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September 18, 2009

**VIA HAND DELIVERY**

The Honorable Timothy Geitner  
Secretary of the Treasury  
U.S. Department of the Treasury  
1500 Pennsylvania Ave. NW  
Washington, D.C. 20220

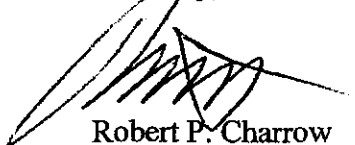
The Honorable Ben Bernanke  
Chairman  
Board of Governors of the Federal Reserve System  
20th and Constitution Avenues, NW  
Washington, D.C. 20551

Re: Petition Rulemaking

Dear Chairman Bernanke and Secretary Geitner:

Greenberg Traurig, LLP, on behalf of its client, the Poker Players Alliance, is transmitting to you an original and three copies of a Petition for Rulemaking from the Poker Players Alliance and two other organizations, the National Thoroughbred Racing Association and the American Greyhound Track Owners Association.

Sincerely,



Robert P. Charrow

RPC/km  
Enclosures

WDC 371,926,454v1 9-18-09

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\*STRATEGIC ALLIANCE

September 16, 2009

The Honorable Timothy Geithner  
Secretary of the Treasury  
U.S. Department of the Treasury  
1500 Pennsylvania Ave. NW  
Washington, D.C. 20220

The Honorable Ben Bernanke  
Chairman  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> and Constitution Avenues, NW  
Washington, D.C. 20551

Subject: Petition for Rulemaking

Dear Chairman Bernanke and Secretary Geithner:

Pursuant to 5 U.S.C. § 553(e), the Poker Players Alliance, the National Thoroughbred Racing Association and the American Greyhound Track Owners Association respectfully request that you issue the attached Interim Final Rule extending by 12 months the date of compliance with your Final Rule implementing the Unlawful Internet Gambling Enforcement Act of 2006. *See* 74 Fed. Reg. 69382 (Nov. 18, 2008). As indicated in the attached proposed Interim Final Rule, an extension of the compliance date is necessary because a significant number of institutions subject to the Final Rule will not have in place the necessary policies and procedures mandated by the Final Rule by December 1, 2009, the current compliance date.

The Poker Players Alliance (“PPA”) is a not-for-profit membership organization comprised of more than one million online and offline poker players. Members of PPA include individuals who play poker on-line for recreation as well as individuals who earn their livelihood or portion of their livelihood by playing lawful on-line poker. Members play on-line poker from jurisdictions where such activity is believed to be legal. A number of PPA members have reported that their financial institutions have advised them that they would be blocking their on-line poker transactions beginning December 1, 2009, because of those institutions’ inability to differentiate lawful activity from unlawful activity and further, that those institutions will not be able to implement the policies and procedures mandated by the Act, especially the Act’s requirement that institutions not “overblock.” Many of these non-exempt participants are small businesses within the meaning of the Regulatory Flexibility Act, and do not have the resources necessary to develop and implement well-honed policies and procedures within the current timetable. This is particularly so, as you have recognized “[t]hat Act does not contain specific performance (much less design) standards.” 74 Fed. Reg. at 69399 (col. a).

The National Thoroughbred Racing Association (“NTRA”) represents the interests of Thoroughbred horseracing - the primary driver for the United States pari-mutuel wagering and racing industry. NTRA members include the majority of Thoroughbred racetracks in the United States as well as breeders, owners, and trainers, who collectively produce races and starters that

account for approximately 80 percent of the \$13 billion wagered on Thoroughbred racing each year. NTRA's members also include handicappers who have long enjoyed participating in the pari-mutuel wagering offered by horse racing, as well as Advanced Deposit Wagering (ADW) companies, which serve the needs of horseplayers who participate in pari-mutuel wagering from off-track locations. While historically regulated at the state level, the horseracing industry is unique in that it is also governed by the Interstate Horseracing Act ("IHA"). The IHA, passed by Congress in 1978, was designed to allow for interstate wagering-simulcasting-on horseracing while allowing states their historical right to oversee and regulate such wagering. The IHA was amended by Congress in 2000, to allow for electronic wagering including via the Internet. Despite the unique protections afforded by the IHA, NTRA remains deeply concerned that the UIGEA regulations could result in confusion among members of the financial services community, leading to a devastating impact on electronic wagering as authorized by the IHA, which produces some \$100 million in prize money for horsemen and millions of dollars of state and local tax revenue.

