



December 10, 2007

Via Electronic Delivery

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Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Ave, N.W.
Washington, D.C. 20551

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

Re: Proposed Rule Implementing Unlawful Internet Gambling Enforcement Act
FRB Docket No. R-1298; Treas. Docket No. Treas-DO-2007-0015

Ladies and Gentlemen:

The Electronic Check Clearing House Organization (“ECCHO”) is submitting this letter to the Board of Governors of the Federal Reserve System and the Department of the Treasury (the “Agencies”) to comment on the proposed rule (the “Proposed Rule”) issued under the Unlawful Internet Gambling Enforcement Act of 2006 (the “Act”).¹

ECCHO is a not-for-profit, mutual benefit, national clearinghouse. Every U.S. chartered depository financial institution is eligible for membership in ECCHO. ECCHO was created in 1990 by banks as a cooperative venture to encourage the use of technology to enhance the check payment system. During 2007, ECCHO member banks exchanged more than 4 billion check images totaling \$6.0 trillion. ECCHO’s primary activities can be divided among three functions: 1) rules development and maintenance, 2) industry education and 3) industry advocacy. The views expressed in this letter do not necessarily reflect the views of each ECCHO member bank.

Comments on the Proposed Rule

Definition of Check Collection System -- Section .2(f)

The definition of “check collection system” in the Proposed Rule states that a “check also includes an electronic representation of a check that a bank agrees to handle as a check.” ECCHO supports the inclusion of an electronic representation of a check, which would include electronic check images, within the definition of a “check.”

The financial services industry is rapidly implementing check image exchange processes both among banks and between banks and their customers. Based on recent check image volume estimates as of October 2007, approximately 8.7 billion check images totaling \$9.2 trillion are exchanged on an annual basis.

¹ 72 Fed. Reg. 56680 (October 4, 2007).

These check image exchanges typically are governed by the ECCHO Operating Rules or the Federal Reserve Operating Circulars, depending on how the check image is collected. Both the ECCHO Operating Rules and Federal Reserve Operating Circulars provide that these electronic check images are deemed to be “checks” for purposes of check law and regulation. ECCHO recommends that the final rule clarify that clearing house rules and the Operating Circulars are forms of agreements to handle an electronic representation of a check as a check.

Exemption For Check Collection Systems – Section ____4(b)

Section ____4(b) of the Proposed Rule provides an exception from the requirement to establish procedures reasonably designed to prevent or prohibit restricted transactions for participants providing certain functions in connection with the check collection system. This section exempts a “check clearing house” from these requirements of the regulation with respect to its activities. A “check clearing house” is defined in Section ____2(e) of the Proposed Rule as “an association of banks or other payors that regularly exchange checks for collection or return.”

As a check clearing house for image exchange, ECCHO supports this exception from the requirements of the regulation, as set forth in the Proposed Rule. ECCHO also supports the definition of check clearing house as set forth in the Proposed Rule. Check clearing houses provide a range of functions for their member financial institutions including, among others, rules coverage, informational reports to assist members with exchanges, physical locations for check exchanges, electronic information exchange, and settlement; although not every check clearing house performs each of these functions. These activities do not provide the check clearing house with information regarding the customers of the financial institutions or the nature of the underlying transactions to which the checks relate. Accordingly, a check clearing house could not establish or implement policies or procedures reasonably designed to prevent or prohibit restricted transactions. As such, the exception in the Proposed Rule for check clearing houses is appropriate.

There are additional participants in the check collection system that provide functions to financial institutions in connection with their check image clearing that are similar to one or more of the functions of a check clearing house. However, for various reasons, these non-bank entities may not meet the definition of a check clearing house under the Proposed Rule. For example, there are non-bank entities in the check image exchange system that perform one or more of the following activities: aggregate check images for banks, transmit check images to and from banks and clearing houses, and store/archive check images for banks. These non-bank entities may be privately held (not an association) and may provide services to non-financial institutions. These non-bank entities are typically acting as an agent, a service provider or network provider for financial institutions in connection with these activities. Like check clearing houses, these non-bank entities do not maintain accounts for customers, and do not have information regarding depositing customers of the financial institutions in order to implement procedures to prevent restricted transactions. Accordingly, ECCHO

recommends that the Agencies include an exemption in the final rule for non-bank entities performing functions as those described above.

Policies and Procedures for Check Collection Systems - Section .6(d)

A. Screening of Check Transactions

ECCHO supports the approach under the Proposed Rule that would not require banks or any other persons to implement procedures for monitoring and testing of check transactions in order to identify and deny payment for restricted transactions. As noted in the adopting release to the Proposed Rule, paying banks and collecting banks process checks based on the MICR line information, and do not have access to information regarding the beneficiary/payee of a check payment. Even if the paying bank reviews a payee line on a manual or exception basis, the paying bank cannot always know whether or not the payee was the person that deposited the check at the depository bank, since checks can be transferred by consumers and businesses outside of the payment system. In addition, the paying bank typically would not have any relationship with the payee, and thus would not be able to obtain any information from the payee to assist in determining whether the payee's check constitutes a restricted transaction for purposes of the Act.

The migration of the check collection system to check image exchange as described above does not change banks' difficulty with monitoring or screening check transactions. While electronic check image exchange programs include the exchange of electronic MICR line data among the banks, the payee line information is not available for review by the paying bank or the collecting banks on an automated basis. Typically, only the MICR line information (which does not include payee information) is included in the electronic file with the check image. As such, it is not possible for paying banks and collecting banks to monitor or screen the payee information on a check image or other electronic representation that is presented for payment.

B. Terms in Commercial Account Agreements

The Proposed Rule sets forth as an example of policies and procedures for the check collection system the bank's inclusion of a term in the commercial customer agreement prohibiting a customer from depositing checks that constitute restricted transactions.

We are concerned that this example of a policy will, as a practical matter, be difficult for banks to implement for existing commercial customers. It is our experience that many commercial customer agreements cannot be amended without the written agreement of the commercial customer. While a customer is not likely to object to a request by the bank to add this type of provision to the account agreement, the time and cost associated with obtaining written and signed amendments for all existing commercial account agreements will be a substantial burden.

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We recommend that the final rule provide an additional example of a policy or procedure in Section __.6 that states that, for commercial customers existing prior to the effective date of the final rule, banks are permitted to provide a written notice to their customers stating the restrictions of the Act. This new example of a policy/procedure would be in lieu of a bank including a term in its commercial customer agreement prohibiting the deposit of checks constituting restricted transactions.

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ECCHO very much appreciates this opportunity to comment on the Proposed Rule. In the event of any questions concerning this letter or if ECCHO can be of further assistance to the Agencies in their consideration of the Proposed Rule, please do not hesitate to contact me at (214) 273-3201.

Sincerely,

s/David Walker

David Walker
President