

**Schedule 3**  
Supplementary Materials on Regulatory Alternatives

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A.     **The“Model” State Remote Account Wagering Law**

1.       There are 18 states that sanction remote account wagering on horse or dog races and, in the case of Nevada, on sporting events.<sup>1</sup>

2.       The individual state statutory and regulatory schemes for remote account wagering tend to be highly similar in almost all key respects. While no two state remote wagering laws are identical, there are core elements that are common to virtually every state remote gambling scheme—and to the current regulatory scheme for remote wagering in Antigua, as well.<sup>2</sup>

3.       A summary of the 18 state laws and regulations pertaining to remote account wagering provides a “model” United States remote account wagering regulatory scheme compiled entirely from provisions of existing state laws governing remote gambling. This model regulatory scheme consists of the following elements:

**1.       The Role of the State Gaming Commission**

4.       The “**Gaming Commission**” as the state gaming rulemaking, licensing, enforcement and oversight agency.

(a)     The “Gaming Commission.” Prior to sanctioning remote account wagering, all states establish a governmental agency, often referred to as the “gaming commission,” whose mission is to establish rules and regulations for such wagering. The gaming commission is charged with the responsibility of licensing, enforcement and oversight of remote account wagering activities.<sup>3</sup>

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<sup>1</sup> See *Exhibits AB-34 to AB-51*.

<sup>2</sup> See AB First Submission, paras. 28-74.

<sup>3</sup> See, e.g., WEST'S ANN.CAL.BUS. & PROF.CODE § 19604(c) (authorising the California Horse Racing Board to adopt account wagering rules); LA. REV. STAT. ANN. § 149.5(B)(1) (permitting account wagering pursuant to the rules and regulations of the Louisiana Racing Commission); OR. REV. STAT. § 462.725(1) (authorising the Oregon Racing Commission to adopt rules licensing and regulating interactive wagering hubs); WASH. REV. CODE ANN. § 67.16.260(6) (authorising the Washington Horse Racing Commission to promulgate rules and regulations for remote wagering); see also IDAHO CODE § 54-2512(5); WYO. STAT. ANN. § 11-25-105(h).

(b) Independent Professional Gaming Commissioners. In most states, the governor nominates three to nine individuals on staggered terms to serve as directors of the state gaming agency.<sup>4</sup> In certain instances, the governor's nominations are subject to confirmation by the state legislature.<sup>5</sup> Many states set standards of professionalism for those appointed to oversee that state gaming commission.<sup>6</sup> Generally, directors are prohibited from receiving monies or serving as employees of a gaming company for a period of time after the expiration of service as a board member.<sup>7</sup>

(c) Duties and Responsibilities of the Gaming Commission. The duties of state gaming commissions generally include:

- Developing and adopting regulations for state-sanctioned gaming;
- Assisting the gaming commission staff in overseeing state-sanctioned gaming;
- Conducting hearings related to gaming within the state;
- Approving or revoking gaming licenses;
- Establishing the scope of sanctioned-gaming within the state;
- Investigating licensees;
- Resolving complaints against licensed operators; and

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<sup>4</sup> See, e.g., CONN. GEN. STAT. § 12-557(d); N.D. CENT. CODE § 53-06.2-02.1; CAL. BUS. & PROF. CODE § 19421 (consisting of seven members appointed by the governor); OR. REV. STAT. § 462.210(1); N.Y. RAC. PARI-MUT. WAG. & BREED. LAW § 101(consisting of three members appointed by the governor); WASH. REV. CODE § 67.16.012; N.J. STAT. ANN. § 5-23 (consisting of nine members appointed by the governor).

<sup>5</sup> See, e.g., CONN. GEN. STAT. § 12-557(d)(a); OR. REV. STAT. § 462.210(3); N.Y. RAC. PARI-MUT. WAG. & BREED. LAW §§ 101 and 103; WASH. REV. CODE § 67.16.012.

<sup>6</sup> See, e.g., CONN. GEN. STAT. § 12-557(d)(b) (requiring that at least four of the five state gaming agency directors must have training or experience in at least one of the following fields: corporate finance, economics, law, accounting, law enforcement, computer science or the pari-mutuel industry); OR. REV. STAT. § 462.273 (prohibiting commission members from having financial interest in meets, horses participating in races, or bets and wagers); N.Y. RAC. PARI-MUT. WAG. & BREED. LAW § 104 (prohibiting commission members from wagering on races); N.J. STAT. ANN. § 5-23 (requiring knowledge of the thoroughbred industry).

<sup>7</sup> See, e.g., CONN. GEN. STAT. § 12-557(d)(c); N.D. CENT. CODE § 53-06.2-02.2; N.Y. RAC. PARI-MUT. WAG. & BREED. LAW § 104; N.J. STAT. ANN. § 5-25.1.

- Compiling and publishing information, usually in the form of an annual report, regarding the state gaming industry.<sup>8</sup>

(d) Independent Gaming Commission Staff. The employees of a state gaming commission are not permitted to have an interest in any gaming operators or wager at state-sanctioned gaming facilities.<sup>9</sup>

## 2. Licensing of Operators

5. With respect to licensing of remote gaming operators, states generally adhere to the following scheme:

(a) Application for License to Conduct Remote Account Wagering. The states require a prospective account wagering operator, prior to commencing operations, to submit a written application with detailed information about the prospective licensee, its corporate structure, its shareholders, directors, officers and key employees.<sup>10</sup>

(b) Description of Operations and Program. The states require as part of the application a detailed description of the prospective licensee's intended nature of operations, including types of wagering to be offered, programs for identity verification, problem gaming programs, and dispute resolution programs.<sup>11</sup>

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<sup>8</sup> See, e.g., CONN. GEN. STAT. § 12-557(e) and 12-564; MASS. GEN. LAWS ch. 128A § 5C (“Betting accounts authorized by this section shall be established, maintained and operated in accordance with rules and regulations promulgated by the commission.”); N.D. CENT. CODE § 53-06.2-02.5; WYO. RULES & REG. DEP’T COMMERCE, PC Ch. 9, § 1(p) (complaints against operators shall be forwarded to the Commission).

<sup>9</sup> CONN. GEN. STAT. § 12-561.

<sup>10</sup> See, e.g., CAL. CODE REGS. tit. 4, § 2071; CONN. GEN. STAT. § 12-574(i); IDAHO ADMIN. CODE 11.04.02.042.01; NEV. GAM. REG. 26C.020; NEV. GAM. REG. 22.020 (for interactive sports wagering); OR. ADMIN. R. 462-210-0030; 58 PA. CODE § 169.1; WASH. ADMIN. CODE §§ 260-49-040(3); WYO. STAT. ANN. § 11-25-105(e); WYO. RULES & REG. DEP’T COMMERCE, PC Ch. 9, § 2(b).

<sup>11</sup> See, e.g., KY. REV. STAT. ANN. §§ 230.779(2); OR. ADMIN. R. 462-210-0030(3); 58 PA. CODE § 169.1(a); WASH. ADMIN. CODE §§ 260-49-040(6)(c)-(e).

