

Order No. 2019-038

IN THE MATTER OF:	§	BEFORE THE BANKING
	§	
E. MEX. FINANCIAL SERVICES, INC.,	§	
CURRENCY EXCHANGE LICENSE NO. 183	§	COMMISSIONER OF TEXAS
	§	
LAREDO, TEXAS	§	AUSTIN, TRAVIS COUNTY, TEXAS

CONSENT ORDER

On this day in the matter of E. Mex. Financial Services, Inc. (“Respondent”) was submitted to me, Charles G. Cooper, Banking Commissioner (“Commissioner”) of the State of Texas, for consideration and action.

1. Respondent holds currency exchange license number 183 issued by the Texas Department of Banking (“Department”) pursuant to Texas Finance Code (“Finance Code”) Chapter 151 (“Chapter 151”) and operates a currency exchange business headquartered in Laredo, Texas.
2. The Department has jurisdiction over Respondent and the subject matter of this proceeding pursuant to Chapter 151. The Commissioner has the authority to issue this Consent Order (“Order”) pursuant to Finance Code §151.706.
3. Respondent has been properly notified of its right to an administrative hearing under Chapter 151.
4. The undersigned representative of Respondent has full authority to enter into and bind Respondent to the terms and conditions of this Order.
5. The statutory provisions at issue in this matter include, but are not limited to, Finance Code §§151.202, 151.207, 151.502, 151.503, 151.601, 151.602, 151.603, 151.604, 151.703, 151.706, 151.707.
6. Any violation of this Order could subject Respondent to additional regulatory or enforcement actions authorized by Chapter 151 and other provisions of Texas law.

7. The Department and Respondent agree that each enters this Order in good faith.
8. Nothing in this Order diminishes the regulatory or enforcement powers of the Department, the Commissioner, or the Finance Commission of Texas under Chapter 151 or other applicable law.
9. This Order does not restrict the Department, the Commissioner, or the Finance Commission of Texas with respect to any enforcement action or other recourse regarding any past, current, or future violations by Respondent that come to the attention of the Department to the extent those violations are not existing and not actually known by the Department as of the effective date of this Order. However, nothing herein shall be construed to limit Respondent's right to contest any future finding or determination of non-compliance, provided that Respondent agrees that a contested case relating to this Order will be heard by the Department's hearing officer and waives any right to challenge the use of the Department's hearing officer, and further provided that Respondent agrees that any failure to comply with the terms of this Order is material and constitutes cause for license revocation within the sole, absolute discretion of the Commissioner. This includes, but is not limited to, revocation of Respondent's license for failure to acquire a deposit account as ordered by Paragraph 30 or timely tender payment of the administrative penalty ordered by Paragraph 43.
10. This Order does not restrict the Department, the Commissioner, or the Finance Commission of Texas from considering any relevant facts in determining the financial and business experience, competence, character, and general fitness of a current or future license holder or applicant under Chapter 151 or each principal of, person in control of, principal of a person in control of, and proposed responsible individual of any such license holder or applicant.
11. For purposes of this proceeding, Respondent knowingly and voluntarily waives:

- a. service upon Respondent of this Order;
- b. the right to present defenses to the allegations in this proceeding;
- c. notice and hearing prior to imposition of this Order;
- d. the filing of proposed findings of fact and conclusions of law;
- e. the issuance of a proposal for decision by an administrative law judge;
- f. the filing of exceptions and briefs with respect to such proposal for decision;
- g. any review of this Order by the Texas Finance Commission; and
- h. judicial review of this Order as provided by Texas Government Code §2001.171 et seq., and any other challenge to the validity of this Order.

