

**SCHWARTZ & BALLEN LLP**

1990 M STREET, N.W. • SUITE 500  
WASHINGTON, DC 20036-3465

(202) 776-0700

FACSIMILE  
(202) 776-0720

www.schwartzandballen.com

**M E M O R A N D U M**

November 14, 2008

To Our Clients and Friends

Re: Final Rule Implementing the Unlawful Internet Gambling Enforcement Act

The Federal Reserve Board and the Treasury Department have issued a joint final rule implementing the Unlawful Internet Gambling Enforcement Act of 2006. The rule requires U.S. financial firms that participate in designated payment systems to establish and implement policies and procedures that are reasonably designed to prevent payments to gambling businesses in connection with unlawful Internet gambling. Compliance is required by December 1, 2009.

**SCOPE OF COVERAGE**

The final rule designates payment systems that are subject to the requirements of the rule, exempts certain participants from certain requirements and provides examples of policies and procedures reasonably designed to identify and block,<sup>1</sup> or otherwise prevent and prohibit, restricted transactions. The rule does not define what constitutes “unlawful Internet gambling” beyond the definition contained in the act because the agencies did not believe that a definition of the term would be practical. The agencies also concluded not to create a list of businesses known to be involved in unlawful Internet gambling because, in their view, such a list would not be effective.

The rule designates the following payment systems as subject to the rule:

- Automated clearing house systems
- Card systems
- Check collection systems
- Wire transfer systems
- Money transmission systems<sup>2</sup>

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<sup>1</sup> The term “block” means to reject a transaction before or during processing. It does not require freezing or otherwise prohibiting subsequent transfer of proceeds.

<sup>2</sup> Solely to the extent they permit customers to initiate transfers remotely.

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### **POLICIES AND PROCEDURES**

The rule generally requires participants in the designated payment systems to establish and implement policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit transaction in connection with unlawful Internet gambling. Under the final rule, financial institutions that participate in designated payment systems are to focus their efforts on the due diligence process they employ in establishing and maintaining commercial customer relationships.

The responsibility for conducting due diligence rests with the party that establishes and maintains the relationship with commercial customers. The final rule emphasizes that payment system participants should focus on due diligence procedures in establishing and maintaining commercial customer relationships and accounts to prevent or prohibit restricted transactions. Participants in card systems may rely on merchant and transaction coding to identify and block restricted transactions. A bank that receives checks for collection from a foreign banking office should adopt procedures that it follows when it has actual knowledge from a government entity, such as a law enforcement or regulatory agency, that a foreign banking office has sent checks that are restricted transactions to the institution.

### **EXEMPTIONS**

The agencies exempted the following participants from the requirement that they establish written policies and procedures reasonably designed to prevent or prohibit restricted transactions:

- Participants in a check collection system, except for the depository bank
- Participants in money transmitting business, except for the operator
- Participants in wire transfer systems, except for the beneficiary's bank
- Participants in automated clearing house systems except for:
  - the receiving depository institution
  - the originating depository institution
  - the receiving gateway operator receiving instructions for an ACH debit transaction directly from a foreign sender

A copy of the final rule can be found on our website at [http://www.schwartzandballen.com/whats\\_new.html](http://www.schwartzandballen.com/whats_new.html).

If you have any questions, please call Gilbert Schwartz, Robert Ballen, Tom Fox or Heidi Wicker at (202) 776-0700.