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Subject: Reg. GG -- Internet gambling

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

Dear Secretary Johnson,

Following careful review the proposed regulations (Docket No. R-1298) implementing the Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA), I agree with the authors of the regulations – the regulations as proposed do have several weaknesses. Most of the weaknesses, which include the inability of the regulations to define “unlawful Internet gambling” and the risk of overblocking transactions to legal businesses, are inherent in UIGEA itself. I urge the Treasury Department and the Federal Reserve to further clarify these regulations prior to implementation to ensure orderly and fair enforcement of these regulations.

The primary weakness in the regulations as proposed is the lack of a definition of “unlawful Internet gambling”. If the Treasury Department and the Federal Reserve were unable to determine what constitutes illegal Internet gambling, how can banks and other financial institutions be expected to? Surely this is an unfair burden to place on our nation’s financial institutions. After all, they are in the business of providing financial services, not of enforcing ambiguous gambling bans.

Banks may choose to comply with these regulations by banning all gambling transactions. This overblocking could cause many problems for legitimate businesses, including the domestic horse racing industry, which was specifically excluded from the provisions of the Act. Additionally, banks could overblock offshore poker sites that are not in violation of any federal or state law. As the United States recently lost its trade dispute (and its final appeal) with Antigua and Barbuda with regards to providing of cross-border betting services, additional restrictions via overblocking resulting from these regulations could result in increased WTO penalties, especially as domestic financial transactions are largely excluded from these regulations.

These issues can largely be avoided by defining the term “illegal Internet gambling” in the regulations. I propose defining illegal Internet gambling as all Internet gambling that is clearly illegal under existing federal law, plus that which is unambiguously illegal under state laws. Federal law is relatively clear in this matter – per appeals court decisions in re MasterCard International Inc. and other cases, the Wire Act covers only sports betting. Additionally, the Professional and Amateur Sports Protection Act of 1992 covers interstate (and, in 46 states, intrastate) professional and amateur sports betting. That is all that is covered by federal law. Since federal case law holds that the Wire Act covers only sports betting, unlawful Internet gambling as defined by federal laws should include only interstate Internet sports betting and intrastate Internet sports betting in the 46 states covered by the Professional and Amateur Sports Protection Act of 1992, excluding horse racing as defined under the Interstate Horse Racing Act.

As for state laws, very few states have outlawed Internet gambling. To keep from placing an unreasonable burden on our banks, the regulations should specify that state laws must be unambiguous in their application to the Internet and to the specific types of gambling banned by that state. Additionally, states wishing to have federal assistance in enforcing their Internet gambling restrictions should be required to request this assistance from the Secretary of the Treasury. This will enable our banks to have a clear understanding of what it required of them.

Our financial institutions deserve to know exactly what they are required to prevent. Thank you for your consideration.

Sincerely,

Richard Muny
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