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Please contact the following attorney if you have any questions about this decision or want additional information regarding white collar and corporate compliance matters:

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Proposed Internet Gaming Fund Transfer Regulations

A year ago, President George W. Bush signed the Unlawful Internet Gambling Enforcement Act of 2006, 31 U.S.C. §§5361 et seq. That statute did not make Internet gaming illegal, as that was already the position of the United States Department of Justice (DOJ) for many years, but rather the statute sought to choke off the transmission of funds between Americans and Internet gaming sites, regardless of where the gaming sites are located. The statute currently prohibits acceptance of credit cards, funds, bank instruments, or proceeds of any other form of financial transaction in connection with unlawful Internet gaming.

Under the statute, the U.S. Department of Treasury and the Board of Governors of the Federal Reserve System, in consultation with the DOJ, were required to issue regulations to flesh out these gaming and payment prohibitions. Notwithstanding the statutory mandate that these regulations be completed within a year, they were not issued until the beginning of this month, in proposed, draft form.

Any individual or business that may have involvement with Internet gaming activities, whether knowingly or inadvertently, should understand the sweep of these proposed regulations and take steps to have them modified before finalization, to the extent thought necessary for commercial or other reasons. You may contact Foley & Lardner LLP so we can help you understand the potential impact of these proposed regulations on your business and your anti-money laundering compliance program, and advise you about whether filing comments (due by December 12, 2007) would likely lead to modifications in the implementation of these regulations or the timing of their effective date.

We strongly suggest that these decisions not be made for you by default.

These proposed regulations require certain companies with payment systems to establish policies and procedures reasonably designed to identify and block or otherwise prevent transactions in connection with unlawful Internet gaming. Caught in their net are credit card systems, automated clearing house (ACH) systems, check collection systems, money transmitting businesses, and wire transfer systems.

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We believe that trying to isolate illegal Internet gaming transactions from the billions of daily transactions in the United States would be expensive, so much so that it could adversely affect the economy. Accordingly, the regulatory compliance requirements are driven by whether any benefits would likely be outweighed by the associated costs of compliance with the proposed regulations.

To that end, consistent with the statute, there are two major safe harbors included in the proposed regulations — exemptions from compliance with the statute and adoption of programs and procedures reasonably designed to prevent or prohibit restricted transactions. If a funds transfer to an illegal gaming operation is effected, the unknowing participant in the restricted transfer is absolved of statutory penalties if it falls into one of these safe harbors. Thus, it is important for you to examine whether your business is subject to an exemption, and if so, for which what portion(s) of its operations. And if not exempted, you should conduct a risk assessment of what programs and procedures must be adopted by your company to protect the organization from legal exposure.

In general terms, the proposed regulations would exempt all participants in Automated Clearing House (ACH) systems, check collection systems, and wire transfer systems, except for the participant that possesses the customer relationship with Internet gaming business in question and certain participants in cross-border transactions. Thus, a given ACH, check collection, or wire transfer system could be exempt from statutory coverage for certain transactions but not for others. Credit card systems and money transfer businesses would enjoy no exemptions under the presently contemplated implementing regulations.

Significantly, for non-exempt transactions, a participant in a designated payment system shall be considered in compliance with the statute if the payments system in question has established policies and procedures to prevent or prohibit restricted transactions, *and the participant relies on, and complies with, the policies and procedures of the designated payment system.* These include addressing methods for conducting due diligence in establishing and maintaining a commercial customer relationship as well as procedures reasonably designed to prevent or prohibit restricted transactions. These policies and procedures are expected also to address ongoing monitoring or testing to detect possible restricted transactions.

Further, these regulations will become applicable — with attendant penalties for non-compliance — six months after the final regulations are adopted.

“Basically, we are shutting down the payment system for Internet gaming,” said former Rep. James Leach (R-IA), one of its principal sponsors, when the statute was enacted. By making it “illegal to use a financial institution to settle an Internet wages,” according to then Rep. Leach, Congress is “putting responsibility on the financial community.”

Foley & Lardner LLP recommends that those in the financial community take steps and conduct assessments to ensure that their receipt of “responsibility” for enforcement of these prohibitions are not unduly onerous and disruptive, and that they be able to comply in a timely fashion.