



Department of the Treasury Financial Crimes Enforcement Network

Ruling

FIN-2012-R004

Issued: May 25, 2012

Subject: Application of Money Services Business Regulations to Daily Money Management Services

Dear []:

This responds to your letter of December 14, 2011, seeking an administrative ruling from the Financial Crimes Enforcement Network (“FinCEN”) on whether [] (the “Company”) is a money services business (“MSB”) under FinCEN’s regulations implementing the Bank Secrecy Act (“BSA”). Specifically, you ask whether the daily money management services the Company offers to its customers makes the Company a money transmitter under FinCEN’s regulations. For the reasons discussed below, FinCEN has determined that the Company is indeed a money transmitter for purposes of the BSA.

In your letter, you represent that the Company facilitates the payment of monthly expenses for its customers and manages their day-to-day finances. The Company conducts a face-to-face consultation with the customer, in which the Company determines what expenses are to be paid each month – such as mortgage, rent, utilities, car payments, etc. – and their due dates, and assesses the amount of money the customer will need for other basic living expenses. The customer deposits money into the Company’s account (in the form of a personal check, a payroll check, or cash), and the Company pays the customer’s expenses by company check at their due date. You represent that the Company’s customer base is comprised of retirees, growing families without good money management skills, and people unable to manage their finances because of addictive behaviors or busy professionals lives.

On July 21, 2011, FinCEN published a Final Rule amending definitions and other regulations relating to MSBs (the “Rule”).¹ The amended regulations define an MSB as “a person wherever located doing business, whether or not on a regular basis or as an organized business concern, wholly or in substantial part within the United States, in one or more of the capacities listed in paragraphs (ff)(1) through (ff)(6) of this section. This

¹ 76 FR 43585 (July 21, 2011) Bank Secrecy Act Regulations – Definitions and Other Regulations Relating to Money Services Businesses.

includes but is not limited to maintenance of any agent, agency, branch, or office within the United States.”²

FinCEN’s regulations, as amended, define the term “money transmitter” to include a person that provides money transmission services, or any other person engaged in the transfer of funds. The term “money transmission services” means the acceptance of currency, funds, or other value that substitutes for currency from one person AND the transmission of currency, funds, or other value that substitutes for currency to another location or person by any means.³ The regulations also stipulate that whether a person is a money transmitter is a matter of facts and circumstances, and enumerates business models where a person’s activities would not make such person a money transmitter. Generally, the acceptance and transmission of funds only integral to the sale of goods or the provision of services, other than money transmission services, will not cause the person that is accepting and transmitting the funds to be a money transmitter.”⁴

There are several rulings in which FinCEN has concluded that entities were not MSBs due to particular facts and circumstances involving the offer of debt management services, the provision of merchant payment processor services, or the collection of utility fees under contract with the provider. In FinCEN Ruling 2004-4,⁵ FinCEN identified the money transmission that a debt management business conducts as an example of such “integral” funds transmissions under the applicable regulation. To the extent that the money transmission conducted by the debt management business is limited to submitting payments to creditors on behalf of debtors in conjunction with a debt management plan under the circumstances described in that Ruling, the debt management business is not a money transmitter by virtue of such activities. In that Ruling, FinCEN’s conclusion was based on the fact that the debt management company was instrumental in negotiating a payment plan that adjusted the total amount of debt, was binding on both the creditor and the debtor, and required the participation of the debt management company as payment processor.

FinCEN Ruling 2003-8 (the “Merchant Payment Processor” ruling)⁶ has a very restrictive scope of application. The ruling operates only when all the following circumstances are found: (a) the entity acts on behalf of merchants collecting payments, and not on behalf of the customers obligated to make them; and (b) the role of the entity

² 31 C.F.R. § 1010.100(ff).

³ 31 C.F.R. § 1010.100(ff)(5)(i)(A) and (B).

⁴ 31 C.F.R. § 1010.100(ff)(5)(ii).

⁵ FinCEN Ruling 2004-4, “Definition of Money Services Business (Debt Management Company)”, November 24, 2004.

