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*By electronic delivery*

December 12<sup>th</sup>, 2007

Mrs. Jennifer J. Johnson  
Secretary, Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue  
N.W., Washington, DC 20551  
[regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)  
**FRB Docket No. R-1298**

Department of the Treasury  
Office of Critical Infrastructure Protection and Compliance Policy  
Room 1327 of Main Treasury Building  
1500 Pennsylvania Avenue, N.W.  
Washington DC, 20220  
**Treasury Docket No. Treas-DO-2007-0015**

Re: Prohibition on Funding of Unlawful Internet Gambling

Dear Sir or Madam:

Branch Banking and Trust Company and the affiliated banks and subsidiaries of BB&T Corporation (BB&T) appreciate the opportunity to comment on the Proposed Regulation ‘Prohibition on Funding of Unlawful Internet Gambling’ issued jointly by the Federal Reserve Board and the U.S. Treasury Department (The Agencies).

BB&T, with more than \$130 billion in assets, is the nation’s fourteenth largest financial holding company and operates more than 1,500 financial centers in the Carolinas, Virginia, Maryland, West Virginia, Kentucky, Tennessee, Georgia, Florida, Alabama, Indiana and Washington, D.C.

BB&T supports the ultimate goal of the proposed regulation to have measures in place to identify and block or otherwise prevent or prohibit transactions in connection with unlawful Internet gambling. However, BB&T strongly believes that in its current form, the proposed regulation has a number of requirements and areas of inadequate clarity that would make compliance unnecessarily confusing and extremely difficult. Our concerns include, but are not limited to, vague definitions of certain terms and requirements of participants and the potential burden put on financial institutions if certain provisions of the rule are adopted as written. Our specific comments and suggestions follow.

**Definition of “unlawful Internet gambling”.** The proposed regulation does not include a definition of what constitutes unlawful Internet gambling, and instead refers to “underlying substantive State and Federal Gambling laws in the State or Tribal Lands in which the bet or wager is initiated, received, or otherwise made”. The lack of a clear definition or description of the specific practices that constitute unlawful Internet gambling is a significant omission that will have serious negative implications for BB&T and other banks attempting to comply with the regulation. First, requiring banks to be knowledgeable of gambling regulations and to monitor those regulations in

all States and Tribal Lands is both unreasonable and impractical, nor is it possible to know where the consumer makes the bet or wager. Additionally, we point to conflicting interpretations of the scope of unlawful Internet gambling at the Federal level as an example of the uncertainty BB&T would face. We strongly recommend that the Agencies work with the Department of Justice to develop a clear and concise definition of unlawful Internet gambling that would be incorporated in the final rule.

**Implementation deadline.** Six months is insufficient time for non-exempt payments system participants such as BB&T to develop and implement policies and procedures. BB&T will not be able to develop a significant portion of its compliance program until the payment organizations, such as NACHA and the card networks, have developed and announced their policies and procedures. We recommend allowing at least an 18-24 month time period following publication of the final rule for these policies and procedures to be implemented by all parties.

**Other Payment Systems.** The Agencies requested comment on ‘Other Payment Systems.’ We feel that new, emerging, and other non-traditional payment systems must be addressed in the final rule and held to the same requirements as the mentioned payment systems and participants. We believe that non-traditional payment participants such as PayPal, Google Checkout, and Bill Me Later must also be subject to the regulations prohibiting unlawful Internet gambling payments or the goal of the proposed regulation will be easily circumvented.

**Wire Transfer System.** BB&T does not advocate the use of the phrase “becomes aware” in the proposed regulation, used in reference to participants becoming aware that a commercial customer has received an unlawful Internet gambling payment. We suggest that the Agencies replace this term with the more definitive standard of “actual knowledge”, defined as when a participant has knowledge of a fact regarding a transaction, which occurs only when that fact is brought to the attention of an individual in the organization who is responsible for the organization’s compliance function with respect to that transaction. To use the current language would imply that indirect notice to anyone in the enterprise could plausibly be considered sufficient in putting the company on notice as to a customer having received an unlawful Internet gambling payment. Instead, then, the actual knowledge standard should be used throughout the regulation as a replacement for “becomes aware”.

