



October 24, 2007

Ms. Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> St. and Constitution Ave., NW  
Washington, DC 20551

**Re: Proposal on Unlawful Internet Gambling – Docket No. R-1298**

Dear Ms. Johnson:

Thank you for the opportunity to present comments on the above-referenced proposal. The Kansas Bankers Association is a non-profit trade organization with 338 of the 340 Kansas banks as members.

We very much appreciate the thoughtful nature of this proposal. In our opinion, the proposal addresses the requirements of the act -- i.e., to identify and block or otherwise prevent transactions in connection with unlawful Internet gambling -- while also recognizing the technological and logistical limitations inherent in certain types of payment systems.

The following comments are in response to specific requests for comments throughout the proposal.

Exemptions.

*ACH systems.* We believe the proposed exemptions for ACH system operators, the originating depository financial institution (ODFI) in an ACH credit transaction, and the receiving depository financial institution (RDFI) in an ACH debit transaction are very practical. As noted in the proposal, while it may be possible for the ODFI in an ACH credit transaction to design a procedure to obtain information on an outgoing ACH credit transaction to collect information on the type of transaction, the likelihood that the consumer initiating an illegal gambling transaction will be truthful about the nature of the transaction is low. Some consumers may not even realize the transaction they are about to engage in is illegal. These factors would severely limit the usefulness of the data presented by the consumer. Requiring the financial institution to investigate each response would be overly burdensome and may or may not improve the reliability of the information as many illegal gambling entities run a covert operation and make great efforts to appear to be legitimate businesses.

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*Wire Transfer Systems.* We believe the proposed exemptions for the originator's bank and intermediary banks (other than the bank that sends transfers to a foreign respondent bank) are again, very practical. It is true that the originating customer in a wire transfer typically has some interaction with the originating institution and procedures could be implemented whereby the originating institution would gather information from the customer at that time, but for the reasons stated above, we believe that information is highly likely to be tainted or inaccurate. To our knowledge, it would not be possible for the originating institution to develop policies or procedures to gather data only from consumer-initiated wire transfers as any system developed would be easily circumvented by a consumer who did not want to be detected.

### Processing of Restricted Transactions Prohibited.

*The "Overblocking" Provision.* We certainly understand the rationale for wanting to assure that lawful transactions are not mistakenly prevented or prohibited. As such, it would be up to the financial institution with the Internet gambling entity as its customer to conduct due diligence to be certain that the entity is conducting and processing lawful gambling transactions. We applaud the proposal's decision to allow institutions to decide to completely avoid processing any gambling transactions and thereby avoid the potential liability presented by this proposal.

### Reasonably Designed Policies and Procedures.

*Due Diligence.* The proposal requests comment on whether the due diligence provisions of the proposed rule should be incorporated into the financial institution's existing account-opening procedures. We believe they could practically become a part of the account-opening procedures as those procedures involve compliance with other laws relating to the identity of the new account owner and the identification of high-risk entities for BSA purposes. As for whether the procedures should include periodic confirmation of the nature of the customer's business, we would suggest that the institution be permitted to have a term in the account agreement that would require the customer to notify the financial institution if and when the nature of the customer's business changes. That would save unnecessary periodic inquiries for those customers whose business does not change.

*Remedial Action.* The proposal requests comment on the appropriateness of the examples given of a participant's responses upon learning that a customer is engaging in restricted transactions. We believe that the examples accomplish the stated goals and are appropriate responses to a discovery that a customer is engaging in restricted transactions. We would offer one additional suggestion, that financial institutions be authorized to initiate a freeze of the funds in the account until processing for fines can be implemented.

**Monitoring.** We agree with the conclusion of the proposed rule that with regard to ACH systems, check collection systems, and wire transfer systems, there is no capability to monitor payment patterns, unlike what might exist for other types of payment systems. It is clear from the proposal, that should technology develop that would allow such monitoring, the rule could be amended to reflect this.

**Cross-Border Relationships.** The due diligence and remedial action provisions for cross-border relationships puts a good deal of responsibility on the first participant in the U.S. that receives the incoming transaction directly from a foreign institution. Procedures are also required for outgoing wire transfers and ACH credit transactions once transfers to a particular foreign bank are determined to be restricted transactions. We believe the proposal is workable and not out of line with regard to the risks imposed in conducting transactions with foreign institutions.

**List of Unlawful Internet Gambling Businesses.** The proposal suggests that perhaps a list of businesses conducting unlawful internet gambling could be maintained and that participants would then have an obligation to routinely check the list before opening an account. We believe that while having such a list would make compliance with this proposal much easier, we also believe that maintaining such a list so that the information was up-to-date and accurate would be impossible. There are more entities out there who would want to deceive the gatherer of that information than would gladly give accurate information. Maintaining its accuracy would be more than a full-time job with much time and many hours devoted to investigation of information.

General Comment.

As we read through the proposal, it occurs to us that there will be many customers who will not qualify as gambling entities. A question we would pose is whether the proposal will speak to the process a financial institution must have in place to demonstrate that it conducted an analysis of their customers to determine whether there was a gambling relationship. Will the institution need to document this for every account or only commercial accounts? Would this monitoring be included with other HRE monitoring under the Bank Secrecy Act?

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Conclusion. Again, we would like to applaud the effort made in the proposal to make compliance reasonable and practical while still accomplishing the goal of the Act – to prohibit the funding of unlawful Internet gambling.

Thank you for allowing us this opportunity to share our comments.

Sincerely,



Charles A. Stones  
President



Terri D. Thomas  
SVP, Director of Legal



Kathleen Taylor Olsen  
SVP, General Counsel