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as an intermediary between the commercial customer and the last depository institution to handle the transaction; and

(3) In the case of a cross-border ACH debit or check collection transaction, is the first service provider located within the United States to receive the ACH debit instructions or check for collection.

(bb) *Unlawful Internet gambling* means to place, receive, or otherwise knowingly transmit 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 term does not include placing, receiving, or otherwise transmitting a bet or wager that is excluded from the definition of this term by the Act as an intrastate transaction or an intra-tribal transaction, and does not include any activity that is allowed under the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 *et seq.*; *see* § 233.1(a)). The intermediate routing of electronic data shall not determine the location or locations in which a bet or wager is initiated, received, or otherwise made.

(cc) *Wire transfer system* means a system through which an unconditional order to a bank to pay a fixed or determinable amount of money to a beneficiary upon receipt, or on a day stated in the order, is transmitted by electronic or other means through the network, between banks, or on the books of a bank. When referring to wire transfer systems, the terms in this regulation (such as ''bank,'' ''originator's bank,'' ''beneficiary's bank,'' and ''intermediary bank'') are defined as those terms are defined in 12 CFR part 210, appendix B.

### § 233.3 Designated payment systems.

The following payment systems could be used by participants in connection with, or to facilitate, a restricted transaction:

(a) Automated clearing house systems;

(b) Card systems;

(c) Check collection systems;

(d) Money transmitting businesses solely to the extent they

(1) Engage in the transmission of funds, which does not include check cashing, currency exchange, or the issuance or redemption of money orders, travelers' checks, and other similar instruments; and

(2) Permit customers to initiate transmission of funds transactions remotely from a location other than a physical office of the money transmitting business; and

(e) Wire transfer systems.

### § 233.4 Exemptions.

(a) *Automated clearing house systems.* The participants processing a particular transaction through an automated clearing house system are exempt from this regulation's requirements for establishing written policies and procedures reasonably designed to prevent or prohibit restricted transactions with respect to that transaction, except for—

(1) The receiving depository financial institution and any third-party processor receiving the transaction on behalf of the receiver in an ACH credit transaction;

(2) The originating depository financial institution and any third-party processor initiating the transaction on behalf of the originator in an ACH debit transaction; and

(3) The receiving gateway operator and any third-party processor that receives instructions for an ACH debit transaction directly from a foreign sender (which could include a foreign banking office, a foreign third-party processor, or a foreign originating gateway operator).

(b) *Check collection systems.* The participants in a particular check collection through a check collection system are exempt from this regulation's requirements for establishing written policies and procedures reasonably designed to prevent or prohibit restricted transactions with respect to that check collection, except for the depositary bank.

(c) *Money transmitting businesses.* The participants in a money transmitting business are exempt from this regulation's requirements for establishing

written policies and procedures reasonably designed to prevent or prohibit restricted transactions, except for the operator.

(d) *Wire transfer systems.* The participants in a particular wire transfer through a wire transfer system are exempt from this regulation's requirements for establishing written policies and procedures reasonably designed to prevent or prohibit restricted transactions with respect to that transaction, except for the beneficiary's bank.

### § 233.5 Policies and procedures required.

(a) All non-exempt participants in designated payment systems shall establish and implement written policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions.

(b) A non-exempt financial transaction provider participant in a designated payment system shall be considered to be in compliance with the requirements of paragraph (a) of this section if—

(1) It relies on and complies with the written policies and procedures of the designated payment system that are reasonably designed to—

(i) Identify and block restricted transactions; or

(ii) Otherwise prevent or prohibit the acceptance of the products or services of the designated payment system or participant in connection with restricted transactions; and

(2) Such policies and procedures of the designated payment system comply with the requirements of this part.

(c) For purposes of paragraph (b)(2) in this section, a participant in a designated payment system may rely on a written statement or notice by the operator of that designated payment system to its participants that states that the operator has designed or structured the system's policies and procedures for identifying and blocking or otherwise preventing or prohibiting restricted transactions to comply with the requirements of this part as conclusive evidence that the system's policies and procedures comply with the requirements of this part, unless the participant is notified otherwise by its Federal functional regulator or, in the case of participants that are not directly supervised by a Federal functional regulator, the Federal Trade Commission.

(d) As provided in the Act, a person that identifies and blocks a transaction, prevents or prohibits the acceptance of its products or services in connection with a transaction, or otherwise refuses to honor a transaction, shall not be liable to any party for such action if—

(1) The transaction is a restricted transaction;

(2) Such person reasonably believes the transaction to be a restricted transaction; or

(3) The person is a participant in a designated payment system and blocks or otherwise prevents the transaction in reliance on the policies and procedures of the designated payment system in an effort to comply with this regulation.

(e) Nothing in this part requires or is intended to suggest that designated payment systems or participants therein must or should block or otherwise prevent or prohibit any transaction in connection with any activity that is excluded from the definition of ''unlawful Internet gambling'' in the Act as an intrastate transaction, an intratribal transaction, or a transaction in connection with any activity that is allowed under the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 *et seq.*; see § 233.1(a)).

(f) Nothing in this part modifies any requirement imposed on a participant by other applicable law or regulation to file a suspicious activity report to the appropriate authorities.

(g) The requirement of this part to establish and implement written policies and procedures applies only to the U.S. offices of participants in designated payment systems.

### § 233.6 Non-exclusive examples of policies and procedures.

(a) *In general.* The examples of policies and procedures to identify and block or otherwise prevent or prohibit restricted transactions set out in this section are non-exclusive. In establishing and implementing written policies and procedures to identify and