



The National Money Transmitters Association, Inc.

12 Welwyn Road, Suite C  
Great Neck, NY 11021  
tel (516) 829-2742  
fax (516) 706-0203  
www.nmta.us

December 11, 2007

Ms. Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551  
Email: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

**By Email**

Re: Docket No. R-1298, Notice of Joint Proposed Rulemaking: Prohibition on Funding of Unlawful Internet Gambling

Dear Ms. Johnson:

The National Money Transmitters Association (the NMTA) represents the state-licensed money transmitters and sale of checks companies of the United States (Money Transmitters.) Thank you for the opportunity to comment on the proposed rule (the Proposal), which will implement the Unlawful Internet Gambling Enforcement Act of 2006 (the Act.)

The Act seeks to use the financial system as a 'choke point' to combat Unlawful Internet Gambling (UIG.) In general, this approach has proved problematic for all concerned: it is usually difficult to write such rules, difficult to follow them, difficult to let good transactions through, and difficult to tell if the measures are working or are worth the trouble.

Luckily, the Act also requires that all new rules must be made *reasonable*. So that we do not witness the birth of a whole new compliance sub-specialty ("UIG Compliance"), we ask the Agencies fit these new regulations as much as possible, into compliance programs and procedures we already have in place.

The NMTA would oppose any new procedures that would tend to force our front-line personnel to make judgments about which transactions are unlawful. Since the Act relies on the underlying state and federal laws to determine what is and is not a restricted transaction, no further specificity in our written procedures and training would seem to be strictly necessary or even practically possible. (Most of our members' existing customer agreements and contracts with counterparties, already include clauses prohibiting network use for unlawful transactions.)

This is not to say it might not be productive to sensitize our personnel, our customers and business partners (through manuals, training, customer agreements, contracts, etc.) to the possibility that *any* gambling activity *may* be considered restricted. This could be followed by referral to management for further due diligence (for those companies that choose to do business at all with such customers), and a re-statement of company policy against accepting such transactions. But that is about all we believe that can *reasonably* be done.

The NMTA believes we need to stop the creeping minimum standard that all financial institutions become brilliant detectives, and get back to a 'red flag' standard of knowledge (and not just in UIG compliance.) A financial institution's responsibility always starts with knowledge, but our expectations of a priori customer knowledge have grown over the years, sometimes beyond what is reasonable.



So, for example, the NMTA would oppose any suggestion that monitoring, testing and analyzing *must* be used in order to have an *acceptable* UIG Compliance program. Leaving aside for the moment, any question of such techniques' validity or usefulness, setting such standards raise the specter of one day seeing punishment for not living up to what should merely be 'best practices.'

Setting the compliance requirements bar too high needlessly punishes too many good companies, and creates an atmosphere of near-hysteria, where no compliance program is ever judged to be good enough. Sometimes the problem is not in the regulations; we must prevent the inevitable gray areas, from being filled-in by over-zealous auditors, who would color everything black. Most importantly, we must take care that those financial institutions that provide facilities to other financial institutions, not have to worry that this Proposal may become but one more reason to sever those relationships.

The Proposal would exempt participants in Wire Transfer Systems acting as Originators' banks, at least partially on the grounds that, while it might be possible to design certain procedures (a customer self-certification procedure, for example), any associated benefits would likely be outweighed by associated costs.

The NMTA believes that Money Transmitting Businesses need and deserve to be included in that exemption, for all the same reasons. Indeed, the only distinction between 'Wire Transfer Systems' and 'Money Transmitting Businesses' is in the fact that one refers to depository institutions, and the other does not. Considering the equivalence of the roles, and the intent and likely effect of the Proposal, surely this constitutes no difference at all. (For many reasons, banks – if anything – would have a *higher* obligation to know their customers who originate wires through them.)

Absent any red flags, focusing on the commercial relationship is where the focus properly lies. But most (if not all) NMTA members do not receive payments of any kind, on behalf of businesses of any kind, at all. NMTA members mostly just send money on behalf of our customers. (Even those members that do have commercial receiving customers, already have Know-Your-Customer procedures in place.)

The NMTA agrees with other commenters that a list of 'prohibited' businesses might be a workable idea, in the same way that OFAC's SDN list is used today, only without the dire penalties. NMTA members stand ready to do our best in the fight against crime but, again, failure to catch a name on a list, in and of itself, should not become new grounds for possible censure.

So, to summarize, the NMTA believes that Money Transmitting Businesses should be entirely exempt from the requirements of the proposal, as long as no receiving commercial customer relationships are maintained.

Sincerely,

David Landsman  
Executive Director