The American Greyhound Track Operators Association ("AGTOA") was formed in April 1946, and is a non-profit corporation composed of the owners and operators of 36 greyhound tracks located throughout the United States. All AGTOA members own and operate lawfully licensed greyhound tracks which are regulated by their respective States.

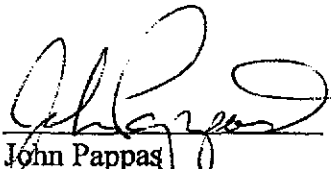
All three groups share a common concern regarding the finalized UIGEA regulation, and it is this: Given a choice between subjecting themselves to liability under the Act for processing transactions involving unlawful internet gambling and subjecting themselves to no liability for overblocking, regulated institutions have indicated to our members that they intend to "overblock." PPA, NTRA and AGTOA believe that by providing these institutions with an additional 12 months is in the public interest and may enable these institutions to develop policies and procedures that do not result in "overblocking."

Accordingly, we respectfully request that your Agencies promptly issue the attached Interim Final Rule extending the UIGEA compliance date by 12 months.

Sincerely,



Alex Waldrop  
CEO  
National Thoroughbred  
Racing Association



John Pappas  
Executive Director  
Poker Players Alliance



Henry Cashen  
Legislative Counsel  
American Greyhound Track  
Operators Association

## INTERIM FINAL RULE

### SUMMARY:

This Interim Final Rule extends until December 1, 2010, the date for compliance by non-exempt participants in designated payment systems with the Final Rule implementing the Unlawful Internet Gambling Enforcement Act of 2006 (“UIGEA” or “Act”) issued on November 18, 2008. *See* 73 Fed. Reg. 69382 (Nov. 18, 2008).

**DATES:** Interim Final Rule is effective on publication, but the public comments will be accepted through [insert-30 days following publication].

### FOR FURTHER INFORMATION CONTACT:

*Board of Governors of the Federal Reserve System:* [Insert]

*Secretary of the Treasury:* [Insert]

### SUPPLEMENTARY INFORMATION:

#### I. Justification for Interim Final Rule

The Administrative Procedure Act requirements for notice of proposed rulemaking (NPRM) do not apply to rules when the agency for good cause finds, and incorporates the finding, and a brief statement of the reasons therefore in the rules issued, that notice thereon is impracticable, unnecessary or contrary to the public interest. The Board of Governors and the Secretary of the Treasury (“Agencies”) believe extending the date for compliance with the Final Rule implementing the UIGEA is necessary and that publishing a notice of proposed rulemaking would be contrary to the public interest and likely make the extension moot. As discussed below, the Agencies believe that it is likely that a significant number of non-exempt participants in depository systems will not have fully developed and implemented the policies and procedures required by the Final Rule by December 1, 2009, the compliance date, and that there is a significant likelihood that these participants will block otherwise lawful activity. This extension is designed to prevent overblocking by providing participants additional time in which to implement the policies and procedures required by the Final Rule.

#### II. Background

##### *Unlawful Internet Gambling Enforcement Act*

The Unlawful Internet Gambling Enforcement Act of 2006 prohibits any person engaged in the business of betting or wagering (as defined in the Act) from knowingly accepting payments in connection with the participation of another person in unlawful Internet gambling.

Such transactions are termed “restricted transactions.” The Act generally defines “unlawful Internet gambling” as placing, receiving, or otherwise knowingly transmitting a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made. The Act states that its provisions should not be construed to alter, limit, or extend any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States.<sup>1</sup> The Act was designed to ensure against “overblocking,” the practice by which a non-exempt participant in a depository system might “block[ ], prevent[ ] or otherwise prohibit[ ]” an otherwise lawful transaction because of its inability to ascertain whether that activity was lawful.<sup>2</sup> The Act does not spell out which activities are legal and which are illegal, but rather relies on the underlying substantive Federal and State laws.<sup>3</sup>

The Act requires the Agencies (in consultation with the U.S. Attorney General) to designate payment systems that could be utilized in connection with or to facilitate restricted transactions. Such a designation makes the payment system, and financial transaction providers participating in the system, subject to the requirements of the regulations. The Act further requires the Agencies (in consultation with the U.S. Attorney General) to prescribe regulations requiring designated payment systems and financial transaction providers participating in each designated payment system to establish policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions. The regulations must identify types of policies and procedures that would be deemed to be reasonably designed to achieve this objective, including non-exclusive examples. The Act also requires the Agencies to exempt certain restricted transactions or designated payment systems from any requirement imposed by the regulations if the Agencies jointly determine that it is not reasonably practical to identify and block, or otherwise prevent or prohibit the acceptance of, such transactions.

