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November 30, 2007

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551
Re: **Docket Number R-1298**

Treas-DO
Department of the Treasury
Office of Critical Infrastructure Protection and Compliance Policy
Room 1327, Main Treasury Building
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220
Re: **Treas-DO-2007-0015**

We appreciate the well prepared joint notice (**Prohibition on funding of Unlawful Internet Gambling**) from the Agencies regarding the proposed rules to implement the applicable provisions of the Unlawful Internet Gambling Enforcement Act of 2006. We are please to be able to comment on the proposed rulemaking by the Treasury and the Federal Reserve.

The proposal appears to capture the intent and the requirements of the Act as well as many of the issues relating to the various parties and systems. The opportunities and benefits that are available to all participants as a result of the Act should not be overlooked. Therefore, it is our hope that the outcome of the rules will meet the needs of all concerned.

We are providing comments on the “Section by Section Analysis” as requested. Our comments follow the outline used in the notice.

- I. **Introduction and Background** [No comment]
- II. **Section by Section Analysis**
 - A. **Definitions** [No comment]

B. Designated Payment Systems

Although none of the payment systems listed seem to have the capabilities to differentiate between restricted and unrestricted transactions, the list of payment systems included in the notice appears to encompass all payment options that are currently available.

C. Exemptions

While different levels of technology and functionality exist within each of the payment systems, none of the payment systems appear capable of completely differentiating between restricted and unrestricted transactions. The proposed exemption of certain payment systems seems inappropriate and we would encourage the agencies to focus on rules that recognize the differences.

First and foremost, it would be prudent for the board to focus its efforts on rules that require all originators (within all payment systems) of a transaction to block restricted transactions related to the Act. This is consistent with the “know your customer” parameters that are already in place.

Secondly, while we agree that the credit card system is further along than other payment systems, we believe changes are still needed to comply with the Act. The notice from the Agencies seems to indicate that the card system is capable of distinguishing between restricted and unrestricted transactions.

It is our understanding that the major card brands assume that only unrestricted (legal) transactions are processed by their participants and that unique Merchant Category Codes and Transaction Codes that distinguish specific forms of gambling are not necessary. However, the Agencies’ notice as well as our experiences are similar in that card issuers perceive restricted (illegal) transactions are processed and thus all gambling (restricted and unrestricted) transactions are often blocked.

In the card system, transactions are limited to a single Merchant Category Code for both restricted and unrestricted gambling transactions. The Transaction Code that is also sent to the card issuer (who in turn makes the determination to authorize or decline the transaction) seems sufficient. Combined, the Merchant Category Code and Transaction Codes do not accurately describe nor fully meet the requirements of the Act since a restricted and unrestricted transaction can have the exact same codes in the card system.

Because restricted and unrestricted transactions can have the exact same codes many card issuers block all gambling transactions involving the Internet or in a Card-Not-Present environment. The Act recognizes the unique forms of gambling and the laws that govern gambling. The card system's single Merchant Category Code for all forms of gambling falls short.

In this best case scenario of all payment systems, the card system provides limited opportunities for participants to discern whether a transaction is restricted or unrestricted. Changes are needed in order to distinguish and recognize transactions that are excluded from the Act's definition of "unlawful Internet gambling", such as qualifying intrastate transactions, intratribal transactions, or interstate horseracing transactions. We therefore recommend the following changes:

1. A separate Merchant Category Code or unique transactions codes that would distinguish between restricted and unrestricted transactions. Unique codes and descriptors would permit participants to identify transactions and meet the requirements of the Act.
2. More importantly we recommend placing or, in the case of the card system, shifting the burden from the receiving institution (issuer) to the originating institution (acquirer) to block restricted transactions. The originator (acquirer) should more reasonably be expected to know the customer.
3. In conjunction with separate codes for restricted and unrestricted transactions we propose a requirement that would help insure that unrestricted transactions are not summarily blocked along with restricted transactions. We do not propose that a participant's right to block certain transactions be overlooked or be limited by the rules. We advocate for the participant to have the ability to distinguish between restricted and unrestricted as identified by the Act and other laws.

D. Processing of Restricted Transactions Prohibited

We agree with the Agencies' assessment on Overblocking and support the rights of any Participant to manage their business and control risk. However, we believe that the payment systems do not distinguish between restricted (illegal) and unrestricted (legal) transactions, so the operator's assumptions about risk are based solely on speculation.

Again, the lack of unique codes are causing issuers in the card system to block both restricted and unrestricted transactions based on the perceived risk of certain restricted transactions ("Overblocking"). Part of the rulemaking of the Agencies should include a solution to address Overblocking that will permit

participants to make more informed business decisions and manage their programs.

