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December 11, 2007

BY HAND DELIVERY

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

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

Re: Treas-DO; Docket Number Treas-DO-2007-0015 & Regulation GG;
Docket No. R-1298

Dear Sir or Madam:

We submit these comments on behalf of a client in response to the Notice of Joint Proposed Rulemaking regarding the Prohibition on Funding of Unlawful Internet Gambling issued by the Departmental Offices of the Department of Treasury and the Board of Governors of the Federal Reserve System (collectively, the "Agencies"). *See Federal Reserve System, Regulation GG; Docket No. R-1298; Department of the Treasury, RIN 1505-AB78, 72 Fed. Reg. 56680 (Oct. 4, 2007) ("Joint Notice")*. As set forth below, we urge the Agencies to establish a list of businesses that engage in unlawful Internet gambling. The creation of such a list is a feasible endeavor that will significantly reduce funding associated with unlawful Internet gambling. Moreover, the list will provide an effective, uniform approach to identify and prohibit restricted transactions.

The Agencies Should Establish a List of Unlawful Internet Businesses

Although the Unlawful Internet Gambling Enforcement Act of 2006 (“Act”) does not require the Agencies to create a list of businesses engaged in unlawful Internet gambling, the Agencies recognize “that there is some interest in exploring this idea.” Joint Notice, 72 Fed. Reg. 56690. The Agencies acknowledge that they considered including examination of such a list within the proposed rule’s examples of reasonably designed policies and procedures to prohibit restricted transactions. *Id.* The Agencies request comment on a range of issues regarding the creation of a list of unlawful Internet businesses, including whether such a list would be appropriate as well as the “practical or operational aspects of establishing, maintaining, updating, or using such a list.” The Agencies also seek comment regarding how the establishment of such a list would affect the acceptable policies and procedures under the Act designed to identify and prohibit restricted transactions. *See* Joint Notice, 72 Fed. Reg. 56691.

A. The Creation of a List of Unlawful Internet Businesses is Feasible and Would Significantly Reduce Unlawful Internet Gambling

Although the Agencies state that the creation of a list of unlawful Internet businesses would be a complex endeavor, the creation of such a list is quite feasible. Websites engaged in unlawful Internet gambling do not operate in secret. Instead, such websites, which typically book sports bets or run casino and card games, operate in the open. In fact, unlawful Internet gambling websites conduct advertising and marketing campaigns on the Internet and in print and broadcast media to attract and retain players.

A list of domestic and foreign websites involved in unlawful gambling can be created fairly easily by compiling data available from companies that monitor Internet traffic, such as Alexa, Nielsen and Comscore. As part of such an effort, researchers can prepare a list of domestic and foreign gambling websites that accept players from the U.S., the owners of such websites, and the jurisdictions in which the websites operate. Researchers may screen the games offered by such sites to identify likely illegal gambling activities such as sports betting, traditional casino games, poker card rooms and play-to-pay bingo. In short, a reliable list may be created efficiently without the need for the formal interpretation of “various Federal and State gambling laws” cited by the Agencies. *See* Joint Notice, 72 Fed. Reg. 56691.

One additional step in the process of preparing a list is to identify businesses that are receiving gambling payments for gambling activity on a specific Website. These businesses are sometimes different than the companies that own the Website.

The simplest process to identify businesses receiving gambling payments is one that is similar to a routine process used by major credit cards to verify compliance of customer-declared activities with actual activities. Credit card companies conduct occasional transactions with customer Websites to verify that transaction coding in fact complies with the Website's activities.

This straightforward process of compiling a list of unlawful Internet gambling websites should yield substantial positive results. A relatively finite number of established brandname websites dominate the illegal Internet gambling community. Targeting these major websites likely would eliminate about 90 percent of the money flowing from the U.S. to the illegal online gambling industry. In addition, "high roller" participants in these illegal games will disappear.

Events surrounding the 2006 enactment of the Act support the view that the establishment of a list of unlawful Internet gambling websites will reduce illegal Internet gambling. Specifically, the mere passage of the Act caused many foreign public companies with gambling operations in the U.S. to pull out of the U.S. market well in advance of the publication of the Act's implementing regulations. The establishment of a publicly available list of unlawful Internet gambling companies certainly will cause many more illegal gambling websites to exit the U.S. market.

The creation of a list of unlawful Internet gambling businesses will present some substantive challenges to the Agencies. For example, agencies will need to make periodic updates to maintain the validity of the list and to address situations noted by the Agencies in which unlawful Internet gambling businesses frequently change their names. Aside from ensuring the validity of the list through frequent updates, the need for major unlawful Internet gambling websites to operate openly to attract and retain players will undercut attempts by such websites to avoid identification through frequent name changes. In short, this process should result in the identification of websites under their new names.

The Agencies also must adopt an appeals mechanism for Internet gaming companies erroneously included on the list to demonstrate that the offered games are in fact lawful. Given the relatively limited number of games at issue, such an appellate process should quickly become efficient.

The Agencies correctly recognize that the erroneous inclusion of a lawful business on the list would inflict "unjustified harm" on such business. *See* Joint Notice, 72 Fed. Reg. 56690. Nonetheless, the creation of a list of illegal gambling websites, with a reasonable appeals process, is a feasible and effective strategy for reducing the flow of funds associated with illegal Internet gambling.

The Agencies contend that any list of unlawful Internet businesses necessarily would be under-inclusive. *See* Joint Notice, 72 Fed. Reg. 56690. Although any list created according to the methodology set forth above may fail to identify small unlawful Internet gaming websites, the list offers a practical method for identifying the major illegal Internet gambling operations. Thus, the creation of a list of unlawful Internet gambling businesses strikes an appropriate balance by achieving the goals of the Act without unduly burdening the financial community or legal internet websites.

B. Examining a List of Unlawful Internet Gambling Businesses Will Enhance the Effectiveness of Acceptable Procedures Under the Act to Block or Otherwise Prohibit Restricted Transactions

As discussed above, the Agencies can establish policies and procedures to develop a fairly comprehensive list of unlawful Internet gambling businesses. The establishment of such a list for review by non-exempt participants will greatly enhance the effectiveness of the acceptable procedures required under the proposed rule and will provide a uniform approach to assist non-exempt participants to block or otherwise prohibit restricted transactions. On behalf of our client, we therefore urge the Agencies to adopt the following specific proposals set forth by the Agencies in the Joint Notice:

Examination of a list of unlawful Internet businesses should be included in the regulation's examples of policies and procedures reasonably designed to block or otherwise prohibit restricted transactions.

A participant who routinely checks the list to ensure that the indicated payee of each transaction the participant processes on a particular designated payment system is not on the list should be deemed to have policies and procedures reasonably designed to prevent or otherwise prohibit restricted transactions with respect to that designated payment system.

A participant who routinely checks the list to ensure that a prospective commercial customer is not included on the list should be deemed to have, without taking any other action, policies and procedures reasonably designed to prevent or prohibit restricted transactions.

Finally, the establishment of a list of unlawful Internet gambling businesses should not lead the Agencies to narrow the exemptions included in the proposed rule for certain participants in the ACH, check collection and wire payment systems that do not have customer relationships with Internet gambling businesses. Although the list will enhance the ability of

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non-exempt participants in these systems to identify and block restricted transactions with their customers, the list will not create direct customer interface for the non-exempt participants. The Agencies' rationale for exempting these participants—the lack of a customer relationship with an Internet gambling business—will continue to apply following the establishment of the list.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "B. Genderson", with a long horizontal flourish extending to the right.

Bruce R. Genderson