



Financial Crimes Enforcement Network Department of the Treasury

FinCEN Ruling 2005-4 – Definition of Money Services Business ("Doing Business" as a Money Services Business)

July 1, 2005

Dear []:

This letter responds to your request for an administrative ruling, dated April 21, 2005, with respect to whether [the business] is a money services business for purposes of regulations implementing the Bank Secrecy Act found at 31 CFR Part 103, and if so, which regulations apply to [the business]. Based solely on the representations made in your April 21, 2005 letter, the Financial Crimes Enforcement Network (FinCEN) concludes that [the business] is not a money services business, and is therefore not subject to the Bank Secrecy Act or its implementing regulations.

In your letter, you represented that you have incorporated [the business] to facilitate the investment of your personal savings and personal loans in foreign currency exchange in Colombia. [The business] will wire funds to its foreign counterpart, a company that you plan to create and that you plan to call [the business' foreign counterpart], through [a domestic bank]. [The business' foreign counterpart] will invest these funds, most likely in currency exchange, and each week will ship the initial investment and 50% of the profits back to [the business] by armored car services. [The business] will subsequently reinvest these proceeds back into [the business' foreign counterpart], creating a cyclical flow of funds. You further stated in your letter that the only funds being invested are your personal funds from savings and loans, and that you will not have partners or third party investors in [the business]. Finally, you stated that [the business' foreign counterpart] will only exchange currency with foreign exchange houses, banks, and the stock exchange of Bogotá, and will not be selling and buying currency from individuals.

31 CFR 103.11(uu) includes in the definition of a money services business, **any person doing business** (emphasis added) in the following capacities¹:

- *"A currency dealer or exchanger (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);" or*

¹ The definition of a money services business at §103.11(uu)(1)-(5) includes currency dealers or exchangers; check cashers; issuers, sellers, or redeemers of traveler's checks, money orders, or stored value; or money transmitters. Due to the representations made in your letter, this administrative ruling evaluates only the two capacities with potential relevance to [the business] (currency dealer or exchanger, and money transmitter).

- “[A] money transmitter... whether or not licensed or required to be licensed, 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, a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both, or an electronic funds transfer network,” or “any other person engaged as a business in the transfer of funds.”

As these definitions indicate, in addition to limiting the term “money services business” to a person “doing business” in one or more of the listed capacities, FinCEN limited the regulatory definition of a money transmitter to a person who “engages as a business” in accepting and transmitting funds, and limited the definition of a currency exchanger to persons providing currency exchange exceeding \$1,000 “for any person on any day.” Therefore, the business in question must provide services to customers or other third parties to meet the regulatory definition of a money services business. Because [the business] will only invest your personal assets, and not those of any customers, FinCEN concludes that [the business] does not meet the regulatory definition of a money services business. Accordingly, [the business] is not responsible for compliance with any of the regulatory requirements for money services businesses found at 31 CFR Part 103.

In arriving at our conclusions in this letter, FinCEN relied upon the accuracy and completeness of the representations made in your letter, dated April 21, 2005. Nothing precludes FinCEN from further action should any of that information prove inaccurate or incomplete, or should the nature of your business change in any of the areas described above. Additionally, by providing this ruling, FinCEN makes no representations about the legality, legitimacy, or profitability of the business model described in your letter, other than its conclusion regarding the applicability of Bank Secrecy Act requirements to [the business]. Should you have any further questions about this letter, please feel free to contact Josh Kaptur, Regulatory Compliance Program Specialist, at 202-354-6400.

Sincerely,

//signed//

William D. Langford, Jr.
Associate Director
Regulatory Policy and Programs Division
Financial Crimes Enforcement Network

Enclosures: 31 CFR 103.11(uu)