We recommend unique merchant codes and transactions codes within the card system for qualifying intrastate transactions, intratribal transactions, or interstate horseracing transactions along with placing the burden on the originator to ensure transactions are legal and unrestricted.

Much consideration should be given to the practicality and reasonableness of changes that are contemplated regarding transaction codes within the parameters of the other payment systems, including Automated Clearing House, Wire Transfer, and Check Collection systems. As with the card system, we believe the burden should be placed on the ODFI in the ACH Network, the Receiver of Wires, and the Depository Bank in a Check Collection system payment, to determine whether their client's business activity is legal and unrestricted.

E. Reasonably Designed Policies and Procedures

1. Due Diligence

We agree with the Agencies' approach of incorporating the due diligence required by the proposed rules into the existing account-opening procedures for participants. Risk mitigation is typically an on-going process for all participants and therefore we don't see a need for the Agencies to impose additional rules or burdens on participants regarding periodic confirmation of gambling businesses. Participants should be allowed to perform reviews as often as necessary based on the level of risk posed by a particular relationship.

With regard to the ACH system, we understand the Agencies' desire to restrict transactions wherever possible. However, exempting or monitoring certain "sides" of an ACH transaction seems rather convoluted and would potentially open up an ODFI or RDFI to mistakenly taking incorrect action. We question whether effective procedures could be built to follow such policies in an automated fashion. It is our belief that our Account Opening Policy and Procedures, along with restricted and high-risk business monitoring policies are the best means of ensuring proper activity through the ACH Network.

2. Remedial Action [No Comment]

3. Monitoring

We agree with the Agencies proposed rules to exclude ongoing monitoring and testing within the examples of the policies and procedures for ACH

system, check collection systems and wire transfer systems because these systems currently do not have the same level of functionality for analyzing patterns for specific payments being processed through the systems.

While we do have controls and policies that prohibit banking with certain types of industries, as well as monitoring the banking business of other high-risk entities and all clients, we cannot monitor with 100% certainty the transactions that our customers conduct through the payment systems mentioned for legality or illegality-particularly in the ACH Network.

4. Coding

The Agencies seem to have a good understanding of the card system and we agree that additional operational functionality is needed in light of what the Agencies have already observed within the card system. Our experiences are also demonstrating that card issuers are already negatively impacting lawful (unrestricted) transactions as they block all gambling transactions due to the lack of information about the type of gambling that is currently lumped into a single Merchant Category Code.

This deficiency within the card system creates a conflict between the Act and the mandates placed on the Agencies by the Act. In order for the Agencies to ensure that excluded transactions are not inadvertently blocked as a result of its rulemaking a solution is needed to address what truly takes place within the card system.

The Agencies have correctly noted that card issuers approve transactions in the card system. Thus, one solution to the dilemma (above) may be to develop distinct codes that better reflect lawful as well as unlawful internet gambling. The distinct codes would permit issuers to knowingly comply with the forthcoming rules and better manage their businesses. A benefit of the enhance codes would be the opportunities that would be created for all participants by revealing more details on the types of unrestricted transactions that are currently being blocked.

For the Automated Clearing House system, coding will have a limited effect, as ODFI's and their customers would not be likely to use a code associated with an illegal activity. The use of codes for specific gambling activity would only cause overblocking by Receivers. And again, the burden should rest with the ODFI to know their customer and understand their customer's business model.

5. Cross-Border Relationships [No Comment]

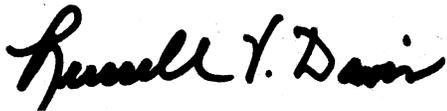
6. List of Unlawful Internet Gambling Businesses

A list of known and unlawful Internet Gambling Businesses is appropriate regardless of whether businesses can change their names or domicile. More appropriately tax identification numbers, names of principals and other information that would aid in the identification of any person known to have participated in restricted transactions would be a benefit. Requirements for policies and procedures should include a query of the most current list. The card system in particular has such a similar tool known as Member Alerts to Control High-Risk (MATCH).

F. Regulatory Enforcement

We concur that recognizing the uniqueness of each payment system is important as well as the individual policies and procedures that are in place for each payment system. Implementing requirements through the existing payment system hierarchy may prove more efficient and cost effective overall. For instance, it is already prohibited to accept or process illegal card transactions and therefore there isn't any reason to create a separate rule. What is needed for all payment systems is a means to identify unrestricted transactions so that all parties measure the benefits of unrestricted transactions that are currently being blocked.

Respectfully Submitted,



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