



Department of the Treasury Financial Crimes Enforcement Network

Ruling

FIN-2008-R002

Issued: March 18, 2008

Subject: Whether a Foreign Exchange Dealer is a Currency Dealer or Exchanger or Money Transmitter

Dear []:

I am responding to your letter of June 29, 2007 to [the Financial Crimes Enforcement Network]. You have requested a ruling as to whether your client, [Forex Company], is a money services business, specifically a currency dealer or exchanger or a money transmitter, as those terms are defined at 31 C.F.R. § 103.11(uu).

You have described that [Forex Company] is a subsidiary of [Parent] Corporation, and is an affiliate of [Broker-Dealer A] and [Broker-Dealer B], each of which are registered as broker-dealers with the Securities and Exchange Commission. [Forex Company] is engaged in the business of conducting foreign exchange transactions by exchanging foreign currency for U.S. currency. [Forex Company] does not conduct any foreign exchange transactions in physical currency. Rather, [Forex Company] conducts these transactions electronically.

[Forex Company] conducts foreign exchange transactions on a proprietary basis. [Forex Company] also conducts foreign exchange transactions for the customers of its affiliates – [Broker-Dealer A] and [Broker-Dealer B]. When conducting transactions for the customers of its affiliates, [Forex Company] exclusively acts on the instructions of its affiliates and does not establish direct relationships with its affiliates' customers.

Finally, [Forex Company] conducts foreign exchange transactions directly for unaffiliated business customers, who effect transactions through [Forex Company] for the purpose of managing foreign exchange risk. When [Forex Company] exchanges U.S. currency for foreign currency for unaffiliated business customers, [Forex Company] first will exchange funds denominated in one currency for funds denominated in another currency. Thereafter, [Forex Company] typically will transmit the exchanged funds to a foreign currency-denominated account of a third-party foreign counterpart of the customer.

Our regulations define the term “currency dealer or exchanger” to include every person who deals in or exchanges currency as a business “other than a person who does not exchange currency in an amount greater than \$1,000 in currency or monetary or other

instruments for any person on any day in one or more transactions.”¹ Our definition of currency dealers or exchangers has always included dealers in foreign exchange, without any limitation to businesses that physically exchange currency of one country for currency of another country.² According to your description, [Forex Company] exchanges funds denominated in U.S. currency for funds denominated in foreign currency. We understand these activities to be encompassed within the ordinary meaning of the term “dealing in foreign exchange.” In consequence, to the extent that the [Forex Company] exchanges funds denominated in U.S. currency of one country for funds denominated in foreign currency in an amount greater than \$1,000 for any of its affiliates or unaffiliated business customers on any day in one or more transactions, the [Forex Company] would be a currency dealer or exchanger according to our regulations.

In addition, 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.”³ 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.”⁴

According to your description, [Forex Company] does not limit its business activity to accepting and transmitting funds for the purpose of executing and settling foreign exchange transactions with its unaffiliated business customers, but additionally settles transactions by moving funds between its customers and their third-party foreign counterparts through [Forex Company’s] own accounts. The settlement of a foreign exchange transaction does not require the transmission of funds between a customer and a third-party counterpart, but rather may be settled between [Forex Company] and its

¹ 31 C.F.R. § 103.11(uu)(1).

² See 31 C.F.R. 103.11 (1972) (published at 37 FR 6912 (Apr. 5, 1972)) (defining “financial institution” to include without limitation “a person who engages as a business in dealing in or exchanging currency as, for example, a dealer in foreign exchange”). While the language of the definition and its place in FinCEN’s regulations have changed over the years, the scope of the definition has been narrowed only by exempting banks, persons registered with, or regulated and examined by, the Securities and Exchange Commission and the Commodity Futures Trading Commission, and those who qualify for a *de minimis* exception. See 51 FR 30233, 30234 (Aug. 25, 1986) (proposing to define “financial institution” to include “a currency dealer or exchanger, including a check casher,” with no notice that this change in language would constitute a change in the scope of the definition); 52 FR 11436, 11439-11440 (Apr. 8, 1987) (adopting the proposed language changes); 62 FR 27890, 27892 (May 21, 1997) (proposing to define “financial institution” to include “money services businesses,” which in turn would include “any person doing business... [as] a currency dealer or exchanger,” and asserting that such proposed change was not intended to narrow any definition); 62 FR 45438, 45442 (Aug. 20, 1999) (adopting the current definition of “money services business” and reiterating that “the changes made to the definitions ... merely clarified the scope of the coverage already inherent in the existing language of the Bank Secrecy Act definitions”).

³ 31 C.F.R. § 103.11(uu)(5)(i)(A).

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

customer by delivering the proceeds of the foreign exchange transaction to the customer directly. After conducting a foreign exchange transaction, the customer may make payments to its third-party foreign counterpart directly by payment mechanisms other than funds transmissions through [Forex Company]. Because [Forex Company's] acceptance of funds from its customer and transmission of funds to the customer's third-party foreign counterpart does not constitute an integral part of the execution and settlement of any transaction other than the funds transmission itself, [Forex Company] is a money transmitter according to our regulations.⁵

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 [Forex 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. 31 C.F.R. §§ 103.81-87. 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 any questions about this letter, please contact [FinCEN's regulatory helpline at (800) 949-2732].

Sincerely,

//signed//

Jamal El-Hindi
Associate Director
Regulatory Policy and Programs Division

⁵ We have not been provided enough information about [the Forex Company's] transmittals of funds on behalf of its affiliates to determine whether they include similar transmittals of funds for no purpose other than funds transmission itself.