**ACH System.** Included in this section is the statement “the institution serving as the ODFI in an ACH debit transaction or RDFI in an ACH credit transaction would not be exempt from the regulations because these institutions typically have a pre-existing relationship with the customer receiving the proceeds and could, with reasonable due diligence, take steps to ascertain the nature of the customer’s business.” What would be considered “reasonable due diligence” is unclear. In order for participants to develop effective policies and procedures that will also meet regulator’s expectations, a more definitive definition of “reasonable due diligence”, and/or examples of practices that would meet the requirements of reasonable due diligence, should be provided in the final rule.

**Due Diligence.** BB&T believes the regulation lacks guidance as to the policies and procedures participants must follow to meet “due diligence standards” for determining if a business is involved in unlawful Internet gambling. Specifically, for example, it is unclear whether the due diligence requirement applies to both new and existing customer relationships. The lack of clarity around the due diligence standards would result not only in using extensive and costly resources to this end, but would also result in both inconvenience and confusion to customers who are already subject to customer identification and screening programs that banks have had in place for a number of years. Accordingly, BB&T recommends the rule explicitly state that the due diligence requirement applies only to new relationships that occur following the effective date of the new rule.

**Monitoring.** BB&T believes that “...monitoring of websites to detect unauthorized use of the relevant card system, including its trademark” is a highly unrealistic expectation to include in the monitoring requirements. The resources required for effectively monitoring Internet websites to detect unlawful use of payment systems could be staggering and could negatively impact the effectiveness of financial institutions’ ongoing BSA/AML monitoring programs.

We also strongly question how participants can be expected to effectively distinguish lawful intrastate gambling transactions from unlawful interstate transactions, given that the participant would have no practical method of determining the customer’s location, in relation to that of the gambling organization, when the transaction occurred.

**Coding.** The proposed regulation stipulates that card system participants are expected to address methods for identifying and blocking restricted transactions and suggests adoption of transaction and merchant/business codes for this purpose. We question the effectiveness of such a system, as Internet gambling sites can easily mask unlawful transactions by submitting them with codes designated for lawful transactions. For example, it is relatively simple for overseas hotels and casinos to process gambling transactions as room service or bar charges.

**List of unlawful Internet gambling businesses.** The proposed regulation mentions that the Agencies considered including in the proposed rule a list that would be established by the U.S. Government “of businesses known to be engaged in the business of unlawful Internet gambling.” BB&T agrees with the Agencies’ viewpoint that establishing and maintaining such a list would be time-consuming and under-inclusive. The Agencies requested comment on the financial institutions establishing and maintaining such a list.

BB&T does not believe that such a listing would be either feasible or effective for a variety of reasons. First, any organization involved in illegal Internet gambling is not likely to identify itself as such when accessing a payment system. If the organization is subsequently identified as an illegal Internet gambling operation, it is likely to simply change its name and gain access via another payment system participant. For these reasons, any listing would likely be incomplete at the outset, and become out of date almost immediately.

If such a listing is mandated, however, we believe the responsibility for developing and maintaining it should be assigned to the federal government, which is in the best position to maintain a single database that could be accessible to all payment system participants.

**Enforcement:** Lastly, BB&T strongly questions whether the payments system is the appropriate place for enforcement of prohibitions on funding unlawful Internet gambling. Banks and other payment system participants have neither the expertise or resources necessary to assume this duty, which BB&T firmly believes should be the responsibility of federal and state law enforcement authorities. Additionally, the proposal includes a suggestion that remedial actions adopted by non-exempt participants could include the imposition of fines, which could put financial institutions in the inappropriate position of acting as the police, judge, and jury in dealing with a customer suspected of engaging in unlawful Internet gambling activity.

## Conclusion

BB&T commends the Agencies’ efforts in the difficult task of implementing applicable provisions of the Unlawful Internet Gambling Enforcement Act of 2006. However, BB&T believes that the proposed regulation does not clearly define certain critical terms and is not clear on what is required of payment system participants in a number of areas. In our opinion, the proposed regulation needs further review, modification and elaboration in order for it to become an effective tool in prohibiting unlawful Internet gambling payments.

Sincerely,

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