



Department of the Treasury Financial Crimes Enforcement Network

FIN-2014-R005

Issued: April 29, 2014

Subject: Whether a Company that Offers Secured Transaction Services to a Buyer and Seller in a Given Sale of Goods or Services is a Money Transmitter.

Dear []:

This responds to your letter of August 9, 2013, seeking an administrative ruling from the Financial Crimes Enforcement Network (“FinCEN”) on behalf of [] (the “Company”), about the Company’s status as a money services business (“MSB”) under the Bank Secrecy Act (“BSA”). Specifically, you ask whether the secured transaction services that the Company offers to the buyer and the seller in a given sale of goods or services would require the Company to register with FinCEN as a money transmitter. Based on the following analysis with respect to facts presented in your letter, FinCEN does not deem the Company to be a money transmitter pursuant to our regulations.

You state that the Company is an Internet-based service providing secure transaction management between buyers and sellers for goods and services. The service intends to relieve the buyer of the risk of paying for an item or service that the buyer does not receive, and relieve the seller of the risk of providing an item or service and not receiving valid payment for it. Both buyer and seller in a specific transaction in goods or services must register on the Company’s web site; buyers and sellers may be either natural or legal persons. The web site provides a platform for the negotiation of a sale, including description of the transaction, terms, freight and insurance specifications, warranties, price, and performance deadlines. The system also allows both parties to monitor each step of the transaction and will notify the parties when further action is required.

When both parties agree to the terms of the transaction, the buyer will pay the Company the purchase price, which will be credited to the buyer’s account at the Company. The Company will then instruct the seller to provide the goods or services as required. When the buyer certifies that it is satisfied with the goods or services received, in accordance to the terms of the transaction, the Company debits the account of the buyer and credits the seller’s account at the Company with the purchase price minus the Company’s transaction management fee. At the seller’s request, the Company will transfer the net amount to the seller through wire transfer, Automatic Clearing House (“ACH”) credit, or check. The Company’s management services include assisting buyers and sellers in creating, negotiating, and managing their transactions; dispute resolution, including on-site visitations; item verification on merchandise shipped to the Company’s offices; and document handling. The Company will transfer funds only to accounts maintained in the name of the seller, or make checks only to the name of the seller. The Company will not pay third parties, nor handle any payments not related to a transaction registered at the web site.

On July 21, 2011, FinCEN published a Final Rule amending definitions and other regulations relating to MSBs (the “Rule”).¹ The Rule defines 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.” Doing business within the United States includes, but is not limited to, the maintenance of any agent, agency, branch, or office within the United States.²

The Rule defines the term “money transmitter” to include a person that “provides money transmission services, or any other person engaged in the transfer of funds.”³ 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.⁴ The Rule also stipulates that whether a person is a money transmitter is a matter of facts and circumstances, and identifies six sets of circumstances under which a person’s acceptance and transmission of currency, funds, or other value that substitutes for currency would not make such person a money transmitter. Of particular relevance to the Company, a person that accepts and transmits funds “only integral to the sale of goods or the provision of services, other than money transmission services” by that person will not be deemed to be a money transmitter.⁵

This limitation on the definition of “money transmission services” derives from a similar limitation in the FinCEN regulations on MSBs that preceded the Rule. FinCEN interpreted this similar limitation in a number of rulings which, while not directly applicable to the Rule, still give a good indication of FinCEN’s understanding of the term “integral.” In FinCEN Ruling 2004-4, FinCEN identified the money transmission that a debt management business conducted as an example of “integral” funds transmissions under the then-applicable regulation.⁶ 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 concluded that, to the extent that the money transmission conducted by the debt management business was limited to submitting payments to creditors on behalf of debtors in conjunction with such a debt management plan, the debt management business was not a money transmitter by virtue of such activities. Similarly, in FinCEN Ruling FIN-2008-R011, FinCEN determined that a company that facilitated “micro-lending” between lenders and entrepreneurs (“borrowers”) in the developing world was not a money transmitter. The company acted as a clearinghouse between its micro-finance lending partners and borrowers, and established the terms of participation in the clearinghouse required of both lenders and borrowers. FinCEN concluded that the company’s acceptance and transmission of the lender’s funds was an integral part of the loan clearinghouse services it

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

² 31 CFR § 1010.100(ff).

³ 31 CFR § 1010.100(ff)(5)(i)(A) and (B).

⁴ 31 CFR § 1010.100(ff)(5)(i)(A).

⁵ 31 CFR § 1010.100(ff)(5)(ii)(F).

⁶ FinCEN Ruling 2004-4, “Definition of Money Services Business (Debt Management Company),” November 24, 2004.

offered.⁷ In FinCEN Ruling FIN-2008-R007, by contrast, FinCEN reached the opposite conclusion with respect to a company that accepted and transmitted funds in a confidential manner in order to protect a consumer's personal and financial information from a merchant when the consumer purchased goods or services. This company, unlike the debt management company or the micro-lending clearinghouse, accepted any consumer and any merchant willing to use its confidential process, and played no active part in arranging, monitoring, verifying or endorsing the transactions that it processed. As a result, FinCEN concluded that this company did not provide a service independent of money transmission, notwithstanding its claim that it provided the service of security, but instead merely offered a secure method of money transmission.⁸

This background should provide useful context for FinCEN's conclusions with respect to the Company. FinCEN finds that the Company's money transmission activities are only integral to its provision of transaction management services. In order to provide assurances to both buyer and seller that the buyer has enough resources to pay for the goods and services, on the one hand, and that those resources will not be released until the transaction is completed according to the purchase agreement, on the other, the Company needs to take possession of the funds and hold them in escrow until the pre-established conditions for the funds to be paid to the seller or returned to the buyer are met, then release those funds appropriately. The acceptance and transmission of funds do not constitute a separate and discrete service provided in addition to the underlying service of transaction management. They are a necessary and integral part of the service itself. Therefore, the Company would not be a money transmitter as that term is defined in our regulations.

This ruling is provided in accordance with the procedures set forth at 31 CFR Part 1010 Subpart G. 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 similar identifying information for your clients, to publish this letter as guidance to financial institutions in accordance with our regulations.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 questions about this ruling, please contact FinCEN's regulatory helpline at (703) 905-3591.

⁷ FIN-2008-R011, "Whether a Company that Engages in Microfinance is a Money Services Business," February 20, 2009.

⁸ FIN-2008-R007, "Whether a Certain Operation Protecting On-Line Personal Financial Information is a Money Transmitter," May 27, 2008.

⁹ 31 CFR §§ 1010.711-717.

Sincerely,

//signed//

Jamal El-Hindi
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Policy Division