- (c) Bond to Secure Payouts. As a prerequisite to obtaining a license, some states require the prospective licensee to provide a bond or provide other form of financial security to ensure payouts to customers.<sup>12</sup>
- (d) Agency Due Diligence Review. Prior to issuance of a license, the gaming commission conducts a professional and thorough due diligence background investigation of the prospective licensee and the information provided in the application.<sup>13</sup>
- (e) Issuance of License. At the conclusion of the licensing process, if approved by the gaming commission, a license to conduct remote account wagering is issued to the operator.<sup>14</sup>

### 3. Establishing Customer Accounts

6. With respect to the establishment of customer wagering accounts, the state model is:

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<sup>12</sup> See, e.g., CAL. CODE REGS. tit. 4, § 2071 (requiring a \$500,000 bond or other form of financial security for a prospective ADW licensee); OR. ADMIN. R. 462-210-0030; NEV. GAM. REG. 26C.050 (establishing a cash reserve requirement for pari-mutuel account wagering operators); NEV. GAM. REG. 22.040 (establishing a cash reserve requirement for interactive sports account wagering operators WASH. ADMIN. CODE § 260-49-020(7).

<sup>13</sup> NEV. GAM. REG. 26C.030(2) (an off-track pari-mutuel horse race account wagering license will not be issued without a finding of suitability of the operator), 26C.040 (requiring full personal information, residency history, criminal background information, consent to a third-party investigation, and registration of all managers and supervisors of a pari-mutuel horse race book that offers account wagering); NEV. GAM. REG. 22.035(1) (requiring same information for interactive sports wagering); see also OR. ADMIN. R. 462-210-0020(2); WYO. RULES & REG. DEP'T COMMERCE, PC Ch. 9, § 2(b)(iii).

<sup>14</sup> Ohio licenses seven advance deposit wagering operators. See Letter from John Izzo, Deputy Director and Legal Counsel, Ohio State Racing Commission, confirming seven licensed operators (18 September 2006) [*Exhibit AB-94*]. Oregon licenses seven advance deposit wagering operators. See Letter from Gordon Tallman, Supervisor of Account Wagering Hubs, Oregon Racing Commission, confirming seven licensed advance deposit wagering companies licensed and regulated by the Oregon Racing Commission (29 August 2006) [*Exhibit AB-95*]. Idaho licenses four advance deposit wagering operators. See Email from Jacqueline Libengood, Management Assistant, Idaho State Racing Commission transmitting licenses of DATT, XpressBet, TVG and Youbet, with copies of the licenses attached (18 September 2006) [*Exhibit AB-96*]. Kentucky licenses several race tracks, OTB and other operators who offer remote account wagering services. See Email from Kendra Schoop confirming account wagering companies licensed in Kentucky (14 September 2006) [*Exhibit AB-97*]. Virginia licenses four advance deposit wagering operators. See Email from David Lermont, Director of Pari-Mutuels, Virginia Racing Commission, confirming four licensed operators, with copies of the licenses attached (19 September 2006) [*Exhibit AB-98*]. Washington licenses three advance deposit wagering operators [*Exhibit AB-99*].

- (a) Written Application for Wagering Account. Prior to commencing account wagering, customers are required by states to submit a written application that contains, at a minimum, the applicant’s full legal name, residential address, telephone number, social security number, and identification demonstrating that the applicant is at least the legal minimum age to gamble.<sup>15</sup> Customers generally may submit their application by mail, facsimile or online.<sup>16</sup> In limited circumstances, such as remote sports betting (but not remote pari-mutuel account wagering) in Nevada, the customer is required to appear in person at a physical gaming location to open an account.<sup>17</sup>
- (b) Acknowledgement of Receipt of Remote Wagering “House Rules.” Bettors must be provided with a copy of applicable betting rules.<sup>18</sup> Some states require that account wagering operators conspicuously display, through the account wagering system, the operator’s “house rules” for account wagering.<sup>19</sup> Some states also require new account holders to acknowledge receipt of the operators remote wagering rules.<sup>20</sup>
- (c) Identity Verification. Prior to opening a customer’s account, states require that the operator verify the prospective customer’s identification. Several states require that

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<sup>15</sup> See, e.g., CAL. CODE REGS. tit. 4, § 2074(c)(1) – (5); IDAHO ADMIN. CODE 11.04.02.043.01a; LA. ADMIN. CODE tit. 35, pt. XIII, § 12027; MD. REGS. CODE tit. 09, §10.04.24(D)-(E); N. J. STAT. ANN. § 5:5-142(d); OR. ADMIN. R. 462-0210-0030(1)(a)(A) – (F); 58 PA. CODE § 169.2(a); WASH. ADMIN. CODE §§ 260-49-050(1)(a); WYO. RULES & REG. DEP’T COMMERCE, PC Ch. 9, § 2(d)(iii).

<sup>16</sup> See, e.g., CAL. CODE REGS. tit. 4, § 2074(a); NEV. GAM. REG. 26C.160(4)(a); 58 PA. CODE § 169.2(a) (allowing application to be mailed); WYO. RULES & REG. DEP’T COMMERCE, PC Ch. 9, § 2(d)(i) (applications may be established in person, by mail, telephone, or other electronic media); see also WASH. ADMIN. CODE §§ 260-49-050(1)(a).

<sup>17</sup> NEV. GAM. REG. 22.140(6).

<sup>18</sup> See, e.g., LA. ADMIN. CODE tit. 35, pt. XIII, § 12027(D); MD. REGS. CODE tit. 09, §10.04.24(F)(3)-(5); MASS. REGS. CODE tit. 205, §§ 6.20; WYO. RULES & REG. DEP’T COMMERCE, PC Ch. 9, § 2(d)(viii).

<sup>19</sup> See, e.g., CONN. AGENCIES REGS. § 12-574-F60(f); NEV. GAM. REG. 26C.180; NEV. GAM. REG. 22.140(4); NEV. GAM. REG. 22.147, 22.150.

<sup>20</sup> NEV. GAM. REG. 26C.160(4)(b).

this verification be conducted by independent third-party electronic identity verification services.<sup>21</sup>

#### 4. Operation and Maintenance of Customer Wagering Accounts

7. The state law model governing the operation and maintenance of player wagering accounts is as follows:

- (a) Deposits/Funding Accounts. States permit bettors to fund accounts with cash, checks, money orders, debit cards, credit cards, or other electronic funds transfers.<sup>22</sup>
- (b) Communicating Wagers. States permit bettors to communicate account wagers in person, by mail, telephone, or other electronic means, including online or by mobile wireless device.<sup>23</sup> Some states require that bettors be afforded the opportunity to confirm the terms of their wagers prior to placing the wager.<sup>24</sup>

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<sup>21</sup> See, e.g., WEST'S ANN.CAL.BUS. & PROF.CODE § 19604(c)(2)(A); IDAHO ADMIN. CODE 11.04.02.043.01b; NEV. GAM. REG. 26C.160(4)(e); OR. ADMIN. R. 462-0210-0030(1)(b); WASH. REV. CODE ANN. § 67.16.260(2)(e); WASH. ADMIN. CODE §§ 260-49-050(1)(b); WYO. STAT. ANN. § 11-25-105(k)(ii); WYO. RULES & REG. DEP'T COMMERCE, PC Ch. 9, § 2(d)(iv).