12. Respondent and the Commissioner agree to this Order solely for the purpose of this proceeding, and without Respondent admitting or denying any violations of law or regulations. Respondent is voluntarily agreeing to the conditions contained in this Order. Without limiting the foregoing, Respondent denies that it engaged in conduct alleged in Paragraphs 17-20 herein, and this Order does not constitute an admission by Respondent or finding by the Department that Chapter 151, a rule adopted or order issued under Chapter 151, the Bank Secrecy Act, the USA PATRIOT ACT, or applicable federal regulations (31 C.F.R. chapter X.) has been violated by Respondent.

13. Respondent has agreed to comply with the terms that are set out in the Order below.

I. Findings

14. Respondent is owned 50% by Edelmiro J. Martinez and 50% by Gladys Martinez.

15. In June 2018, the Department initiated a full-scope examination of Respondent pursuant to Finance Code §151.601 and required that Respondent provide certain financial and operational information regarding its currency exchange business.

16. Between August 27 and August 31, 2018, the Department conducted the on-site portion of the examination at Respondent's headquarters in Laredo, Texas.
17. During the course of the examination, the Department discovered deficiencies in Respondent's cash handling procedures and material discrepancies with Respondent's physical cash count records.
18. The Department further discovered that Respondent was withholding and suppressing information requested by the Department during the 2018 examination, such as Respondent's relationships with affiliates and financial institutions.
19. The Department further discovered Respondent engaging in violations of law and regulations and unsafe and unsound practices, including failing to maintain adequate books and records and failing to maintain an effective anti-money laundering program.
20. The Commissioner has considered the matter and finds that, based on credible evidence, that Respondent has:
 - a. not cooperated with an examination authorized by Chapter 151;
 - b. engaged in unsafe and unsound acts and practices;
 - c. knowingly made material misstatements and suppressed or withheld material information on a report and other documents required to be filed with the Department; and
 - d. failed to prepare, maintain, and preserve records required by Chapter 151.
21. As required by Finance Code §151.707(d), the Commissioner has considered the seriousness of the violations, Respondent's compliance history, and Respondent's good faith in attempting to comply with Chapter 151 and finds that a penalty of \$250,000 is appropriate.

II. Order

It is hereby ORDERED, ADJUDGED, and DECREED that:

22. Respondent must retain and pay for the services of Haynie & Company. If such firm becomes unavailable, Respondent shall retain a different independent certified public accountant, that has adequate expertise and resources, and is approved by the Commissioner, which approval shall not be unreasonably withheld, to perform the CPA services required by this Order. Haynie & Company or the replacement certified public account selected hereunder shall be known as the “CPA” under this Order. The CPA must attest to the reasonableness of disclosures, the freedom from material misstatement, and the adherence to the applicable generally accepted accounting principles in the preparation of all financial statements and general ledgers required by this Order. All such auditing by the CPA shall include auditing of E Mex’s cash drawers and vaults and E Mex’s adherence to related policies and procedures to be established in accordance with Paragraph 36.

23. Respondent must have audited general ledger and financial statements for 2018 prepared by the CPA and provide those to the Department. To the extent the CPA has the available resources to begin the engagement required under Paragraph 23, Respondent agrees to engage the CPA within ten (10) days of executing this Order. Furthermore, the Department and Respondent mutually understand and agree that the CPA must perform a full scope audit but the audit may include a limitation to non-cash transactions if that limitation is determined to be necessary by the CPA and that determination is noted in the audit; however, review of cash related polices and controls must still be included within the scope. This audit must include within its scope transactions between Respondent and affiliates and insiders, including at a minimum:

- a. Mr. Edelmiro J. Martinez;
- b. Ms. Gladys Martinez;

