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December 10, 2007

VIA OVERNIGHT MAIL

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Department of the Treasury
Office of Critical Infrastructure Protection and Compliance Policy
Room 1327
Main Treasury Building
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Re: Federal Reserve Docket Number R-1298
Treasury Docket Number Treas-DO-2007-0015

Dear Ms. Johnson:

I am writing on behalf of the clearing agency subsidiaries of The Depository Trust & Clearing Corporation ("DTCC") to express our concern regarding the proposed regulations (the "Proposed Regulations") issued by the Department of the Treasury and the Board of Governors of the Federal Reserve System (collectively, the "Federal Agencies") to implement applicable provisions of the Unlawful Internet Gambling Enforcement Act of 2006 (the "Act"). We support the stated objectives of the Proposed Regulations to require certain payment systems and financial transaction providers participating in such systems to establish policies and procedures designed to identify and block unlawful internet gambling transactions ("Restricted Transactions"). However, we respectfully request that the Proposed Regulations be modified to expressly exclude securities clearing agencies and the activities such entities perform in accordance with their rules from the requirements of the Proposed Regulations.

Subsidiaries:
The Depository Trust Company
National Securities Clearing Corporation
Fixed Income Clearing Corporation
DTCC Deriv/SERV LLC
DTCC Solutions LLC

Background information about DTCC's clearing agency subsidiaries

DTCC, which is owned by its principal users, including major banks and broker-dealers, is the corporate parent of a family of securities clearing agencies registered under Section 17A of the Securities Exchange Act of 1934 (the "Exchange Act") and regulated by the Securities and Exchange Commission (the "SEC"). DTCC's subsidiary clearing agencies are The Depository Trust Company ("DTC"),¹ National Securities Clearing Corporation ("NSCC") and the Fixed Income Clearing Corporation ("FICC"). These subsidiaries provide clearance, settlement and information services for transactions in equities, corporate debt, municipal debt, U.S. government securities and mortgage-backed securities. In addition, DTC, which is the nation's principal securities depository, provides securities custody and safekeeping services as well as underwriting and asset servicing.

The DTCC clearing agency subsidiaries are part of the national system for the clearance and settlement of securities transactions mandated under Section 17A of the Exchange Act. In enacting Section 17A, Congress found, among other things, that "[t]he prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and on behalf of investors" and expressly directed the SEC "[t]o facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities". The clearing agencies have been organized and are regulated pursuant to this Congressionally-mandated system.² Through their interfaces with hundreds of commercial banks, broker-dealers and similar institutions throughout the country and the world, the clearing agencies direct the movement of many trillions of dollars in funds and securities annually.

Comments

The Act requires the Federal Agencies to designate payment systems that could be used in connection with or to facilitate Restricted Transactions. Such a designation makes the payment system and the participants in the system (unless they fall under one of the exemptions) subject to the requirements of the Proposed Regulations. The requirements include establishing policies and procedures designed to identify and in certain instances, block or otherwise prevent or prohibit Restricted Transactions.

¹ DTC is also a limited purpose trust company established under the New York Banking Law and a state member bank of the Federal Reserve System.

² The clearance and settlement processes performed by the clearing agencies are set forth in their respective rules, which have been approved by the SEC.

It is not clear whether the Proposed Regulations, as currently drafted, would apply to registered clearing agencies and their activities. The Proposed Regulations would establish wire transfer systems and automated clearing house (“ACH”) systems among the designated payment systems subject to the requirements of the Proposed Regulations. Therefore, participants in such systems would be subject to the requirements of the Proposed Regulations.

The DTCC clearing agencies could arguably fall within the requirements of the Proposed Regulations as currently drafted. For example, DTC is a participant in a wire transfer system. DTC, which is a member of the Federal Reserve, directly participates in Fedwire; DTC does so as part of its clearing agency activities. Payments may be wired into DTC’s Fedwire account at the Federal Reserve (if, for example, a DTC participant is approaching its net debit cap and wishes to wire funds into DTC via Fedwire); payments may be wired out of DTC’s Fedwire account (if, for example, a participant seeks to obtain certain principal and interest payments on its securities holdings at DTC intraday). In addition, DTC and NSCC use ACH systems for billing purposes incidental to their functions as clearing agencies. DTC also uses ACH systems for certain principal and interest payments.

The Proposed Regulations contain exemptions from their requirements. However, the extent to which securities clearing agencies can avail themselves of these exemptions is not clear. For example, the release states that the originating financial institution in an ACH debit transaction would not be exempt from the requirements. In addition, there is an exemption in the Proposed Regulations’ definition of “bet or wager” for “[a]ny transaction conducted on or subject to the rules of a *registered entity* . . . under the Commodity Exchange Act (the “CEA”).” (Emphasis added.) Registered derivatives clearing organizations are “registered entities” under the CEA and thus would seem to be exempt from the Proposed Regulations. There is an exemption in the Proposed Regulations for “[a]ny activity governed by the securities laws . . . for the purchase or sale of securities.” However, it is not clear that this language as currently written would provide a clear exemption for securities clearing agencies.

We do not believe that activities of securities clearing agencies should be encompassed within the requirements of the Proposed Regulations. The Proposed Regulations were aimed at the “gambling business’s bank”.³ This is because “[such bank] could, through reasonable due diligence, ascertain the nature of its customer's business and ensure that the customer relationship is not used to receive unlawful Internet gambling transactions.”⁴ The DTCC clearing agency subsidiaries are not in a position to perform

³ *See* Remarks of Deputy Assistant Secretary Valerie Abend before the U.S. House of Representative Judiciary Committee, November 14, 2007, HP-680.

⁴ *See id.*

these tasks. The DTCC clearing agency subsidiaries do not have the direct relationship with the underlying customer that could potentially be engaging in unlawful internet gambling. In the example described above regarding DTC's usage of Fedwire, the debits and credits on Fedwire involve DTC participants who are generally banks and broker-dealers. We do not believe that these are the entities that are likely to be gambling businesses. DTC is not in a position to take steps to ascertain the nature of the business of the underlying customer of the bank and broker-dealer nor is DTC able to assess the risk that such customer may be involved in Restricted Transactions.

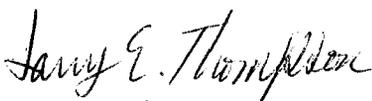
Conclusion

Because the DTCC clearing agency subsidiaries are not in a position to assess the risk that the entities with whom the subsidiaries deal directly are submitting Restricted Transactions, imposition of the requirements of the Proposed Regulations on the securities clearing agencies would cause delays in processing and hinder their mission to clear and settle transactions promptly and accurately. Implementation of the requirements would also be very costly to the DTCC clearing agency subsidiaries, as they would likely require significant system and software changes. We, therefore, respectfully request that the Proposed Regulations be modified to expressly exclude securities clearing agencies and their activities from the proposed requirements regarding Restricted Transactions. We also believe it would be helpful to provide an express exemption for futures clearing organizations, as many of the same concerns noted above apply to these clearing entities as well.

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We appreciate the opportunity to comment on the Proposed Regulations. If you have any questions on the foregoing, please contact Nikki Poulos, Managing Director, at 212-855-7633, or myself.

Sincerely,



Larry E. Thompson
General Counsel
The Depository Trust & Clearing Corporation

cc: Valerie Abend, Deputy Assistant Secretary
Department of the Treasury, Office of Critical Infrastructure
Protection and Compliance Policy