



Department of the Treasury Financial Crimes Enforcement Network

Guidance

FIN-2007-G006

Issued: December 3, 2007

Subject: Application of the Definition of Money Services Business to Certain Owner-Operators of Automated Teller Machines Offering Limited Services

The Financial Crimes Enforcement Network is issuing this interpretive guidance to clarify whether a non-bank owner and operator of an automated teller machine (ATM) would be a money services business (MSB) as that term is defined under the Bank Secrecy Act and its implementing regulations.¹ Specifically, this guidance addresses whether a non-bank owner-operator of an ATM that offers the limited range of services described below would be deemed a currency dealer or exchanger or a money transmitter, and therefore would be an MSB.²

This guidance concerns owner-operators of ATMs that offer customers of depository institutions no services other than remote access to those customers' accounts at those depository institutions for the purpose of making balance inquiries or currency withdrawals.³ A customer accesses its account through such an ATM by means of an ATM card issued by its depository institution, not by the owner-operator of the ATM. The owner-operator of such an ATM stocks the ATM with currency withdrawn from the owner-operator's own account. When a customer requests a withdrawal of funds through such an ATM, the withdrawal is authorized by the account-holding institution. The customer's account is debited, the ATM dispenses currency in the withdrawal amount, and the owner-operator's account is electronically credited for the amount of the withdrawal by the payment processing network that the ATM owner-operator uses. In exchange for providing the ATM service, the owner-operator receives compensation from the payment processing network. The owner-operator replenishes the currency in the ATM with currency withdrawn from its own account.

¹ 31 C.F.R. § 103.11(uu).

² 31 C.F.R. § 103.11(uu)(1) and (5).

³ This guidance concerns owner-operators of ATMs that do not accept deposits.

Current Regulations

MSBs include currency dealers or exchangers, check cashers, issuers, sellers, and redeemers of traveler's checks, money orders, or stored value, money transmitters, and the United States Postal Service. MSBs must comply with various recordkeeping and reporting requirements under the Bank Secrecy Act, and must implement anti-money laundering programs.⁴ In addition, certain MSBs are required to register with FinCEN.⁵ The only categories of MSB that conceivably are applicable to an ATM owner-operator as described above are those of currency dealer or exchanger and money transmitter. We address these two categories in turn.

Currency Dealer or Exchanger

A "currency dealer or exchanger" is defined as a currency dealer or exchanger whose business activity exceeds the threshold transaction size of \$1,000 per person per day.⁶

Under the limited circumstances pertaining to this guidance, the ATM is a terminal for communicating a customer's withdrawal instructions to the customer's financial institution, and for dispensing funds in a single currency pursuant to an authorization from the financial institution to honor the withdrawal instructions. The ATM dispenses currency in accordance with the authorized withdrawal instructions, in exchange for a fee. The owner-operator of the ATM is not in the business of buying and selling currency for the customer. In such circumstances, the owner-operator would not be doing business as a currency dealer or exchanger as that term is defined in our regulations.

Money Transmitter

Whether a person engages in the business of money transmission is a matter of facts and circumstances. As defined in our regulations, a money transmitter is "[a]ny person, whether or not licensed or required to be licensed, who engages as a business in accepting currency, or funds denominated in currency, and transmits the currency or funds, or the value of the currency or funds, by any means through a financial agency or institution ... or an electronic funds transfer network; or ... [a]ny other person engaged as a business in the transfer of funds."⁷

⁴ See 31 C.F.R. § 103.125 (anti-money laundering programs for MSBs).

⁵ 31 C.F.R. § 103.41.

⁶ 31 C.F.R. § 103.11(uu)(1). Accordingly, if no customer can obtain more than \$1,000 per day at all of the ATMs belonging to an owner-operator, the owner-operator is not a currency dealer or exchanger regardless of the services the owner-operator provides.

⁷ 31 C.F.R. § 103.11(uu)(5)(i).

The owner-operator of an ATM described above provides a customer with electronic access to the customer's own account. The ATM dispenses funds belonging to the customer, pursuant to withdrawal instructions that are authorized by the customer's depository institution. The ATM is unable to transmit funds to third parties or to customer accounts at other financial institutions. In consequence, the owner-operator would not be doing business that meets the definition of "money transmitter" as that term is defined in our regulations.

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Financial institutions with questions about this guidance or other matters related to compliance with the Bank Secrecy Act and its implementing regulations may contact FinCEN's Regulatory Helpline at (800) 949-2732.