

Client Alert

International Trade Practice Group

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Foreign-Located Money Services Businesses Doing Business in the United States are Subject to Bank Secrecy Act Requirements

On July 21, 2011, the Financial Crimes Enforcement Network (FinCEN) published a **Final Rule** that clarifies, *inter alia*, which businesses qualify as Money Services Businesses (MSBs) under the Bank Secrecy Act (BSA). This rule becomes effective on September 19, 2011.

Background

Under the BSA, the following are defined as MSBs: (1) currency dealers or exchangers, (2) check cashers, (3) issuers of traveler's checks, money orders, or stored value, (4) sellers or redeemers of traveler's checks, money orders, or stored value, (5) money transmitters, and (6) the U.S. Postal Service. MSBs are generally required to:

1. Establish written AML programs that are reasonably designed to prevent the MSB from being used to facilitate money laundering and the financing of terrorist activities;
2. File Currency Transaction Reports and Suspicious Activity Reports; and
3. Maintain certain records, including those relating to the purchase of certain monetary instruments with currency, transactions by currency dealers or exchangers, and certain transmittals of funds.

Most types of MSBs are also required to register with FinCEN, and all are subject to examination for BSA compliance by the Internal Revenue Service.

Final Rule

Final Rule amends the current MSB regulations by:

- Revising the definition of MSB to ensure that certain foreign-located persons engaging in MSB activities within the United States are subject to the BSA rules;
- Updating the MSB definitions to reflect past guidance and rulings, current business operations, evolving technologies, and merging lines of business;

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- Separating the provisions dealing with stored value from those dealing with issuers, sellers, and redeemers of traveler's checks and money orders;
- Making minimal nomenclature changes with respect to certain MSB categories to help clarify distinctions between them; and
- Replacing the existing term "currency dealer or exchanger" under the MSB definition with the new term "dealer in foreign exchange" to include the exchange of instruments other than currency as a category of MSBs.

One key requirement under the BSA is the "activity threshold" requirement that applies to all MSBs other than money transmitters. Under the activity threshold requirement, the MSB regulations apply to persons engaged in specified activities that exceed \$1,000 for any person in any day. With respect to money transmitters, they do not have an activity threshold requirement and are subject to the BSA rules for all money transmission transactions. The Final Rule does not change this requirement.

The Final Rule also clarifies that whether a person is an MSB, as defined under the BSA, does not depend on whether the person is licensed as a business, has employees, or is engaged in a for-profit venture. Rather, the Final Rule clarifies that it is the activities performed within the United States that cause a person to be categorized as an MSB, subject to BSA's requirements. Specifically, the Final Rule explains that an entity qualifies as an MSB based on its activities within the United States, because FinCEN recognizes that the Internet and other technological advances make it increasingly possible for persons to offer MSB services in the United States from foreign locations. The Final Rule seeks to ensure that the BSA rules apply to all persons engaging in covered activities within the United States, regardless of their physical location.

If you have any questions regarding the Final Rule, please contact Jeff Telep at +1 202 626 2390 or Jane Cohen at +1 202 661 7842.

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