<sup>22</sup> See, e.g., CAL. CODE REGS. tit. 4, § 2076(a)(1) – (4) (Bettors may fund their ADW account with cash, a personal check, cashier check, money order, debit card, credit card, or electronic fund transfer from an account controlled by the bettor); LA. ADMIN. CODE tit. 35, pt. XIII, § 12029(B)(1) (cash, check, money order, credit card, debit card); NEV. REV. STAT. § 463.016425(1) (stating an interactive gambler may utilize “money, checks, electronic checks, electronic transfers of money, credit cards, debit cards”); NEV. GAM. REG. 26C.190(1) (a bettor establishing a pari-mutuel account wagering account may make deposits with cash, personal check, wire transfers, money order sent by mail, credit instruments approved by Nevada law, transfers from “Front Money” accounts, debit card, credit card or electronic funds transfers); WYO. RULES & REG. DEP'T COMMERCE, PC Ch. 9, § 2(e) (deposits may be made by cash, check, cashier’s check, money order, credit card, debit card, or electronic funds transfer); see also CONN. AGENCIES REGS. § 12-574-F60(1)-(m); NEV. GAM. REG. 22.160(1); OR. ADMIN. R. 462-0210-0040(3); WASH. ADMIN. CODE §§ 260-49-060(3). Massachusetts account deposits must be made by cash or checks only, delivered in person or through the mail, and credit card deposits are not permitted. MASS. REGS. CODE tit. 205, §§ 6.24.

<sup>23</sup> See, e.g., KY. REV. STAT. ANN. §§ 230.783 (“account holders may communicate instructions concerning wagers to the hub by telephonic or other electronic means”); N.D. CENT. CODE § 53-06.2-10.1 (“An account wager may be made in person, by direct telephone communication, or through other electronic communication in accordance with rules adopted by the commission”); see also OR. ADMIN. R. 462-0220-0060(2); WASH. ADMIN. CODE § 260-49-010(9). A few of the states that sanction remote account wagering, such as Pennsylvania, only permit telephone account wagering. PA. STAT. ANN., tit. 4, § 325.218.

<sup>24</sup> See, e.g., LA. ADMIN. CODE tit. 35, pt. XIII, § 12035(C); NEV. GAM. REG. 26C.170(2); NEV. GAM. REG. 22.145(1)-(2).

(c) Wagering on Credit. Few states permit account wagering on credit. Therefore, operators in most states are required to ensure that account betting system will not accept wagers in an amount that exceeds funds on deposit.<sup>25</sup>

(d) Security, Confidentiality and Privacy. States require operators to utilise secure, confidential, and private wagering systems.<sup>26</sup> To ensure security, confidentiality and privacy, state regulations often include requirements that operators:

- utilise personal identification numbers (PINs) and other technologies to assure that only the account holder has access to the wagering account;<sup>27</sup>
- utilise PINs and confidential passwords for deposits and withdrawals to ensure payment to the accountholder;<sup>28</sup>
- ensure that the amount deposited, wagered and withdrawn is kept confidential;<sup>29</sup> and
- ensure that the identity and personal information pertaining to an individual bettor is kept confidential.<sup>30</sup>

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<sup>25</sup> See, e.g., MASS. GEN. LAWS ch. 128A § 5C; NEV. GAM. REG. 26C.170(3); OR. ADMIN. R. 462-0210-0040(5); PA. STAT. ANN., tit. 4, § 325.218(b); 58 PA. CODE § 169.3(4); WASH. REV. CODE ANN. § 67.16.260(2)(b); WYO. RULES & REG. DEP'T COMMERCE, PC Ch. 9, § 2(f)(i)(B).

<sup>26</sup> See, e.g., NEV. REV. STAT. § 463.750(2) (authorising the use of *intrastate* interactive gaming systems provided the systems are secure, reliable and reasonable assurance can be given that players will be at least of sufficient legal age to gamble under state law); OR. ADMIN. R. 462-0220-0010(2) (Appropriate data security standards to prevent unauthorised access by any person who has not subscribed or who is a minor); WYO. RULES & REG. DEP'T COMMERCE, PC Ch. 9, § 2(c)(ix) (no employee or agent of the operator shall divulge any confidential information related to a wagering account).

<sup>27</sup> See, e.g., WEST'S ANN.CAL.BUS. & PROF.CODE § 19604(c)(2)(B); MD. REGS. CODE tit. 09, §10.04.24(F)(1)-(2); NEV. GAM. REG. 26C.160(3) (“Each book shall issue each patron a secure personal identification reasonably designed to prevent the acceptance of wagers from persons other than the patrons for whom wagering accounts are established.”); WYO. RULES & REG. DEP'T COMMERCE, PC Ch. 9, § 2(A)(IX) (defining confidential information as the identity of the account holder, the account number and all wagering transactions”); see also LA. ADMIN. CODE tit. 35, pt. XIII, § 12027(B); NEV. GAM. REG. 26C.180(5); NEV. GAM. REG. 22.140(5); 58 PA. CODE § 169.3.(a)(2).

<sup>28</sup> See, e.g., CONN. AGENCIES REGS. § 12-574-F60(d)(1); LA. ADMIN. CODE tit. 35, pt. XIII, § 12027(C); OR. ADMIN. R. 462-0210-0040(4)(ii).

<sup>29</sup> See, e.g., MD. REGS. CODE tit. 09, §10.04.24(P)(1)(d); NEV. GAM. REG. 26C.180(5)(a)-(c).

<sup>30</sup> MD. REGS. CODE tit. 09, §10.04.24(P)(1)(a)-(c); NEV. GAM. REG. 26C.180(5)(d)-(e).



(e) Crediting Winning Bets. Under state regulations, winning bets must be posted to the bettor's account as soon as reasonably practicable after the event or contest.<sup>31</sup>

(f) Withdrawals. States permit withdrawals to be made in person, or by means of check mailed or electronic funds transfer sent to the account holder.<sup>32</sup> A number of states require operators to pay out withdrawals within a stated time limit, with the most general rule of the pay out being sent within five days.<sup>33</sup>

(g) Recordkeeping. States generally require operators to maintain records and reports required by the gaming commission for the regulation of the business.<sup>34</sup> States sometimes require operators to maintain electronic records, often referred to as an "electronic ledger" to record wagering transactions, including notations for all: (i) deposits; (ii) withdrawals; (iii) amounts wagered; (iv) amounts paid on winning wagers; (v) amounts paid for horse racing-related services or merchandise; (vi) service or other transaction-related charges authorised by the patron; and (vii) adjustments to the account, if any.<sup>35</sup>

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<sup>31</sup> See, e.g., CONN. AGENCIES REGS. § 12-574-F60(s) (payments on winning bets should be posted as soon as practicable); MD. REGS. CODE tit. 09, §10.04.24(K)(2) (proceeds from a successful bet shall be credited as soon as reasonably practicable after the race or races upon which the bet was placed becomes official).

<sup>32</sup> See, e.g., WEST'S ANN.CAL.BUS. & PROF.CODE § 19604(c)(2)(C); MASS. REGS. CODE tit. 205, §§ 6.26(2); 58 PA. CODE § 169.2(d); WYO. RULES & REG. DEP'T COMMERCE, PC Ch. 9, § 2(g)(i).

