



Florida Regulator Clarifies Money Transmitter Licensing Exemptions (or lack thereof)

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Among the many state licenses that can impact financial services companies, money transmitter licensing can be among the harder to figure out. In addition to uncertainties about digital currency and developing technologies, the vagueness of the licensing triggers can make it difficult to determine when a person needs to hold a state money transmitter license.

State money transmitter licenses (sometimes call money services business licenses) often apply to a person who receives money for transmission. That language would obviously cover a traditional money transmitter, who advertises the service of transferring money from one person to another. However, in more nuanced scenarios, the language can leave a great deal of uncertainty. With the rise of virtual currencies, there is often a question about what is “money.” In addition, if a person provides technology or other services to facilitate transactions, it can be unclear whether the person actually “receives” money for purposes of the licensing requirement. In these instances, state laws sometimes provide little clarity.

One strategy that some rely on in interpreting state money transmitter licenses is to refer to the federal money services registration and its interpretations. Regulations implementing the federal Bank Secrecy Act require “money services businesses” to register with the U.S. Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”). The federal regulations provide more clarity than many state laws. Even more helpfully, FinCEN has numerous interpretations that clarify the registration requirement. As a result, the federal regulation can be useful in framing how a state license may apply. However, a recent ruling in Florida, *In Re: Petition For Declaratory Statement Intercam Futures, Inc., Petitioner*, 2023 WL 5829073 (September 1, 2023), shows that the scope of a state license may differ from that of the federal registration.

The ruling was issued by the Florida Office of Financial Regulation (the “OFR”) and was in response to a company’s request for a declaratory statement about the scope of Florida’s money transmitter license. The company was planning to facilitate the buying and selling of foreign currency for clients, which would involve receiving and transmitting money. As the company was registered with the Commodity Futures Trading Commission (the “CFTC”), however, it was excluded from the federal money services business registration requirement. Accordingly, the company was seeking a declaration from the OFR that it should similarly be excluded from Florida’s licensing requirement.

In the view of the company, “although Florida law does not contain the same explicit exemption as federal law,” the CFTC’s oversight, as well as other exemptions under the federal rule, should

weigh against the need for a Florida license. The OFR, however, was not swayed by the federal exclusion. The OFR ruled that the company was a money transmitter as defined by Florida law and would be subject to licensing if it offered the proposed services.

While reference to federal law can be a helpful tool in considering state law issues, this ruling makes clear that it is merely a consideration and not an answer.