

APPENDIX II

The Massachusetts Division of Banks July 10, 2012 Industry Guidance



DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

THE COMMONWEALTH OF MASSACHUSETTS DIVISION OF BANKS

1000 Washington Street, 10th Floor, Boston, Massachusetts 02118

GREGORY BIALECKI
SECRETARY OF HOUSING AND
ECONOMIC DEVELOPMENT

BARBARA ANTHONY
UNDERSECRETARY, OFFICE OF
CONSUMER AFFAIRS AND
BUSINESS REGULATION

DAVID J. COTNEY
COMMISSIONER OF BANKS

July 10, 2012

Re: Industry Guidance Relative to Money Transmission to Foreign Countries by Foreign Transmittal Agencies

To All Interested Parties:

The purpose of this industry letter is to clarify the due diligence and record keeping requirements relative to money remittances to foreign countries by foreign transmittal agencies.

The Division of Banks (Division) licenses and supervises foreign transmittal agencies (Licensee or Licensees) operating in the Commonwealth under the authority of M.G. L. c. 169 and 209 CMR 44.00 et seq. A significant component of a Licensee's internal control practices is to ensure an adequate level of oversight of third party providers and to exercise an appropriate level of due diligence in the selection of these providers.

The Division has become aware that some Licensees utilize the services of third-party entities to facilitate the remittance to a beneficiary, rather than engage in direct transmittals, or remit funds through financial institutions in foreign countries. This has been seen typically in cases of money transmittals to Central and South America. Such third-party entities are often located in areas geographically distant from the recipients, often in Europe, and act as intermediaries for the Licensees. Frequently these third-party entities contract with other associated parties or correspondents to complete the remittances. Many of these associated parties have no direct contact or correspondence with the original Licensees. As such, the Licensees are often unable to produce sufficient documentary evidence to show that the transmittal was properly remitted to the recipient in the foreign country within seven days, as required by M.G.L., c. 169, s. 8.

As a regulatory consumer protection agency, the Division remains particularly concerned with the ability of Licensees to ensure that transmittal transactions are completed in a timely fashion and have the proper documentation. In each transaction, the licensee should ensure that there is documentation evidencing that a transfer has been made to the person designated as the recipient corresponding with the original transmission amount.

A lack of adequate record keeping of all transaction documentation would also place the Licensee at risk of non-compliance with the record retention requirements set forth in 31 CFR 1010.430, which requires money services businesses to retain records for a period up to five years. Additionally, Licensees should further review the Financial Crimes Enforcement Network's (FinCEN) December 8, 2004

TEL (617) 956-1500 ■ FAX (617) 956-1599 ■ TDD (617) 956-1577 ■ www.mass.gov/dob

Interpretive Guidance¹, in which FinCEN requires money services businesses to establish suitable due diligence and monitoring for such foreign correspondents and take appropriate corrective action by terminating relationships where warranted.

Licensees may also increase their exposure to additional compliance and reputational risks, as in some cases, these third-party providers are not appropriately licensed or authorized to engage in their model of business practices. This is especially relevant in Brazil, where a large volume of Massachusetts remittances are sent. During 2011, nearly \$414 Million was transmitted to Brazil from Massachusetts residents, representing nearly 20% of all transmissions made in Massachusetts during the year. Brazilian Law 7,492 of 1986 requires all foreign exchange to be conducted through financial institutions properly authorized by the Central Bank of Brazil. It has been estimated that over 50% of the approximately \$4 Billion transmitted from the United States to Brazil annually is done via unauthorized third party payment providers or systems.²

For these reasons, the Division urges Licensees to review all relevant third party providers and their relationships with these providers to ensure that all consumer, compliance, and reputational risks are appropriately evaluated and addressed on an ongoing basis.

Should have any questions or concerns with the content of this letter, please contact Deputy Commissioner Christopher R. Pope at (617) 956-1537.

Sincerely,



David J. Cotney
Commissioner of Banks

¹ FinCen Interpretive Release 2004-1, Anti-Money Laundering Program - Requirements for Money Services Businesses With Respect to Foreign Agents or Foreign Counterparties, December 2004

² Hugo Cuevas-Mohr, Gray Market Real Exchange System in Brazil, December 2011