<sup>33</sup> See, e.g., LA. ADMIN. CODE tit. 35, pt. XIII, § 12029(C)(2)(b) (withdrawal checks must be sent within five days); MD. REGS. CODE tit. 09, §10.04.24(K)(3) (five days for withdrawals); MASS. REGS. CODE tit. 205, §§ 6.26(2) (the association will send a check to the account holder within five business days); NEV. GAM. REG. 26C.190(4) (up to five days for withdrawals); NEV. GAM. REG. 22.160(4) (up to five days for withdrawals); OR. ADMIN. R. 462-0210-0040(4)(c)(iii)(B) (up to five days for withdrawals); 58 PA. CODE § 169.2(d). (requiring withdrawals be sent within two business days of receipt of the withdrawal request).

<sup>34</sup> See, e.g., LA. ADMIN. CODE tit. 35, pt. XIII, § 12035(H)-(J); NEV. GAM. REG. 26C.220; NEV. GAM. REG. 22.220; WYO. RULES & REG. DEP'T COMMERCE, PC Ch. 9, § 1(b).

<sup>35</sup> See NEV. GAM. REG. 26C.010(14) and 26C.060; NEV. GAM. REG. 26C.170(8)-(9); NEV. GAM. REG. 22.140(8); see also WYO. RULES & REG. DEP'T COMMERCE, PC Ch. 9, § 2(c).

(h) Statements of Account Activity. A bettor's own wagering records must be made available to the bettor, upon reasonable request, and in many instances, at reasonable intervals of time.<sup>36</sup>

## 5. Consumer Protection

8. The state model also contains statutes and regulations that assure players are protected and regulations are adhered to.

(a) Audits, investigations, and monitoring to ensure compliance. States require operators to allow gaming commission officials to access the operator's premises to visit, investigate, and audit to ensure rules and regulations, including security provisions, are complied with.<sup>37</sup>

(b) Advertising. Some states place restrictions on remote gaming advertising, such as placing notices in all advertising that individuals under the legal wagering age may not open remote betting accounts<sup>38</sup> or requiring that advertising not be deceptive.<sup>39</sup>

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<sup>36</sup> See, e.g., LA. ADMIN. CODE tit. 35, pt. XIII, § 12035(L) (the operator must, from time to time and not less than once per year provide each bettor with a statement of account activity; in addition, account activity records must be made available upon request of the bettor); MD. REGS. CODE tit. 09, §10.04.24(L) (requiring quarterly reports to accountholders); NEV. GAM. REG. 26C.180(2) (make records available upon request); OR. ADMIN. R. 462-0210-0040(13) (an operator must make records available upon request and from time to time, but not less than once per year, provide written statement of the bettor's account); see also CONN. AGENCIES REGS. § 12-574-F60(t)(not less than once per year the operators shall provide written statements of account activity); WYO. RULES & REG. DEP'T COMMERCE, PC Ch. 9, § 2(c)(vii) (upon request of an account holder, the operator shall provide a statement detailing account activity for the past 30 days).

<sup>37</sup> See, e.g., WEST'S ANN.CAL.BUS. & PROF.CODE § 19604(c)(2)(D); CONN. GEN. STAT. § 12-574(k); KY. REV. STAT. ANN. §§ 230.785; LA. ADMIN. CODE tit. 35, pt. XIII, § 12035(N); NEV. GAM. REG. 26C.210; NEV. GAM. REG. 22.1960; N.D. CENT. CODE § 53-06.2-012; WYO. STAT. ANN. § 11-25-105(k)(iv) and WYO. RULES & REG. DEP'T COMMERCE, PC Ch. 9, § 2(b)(vi)(B).

<sup>38</sup> WASH. REV. CODE ANN. § 67.16.260(2)(c) and (d); WYO. STAT. ANN. § 11-25-105(k)(vi).

<sup>39</sup> WYO. RULES & REG. DEP'T COMMERCE, PC Ch. 9, § 2(b)(ix) ("The Commission shall prohibit advance deposit wagering advertising that it determines to be deceptive to the public.").

- (c) Fair Play. Certain states prohibit race or sports books from accepting wagers on an event whose outcome has already been determined<sup>40</sup> or unilaterally rescinding a wager.<sup>41</sup>
- (d) Reporting Suspicious Wagers. Some states require operators to report suspicious wagers.<sup>42</sup> A wager is suspicious, for instance, when it has no apparent lawful purpose or is not the sort of wager which the bettor would normally be expected to place, and which the operator knows of no reasonable explanation for the wager after examining the facts.<sup>43</sup> An example of a suspicious wager is a wager placed by a player in a sports contest in which he is playing or by a coach of a team he is coaching.
- (e) Problem gaming programs. Account wagering operators in some states are required to provide account holders with contact information for a recognised problem-gambling support organisation.<sup>44</sup>
- (f) Dispute resolution procedures. A few states require operators to maintain and inform bettors of any process to resolve disputes over wagers or accounts.

## 6. Taxation

9. Each state statute contains provisions regarding the payment of taxes related to remote account wagering.

- (a) Payment of government tax revenues based on wagering. All states have enacted regulations establishing the manner in which the state calculates and collects its share of the revenues earned from account wagering.<sup>45</sup>

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<sup>40</sup> NEV. GAM. REG. 26C.070(3).

<sup>41</sup> NEV. GAM. REG. 26C.110; NEV. GAM. REG. 22.115.

<sup>42</sup> NEV. GAM. REG. 22.121; WYO. RULES & REG. DEP'T COMMERCE, PC Ch. 9, § 1(q).

<sup>43</sup> NEV. GAM. REG. 22.121(1).

<sup>44</sup> WYO. RULES & REG. DEP'T COMMERCE, PC Ch. 9, § 2(b)(x).

<sup>45</sup> See, e.g., WYO. STAT. ANN. § 11-25-105(b) ("Every Wednesday following any pari-mutuel event, the permittee shall: . . . (ii) Pay an amount equal to one and one-half percent (1%) of the total amount wagered . . . to be credited by the state").

(b) Ensuring customers pay federal taxes due on winnings. Certain states, such as California, Massachusetts and Wyoming, require operators to adhere to federal tax reporting and withholding proceeds for player withdrawals.<sup>46</sup> When required to do, the operator must send account holders an IRS Form W2-G to report his or her winnings to federal tax authorities.<sup>47</sup> Other states, such as Nevada, place requirements on operators when bettors seek to wager more than US \$10,000.<sup>48</sup>

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<sup>46</sup> CAL. CODE REGS. tit. 4, § 2074(i); MASS. GEN. LAWS ch. 128A § 5C; WYO. RULES & REG. DEP'T COMMERCE, PC Ch. 9, § 2(d)(ix).

<sup>47</sup> NEV. GAM. REG. 22.121; WYO. RULES & REG. DEP'T COMMERCE, PC Ch. 9, § 2(d)(ix).

<sup>48</sup> NEV. GAM. REG. 22.061 to .063.