- c. Laredo Fuel Investments, LLC;
 - d. Lafayette C-Store, LLC;
 - e. Laredo Armored, Security, and Investigation Services, LLC;
 - f. E & G Real State Investment, LLC;
 - g. E & G Martinez Properties, LTD;
 - h. High Risk Insurance Agency, LLC;
 - i. Martrod Properties LTD;
 - j. MG Fuel Investments, LLC;
 - k. E. Martinez Ranch, LLC;
 - l. Rancho La Pita Properties, LLC; and
 - m. Encinal Fuel, LLC.
24. Respondent must have audited general ledger and financial statements for 2019, 2020, and 2021 prepared by the CPA and provide those to the Department annually by April 1 of the subsequent applicable year.
25. Respondent must repay all legitimate shareholder loans, cease paying all expenses not related to Respondent's business on behalf of any individuals and affiliates, and document in writing all insider and affiliate transactions, which must be on fair, arms'-length bases.
26. Respondent will not obtain any financing from insiders or affiliates until after 2021, unless written documentation evidencing the financing is provided to the Department with proof reasonably confirming such financing has in fact been provided and advanced to Respondent.
27. Respondent must have a certified public accountant compile quarterly un-audited financial statements and provide those to the Department by February 1, May 1, August 1, and November 1 for the applicable preceding quarter for each quarter through 2021. The certified

public accountant that prepares these quarterly un-audited financials does not need to be the CPA selected under Paragraph 22.

28. Respondent must amend its 2018 tax return, or recertify its existing tax returns if supported by the audited financial statements prepared in accordance with Paragraph 23. If applicable, Respondent must pay all income taxes, fines, and penalties due.
29. Respondent represents and covenants that, other than the entities listed in Paragraph 23, there are no other entities or individuals that were (a) the beneficiaries of payments from or other transfers by Respondent that resulted in adjustments to Respondent's "Loans to Shareholders", "Loans from Shareholders", or "Paid-In Capital" subaccounts as such payments or transfers are reflected on the general ledgers provided to the Department by Respondent's counsel on February 26, 2019, and (b) directly or indirectly owned or controlled by Mr. Edelmiro J. Martinez or Ms. Gladys Martinez as of that date.
30. On or before February 29, 2020, Respondent must cease using all financial institution deposit accounts not in its name and provide the Department with confirmation that Respondent has acquired a deposit account at a federally insured financial institution in Respondent's own name to be used in its currency exchange business. If Respondent has not acquired this account in its own name by such time, Respondent may request an additional thirty days to obtain this account. Respondent must submit this request to the Department in writing prior to February 29, 2020 and include in its request a written explanation of its efforts used to acquire a deposit account in the preceding ninety days and its plan to acquire a deposit account within that additional thirty days. If such request is timely provided, the Commissioner shall not unreasonably refuse to approve that request.

31. If the financial institution with which Respondent obtains the deposit account required by Paragraph 30 notifies Respondent that it will cease providing that deposit account to Respondent:
- a. Respondent will promptly notify the Department and provide all correspondence from that financial institution related to the ending of that relationship;
 - b. Respondent will promptly provide the Department with a written plan for opening a new deposit account as required by Paragraph 30;
 - c. Respondent will open a new deposit account as required by Paragraph 30 no later than 60 days after the closing of its prior deposit account; and
 - d. Respondent may delay making the penalty payments required by Paragraph 43 until the earlier of (i) the opening of the new account, or (ii) two months following the date upon which such payments were otherwise due.
32. Paragraph 31 only applies in the first instance where the financial institution ceases providing a deposit account to Respondent. If Respondent is unable to make a payment because a subsequent financial institution ceases providing a deposit account, Respondent may request a second delay in payment under Paragraph 31. Respondent must submit this request to the Department in writing and include the information required by Paragraph 31. If such request is timely provided, the Commissioner shall not unreasonably refuse to approve that request.
33. Respondent must disclose to all financial institutions where a deposit account is acquired that Respondent is a currency exchange business and how Respondent will use that account. This disclosure must include providing a copy of this Order.
34. Respondent must provide a copy of this Order to all financial institutions from which E Mex seeks to obtain services through 2021.

