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House Financial Services Committee Considers Internet Gambling

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Internet gambling has captured the attention of the House Financial Services Committee and its chairman, Congressman Barney Frank of Massachusetts. Currently on the books, but not yet implemented, is the Unlawful Internet Gambling Enforcement Act (UIGEA). Despite its title, the UIGEA does not directly prohibit Internet gambling. It does, however, prohibit persons engaged in gambling businesses from accepting certain financial instruments in connection with bets or wagers that are illegal under federal, state, or tribal gambling laws.

To the consternation of the banking industry, regulations implementing the UIGEA require financial institutions to monitor all transactions for gambling activity and to block any transactions relating to bets that are illegal. Thus financial institutions are placed in the untenable position of enforcing this indirect prohibition and, in doing so, must interpret the applicability of antigambling statutes, including an often used federal criminal prohibition that has been disputed for over a decade. That law, commonly known as the Wire Act, prohibits the use of a wire communication facility for the transmission of bets, wagers, or betting and wagering information on sporting events or contests, and is codified at Title 18, United States Code, Section 1084. The current position of the United States Department of Justice is that the Wire Act applies to forms of gambling other than gambling on sporting events, that is, it applies to all betting or wagering on the Internet. Fortunately for financial institutions, the UIGEA has not yet been implemented.

Meanwhile, Congressman Frank has introduced legislation that would sanction the licensing, regulation, and taxation of domestic and offshore Internet gambling businesses and essentially repeal the UIGEA. At a hearing held last December by his committee on his bill, The Internet Gambling Regulation, Consumer Protection, and Enforcement Act, Samuel A. Vallandingham, Chief Information Officer and Vice President of The First State Bank of Barboursville, West Virginia, testified on behalf of the Independent Community Bankers of

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America and strongly endorsed Congressman Frank's proposal. Its regulatory framework would remove from banks the awesome and uninformed responsibility of determining which customers, entities, and financial transactions violate federal, state, or tribal gambling laws. As long as financial transactions relate to gambling operations licensed under the authority provided by Congressman Frank's bill, financial institutions would incur no liability. His bill would also resolve the dilemma created by a federal appeals court in *Thompson v. MasterCard, International Inc.*, 317 F.3d 757 (5th Cir. 2002), when it held that the Wire Act applied only to sports betting and not, as the Justice Department has claimed, to other kinds of gambling. Under Congressman Frank's proposal, the Wire Act could not be enforced against any online gambling business operated within its regulatory framework. Congressman Frank's bill recently received bipartisan support in the Senate when Senator Ron Wyden, an Oregon Democrat, and Senator Judd Gregg, a New Hampshire Republican, introduced a tax reform bill that included provisions for the licensing, regulation, and taxing of Internet gambling.

Implementation of the UIGEA and its regulations has been delayed by the Treasury Department until June 2010. The delay was, in part, the result of an attempt by Congressman Frank and other House members to ensure that his proposal is fully debated and acted upon. No further action has been taken since the December hearing, but unless another bill that Congressman Frank has introduced to extend the delay until December 2010 becomes law soon, it seems likely that further action on The Internet Gambling Regulation, Consumer Protection, and Enforcement Act will occur no later than the second quarter of this year.

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[Kevin V. Di Gregory](#) Mr. Di Gregory's practice focuses on sensitive criminal, regulatory, and investigative matters. Since joining Manatt in 2008, Mr. Di Gregory has represented clients in connection with investigations conducted by the United States Department of Justice, several United States Attorney's Offices, the United States Senate, the United States House of Representatives, the Treasury Department's Office of Foreign Assets Control, the Securities and Exchange Commission's Division of Enforcement, state Attorneys General, and the Federal Bureau of Investigation. As a senior adviser to the United States Attorney General, Mr. Di Gregory developed and implemented antigambling enforcement policy and testified before Congress on pending Internet gambling legislation. He is a litigation partner and a member of the Corporate Investigations and White Collar Criminal Defense, and Sports Law practice groups.

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