## **B. Existing Age and Identity Verification Measures**

### **1. State Age and Identity Verification Measures for Remote Gambling**

10. The states that sanction and regulate remote gambling typically also have laws that are designed to prevent remote gambling by minors, usually through comprehensive age verification measures incorporated into the law. These age-verification measures establish that statutory and regulatory methods designed to ensure minors do not engage in remote gambling currently do exist and are considered sufficient by the United States to guard against some of the concerns associated with remote gambling.

#### **(a) Oregon**

11. Oregon was one of the first states to sanction telephone and personal computer-based remote gambling on horse and dog races. The Oregon state legislature opened up the possibility of this form of remote wagering by enacting legislation that permits account wagering pursuant to the rules and regulations of the Oregon Racing Commission.<sup>49</sup> Oregon is a recognised “leader in supporting technological advancements by being the first state to license multi-jurisdictional simulcasting and interactive wagering totalisator hubs through closed loop subscriber systems.”<sup>50</sup>

12. Under the Oregon account wagering rules, a person may establish a betting account in person or by mail through a two-step process.<sup>51</sup> To open a betting account, a person must first sign and submit a written application that contains his or her name, residential address, telephone number, social security number and proper identification demonstrating the applicant is at least 18 years of age. The application is then subject to “electronic verification” by the account wagering service. This verification process must be conducted “by either a national, independent, individual reference service company or another technology which meets or

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<sup>49</sup> OR. REV. STAT. § 462.142(1).

<sup>50</sup> Oregon Racing Commission, Annual Performance Progress Report Executive Summary: Time Period: Fiscal Year 2003-2004, p. 2 [[http://racing.oregon.gov/RACING/docs/ORC\\_2003-2004\\_Annual\\_PM\\_Report\\_9\\_27\\_04.pdf](http://racing.oregon.gov/RACING/docs/ORC_2003-2004_Annual_PM_Report_9_27_04.pdf)] [*Exhibit AB-100*].

<sup>51</sup> OR. ADMIN. R. 462-0210-0030(1).

exceeds the reliability, security, accuracy, privacy and timeliness provided by individual reference service companies.”<sup>52</sup>

**(b) California**

13. California sanctions private companies to offer telephone and online remote gambling on horse races. The state legislature has enacted legislation that permits account wagering pursuant to the rules and regulations of the California Horse Racing Board.<sup>53</sup> The California advance deposit wagering system allows customers to deposit funds into accounts in order to wager online and over the telephone.<sup>54</sup>

14. The California remote wagering statute requires licensed operators to utilize independent third party to perform identify, resident and age verification services.<sup>55</sup>

15. To establish an account, an application form must be submitted by the prospective customer that includes the applicant’s full legal name, residential address, telephone number, social security number and identification demonstrating that the applicant is at least 18 years of age.<sup>56</sup> The operator must then obtain an electronic verification of the applicants identification “by a Board-approved national, independent, individual reference company or another independent technology approved by the Board which meets or exceeds the reliability, security, accuracy, privacy and timeliness provided by individual reference service companies.”<sup>57</sup>

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<sup>52</sup> *Id.*

<sup>53</sup> WEST'S ANN.CAL.BUS. & PROF.CODE § 19604(c).

<sup>54</sup> California Horse Racing Board, Thirty-Fifth Annual Report of the California Horse Racing Board: A Summary of Fiscal Year 2004-2005 Racing in California, p. 3 [http://www.chrb.ca.gov/annual\_reports/2005\_annual\_report.pdf] (hereinafter the “*California Horse Racing Board 2005 Annual Report*”) [*Exhibit AB-101*].

<sup>55</sup> WEST'S ANN.CAL.BUS. & PROF.CODE § 19604(c)(2)(A).

<sup>56</sup> CAL. CODE REGS. tit. 4, § 2074(c)(1) – (5):

<sup>57</sup> CAL. CODE REGS. tit. 4, § 2074(d).

**(c) Washington**

16. Washington sanctions private companies to offer telephone and online remote gambling on horse races to Washington residents. In 2004, the state of Washington enacted its advance deposit wagering statute.<sup>58</sup>

17. In order to obtain a Washington remote account wagering license, licensees must ensure that they do not allow individuals under 21 years of age to open remote betting accounts and place a notice in all advertising that individuals under 21 years of age may not open remote betting accounts.<sup>59</sup> Operators are also required to verify the identification, residence and age of each account holder using “methods and technologies approved the commission.”<sup>60</sup>

18. To establish an account, an application form must be signed or otherwise authorised in a manner acceptable to the commission and include the applicants full legal name, residential address, telephone number and proper identification demonstrating that the applicant is at least 21 years of age.<sup>61</sup> The rules add:

“Each application submitted shall be verified with respect to name, principal residence address, and date of birth by either an independent service provider or another means which meets or exceeds the reliability, security, accuracy, privacy and timeliness provided by an independent service provider. If there is a discrepancy between the application submitted and the information provided by the verification described above or if no information on the applicant is available from such verification process, another individual reference service may be accessed or another technology meeting the requirements described above may be used to verify the information provided. If the applicant's information cannot be verified, the authorized advance deposit wagering service provider shall not establish an account.”<sup>62</sup>

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<sup>58</sup> WASH. REV. CODE ANN. § 67.16.260.

<sup>59</sup> *Id.*, § 67.16.260(2)(c) and (d).

<sup>60</sup> *Id.*, § 67.16.260(2)(e).

<sup>61</sup> WASH. ADMIN. CODE § 260-49-050(1)(a).

<sup>62</sup> WASH. ADMIN. CODE § 260-49-050(1)(b).

## 2. State Age Verification Measures for Remote Cigarette Sales

19. In addition to the state measures implemented to prevent minors from engaging in remote gambling, a number of states have adopted and implemented state laws to ensure that minors do not engage in other forms of online transactions that are inappropriate for minors. A number of states, for instance, have adopted statutory age-verification protocols to prevent the sale of cigarettes to minors.<sup>63</sup> These state statutes further establish that states can, and do, have the ability to regulate online commerce that is inappropriate for minors.

### (a) The Four-Step “Model” Statutory Age Verification Process

20. A number of individual states have enacted a four-step age verification protocol for Internet cigarette retailers.<sup>64</sup> The states which have implemented this age verification process includes Arizona, Delaware, Rhode Island, Texas, Virginia, and Washington. In each of these states, an online cigarette retailer may not deliver cigarettes to a customer without obtaining reliable confirmation that the individual is an adult. The statutory age verification measures for these states require that online cigarette retailers adhere to a specific four-step process in order to verify a customer’s adult status.

21. In the first step of the age verification process, the retailer is required to obtain a sworn or certified statement signed by the customer that certifies the address and date of birth of the individual and confirms that the customer understands that signing another individual’s name to the certification is illegal, that the sale of tobacco products to individuals under the legal minimum purchase age is illegal and that the purchase of tobacco products by individuals under the legal minimum purchase age is illegal.<sup>65</sup>

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<sup>63</sup> These states include Arizona, California, Delaware, Minnesota, Rhode Island, Texas, Virginia and Washington [*Exhibit AB-102*].

<sup>64</sup> ARIZ. REV. STAT. ANN. § 42-3223. DEL. CODE ANN. tit 30, § 5363; R.I. GEN. LAWS § 44-20.1-3; TEX. HEALTH & SAFETY CODE ANN. § 161.453; VA. CODE ANN. § 18.2-246.8; WASH. REV. CODE ANN. 70.155.105.

