The Huntington National Bank
Legal Department
Huntington Center
41 South High Street
Columbus, Ohio 43287

December 12, 2007

Via Electronic Delivery

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

Department of the Treasury
Office of Critical Infrastructure
Protection and Compliance Policy
Room 1327
Main Treasury Building
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220
http://www.regulations.gov

Attention: Federal Reserve: Docket No. R-1298
Treasury: Treas-DO-2007-0015

Re: Notice of Joint Proposed Rulemaking
Prohibition on Funding of Unlawful Internet Gambling
72 *Fed. Reg.* 56680 (October 4, 2007)

Dear Sir/Madame:

This letter is submitted on behalf of The Huntington National Bank ("Huntington")[1] in response to the above-referenced Notice of Joint Proposed Rulemaking published jointly by the

[1] Huntington is a subsidiary of Huntington Bancshares Incorporated, which is a $55 billion regional bank holding company headquartered in Columbus, Ohio. Along with its affiliated companies, Huntington has more than 141 years of serving the financial needs of its customers, and provides innovative retail and commercial financial products and services through over 600 regional banking offices in Indiana, Kentucky, Michigan, Ohio, Pennsylvania and West Virginia. Huntington, along with its affiliated companies, also offers retail and commercial financial services online at www.huntington.com; through its technologically advanced, 24-hour telephone bank; and through its network of over 1,400 ATMs. Selected financial service activities are also conducted in other states including: Dealer Sales offices in Arizona, Florida, Georgia, Nevada, New Jersey, New York, North Carolina, South Carolina, and Tennessee; Private Financial and Capital Markets Group offices in Florida; and Mortgage Banking offices in Maryland and New Jersey. Huntington's affiliate, Sky Insurance, offers retail and commercial insurance agency services, through offices in Ohio, Pennsylvania, Michigan, Indiana, and West Virginia. International

Board of Governors of the Federal Reserve System and the Department of the Treasury (collectively, the "Agencies"). We appreciate this opportunity to comment on the Notice.

While Huntington is willing to do its part to implement government policies, the requirements of the proposed rule in deputizing banking institutions and other payment system participants to enforce a social policy against certain forms of gambling create a significant burden on participants and the payment systems affected. This burden is exacerbated when the proposed rule shifts the burden of determining which transactions are legal or illegal to the payment system participants and payment systems, apparently because the federal regulators do not want be making such determinations, and in fact, apparently cannot even agree in certain cases on what is legal or not.[2] Payment system participants and payment systems should not be put in the position of having to become legal experts on what forms of Internet gambling are legal and what are not under federal law and the law of all fifty states, not to mention that such determinations are also affected by factual issues that may be impossible for the participant or system to know, such as where the consumer is at the time of conducting the transaction[3] or where the various servers over which the transaction are sent may be located.[4]

We appreciate the approach taken by the Agencies to provide that establishment and compliance with policies and procedures will constitute compliance with the proposed rule. It is important that compliance be at a policy/procedural level and not at a transaction level where it will be difficult to get this right all of the time. However, not all compliance obligations in the proposed rule are kept above the transaction level, as when, for example, the safe harbor

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banking services are available through the headquarters office in Columbus and through limited purpose offices located in the Cayman Islands and Hong Kong.

[2] See November 14, 2007 discussion by representatives of the Department of the Treasury and Department of Justice before the House Judiciary Committee's hearing on establishing consistent enforcement policies in the context of online wagers. http://judiciary.house.gov/oversight.aspx?ID=396.

[3] It hardly needs to be pointed out that consumers with laptop computers can access the Internet to perform gambling transactions from almost any location in the world.

[4] In the preamble to the proposed rule, in response to suggestions that the Agencies compile a list of unlawful Internet gambling businesses, the Agencies state that in order to compile such a list "the Agencies would have to formally interpret the various Federal and State gambling laws in order to determine whether the activities of each business that appears to conduct some type of gambling-related function are unlawful under these statutes." 72 FR, at 56691. But this is exactly what the proposed rule requires payment system participants and payment systems to do in order to block transactions. Similarly, the Agencies say that "[a]ny government agency compiling and providing public access to such a list would need to ensure that the particular business was, in fact, engaged in activities deemed to be unlawful Internet gambling under the Act. This would require significant investigation and legal analysis. Such analysis could be complicated by the fact that the legality of a particular Internet gambling transaction might change depending on the location of the gambler at the time the transaction was initiated, and the location where the bet or wager was received. In addition, a business that engages in unlawful Internet gambling might also engage in lawful activities that are not prohibited by the Act." 72 FR, at 56690. Clearly these are significant burdens for the Agencies to be concerned about imposing on the government, but the appropriate solution cannot be simply to shift those burdens to payment system participants and payment systems as the Agencies do with this proposed rule.

provision in __.5(c) of the proposed rule requires a determination that a person reasonably believes that a blocked transaction is a restricted transaction. Furthermore, even at the policy/procedure level the proposed rule creates difficult compliance issues and loopholes from any safe harbor, as when, for example, under __.5(b) of the proposed rule participants in a designated payment system are permitted to rely on and comply with the policies and procedures established by the designated payment system, but only if those policies and procedures comply with the regulation. This would appear to require each of the participants in the particular payment system to perform its own evaluation of the payment system's policies and procedures for compliance with the rule, which is not only inefficient and impractical (particularly when the payment system has thousands of participants and no single participant has any significant leverage with the payment system), but then puts every relying participant in violation of the rule if the payment system got something wrong.

