency for a foreign financial institution to a U.S. financial institution for deposit into the foreign financial institution's account. In contrast, an armored car business that has knowledge that it is involved in the transportation of funds for deposit into the account(s) of a third-party (a person/entity other than the entity that provided the funds to the armored car business) would be a money transmitter for BSA purposes, because the armored car company in that case would be functioning as an alternate form of funds transmittal.

Finally, the nature of the services provided by the armored car business affects the determination whether the business is an MSB, and which category of MSB the business falls into. First, it should be noted that the exchange of worn or mutilated currency for new currency of the same type is not a currency exchange transaction for BSA purposes. Thus, [] would not be deemed a currency dealer or exchanger by virtue of such transactions. In the context of currency exchange, if "Company A" hires an armored car business to transport foreign currency to "U.S. Bank X" to be exchanged for U.S. currency and transported back to "Company A" by the armored car business, the armored car business would be neither a money transmitter nor a currency exchanger for purposes of BSA regulations. In such a scenario, the nature of the service provided by the armored car business is limited to secure transportation of currency. In contrast, an armored car business that has involvement in the transaction beyond mere physical transportation, for example, by having authority to select the financial institution at which the currency is exchanged, or to select the date on which the currency is exchanged for purposes of obtaining a favorable exchange rate, would be deemed a currency exchanger for BSA purposes (and required to register as an MSB) because the service provided by the armored car business rises to the level of participation, or having a stake, in the financial transaction.

As indicated above, in order for FinCEN to be in a position to make a determination whether [] is a money services business for BSA purposes, we would need you to provide in writing a more complete description of the services provided by [], including whether [] ever transports currency other than to a U.S. financial institution subject to BSA regulations, whether [] ever transports currency to or for a third-party beneficiary as described above, and 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 based on the rate of exchange obtained, and any other involvement in a currency exchange transaction). In arriving at our decision, FinCEN relied upon the accuracy

and completeness of the representations made in your March 14, 2003, and August 6, 2003 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: David M. Vogt, Executive Associate Director, Office of Regulatory Programs
Deborah Silberman, Supervisory Program Officer, MSB/Casinos/IRS Section

[Attachment: FinCEN Letter Ruling dated June 11, 2002](#)