



# Department of the Treasury Financial Crimes Enforcement Network

## Ruling

**FIN-2012-R001**

**Issued: May 23, 2012**

**Subject: Application of the Money Services Business Rule to a Bank Holding Company that Issues Official Checks**

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Dear []:

This letter responds to your April 8, 2009 request to the Financial Crimes Enforcement Network (“FinCEN”) for an administrative ruling on whether [] (the “Company”) is a money services business (“MSB”) as defined in our regulations.<sup>1</sup> []

As you have described, the Company is a bank holding company that began issuing a negotiable instrument identified on its face as an “Official Check” in the mid-1980s, after receiving approval from the Board of Governors of the Federal Reserve System (“FRB”) to engage in the issuance and sale of three types of payment instruments: domestic money orders, international money orders, and official checks.<sup>2</sup> Under this authority, the Company’s money orders (domestic and international) could only be issued in amounts of \$10,000 or less, and the official checks could be issued for any amount. Currently, the Company only issues official checks and is seeking an administrative ruling only with regard to the issuance of these official checks.<sup>3</sup>

You state that the Company and [] (the “Bank”) maintain the following risk management policies and procedures for the sale of any official check: (1) the official check may be sold only to a person who is a current customer of the Bank; (2) the official check must identify a specific payee on the face of the instrument (it may not be payable to “cash”); and (3) notwithstanding the authority granted by the FRB, the official check may be issued only in face amounts of \$10,000 or less. Moreover, since the official checks are sold by the Bank, sales of these instruments are subject to: (1) applicable Bank Secrecy Act (“BSA”) recordkeeping and reporting requirements; (2) federal anti-

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<sup>1</sup> See generally, 31 CFR § 1010.100(ff) (formerly 31 CFR § 103.11(uu)).

<sup>2</sup> According to your description, the Company’s official checks are designated on their face by the term “Official Check,” signed by a representative of the Company, and show on their face that the Company is the issuer of the official check and that they are payable at the Bank. These official checks are negotiable instruments that are payable on demand. The Company’s official checks are issued under authority granted by the FRB and also pursuant to a license granted to the Company by the Department of Financial Institutions of the State of California.

<sup>3</sup> According to your description, the Company issues official checks, but does not sell them. The official checks are sold through the Bank, a wholly owned subsidiary of the Company subject to supervision and examination by the Office of the Comptroller of the Currency.

money laundering (“AML”) laws and regulations; and (3) applicable provisions of the Company’s enterprise-wide AML program and related policies.

Money services businesses are defined in the regulations implementing the BSA to include, under the specified terms, check cashers; dealers in foreign exchange; issuers or sellers of traveler’s checks or money orders; providers or sellers of prepaid access; and money transmitters. As defined in the applicable regulations, banks are excluded from our money services business regulations.<sup>4</sup> Consequently, the Bank, a nationally chartered bank regulated by the Office of the Comptroller of the Currency, would not be considered an MSB.

The Company, however, is not excluded from being defined as an MSB under applicable regulations by virtue of its affiliation with the Bank. Our regulations at present operate on “an individual entity rather than a consolidated group basis; as long as that is so, each corporation in a controlled group must be analyzed separately to determine its characterization under the Bank Secrecy Act and its rules.”<sup>5</sup> Accordingly, the Company’s status as an MSB is determined by its issuance of official checks and whether these checks are deemed to be traveler’s checks or money orders such that the issuer would be brought within the definition of an MSB.

A “traveler’s check” is defined by the Uniform Commercial Code as an instrument that (1) is payable on demand, (2) is drawn on or payable at or through a bank, (3) is designated by the term “traveler’s check” or by a substantially similar term and (4) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.<sup>6</sup> As the Company’s official checks are not designated by the term “traveler’s check” or by a substantially similar term and do not require, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument, the Company’s official checks would not be considered traveler’s checks.

You have represented that the Company, in its application to the FRB to issue and sell money orders<sup>7</sup> and official checks, and the FRB, in its approval of the application, understood that the money orders and official checks were distinct classes of instruments subject to different rules. The Company was not authorized to issue money orders in excess of \$10,000, while it could issue official checks in any amount. The distinction between the money orders and official checks in the FRB approval order demonstrates that a separate classification of these instruments was intended, and therefore that the

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<sup>4</sup> See 31 CFR § 1010.100(ff) (formerly 31 CFR § 103.11(uu)); 31 CFR § 1010.100 (d) (formerly 31 CFR § 103.11(c)). .

<sup>5</sup> See *Amendment to the Bank Secrecy Act Regulations – Definitions Relating to, and Registration of, Money Services Businesses*, 64 FR 45446 (Aug. 20, 1999).

<sup>6</sup> U.C.C. § 3-104(i) (2011).

<sup>7</sup> The term “money order” is not defined in the Uniform Commercial Code.

Company's official checks are not the same as money orders.<sup>8</sup> To the extent that the Company continues to issue official checks in the manner which you have described, such issuance would not define the Company as an MSB under our regulations. We also note that, according to your explanation, these official checks are sold through the Bank and subject to the full range of BSA/AML requirements.

This ruling is provided in accordance with the procedures set forth at 31 CFR § 1010.711. In arriving at the 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 the information provided is inaccurate or incomplete. We reserve the right, after redacting your name and your company's name and address, to publish this letter as guidance to financial institutions in accordance with our regulations. 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 regarding this letter, 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>8</sup> See 72 Fed. Res. Bull. 149 n.5 (1986). "Money orders are primarily used to transmit money by consumers who do not or cannot maintain checking accounts. Traditionally, money orders have a maximum face value printed on the instrument, which is generally at or lower than the limit set by Regulation Y. Official checks can be used to substitute for a variety of payment instruments, such as cashier's checks, and could be used by businesses as part of their cash management strategy."