35. Respondent must provide the Department written explanation regarding its use of deposit accounts in its name and related documents, such as account statements and copies of canceled or return checks, if requested by the Department.
36. Respondent must also establish adequate accounting and auditing policies and procedures for management and recording keeping regarding its cash drawers and vaults as needed to properly audit its cash balances. Respondent must consult with the CPA regarding such policies and procedures and the CPA's annual audits required by Paragraph 24 must attest to the proper implementation of such policies and procedures.
37. Respondent must maintain its cash assets at its financial institutions and limit cash-on-hand at each location and its vault to an amount reasonably necessary to properly fund its daily operations. Respondent must consult with the CPA regarding this cash-on-hand limit and the CPA's annual audits required by Paragraph 24 must attest to this limit being reasonably necessary to fund Respondent's daily operations.
38. If Respondent provided any un-audited financial statements to any financial institution between January 1, 2018 and the effective date of this Order, Respondent must provide a copy of the audited financial statements prepared in accordance with Paragraph 23 and Paragraph 24.
39. Respondent must cease commingling its assets with the assets of all other entities and individuals, and ensure that all property and funds in its possession or control, including cash in its vaults and drawers, belong solely to Respondent or, for assets that are not cash or monetary instruments, in Respondent's possession subject to a commercially reasonable written lease or other agreement with the owner of such property.

40. Respondent must promptly report any non-compliance with this Order to the Department in writing.
41. Mr. Edelmiro J. Martinez must cease all formal and informal management of Respondent until at least January 1, 2022; provided, however, that
- a. while this Order prohibits Mr. Martinez from serving as officer or director of Respondent during that time period, Mr. Martinez may continue to exercise his non-managerial rights as a shareholder, including examining Respondent's books and records under subchapter E of chapter 21 of the Texas Business Organizations Code ("TBOC") and participating in voting on electing directors of Respondent, "fundamental actions" under §21.364 of the TBOC, fundamental business transactions under subchapter J of chapter 21 of the TBOC, winding up under subchapter K of chapter 21 of the TBOC, distributions under subchapter G of chapter 21 of the TBOC, and financing for Respondent; and
 - b. Mr. Martinez may exercise authority as a dual signor, with an officer of Respondent acting as the other requisite signor, on checks and other payment instruments executed by Respondent in a face amount exceeding \$7,500.
42. Respondent must directly employ all of its officers and managers.
43. Respondent must pay an administrative penalty to the Department totaling \$250,000. Within 5 days of obtaining a bank account in accordance with Paragraph 30, Respondent will tender to the Department via cashier's check or wire transfer \$70,000. Respondent will then pay the remaining \$180,000 by tendering payment of \$15,000 on the fifth day of each subsequent month for the next twelve months. If Respondent fails to make any monthly payment within five days of the due date, the entire penalty amount remaining becomes immediately due, unless payment is temporarily suspended pursuant to Paragraph 31.

44. To the extent information is required to be provided to the Department pursuant to this Order, it must be addressed to Texas Department of Banking, Nondepository Supervision, 2601 N. Lamar Blvd, Austin, Texas 78705.

45. To the extent this Order requires Respondent to document a transaction or create records, Respondent must maintain those records for a period of five years and make them available upon request of the Department.

III. Effective Dates

This Order against Respondent is effective on the date signed by the Commissioner and is final and non-appealable as of that date.

Signed on this 23rd day of December, 2019.

/s/ Charles G. Cooper
Charles G. Cooper
Commissioner, Department of Banking

AGREED AS TO FORM AND SUBSTANCE:

E. Mex. Financial Services, Inc.

By: /s/ Eldemiro Martinez
Eldemiro Martinez

Date: 12/19/19

E. Mex. Financial Services, Inc.

By: /s/ Gladys Martinez
Gladys Martinez

Date: 12/19/19

APPROVED AS TO FORM:

/s/ John Scott
John Scott PLLC
Counsel for E. Mex. Financial Services, Inc.

Date: 12/20/19

/s/ Ryan P. McCarthy
Ryan P. McCarthy
Assistant General Counsel
Texas Department of Banking

Date: 12/20/19