



Department of the Treasury Financial Crimes Enforcement Network

FIN-2013-R003

Issued: November 13, 2013

**Subject: Application of the Prepaid Access Rule to Closed Loop
Prepaid Access Sold or Exchanged in a Secondary Market**

Dear []:

This responds to your letter of October 26, 2012, seeking an administrative ruling from the Financial Crimes Enforcement Network (“FinCEN”) on behalf of your client, [the Company] regarding the effect your client’s trading in the prepaid access secondary market might have on the status of the traded prepaid access for purposes of the Bank Secrecy Act (“BSA”). Specifically, you ask whether [the Company]’s gift card exchange business for consumers would change the closed loop status of the retailer-issued prepaid access that [the Company] buys and sells.

In your letter, you represent that [the Company] offers a web-based service for consumers to sell and purchase closed loop prepaid access. [The Company] will purchase the prepaid access from a consumer at a discount, and sell it to another consumer at a lower discount, either directly, or through agreements with retailers (“enterprise clients”). When operating directly with consumers, consumers will enter the details of the closed loop prepaid access they want to sell or purchase in [the Company]’s website. [The Company] will quote its buying and selling prices, and arrange payment against delivery. When operating through its enterprise clients, [the Company] will either arrange the transfer of the balance of the closed loop prepaid access (from the seller to [the Company] or from [the Company] to the purchaser) against payment of the discounted value in the form selected, or arrange the replacement of the unwanted closed loop prepaid access offered for sale by one of the enterprise clients’ own brand. In all cases, the nature of the prepaid access purchased, sold, or exchanged does not vary (that is, closed loop prepaid access is never exchanged for general purpose prepaid access).

You state that your client would like FinCEN to clarify the following issues: (a) whether the availability of a secondary market for closed loop prepaid access (through [the Company] or other operators) causes such prepaid access to lose its closed loop status for the original retailer under FinCEN’s regulations, regardless of the exchange method used (for example, the possibility of using the secondary market to sell a closed loop prepaid access for a negotiable instrument or funds, or to exchange a closed loop prepaid access issued by a defined merchant or location for another closed loop prepaid access issued by a different merchant or location); and (b) whether the purchase of closed

loop prepaid access from a consumer by [the Company] constitutes a transfer “between or among users of prepaid access within a prepaid program.”

On July 29, 2011, FinCEN published a Final Rule on Definitions and Other Regulations Relating to Prepaid Access (the “Prepaid Access Rule”).¹ The Prepaid Access Rule introduces a regulatory definition of “prepaid access” and establishes a more comprehensive regulatory regime over providers and sellers of certain types of prepaid access, imposing BSA obligations more in line with their MSB counterparts. 31 CFR § 1010.100(w) defines prepaid access as “access to funds or the value of funds that have been paid in advance and can be retrieved or transferred at some point in the future through an electronic device or vehicle, such as a card, code, electronic serial number, mobile identification number, or personal identification number.” Closed loop prepaid access is defined as “prepaid access to funds or the value of funds that can be used only for goods or services in transactions involving a defined merchant or location (or set of locations), such as a specific retailer or retail chain, a college campus, or a subway system (31 CFR § 1010.100(k)). Lastly, in 31 CFR § 1010.100(ff)(4)(iii), FinCEN defines a prepaid program as “an arrangement under which one or more persons acting together provide(s) prepaid access.” However, an arrangement is not a prepaid program if “it provides closed loop prepaid access to funds not to exceed \$2,000 maximum value that can be associated with a prepaid access device or vehicle on any day.”

In general terms, the availability of a secondary market for a regulated product, service, or activity, does not affect the obligations of the original provider or seller, or the characterization of the product, service, or activity under FinCEN regulations. Closed loop prepaid access that originally met the conditions to be excluded from the regulations will continue to be excluded from the regulations despite being bought or sold in the secondary market. Secondary market activity cannot and does not alter the intrinsic status of the prepaid device or vehicle. For similar reasons, the purchase or sale of closed loop prepaid access in the secondary market does not represent a transfer between or among users of prepaid access within a prepaid program. By definition, users have to resort to using a secondary market because the program itself does not allow the total or partial transfer of balances among users.

This ruling is provided in accordance with the procedures set forth at 31 CFR § 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

¹ 76 FR 45403 (July 29, 2011), Final Rule – Definitions and Other Regulations Relating to Prepaid Access.

administrative ruling.² 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 (703) 905-3591.

Sincerely,

//signed//

Jamal El-Hindi
Associate Director
Policy Division

² 31 CFR §§ 1010.711-717.

