

Alert

FinCEN Issues Administrative Rulings Clarifying the Definition of Money Transmitter

May 1, 2014

On April 29, 2014, the Financial Crimes Enforcement Network ("FinCEN"), a bureau of the U.S. Department of the Treasury, issued five administrative rulings clarifying the application of certain exclusions to the definition of "money transmitter" under the Bank Secrecy Act ("BSA") regulations.

- [FIN-2014-R007](#): *Application of MSB Regulations to the Rental of Computer Systems for Mining Virtual Currency* clarifies that a company renting computer systems to third parties for use to obtain convertible virtual currency does not fit the definition of a "money transmitter" under the BSA regulations, which specifically exempt "a person that only provides the delivery, communication, or network data access services used by a money transmitter to supply money transmission services." See 31 C.F.R. § 1010.100(ff)(5)(ii)(A).
- [FIN-2014-R008](#): *Whether a Company that Provides an Armored Car Coin and Currency Exchange Service is a Money Transmitter and Whether the Armored Car Service Exemption Would Apply to the Service* clarifies that a company that does not limit its activities to the physical transportation of currency and/or coin (e.g., where the business also exchanges larger denominations of currency for smaller denominations) cannot rely upon the armored car exclusion to the definition of "money transmitter." See 31 C.F.R. § 1010.100(ff)(5)(ii)(D).

The other three administrative rulings provide further guidance regarding whether a business that "accepts and transmits funds only integral to the sale of goods or provision of services" is deemed a "money transmitter" under BSA regulations. See 31 C.F.R. § 1010.100(ff)(5)(ii)(F).

- [FIN-2014-R006](#): *Whether a Company that Provides Online Real-Time Deposit, Settlement, and Payment Services for Banks, Businesses and Consumers is a Money Transmitter rather than a Provider of Prepaid Access* clarifies that a company that operates a payment platform enabling users to send and/or receive online payments directly to or from other users is a "money transmitter" under the BSA regulations. The ruling further clarifies that such a company is not a "provider of prepaid access," as defined under BSA regulations, even though its users prefund their accounts for future application to a purchase transaction.
- [FIN-2014-R004](#): *Application of MSB Regulations to a Company that Offers Escrow Services to a Buyer and Seller in a Given Internet Sale of Goods or Services* clarifies that a company that provides escrow services in connection with Internet sales of goods or services, where the company receives funds from the buyer and holds the funds in escrow until releasing the funds

to the seller, subject to the satisfaction of specified conditions precedent, does not constitute a “money transmitter” under the BSA regulations.

- [FIN-2014-R005](#): *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* clarifies that a company that provides secured transactions in connection with online sales of goods or services, where the acceptance and transmission of funds do not constitute a separate and discrete service provided in addition to the underlying service of transaction management, does not constitute a “money transmitter” under the BSA regulations.

If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the following attorneys: [Donald J. Mosher](#), [Joseph P. Vitale](#), Sung-Hee Suh or [Melissa G.R. Goldstein](#).

U.S. Treasury Circular 230 Notice: Any U.S. federal tax advice included in this communication was not intended or written to be used, and cannot be used, for the purpose of avoiding U.S. federal tax penalties.

This information has been prepared by Schulte Roth & Zabel LLP (“SRZ”) for general informational purposes only. It does not constitute legal advice, and is presented without any representation or warranty as to its accuracy, completeness or timeliness. Transmission or receipt of this information does not create an attorney-client relationship with SRZ. Electronic mail or other communications with SRZ cannot be guaranteed to be confidential and will not (without SRZ agreement) create an attorney-client relationship with SRZ. Parties seeking advice should consult with legal counsel familiar with their particular circumstances. The contents of these materials may constitute attorney advertising under the regulations of various jurisdictions.

Schulte Roth&Zabel

New York | Washington DC | London

www.srz.com