



## Department of the Treasury Financial Crimes Enforcement Network

**FIN-2014-R009**

**Issued: August 27, 2014**

**Subject: Application of Money Services Business Regulations to a Company Acting as an Independent Sales Organization and Payment Processor**

Dear [ ]:

This responds to your letter of March 18, 2014, seeking an administrative ruling from the Financial Crimes Enforcement Network (“FinCEN”) on behalf of [ ] (the “Company”), about the Company’s possible status as a money services business (“MSB”) under the Bank Secrecy Act (“BSA”). Specifically, you ask whether the services provided by the Company as an Independent Sales Organization (“ISO”) and as a payment processor would make the Company a money transmitter under the BSA. Based on the following analysis of the description of the services as presented in your letter, FinCEN finds that pursuant to our regulations the Company would not be a money transmitter as a result of its ISO activities, nor would it be a money transmitter because of its payment processor services, to the extent the Company complies with the requirements of the payment processor exemption.

You state in your letter that the Company is currently engaged in two types of activities. The Company is acting as an ISO, soliciting merchants to offer them the credit and debit card processing services of two counterparties, under a marketing and sponsorship agreement. As an ISO, the Company does not take possession or control of merchant funds at any point. The Company is also acting separately as a payment processor for merchant credit and debit card transactions, and Automatic Clearing House (“ACH”) transfers. As a payment processor, the Company presents claims and debit transfers on behalf of the merchants it serves, collects payments on behalf of those merchants, and settles with the merchants according to the terms of the Company’s Merchant Agreement. You also state that the Company’s customer base is mostly made of non-profit and religious organizations that collect donations pledged by contributors.

On July 21, 2011, FinCEN published a Final Rule amending definitions and other regulations relating to MSBs (the “Rule”).<sup>1</sup> 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

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

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

BSA 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.<sup>3</sup> The regulations also stipulate that whether a person is a money transmitter is a matter of facts and circumstances, and identifies circumstances under which a person’s activities would not make such person a money transmitter.<sup>4</sup>

When acting as an ISO, the Company neither accepts nor transmits funds on behalf of the merchants the Company solicited, nor on behalf of the Company’s counterparties, and therefore we find that such marketing activities do not make the Company a money transmitter under FinCEN regulations. With respect to the Company’s payment processor activities, for either credit or debit transactions or ACH payments, FinCEN cannot reach a definite conclusion, as certain key information is not contained in your letter.

FinCEN stipulates four conditions for the payment processor exemption to apply to a particular business pattern:<sup>5</sup>

- (a) the entity providing the service must facilitate the purchase of goods or services, or the payment of bills for goods or services (other than money transmission itself);
- (b) the entity must operate through clearance and settlement systems that admit only BSA-regulated financial institutions;
- (c) the entity must provide the service pursuant to a formal agreement; and
- (d) the entity’s agreement must be at a minimum with the seller or creditor that provided the goods or services and receives the funds.

From your letter, it appears that your activity meets conditions (a), (c) and (d) of the exemption. In other words, the Company is operating under a formal agreement with the seller or creditor to obtain payment from the buyer or debtor). However, your letter does not provide information about the way the Company disburses funds to its customers, and as such it is unclear whether your activity meets condition (b). According to your letter, the Company is *obtaining* payment from debtors or buyers through clearance and settlement systems that admit only BSA-regulated financial institutions (such as the

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<sup>2</sup> 31 CFR § 1010.100(ff).

<sup>3</sup> 31 CFR § 1010.100(ff)(5)(i)(A) and (B).

<sup>4</sup> 31 CFR § 1010.100(ff)(5)(ii).

<sup>5</sup> FIN-2013-R002 (“Whether a Company that Offers a Payment Mechanism Based on Payable-Through Drafts to its Commercial Customers is a Money Transmitter” - 11/13/2013).

ACH) or are themselves regulated institutions (such as operators of credit cards). However, if the *disbursement* to the merchants, non-profit, and religious organizations the Company represents, is conducted outside of a clearance and settlement system that admits only BSA-regulated financial institutions (such as, in the form of monetary instruments), then the Company would not be able to claim the payment processor exemption. To the extent such disbursements are conducted exclusively through a clearance and settlement system that admits only BSA-regulated financial institutions, the Company is operating within the four fundamental conditions of the exemption, and its payment processing activities would not make it a money transmitter under our regulations.<sup>6</sup>

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.<sup>7</sup> 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

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<sup>6</sup> 31 CFR § 1010.100(ff)(5)(ii)(B).

<sup>7</sup> 31 CFR §§ 1010.711-717.