⁶ FinCEN Ruling 2003-8, “Definition of Money Services Business (Merchant Payment Processor)” November 19, 2003.

is limited to (i) submitting debit authorizations granted by the customer to the merchant to the customer's bank, (ii) extracting the money from the customer's bank account and depositing it into the entity's account, and (iii) passing the money on from the entity's account to the merchant's. The entity is offering a service that, while intimately related to the movement of funds, goes beyond moving money: if the ACH system allowed a payment processor to order the customer's bank to credit the merchant's account directly (which it currently does not), the entity would be able to offer identical services without a portion of the payment ever touching the entity's account, and there would be no acceptance and transmission of funds.

FIN 2008-R006 (the "Utility Payment Agent" ruling)⁷ found that, even though the mechanics of the movement of funds were different (the agent utility companies received payments from utility clients, rather than drawing such payments from the utility clients' accounts), the services of the entity in question were close enough to FinCEN Ruling 2003-8 for the conclusions of such Rule to apply. The entity is engaged as a collection agent for the utility company, under a specific contractual arrangement, to receive payments from utility clients on the utility company's behalf.

FinCEN finds that in the Company's case the scheduled money transmission offered by the Company to its customers, through the disbursement of company checks on the clients' behalf, is not integral to the sale of goods or the provision of services other than the funds transmission itself. The Company does not provide some of the key services that FinCEN Ruling 2004-4 identifies as separating core debt management services from money transmission. In particular, while the Company provides some money management counseling services to its clients such as development of a payment plan for monthly expenses, the Company does not negotiate with creditors to effect the adjustment, compromise, or discharge of debts on behalf of its clients, nor tries to secure from creditors benefits to its customers such as interest rate reductions, waiver of late charges, and reduction in monthly payment amounts.

According to your letter, the Company obtains from its customers a list of the obligations to pay and the day of the month the customer will have funds available to make payment, accepts a bulk payment from the customer that will be used to cover the obligations, and transmits payment to the individual creditors by check. While the Company's services are convenient –and, arguably, in the case of some of its customers, necessary – they primarily consist of accepting funds from customers and transmitting those funds to the customer's creditors, activity defined as money transmission under FinCEN's regulations. FinCEN has issued a series of rulings deeming entities money transmitters based on this approach, where the services provided either consisted of a certain type of money transmission, or where the money transmission was not integral to

⁷ FinCEN Ruling 2008-R006, "Whether an Authorized Agent for the Receipt of Utility Payments is a Money Transmitter", June 11, 2008

the sale of goods or the provision of services other than the money transmission itself.⁸ Under these facts and circumstances, FinCEN finds that the Company's money transmission on behalf of its clients is not ancillary to the Company's money management services, and therefore deems the Company to be a money transmitter for purposes of the registration, recordkeeping, and reporting obligations applicable to money transmitters under FinCEN's regulations.

This ruling is provided in accordance with the procedures set forth at 31 C.F.R. § 1010.711. In arriving at the conclusions in this administrative ruling, we have relied upon the accuracy and completeness of the representations you made in your communications with us. Nothing precludes FinCEN from arriving at a different conclusion or from taking other action should circumstances change or should any of the information you have provided prove 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.⁹ 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

⁸ See e.g., FIN-2008-R007 (Whether a Certain Operation Protecting On-line Personal Financial Information is a Money Transmitter - 06/11/2008). See also FIN-2008-R004 (Whether a Foreign Exchange Consultant is a Currency Dealer or Exchanger or Money Transmitter - 05/09/2008); FIN-2008-R003 (Whether a Person That is Engaged in the Business of Foreign Exchange Risk Management is a Currency Dealer or Exchanger or Money Transmitter - 05/09/2008); FIN-2008-R002 (Whether a Foreign Exchange Dealer is a Currency Dealer or Exchanger or Money Transmitter - 05/09/2008). For an example of a ruling when the same basic business model, applied to two types of customers, would justify a different regulatory interpretation, see FIN-2009-R004 (Determination of Money Services Business Status and Obligations Under the Funds Transfer Recordkeeping Rule, and Request for Regulatory Relief - 01/19/2010).

⁹ 31 C.F.R. §§ 1010.711-717.