



Department of the Treasury Financial Crimes Enforcement Network

Ruling

FIN-2008-R004

Issued: March 19, 2008

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

Dear []:

I am responding to your letter of January 24, 2008 to the Financial Crimes Enforcement Network, requesting a ruling as to whether your company [] is a money services business. Specifically, you have asked us to determine whether your company is a currency dealer or exchanger or a money transmitter as those terms are defined at 31 C.F.R. § 103.11(uu).¹

You describe your company as an “intermediate foreign exchange broker and consultant” engaged in obtaining interbank prices for the foreign currency transactions of your clients. As you have described, a client will contact your company because it must make payments in foreign currency. You will inform your client of the market for the particular currency and will contact a bank² to obtain the interbank rate. On the client’s direction, you will tell the bank (hereinafter, the “executing bank”) to execute the foreign exchange transaction necessary to satisfy the client’s foreign currency needs, and you will disclose the client’s name to the executing bank. You will communicate the details of the executing bank’s transaction to the client, first orally and then in writing. Your client’s foreign exchange-related business thereafter will follow one of two scenarios, according to the preference of the executing bank.

In the first scenario, the executing bank thereafter will deal directly with your client. The executing bank will send a written confirmation to the client, all paying and receiving instructions will be exchanged directly between the client and the executing bank, and the client will make all arrangements for the transfer and receipt of funds with the executing bank. The foreign exchange transaction will not be conducted through your company’s accounts, and funds will not be transmitted from your company’s accounts to

¹ According to the facts and circumstances you have presented to us, your company could not meet the definitions of the other categories of money services businesses: Check casher; issuer of traveler’s checks, money orders, or stored value; or seller or redeemer of traveler’s checks, money orders, or stored value. See 31 C.F.R. §§ 103.11(uu)(2), (3), and (4).

² You may also arrange for these transactions with other types of financial institutions. We would reach the same conclusions whether you dealt with a bank or another type of financial institution.

the client's foreign counterparty. Your company will receive payment for its finding and arranging services from the client.

In the second scenario, your company will continue to intermediate between your client and the executing bank. Your company will pass on the client's delivery information to the executing bank, and the executing bank will send your company a written confirmation of the trade, affirming all details of the transaction. The client will transfer U.S. dollars to your company's U.S. bank account, and your company thereafter will transfer those dollars to the executing bank for your client.³ The foreign exchange transaction will be conducted by the executing bank and not through your company's accounts. Funds also will not be transmitted from your company's accounts to the client's foreign counterparty; rather, the executing bank will transmit the funds following its execution of the foreign exchange transaction. Your company will receive payment from the client for its finding and arranging services, and for the additional services it provides under this scenario.

The term "currency dealer or exchanger" is defined in our regulations 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."⁴ According to your description, your company will not "exchange currency" for your clients in currency or instruments of any aggregate amount. Rather, regardless of the scenario, the foreign exchange transactions that your company will arrange for its clients will be effected by the executing bank. In consequence, your company is not a "currency dealer or exchanger" according to our regulations.

Additionally, the term "money transmitter" is defined in our regulations 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."⁵ The regulations also provide 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."⁶

In the first scenario, your company will not transmit funds at all. In the second scenario, you have described that your company will transmit funds from a client to an executing bank, through your U.S. bank account. This acceptance and transmission of funds is not conducted for the purpose of settling a funds transmission, but rather is conducted solely for the purpose of settling a foreign exchange transaction that your company has arranged for its client with the executing bank. Any subsequent funds

³ As you have explained, you commenced conducting business in this second manner because certain banks and financial institutions prefer it.

⁴ 31 C.F.R. § 103.11(uu)(1).

⁵ 31 C.F.R. § 103.11(uu)(5)(i)(A).

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

transfers to the client's foreign counterparty will be conducted by the executing bank following the settlement of the foreign exchange transaction, without involving your company. To the extent that your company is transmitting funds solely as an integral part of the settlement of foreign exchange transactions that your company has arranged, your company is not a money transmitter according to our regulations.⁷

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 your company's name and address, 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

⁷ See *Definition of Money Services Business (Debt Management Company)* (FinCEN Ruling 2004-4, Nov. 24, 2004) (a person is not a money transmitter when it transmits funds solely as part of the execution and settlement of debtors' payment plans and/or debt adjustment agreements which the person has helped to negotiate).