December 12, 2007

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

Re: Notice of Proposed Joint Rulemaking – Prohibition on Funding of Unlawful Internet Gambling – Docket Number R-1298

Dear Madam Secretary:

The Interactive Skill Games Association ("ISGA") respectfully submits these comments in response to the above-referenced Notice published in the *Federal Register* on October 4, 2007 ("Proposed Regulations") in connection with implementation of the Unlawful Internet Gambling Enforcement Act of 2006 ("UIGEA").

ISGA is a trade associate established for the purpose of promoting the growth of the interactive skill games industry; ensuring the industry's compliance with applicable federal and state laws; and facilitating public understanding of skill games as a national past-time that engages participants in contests that are fun and challenging. ISGA members are companies offering competitive skill games in North America.

Skill games are not gambling, and therefore ISGA is compelled to urge that the Board of Governors of the Federal Reserve System and the Department of Treasury amend the Proposed Regulations to clarify that the definition of "unlawful Internet gambling" does not include skill games, and that the system designed to stop the flow of funds from illegal gambling operations shall not include businesses hosting skill games on the Internet. ISGA believes that the proposed regulations in their current form will likely have a profound negative impact on this socially beneficial industry for the reasons set forth in this letter, and that such a result was not intended by Congress.

What are Skill Games?

A skill game is a contest in which player intervention is decisive in determining the outcome of the game. Skill games include well known games such as chess and trivia quizzes, as well as competitions in popular casual games, like Bejeweled and Luxor in which players compete against other players. The Internet provides a venue whereby players can engage in skill game competitions against other players of equal ability from the comfort of their homes. Players

enjoy the challenge of competing as well as the mental escape associated with being engrossed in their favorite word, card, strategy, or arcade games.

According to industry surveys, two-thirds of the players frequenting skill game sites are women, with more than half being between the ages of 25 and 54. Additionally, most of the players are married and many have children. All of the leading Internet sites, including AOL, MSN and Yahoo! and hundreds of other popular Web destinations, offer skill games on their sites.

The social value of skill competitions is well documented and supported by a scientific basis. For example, a June 2003 study published in the *New England Journal of Medicine* found the cumulative risk of dementia significantly lower for elderly persons who play skill games compared to those who do not. In another study, researchers at Case Western Reserve Medical School compared the leisure time activities of more than 550 people, nearly 200 of whom went on to develop Alzheimer's. The study found that "those who had engaged in stimulating activities throughout their life – everything from reading, doing crossword puzzles, and playing bridge, chess, or board games to visiting friends, practicing a musical instrument, and bicycling – were 2 1/2 times less likely to get Alzheimer's."

Skill Games Are Not Gambling

Unlike gambling games, no person can expect to win a skill competition by mere random moves or as a result of one or more favorable chance events. Skill games involve the exercise of quickness or acuteness of sense perceptions; intellect, keenness of discernment and sound judgment; shrewdness; and/or the ability to see what is relevant and significant to accomplish the desired end result. Ultimately, the player's skill, and not chance or other fortuitous circumstances, is the determining factor in the outcome of skill competitions.

Interactive skill game companies must generate revenue to build and maintain their sites and pay their employees. However, unlike gambling, skill games do not involve bets [1], or individual play against the "house" or a "bank." Rather, to join a skill game tournament online, players pay a user or entry fee, which is typically modest, as competition in the industry tends to set pricing. Skill game tournaments commonly involve two to three players and have entry fees of approximately $2.00 for a game that will generally last from three to five minutes with an

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[1] The statutory definition of "unlawful Internet gambling" requires that there be a "bet or wager" to trigger the application of the process established in the Proposed Regulations to code and block the flow of funds: "(10) Unlawful Internet Gambling. – (A) In General. – The term 'unlawful Internet gambling' means to place, receive or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made."

average prize of about $6.00 awarded to the player who accumulates the most points. As this example illustrates, the typical prize is also minimal – certainly far from any amount likely to cause the social ills associated with gambling addictions.

Impact of the Proposed Regulations on Skill Games

ISGA does not believe Congress intended that UIGEA block lawful game transactions such as skill games. The Proposed Regulations, however, do not attempt to distinguish lawful skill competitions from illegal gambling games. The proposed regulatory solution as it relates to distinguishing legal and illegal transactions shifts the burden to the financial transaction providers ("FTPs"), with no guidance and only downside liability. This results in shifting the fundamental purpose of the rulemaking under UIGEA to the FTPs to make policy and procedural decisions central to implementing UIGEA.

This shift frustrates the purpose of UIGEA and will likely inflict unnecessary harm on many lawful industries. Most financial institutions want no part of the expense associated with this monumental undertaking and lack the necessary knowledge to conduct such investigation into the legality of different online activities. Therefore, their likely inclination will be to assume that all transactions involving prizes are restricted, and as a result to code and block those transactions as gambling transactions.

Conclusion and Proposed Action

The Proposed Regulations as currently drafted:

1. fail to recognize that there are lawful businesses hosting lawful interactive skill games that are not gambling and were not intended by Congress to be swept into the regulatory ban imposed by UIGEA;
2. fail to provide sufficient safeguards to protect lawful Internet activities; and
3. shift the burden onto private third parties to determine what is and what is not a lawful activity – an improper abdication of governmental responsibility.

The Proposed Regulations should be revised to provide clear guidance to FTPs regarding legal and illegal activities under UIGEA. This could be accomplished by developing a list of prohibited gaming sites. While the Proposed Rules cite complex laws and a lack of relevant expertise in rejecting this approach, similar lists have been developed to prohibit financial transactions with terrorists and narcotics traffickers. In our opinion, utilizing the expertise of the Department of Justice would likely overcome these concerns. Alternatively, the Proposed Rules could provide clear guidance to FTPs by developing, in conjunction with the Department of Justice, a list of sites that do not violate UIGEA.

Thank you in advance for consideration of our comments.

Sincerely,

Harlan W. Goodson
President
Interactive Skill Games Association