<sup>65</sup> ARIZ. REV. STAT. ANN. § 42-3223(A)(1); DEL. CODE ANN. tit 30, § 5363(a)(1); R.I. GEN. LAWS § 44-20.1-3(a)(1); TEX. HEALTH & SAFETY CODE ANN. § 161.453(a)(1); VA. CODE ANN. § 18.2-246.8(a)(1); WASH. REV. CODE ANN. 70.155.105(1)(b).



22. After receiving a signed statement from the customer, as the second step of the age verification process, the cigarette retailer is required to make a good faith effort to verify the information contained in the certification“against a commercially available database that may be reasonably relied on for accurate age information or obtain a photocopy or other image of a valid government issued identification that states the date of birth or age of the individual.”<sup>66</sup>

23. The third step of the process, to ensure proper notice of applicable law to the customer, requires the cigarette retailer to send the customer an email notice that includes prominent and clearly legible statements that:

- cigarette sales to consumers below the legal minimum purchase age are illegal;
- restates one of the approved federal warnings to discourage cigarette smoking;
- sales of cigarettes are restricted to those consumers who provide verifiable proof of age; and
- cigarette sales are subject to state tax to be paid upon delivery of the cigarettes.<sup>67</sup>

24. As the final safeguard of this four-step age verification process, an online cigarette retailer may only deliver cigarettes to a customer who has paid by a credit or debit card that has been issued in the name of the customer or by personal or company check of the customer.<sup>68</sup>

**(b) The Additional Age Verification Methods Required by California Law: The “Identity Kit”, “Credit Card Billing Statement Language”, and “Check Back” Measures**

25. The California age verification process, although similar to the other state laws in many respects, contains three unique features that are not included in the general four-step age

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<sup>66</sup> ARIZ. REV. STAT. ANN. § 42-3223(A)(2); DEL. CODE ANN. tit 30, § 5363(a)(2); R.I. GEN. LAWS § 44-20.1-3(a)(2); TEX. HEALTH & SAFETY CODE ANN. § 161.453(a)(2); VA. CODE ANN. § 18.2-246.8(a)(2); WASH. REV. CODE ANN. 70.155.105(2)(a).

<sup>67</sup> TEX. HEALTH & SAFETY CODE ANN. § 161.453(a)(3) (requiring email notice) and § 161.453 (providing the specific terms of the email notice); VA. CODE ANN. § 18.2-246.8(a)(3) (requiring email notice) and § 18.2-246.9 (providing the specific terms of the email notice); WASH. REV. CODE ANN. § 70.155.105(2)(b) (requiring email notice); and § 70.155.105(3) (providing the specific terms of the email notice); see also DE. STAT. tit 30, § 5363(a)(2); R.I. GEN. LAWS § 44-20.1-3(a)(3).

<sup>68</sup> ARIZ. REV. STAT. ANN. § 42-3223(A)(4); DE. STAT. tit 30, § 5363(a)(4); R.I. GEN. LAWS § 44-20.1-3(a)(4); TEX. HEALTH & SAFETY CODE ANN. § 161.453(a)(3); VA. CODE ANN. § 18.2-246.8(a)(4) (credit or debit cards only).

verification statute: “identity kits,” “credit card billing statement language,” and “check backs.”<sup>69</sup>

26. The first step of the California age-verification process mandates the online cigarette distributor to verify that the purchaser is 18 years of age or older by matching name, address, and date of birth provided by the customer to information contained in records in a database of individuals whose age has been verified to be 18 years or older by reference to an appropriate database of government records kept by the distributor, a direct marketing firm, or any other entity.<sup>70</sup>

27. As in most states, cigarette retailers must receive payment from California residents by check or credit card. The cigarette retailer is required to verify that the billing address on the check or credit card offered for payment by the customer matches the address listed in the database.<sup>71</sup>

28. If the online cigarette retailer is unable to verify that the purchaser is 18 years of age through this initial database matching process, the retailer is required to require the customer to submit an “age-verification kit” consisting of an attestation signed by the customer that he or she is 18 years of age or older and a copy of a valid form of government identification.<sup>72</sup>

“For the purposes of this section, a valid form of government identification includes a driver's license, state identification card, passport, an official naturalization or immigration document, such as an alien registration receipt card (commonly known as a "green card") or an immigrant visa, or military identification. The distributor or seller shall also verify that the billing address on the check or credit card provided by the consumer matches the address listed in the form of government identification.”<sup>73</sup>

29. As an additional safeguard to ensure that a minor has not usurped a parent's credit card, California requires cigarette retailers to report to the credit card processor that the transaction involved the sale of cigarettes so that the words “tobacco product” can be printed in the

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<sup>69</sup> WEST'S ANN.CAL.BUS. & PROF.CODE § 22963.

<sup>70</sup> WEST'S ANN.CAL.BUS. & PROF.CODE § 22963(b)(1)(A).

<sup>71</sup> *Id.*

<sup>72</sup> WEST'S ANN.CAL.BUS. & PROF.CODE § 22963(b)(1)(B).

<sup>73</sup> *Id.*

customer's credit card statement when a purchase of a tobacco product is made by credit card payment.<sup>74</sup> This will dissuade most minors from attempting to use a parent's credit card without the parent's knowledge.

30. California also mandates the cigarette retailers check back with the customer to confirm the order. The cigarette retailer "shall make a telephone call after 5 p.m. to the purchaser confirming the order prior to shipping the tobacco products."<sup>75</sup> The telephone call may be a person-to-person call or a recorded message. The distributor or seller is not required to speak directly with a person and may leave a message on an answering machine or by voice mail.<sup>76</sup>

31. As a final safeguard to ensure minors do not obtain cigarettes by online purchase, California law requires the cigarette retailer to deliver the product to the customer's verified billing address on the check or credit card used for payment.<sup>77</sup> No delivery is permitted to any post office box.<sup>78</sup>

### **3. State Age Verification Measures for Remote Alcohol Sales**

32. Several states have enacted laws which authorize the remote sale of alcoholic beverages.<sup>79</sup> Some of these state laws sanction the *interstate* sale of alcoholic beverages by

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<sup>74</sup> WEST'S ANN.CAL.BUS. & PROF.CODE § 22963(b)(2).

<sup>75</sup> WEST'S ANN.CAL.BUS. & PROF.CODE § 22963(b)(3).

<sup>76</sup> *Id.*

<sup>77</sup> WEST'S ANN.CAL.BUS. & PROF.CODE § 22963(b)(3).

<sup>78</sup> *Id.* Minnesota is another state that place additional shipping requirements on the delivery of cigarettes purchased online. MINN. STAT. ANN. § 325F.781, subdivision b, (b)-(c) (requiring the cigarette retailer to clearly mark the outside of the package of tobacco products to be shipped "tobacco products - adult signature required" and to show the name of the tobacco retailer. The cigarette retailer is also required to utilize a delivery service that requires an adult to sign for the delivery and the person signing for the delivery must show valid government-issued identification that contains a photograph of the person signing for the delivery and indicates that the person signing for the delivery is of legal age to purchase tobacco products and resides at the delivery address.).

