

Center for Regulatory Effectiveness

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November 4, 2008

The Honorable Ben S. Bernanke
Chairman
Board of Governors of
the Federal Reserve System
Room 2046
20th Street and Constitution Avenue, NW
Washington, DC 20551

The Honorable Henry S. Paulson, Jr.
Secretary
US Department of the Treasury
Room 3330
1500 Pennsylvania Avenue, NW.
Washington, DC 20220

Re: Deferring the UIGEA Rule Pursuant to G-20 Negotiations

Dear Dr. Bernanke and Mr. Paulson:

The planned Unlawful Internet Gambling Enforcement Act (UIGEA) rule would unilaterally disrupt international capital flows and, thus, should be deferred until after the G-20 negotiations starting on November 15th so that the rule can be coordinated with the outcome of the financial discussions.

The Center for Regulatory Effectiveness (CRE) is particularly concerned that publication of the UIGEA would preempt significant portions of the G-20 negotiations. More specifically, the UIGEA is not transparent (clear) because it provides no clear, coherent definition of what activities constitute illegal internet gambling, *i.e.*, “restricted transactions” that are to be blocked.

The most recent G-20 Communiqué stressed the importance of increasing transparency among financial intermediaries – a principle that would be abrogated by implementation of the UIGEA rule prior to the G-20 meeting. As the Communiqué explained:

*...we concur that recent events have emphasised the need for greater effectiveness of financial supervision and the management of financial risks as well as to increase transparency among financial intermediaries.*¹

The UIGEA rule, as discussed below, would undermine the transparency and the efficiency of international payment systems. Moreover, the rule would run directly counter to the payment system and legal certainty precepts contained in the G-20's report on Institution Building in the Financial Sector. This report stated that,

¹http://www.g20.org/G20/webapp/publicEN/publication/communiqués/doc/2007_Communiqé-Kleinmond_Cape%20Town_South%20Africa.pdf, p. 1. [Emphasis added.]

*Building strong and efficient payment systems should be a priority in the institutional development of the financial sector, and the central bank should be at the heart of these efforts.*²

The G-20 report also stated that, “Legal certainty is an important precondition for the proper functioning of a market economy.”³

As the leadership of organizations representing international financial institutions have already explained to the agencies, the UIGEA rule threaten harms to legitimate international payment flows, payment system efficiency, legal certainty and the preeminent role of the US dollar. Moreover, our international partners have called for discussions on implementation of the UIGEA, discussions which should take place following the G-20 negotiations.

▶ **British Bankers Association**

Members have already seen some evidence of legitimate transactions such as loan repayments being blocked because of a link with the internet gambling industry.

Members also point out that blocking or freezing transactions could very well open them to claims of civil liability by the customer if such actions are taken in a non-US legal jurisdiction to comply with US Regulations. Similarly, a US bank operating in a non-US country could be sued in that jurisdiction's courts for failing to honour a payment without legal justification under the appropriate national law. The problem would be particularly acute if the action were taken on the basis of reasonable belief, given the uncertainties over definitions which, under the terms of the draft Regulation, the Federal Reserve System and the Department of Justice take no responsibility for resolving.

*Given the level of uncertainty around many important areas required to implement the Regulations and the Act, BBA members would be very much in favour of an opportunity for further consultation on cross borders issues.*⁴

▶ **The Clearing House Association, L.L.C.**

*The modern payments system was built to allow payments to be made anywhere in the world with great speed and accuracy, and the U.S. dollar's role as the world's reserve currency has meant that a large proportion of the world's funds transfers have been denominated in dollars. ... We are concerned that the increasing pressure placed on the U.S. payments system may have a cumulative effect on the role of the dollar as the world's reserve currency. ... The government, most especially the Treasury and the Board, should continue to be sensitive to these trends and resist efforts to unduly burden the U.S. payments system.*⁵

² http://www.g20.org/G20/webapp/publicEN/publication/further/doc/20050922_institution_building.pdf, p. xiii.

³ Ibid., p. 11.

⁴ http://www.federalreserve.gov/SECRS/2007/December/20071213/R-1298/R-1298_119_1.pdf

⁵ http://www.federalreserve.gov/SECRS/2007/December/20071217/R-1298/R-1298_136_1.pdf.

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CRE also notes that, were the agencies to finalize the UIGEA rule prior to the G-20 negotiations, they would be violating one of the four primary responsibilities for central banks enumerated in the Bank for International Settlements' Core Principles for Systemically Important Payment Systems. BIS explained that,

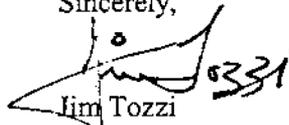
*The central bank, in promoting payment system safety and efficiency through the Core Principles, should cooperate with other central banks and with any other relevant domestic and foreign authorities.*⁶

Thus, to be consistent with their international responsibilities in ensuring efficient and effective policies for payment systems, the US authorities should discuss with the implementation of the UIGEA with their counterparts in the G-20.

Conclusions

1. The Federal Reserve should suspend finalization of the UIGEA rule until the completion of the G-20 discussion process;
2. The Treasury Department should request, pursuant to Joshua Bolten's memorandum of May 9, 2008, that OMB issue a moratorium on all new regulations – including the UIGEA rule – which would impose cross-border restrictions on capital flows until completion of the G-20 discussions; and
3. Both agencies, in consultation with their international financial regulatory partners, should develop a UIGEA rule that is consistent with any agreements reached by the G-20.

Sincerely,



Jim Tozzi

Member, Board of Advisors

cc: The Honorable Jim Nussle, Director, Office of Management and Budget

⁶ <http://www.bis.org/publ/cpss43.pdf>, p. 66. [Emphasis in original]