We believe that the only part of the proposed rule that may be possible reasonably to comply with at the present time is that portion dealing with card systems, but only if banks are clearly permitted to rely on the card systems' policies and procedures without qualification, including appropriate coding developed by the card systems to identify restricted transactions, with no obligation for issuers or acquirers to engage in monitoring or testing, but allowing reliance on the card systems' monitoring and testing. Even this, however, could result in a significant amount of either underblocking or overblocking, since it is to be expected that gambling establishments will not code gambling transactions with codes that they know will be rejected, and if such establishments offer other lawful services, such as meals or lodging, it may be difficult for a card issuing bank, for example, to be certain which transactions to reject and which to allow, not to mention the costs to the bank of monitoring and evaluating such transactions.

These and other specific problems with the proposed rule for card systems and for the other covered payment systems are more fully set forth in the comment letters filed by Financial Services Roundtable, Consumer Bankers Association and American Bankers Association, and we support the concerns expressed in those comment letters. Considering the significant level of problems with implementing this proposed rule and significant questions as to its effectiveness, we believe that the Agencies should defer applying this regulation outside of the card systems until there is further study to address these concerns.

We would also like to emphasize that this proposed rule, as well as the underlying statute, create a conflict with section 137 of the federal Truth in Lending Act, 15 U.S.C. 1647, and section 226.5b(f) of the Federal Reserve Board's Regulation Z, 12 C.F.R. 226.5b(f). These provisions prohibit creditors from making any changes to home equity credit lines other than as permitted by these provisions, including only limited circumstances under which a creditor is permitted to prohibit additional extensions of credit. Many banks offer home equity credit lines with credit card access, and some bank customers use such credit cards to engage in Internet gambling transactions. Blocking Internet gambling transactions when the consumer is using a credit card issued under a home equity credit line is a prohibition of additional extensions of credit under that home equity credit line, and none of the permitted prohibitions of additional

extensions of credit would appear to encompass transactions blocked in accordance with this proposed Internet gambling rule and its underlying statute.[5] For example, relying on section 226.5b(f)(3)(vi)(C) to place a provision in a credit agreement that prohibits use of the account for illegal gambling enables consumers to claim that failure of the bank to monitor or enforce the provision—whether it is impossible or not to do so—or notwithstanding any monitoring, allowing gambling transactions to go through, shifts the liability for the gambling transaction to the bank. In order to avoid unnecessary litigation over this issue under the Truth in Lending Act and Regulation Z, the proposed rule should clarify that compliance with the proposed rule cannot be the basis of a claim for a violation of the Truth in Lending Act or Regulation Z, or in the alternative, the Federal Reserve Board should propose a parallel revision to Regulation Z to resolve this conflict.

We also believe it is important for the Agencies to recognize that this proposed regulation, if not properly drafted, is likely to be a further springboard for litigation against banks, simply because use of accounts for gambling purposes often results in losses that the consumer (or, for example, a joint obligor spouse who claims to be unaware of the gambling) is seeking to recover from someone, with the bank being an obvious target. And on the other side, if banks block legal gambling transactions, or transactions that they thought were gambling transactions but were not, consumers will be similarly motivated to seek a remedy against the bank. Thus, broad and reliable safe harbor provisions are an essential part of this rule.

Thank you for consideration of these comments. If you have any questions concerning these comments, or if I may otherwise be of assistance in connection with this matter, please do not hesitate to contact me at 614-480-5760.

Sincerely,

Daniel W. Morton
Senior Vice President & Senior Counsel

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[5] Regulation Z, section 226.5b(f)(3)(vi) provides that: "No creditor may, by contract or otherwise . . . [c]hange any term, except that a creditor may . . . (vi) Prohibit additional extensions of credit or reduce the credit limit applicable to an agreement during any period in which:
(A) The value of the dwelling that secures the plan declines significantly below the dwelling's appraised value for purposes of the plan;
(B) The creditor reasonably believes that the consumer will be unable to fulfill the repayment obligations under the plan because of a material change in the consumer's financial circumstances;
(C) The consumer is in default of any material obligation under the agreement;
(D) The creditor is precluded by government action from imposing the annual percentage rate provided for in the agreement;
(E) The priority of the creditor's security interest is adversely affected by government action to the extent that the value of the security interest is less than 120 percent of the credit line; or
(F) The creditor is notified by its regulatory agency that continued advances constitute an unsafe and unsound practice.