<sup>79</sup> *See, e.g.*, ARIZ. REV. STAT. ANN. §§ 4-241, 4-203.04; WEST'S CAL. BUS. & PROF. Code § 23661.3; MICH. COMP. LAWS ANN. § 436.1203; MINN. STAT. ANN. § 340A.417; see also An Act Concerning Restrictions on the Authority of Wineries to Ship Wine to Personal Consumers, Ch. 126 (2006) (codified as repealed and reenacted at COL. REV. STAT. ANN. §§ 12-47-103, 12-47-104, 12-47-402, 12-47-403, 12-47-503). Copies of these statutes are attached as **Exhibit AB-103**.

means of “mail order, internet, telephone, computer, device, or other electronic means.”<sup>80</sup> Each of these state laws include age and identity verification measures to prevent the sale of alcoholic beverages to customers who have not attained the legal age to purchase alcohol.<sup>81</sup>

33. In Arizona, for instance, a wine retailer who holds a “direct shipment” license is permitted to sell and deliver wine ordered by a customer who placed the order by means of the telephone or online.<sup>82</sup> The wine retailer is required to ensure the direct shipment of wine comports with state law, including state law that prohibits the sale of wine to individuals under 21 years of age.<sup>83</sup> Therefore, at the time a customer places a remote request to purchase wine, the retailer must verify the customer is of the legal age.<sup>84</sup> To ensure that deliveries are not made to underage customers, the Arizona direct alcohol shipment statute requires that, at the time of delivery, the shipper ensures that the person accepting the delivery is 21 years of age or older and exhibits an acceptable written instrument of identification.<sup>85</sup> The shipper is also required to write down the name, age, and identification information of the person accepting delivery of the product.<sup>86</sup>

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<sup>80</sup> MICH. COMP. LAWS ANN. § 436.1203(3) (for “the sale, delivery, or importation of wine, to consumers in this state”); *see also* West’s Cal. Bus. & Prof. Code § 23661.3 (a retailer from “this state or any other state” who obtains a direct shipper permit may sell and ship wine directly to a resident of California). While Minnesota permits interstate remote sales and shipment of wine, it does not permit orders to be placed over the Internet. MINN. STAT. ANN. § 340A.417(a) (“a winery licensed in a state other than Minnesota, or a winery located in Minnesota, may ship . . .”) and (c)(3) (“No person may . . . accept orders for shipments authorized by this section by use of the Internet.”).

<sup>81</sup> *See, e.g.*, COL. REV. STAT. ANN. §§ 12-47- 104(b) and (c) (shipments of wine may be delivered to the customer or customer’s designee, provided the customer or designee presents valid proof of identity and age and personally signs a receipt acknowledging delivery”).

<sup>82</sup> ARIZ. REV. STAT. ANN. § 4-203.04(E) (“ A resident of this state who is twenty-one years of age or older may place an order in person, by telephone, mail or catalog or on the internet for spirituous liquor for the person’s own personal use with a person who holds a direct shipment license.”)

<sup>83</sup> ARIZ. REV. STAT. ANN. § 4-203.04(F) and § 4-241 (a licensee “shall require the person to exhibit a written instrument of identification and may require the person on a card to be retained by the licensee to sign the person’s name, the date, and the number of such identification.”).

<sup>84</sup> *Id.*

<sup>85</sup> ARIZ. REV. STAT. ANN. § 4-203.04(H)(1).

<sup>86</sup> *Id.*, § 4-203.04(H)(2).

34. In Michigan, a licensed alcohol retailer may sell alcoholic beverages by remote means, provided the retailer adheres to the state age verification laws.<sup>87</sup> The state age verification scheme for remote alcohol sales mandates that the retailer obtain a copy of the customer's identification card and an affirmation from the customer stating that he or she is of legal age to purchase alcoholic beverages.<sup>88</sup> When a customer requests a shipment of wine by internet, the retailer is not required to obtain a copy of the customer's identification card if the retailer utilizes an identification verification service.<sup>89</sup> At the time the order is placed, the retailer is further required to record the name, address, date of birth of the customer and reprint this information on the shipping label of the package to be delivered to the customer.<sup>90</sup> With respect to the delivery of the alcohol product, the retailer must display in a prominent fashion that the delivery package contains alcoholic beverages and that the recipient at the time of the delivery is required to provide identification verifying his or her age along with a signature.

**C. The Use of Social Security Numbers, Private Information Services, Credit Cards, and Public Records Databases to Perform Age and Identity Verification in Remote Transactions**

35. States recognise the existence and effectiveness of electronic services that are able to verify a person's age and identity in an online transaction.

36. These services generally verify a person's age and identity in reliance upon the person's unique federal social security number ("SSN").

37. American businesses commonly verify a person's identity through private information services that have amassed information about each person, including the person's unique federal SSN.<sup>91</sup>

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<sup>87</sup> MICH. COMP. LAWS ANN. § 436.1203(2)-(3).

<sup>88</sup> *Id.*, § 436.1203(2)(d).

<sup>89</sup> *Id.*, § 436.1203(3)(d).

<sup>90</sup> *Id.*, §§ 436.1203(2)(d)-(f), (3)(d)-(f).

<sup>91</sup> United States General Accounting Office, GAO-04-11, Social Security Numbers: Private Sector Entities Routinely Obtain and Use SSNs, and Laws Limit the Disclosure of this Information, p. 4 (January 2004), [[www.gao.gov/new.items/d0411.pdf](http://www.gao.gov/new.items/d0411.pdf)] [*Exhibit AB-104*].

38. By way of background, the United States established the use of the SSN over 70 years ago to track individual employment and government retirement benefits referred to as “social security benefits” in the United States. SSNs are issued to most United States citizens and are available to non-citizens lawfully admitted to work in the United States.<sup>92</sup> As of January 2004, approximately 277 million individuals were assigned a SSN. According to the United States, “[b]ecause of the number’s uniqueness and broad applicability, the SSN has become the identifier of choice for government agencies and private businesses . . . .”<sup>93</sup>

39. Currently, there are a number of private information services in the United States that specialise in amassing consumer information about every United States resident. These businesses include consumer reporting agencies (*i.e.*, “credit bureaus”) and other information brokers who compile vast databases on every person with an SSN. “For example, business clients or individual customers provide SSNs to these entities, and the numbers are used to produce credit reports or verify information about individuals for employment and other purposes.”<sup>94</sup>

40. Information services use the SSN as an identity verification tool.

“Some of these entities have incorporated SSN into their information technology, while others have incorporated SSNs into their client’s databases used for identity verification. For example, one large information reseller that specializes in information technology solutions has developed a customer verification data model that aids financial institutions in their compliance with some federal laws regarding ‘knowing your customer.’ According to this company’s information, the data model compares information provided by the applicant, such as name, address, and SSN, with the data they already have in their databases, which is composed of multiple public and private sources. Another information reseller that specializes in mortgage services uses the SSN as the main factor in identifying individuals for their product reports . . . .”<sup>95</sup>

41. The customers of these information services include: “Law firms, private businesses, law enforcement agencies, and others . . . . For example, lawyers, debt collectors, and private investigators may request information on an individual’s bank accounts and real estate holdings

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<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*, p. 1.

