



## Department of the Treasury Financial Crimes Enforcement Network

### Ruling

**FIN-2009-R001**

**Issued: January 22, 2009**

**Subject: Whether Certain Operations of a Service Provider to Prepaid Stored Value Program Participants is a Money Services Business**

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Dear []:

I am responding to your letter of September 20, 2005 to the U.S. Department of the Treasury. You seek a determination as to whether your client, [] (“the Company”), is a money services business (“MSB”) as that term is defined in our regulations by virtue of having entered into a distributorship agreement with [] (“the Arranger”).

You represent that the Company has traditionally engaged in several types of activities related to the sale of stored value. The Company provides point-of-sale (“POS”) interface, network and data processing software, and it owns POS terminals located at retail establishments through which prepaid stored value products and other related services are sold. The Company contracts with sellers or issuers of stored value products to process the sale of these products through the Company’s POS terminals. The Company also serves as the processing conduit among purchasers, retailers, issuers, and/or issuer’s banks, through its POS terminals and transaction processing platform, for the sale of stored value products.

You additionally represent that the Company has entered into a distributorship agreement with the Arranger in which the Company serves as a service provider for the Arranger in connection with the sale of stored value cards (“Cards”), issued by [] (the “Bank”) and bearing the Arranger’s brand, by retailers operating as the Arranger’s sales agents. The Cards can be loaded with up to \$1,000 per day and \$2,500 per month. The Company is aware that purchasers of these Cards may send them to family members, friends, or associates located in countries outside the U.S. Under the distributorship agreement, the Company will engage in marketing and sales promotion with retailers on the Arranger’s behalf, capture card purchase and reload funds accepted by retailers, and transfer those funds to the Bank for crediting to the appropriate stored value accounts. The Company does not independently sell the Cards or any other stored value product.

Our regulations define the term “money services business” to include a money transmitter, defined as “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 any other person engaged as a business in the transfer of funds”<sup>1</sup> The money transmitter definition also provides that “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.”<sup>2</sup>

It is clear that the Company’s activities outside of the distributorship agreement do not meet this definition. When selling and marketing its software and hardware products to retailers, program managers, and issuing banks, the Company is providing data processing hardware and software and product networking services – not money transmitting services – to merchants and financial institutions. In addition, to the extent that the Company processes specific stored value transactions by submitting payment instructions obtained from merchants to issuing banks for ACH processing, and remitting funds received through the ACH process to the merchants, the Company is effectively operating as a merchant payment processor. FinCEN has already concluded that a merchant payment processor acting exclusively on behalf of merchants receiving payments for goods and services, rather than on behalf of consumers making payments to merchants, is not a money transmitter.<sup>3</sup>

Moreover, when acting as service provider for the Arranger – capturing the card purchase and reload amounts accepted by the retailers, withholding its fees, and then transferring to the Issuing Bank the cumulative amounts for the credit of the Arranger – the Company is doing so solely in connection with the sale of stored value by the Arranger through its sales agents, the third-party retailers, consistent with the pre-existing agreement between the Company and the Arranger. The acceptance and transmission of funds is an integral part of the execution and settlement of a transaction other than the funds transmission itself, namely the issuance and sale of stored value by the Bank through third-party retailers. As a result, to the extent that the Company transmits funds in connection with the sale and reload of stored value as service provider for the Arranger in the manner described above, the Company is not a money transmitter under our regulations.

In addition, our regulations define a money services business to include a seller or redeemer of stored value who sells or redeems stored value in an amount greater than

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<sup>1</sup> 31 C.F.R. § 103.11(uu)(5)(i).

<sup>2</sup> 31 C.F.R. § 103.11(uu)(5)(ii).

<sup>3</sup> See FinCEN Ruling 2003-8 – Definition of Money Transmitter (Merchant Payment Processor) (Nov. 19, 2003) (“to the extent that [one’s role] is limited to submitting payment instructions obtained from a merchant to a bank for ACH processing, and remitting funds received through the ACH process to the merchant... [one would not be] a money transmitter for the purposes of 31 CFR 103.11(uu)(5)”).

\$1,000 per person per day in one or more transactions.<sup>4</sup> Stored value is defined as “funds or monetary value represented in digital electronics format (whether or not specially encrypted) and stored or capable of storage on electronic media in such a way as to be retrievable and transferable electronically.”<sup>5</sup> As service provider for the Arranger, engaged in the marketing, sale, loading and reloading of the Cards only as an intermediary between the Arranger and its selling agents, the Company would not be a seller or redeemer of stored value as that term is defined in our regulations. Rather, the Company would be engaging in providing back-office services in connection with the provision of a stored value product.<sup>6</sup>

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.<sup>7</sup> 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 about this ruling, please contact [FinCEN’s regulatory helpline at (800) 949-2732].

Sincerely,

// signed //

Jamal El-Hindi  
Associate Director  
Regulatory Policy and Programs Division

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<sup>4</sup> 31 C.F.R. § 103.11(uu)(4).

<sup>5</sup> 31 C.F.R. § 103.11(vv).

<sup>6</sup> Beyond the conclusion that the Company is not the issuer or seller of the Card, this ruling reaches no conclusion as to (1) who among the Arranger and its sales agents is the “seller” of the Card, or (2) whether the seller of the Card is a money services business as defined by our regulations. With respect to the first of these points, we note that you have made no representations as to the nature of the agreement between the Arranger and its sales agents beyond those in this ruling. With respect to the second of these points, we note that, while you have represented that no more than \$1,000 will be able to be loaded onto one Card on any given day, you have also not made any representation regarding whether one single customer might obtain or maintain more than one Card in one day, and therefore exceed the \$1,000 a person/a day threshold set for stored value.

<sup>7</sup> 31 C.F.R. §§ 103.81-87.