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Mr. Charles Klingman
Deputy Director
Office of Critical Infrastructure Protection and Compliance Policy
U.S. Department of the Treasury
Room 1327, Main Treasury Building
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

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

Re: Comments to Notice of Joint Proposed Rulemaking, Prohibition on Funding Unlawful Internet Gambling; Docket Number Treas-DO-2007-0015; Docket Number R-1298

Dear Mr. Klingman and Ms. Johnson:

I am writing on behalf of Magna Entertainment Corp. ("MEC"), one of the largest horseracing and pari-mutuel wagering operators in North America, to offer MEC's comments on the Agencies' proposed regulations required by the Unlawful Internet Gambling Enforcement Act (UIGEA).

MEC is one of North America's leading owners and operators of horse racetracks and one of the world's leading suppliers, via simulcasting, of live racing content to the growing inter-track, off-track and account wagering markets. MEC currently owns and/or operates seven Thoroughbred racetracks (Santa Anita Park, Gulfstream Park, Pimlico Race Course, Laurel Park, Golden Gate Fields, Thistledown, and Portland Meadows), two racetracks which conduct both Thoroughbred and Quarter Horse/Mixed Breed race meets (Lone Star Park at Grand Prairie and Remington Park), and one harness racetrack (The Meadows), as well as the simulcast wagering venues at these tracks and their affiliated off-track betting (OTB) facilities. In addition to its racetrack and affiliated OTB operations, MEC owns and operates a national account wagering business known as XpressBet™, which permits customers located in the United States to place wagers by telephone and over the Internet on horse races at over 100 North American racetracks and internationally on races in Australia, South Africa and Dubai. MEC also owns MagnaBet™,

which is an account wagering business that opens and manages wagering accounts on behalf of European residents.

MEC has made a significant investment in live horseracing and pari-mutuel wagering, including its account wagering operations. It therefore has followed closely the passage of UIGEA and the rule-drafting process required by it, and it appreciates the opportunity to submit these comments. MEC believes that the proposed regulations represent a diligent effort to follow UIGEA's statutory mandates and reflect faithfully Congressional intent. The proposed regulations also recognize the practical issues that financial institutions likely will confront as they begin to devise and implement programs and procedures that comply with the law. MEC requests that the Agencies consider one important change to the proposed regulations. This amendment, as discussed below, is strongly supported by the language of UIGEA.

I. The Proposed Regulations Appropriately Recognize that Transactions Allowed by the Interstate Horseracing Act (IHA) are Exempt from UIGEA's Definition of "Unlawful Internet Gambling"

Both the statutory language and the legislative history of UIGEA evince clear Congressional intent to preserve existing state and federal gambling laws concerning pari-mutuel wagering on horse races. There is ample authority to support the proposition that Congress sought to ensure that lawful activities under the IHA would not be adversely affected by UIGEA.

UIGEA provides that "[n]o provision of this subchapter shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States." 31 U.S.C. § 5361(b). Specific evidence of Congress' intent can be found in the definition of "unlawful Internet gambling," which expressly exempts wagers that meet certain conditions, including being allowed under the IHA. *See* 31 U.S.C. § 5362(10)(C)(iv)(I). The Agencies recognized Congressional intent in noting that UIGEA "was not intended to change the legality of any gambling-related activity in the United States." Proposed Regulations, Section-by-Section Analysis, at 19.

II. To Effectuate Congressional Intent, the Agencies Should Provide Further Assurances to Financial Institutions that Process Exempt Transactions Under UIGEA Where Those Financial Institutions Have Developed Procedures, Including the Development of Merchant Category Codes ("MCC"), Reasonably Designed to Distinguish Between Exempt Transactions and Restricted Transactions

UIGEA directs the Secretary of the Treasury and the Board of the Federal Reserve System to "ensure that transactions in connection with any activity excluded from the definition of unlawful internet gambling...are not blocked or otherwise prevented or prohibited by the prescribed regulations." 31 U.S.C. § 5364(b)(4)(emphasis added). The Agencies acknowledge this directive, noting that UIGEA "directs the Agencies to ensure that transactions in connection with any activity excluded from the Act's definition of 'unlawful Internet gambling'...are not blocked or otherwise prevented or prohibited by the prescribed regulations." Proposed Regulations, Supplementary Information, at 5. We consider UIGEA's directive to be a mandate

to the Agencies to promulgate regulations designed to avoid the situation where otherwise exempt transactions are blocked out of an overabundance of caution. Accordingly, we believe the regulations should establish a formal mechanism that “ensure[s]” lawful transactions (*i.e.*, transactions exempt from the definition of “unlawful Internet gambling”) are processed in a manner envisioned by UIGEA.

From the proposed regulations, it is apparent that the Agencies recognize that “a participant in a designated payment system shall be considered in compliance with the requirement if the designated payment system of which it is a participant has established policies and procedures to prevent or prohibit transactions and the participant relies on, and complies with, the policies and procedures of the designated payment system.” Proposed Regulations, Section-by-Section Analysis, at 18; *see also* 31 C.F.R. § 132.6(c)(proposed). We also note that the Agencies state that “it may be reasonably practical for card systems to develop merchant category codes for particular types of lawful Internet gambling transactions.” Proposed Regulations, Section-by-Section Analysis, at 22.

We believe that the creation of Merchant Category Codes (“MCC”) would help designated payment systems and participants distinguish between restricted and exempt transactions, thus fulfilling Congress’ goal of blocking only restricted transactions while ensuring that exempt transactions are processed. We therefore suggest that the proposed regulations be amended to encourage designated payment systems or participants to create an MCC designed to identify the types of transactions expressly exempted under UIGEA. We believe this encouragement should take the form of expressly stating in the regulations that the creation of this type of an MCC is a procedure that is deemed to be reasonably designed to block or otherwise prevent restricted transactions.

Accordingly, we strongly recommend that the Agencies amend 31 C.F.R. § 132.6(c)(proposed) by adding a new paragraph (4):

“(4) With respect to any activity that is allowed under the Interstate Horseracing Act of 1978, rely upon a merchant category code (MCC) that is limited only to activities allowed under such Act.”

We appreciate the opportunity to share our views with the Agencies overseeing this important rulemaking. Thank you for the opportunity to comment on the proposed regulations.

Sincerely



Gregg A. Scoggins
National Director of Regulatory Affairs