#### *Proposed Rulemaking*

In October 2007, the Agencies jointly issued, and requested public comment on, a Notice of Proposed Rulemaking (“NPRM”) to implement the Act.<sup>4</sup> The proposed rule provided definitions of terms used in the regulation, many of which followed or referred to definitions set out in the Act or other existing regulatory or statutory definitions. The proposed rule did not attempt to further define gambling-related terms because the Act itself does not specify which gambling activities are legal or illegal and relies on prohibitions contained in statutes that are not under the jurisdiction of the Agencies. Application of some of the terms used in the Act may depend significantly on the facts of specific transactions such that general regulatory definitions would not be appropriate.

The proposed rule designated the following payment systems as payment systems that could be used in connection with unlawful Internet gambling transactions restricted by the Act: Automated clearing house systems; card systems; check collection systems; money transmitting

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<sup>1</sup> 31 U.S.C. § 5361(b).

<sup>2</sup> 31 U.S.C. § 5364(b)(4).

<sup>3</sup> See H. Rep. No. 109-412 (pt. 1) p. 10.

<sup>4</sup> 72 Fed. Reg. 56680 (Oct. 4, 2007).

businesses; and wire transfer systems. The proposed rule required participants in these designated payment systems to establish and implement written policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit transactions in connection with unlawful Internet gambling.

### *Final Rule*

On November 18, 2008, the Agencies jointly issued their Final Rule to implement the Act. The Final Rule became effective on January 19, 2009, but compliance by non-exempt participants was not required until December 1, 2009. The Final Rule did not provide a single regulatory definition of “unlawful Internet gambling” nor did it define the term “subject to chance,” a provision of the Act’s definition of unlawful Internet gambling. Instead, the Final Rule left it to members of the regulated sector to develop their own definitions of those terms. The Agencies initially believed that non-exempt participants in designated payment systems should not require more than 12 months to design and implement the necessary policies and procedures required to ensure compliance with the Act and the Final Rule.

### **III. Interim Final Rule**

The Agencies believe that non-exempt participants and those engaged in lawful Internet gaming have demonstrated that 12 months is not sufficient to design and implement the necessary policies and procedures and that as a result, there is a demonstrable risk that lawful activity would be blocked by these institutions out of an abundance of caution. While the Act does not impose liability on entities that overblock,<sup>5</sup> it nonetheless expressly precludes “overblocking.” Accordingly, given that there is no private remedy for overblocking, this Interim Final Rule specifies a compliance date of December 1, 2010. The Agencies believe that an additional 12 months is required to comply with the Final Rule and the Act.

### **IV. Statutory and Executive Order Reviews**

#### *A. Executive Order 12866: Regulatory Planning and Review*

Extension of a compliance date is not a “significant regulatory action” under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

#### *B. Paperwork Reduction Act*

Extension of a compliance date does not impose any new information collection burden. We are not promulgating any new paperwork requirements (e.g., monitoring, reporting, recordkeeping) as part of this proposed action.

#### *C. Regulatory Flexibility Act*

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<sup>5</sup> 31 U.S.C. § 5364(d).

The Regulatory Flexibility Act (“RFA”) generally requires an Agency to prepare a regulatory flexibility analysis of any regulation subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the Agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposal on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (“SBA”) size standards. (See 13 CFR 121.); (2) A governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

I certify that this extension of a compliance date will not have a significant economic impact on a substantial number of small entities.

D. *Unfunded Mandates Reform Act*

This extension of the compliance date contains no Federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (“UMRA”), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector. This extension imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of section 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. *Plain Language*

The Agencies have sought to present the Interim Final Rule, to the extent possible, in a simple and straightforward manner.