<sup>95</sup> *Id.*, p. 10.

for use in civil proceedings such as divorce; automobile insurers may want information on whether insurance applicants have been involved in accidents or have been issued traffic citations; employers may want background checks on new hires; pension plan administrators may want information to locate pension beneficiaries; and individuals may ask for information to help locate birth parents.”<sup>96</sup>

42. Another method commonly used in online transactions to verify a person’s age is by means of “credit card verification.” With this method of age verification, the use of a valid credit card number grants access to materials or transactions at the web site.<sup>97</sup> This method of age verification is based upon the accepted fact that many adults, and exceedingly few minors under 18 years of age, have credit cards. Under this method of age verification, presentation of a valid credit card number is presumed to be evidence that the user is an adult.<sup>98</sup>

43. Yet another method of online age verification relies upon the use of databases of public records such as government-issued voter registration cards or drivers’ licenses.<sup>99</sup> As an example of this verification method, a customer who wants to access to an online gambling web-site would send an online request to an age verification service (along with a credit-card number to effect payment) for a certification of age for a given individual. He or she also provides appropriate personal information, and the adult verification service checks that information against public records such as state drivers’ licenses and voting registration that contain or imply age information.

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<sup>96</sup> *Id.*, p. 4.

<sup>97</sup> *Youth, Pornography and the Internet*, Dick Thornburgh and Herbert S. Lin, Editors, *Committee to Study Tools and Strategies for Protecting Kids from Pornography and Their Applicability to Other Inappropriate Internet Content*, (2002 National Academy Press/National Research Council) [available at [http://newton.nap.edu/html/youth\\_internet/ch2.html](http://newton.nap.edu/html/youth_internet/ch2.html)] (hereinafter “*Committee to Study Tools and Strategies for Protecting Kids from Inappropriate Internet Content*”), sec. 2.3.2 (Technologies for Authentication and Age Verification) [*Exhibit AB-105*].

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

44. The age verification process can be enhanced by coupling the use of public record databases to an authentication process that provides assurance of identity.<sup>100</sup> In this case, when adult status is confirmed, a credential certifying one's adult status is mailed (via postal service) to the address of record on those public records. In this context, the postal service serves as an authenticating process that ensures the adult credential is sent to the right person. The individual can then use this special key to obtain access to adults-only services that recognise this special key.<sup>101</sup>

#### **D. Existing Age and Identity Verification Services**

##### **1. IDology, Inc.**

45. IDology, Inc. ("IDology") is a private company headquartered in Atlanta, Georgia, that provides business-to-business age and identity verification services to its clients.<sup>102</sup>

46. Idology's proprietary product, ExpectID™, is an instantaneous electronic age and identity verification service.<sup>103</sup>

47. ExpectID has been approved for use by state authorities in connection with the online sale and shipment of wine. Specifically, on August 8, 2006, the Michigan State Liquor Control Commission cited use of Idology's ExpectID service as an effective age verification product for direct wine shipments.<sup>104</sup> Prior to issuing this endorsement, the Michigan State Liquor Control Commission's reviewed test data which established that ExpectID correctly identified individuals who were underage and those who were of legal age to purchase wine.

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<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> [www.idology.com](http://www.idology.com). See *Exhibit AB-106*.

<sup>103</sup> [www.idology.com/age.html](http://www.idology.com/age.html) and [www.idology.com/identity.html](http://www.idology.com/identity.html).

<sup>104</sup> [www.idology.com/press10.html](http://www.idology.com/press10.html) and [www.michigan.gov/cis/0,1607,7-154-10570-150257--,00.html](http://www.michigan.gov/cis/0,1607,7-154-10570-150257--,00.html).



48. The ExpectID service is recommended by Wine America, a wine industry association, as an age verification service for online wine sales.<sup>105</sup> Wine maker Kendall-Jackson uses IDology's age verification technology to confirm that new customers on two of its e-commerce sites are at least 21 years old, and Nexternal Solutions, which provides more than 150 wineries software to their wines online, has partnered with Idology to determine a potential customer's age.<sup>106</sup>

49. Idology's services are also utilised to keep adults away from web sites for children. Zoey's Room, a social networking web site aimed at 10 to 14 year old girls to increase their interest in science, technology, engineering and math in a fun and creative community, has selected ExpectID product suite to perform identity and age verifications at the point of sign-up to help shield their members from online paedophiles.

## 2. Choice Point

50. Choice Point offers a number of age and identify verification products.<sup>107</sup> One of its products is TrueID, an identity verification system to a wide variety of businesses. TrueID captures information from a photo identification cards and electronically compares the information against a databases of more than 17 billion records.<sup>108</sup>

51. Choice Point also offers its ProCheck system to verify a person's identity and age.<sup>109</sup> This service instantly checks an individual's self-entered or self-provided information and verifies the information against several databases containing more than 19 billion records. The service can be integrated into existing business processes and Web sites and be used to effectively verify that a computer user is above a pre-defined age threshold.

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<sup>105</sup> [www.idology.com/press1.html](http://www.idology.com/press1.html);  
[www.wineamerica.org/newsroom/newsletters/November%20Final%20Newsletter.doc](http://www.wineamerica.org/newsroom/newsletters/November%20Final%20Newsletter.doc).

<sup>106</sup> *Id.*; [www.charlotte.com/mld/charlotte/business/local/15263530.htm](http://www.charlotte.com/mld/charlotte/business/local/15263530.htm);  
<http://www.nexternal.com/Partners/alliances.asp>.

<sup>107</sup> [www.choicepoint.com](http://www.choicepoint.com). See *Exhibit AB-107*.

<sup>108</sup> [www.choicepoint.com/business/authen/true\\_id.html](http://www.choicepoint.com/business/authen/true_id.html).

<sup>109</sup> [www.choicepoint.com/authentication/common/pdfs/ProCheck.pdf](http://www.choicepoint.com/authentication/common/pdfs/ProCheck.pdf).

52. Since 2003, ChoicePoint has processed 16 million requests for age verification in industries selling products and services such as alcohol, firearms, tobacco, and businesses that ship or deliver age-restricted products.<sup>110</sup>

### **3. Trufina**

53. Trufina is an online identity verification and management service.<sup>111</sup> It provides individuals with a way to self-verify their identity and then share verified personal information with anyone they interact with on the web.

54. Trufina issues “identity cards” to its members, which Trufina describes as “on-line driver’s licenses.”<sup>112</sup> Trufina allows for the creation of multiple credentials for various situations, such as online dating, reputation management, or buying and selling goods through online auctions or classifieds. The consumer chooses and controls who sees which cards, and of course specific companies could require a certain card to be used in order to access their products and services.<sup>113</sup>

55. Trufina’s product uses a proprietary data testing algorithm that confirms and correlates data contained in public record databases to ensure that every subscriber passes the a rigorous set of qualifications before verification is approved. A customer is first asked to provide information about him or herself, including name, address, date and country of birth, phone number, and last four digits of Social Security Number. Then Trufina will correlate this data with public records databases and credit records and use those records to generate a quiz about the consumer that only that person should be able to pass.<sup>114</sup>

56. Trufina’s verification service can be integrated into a online business’s web site. Trufina has a variety of programs which allow businesses to integrate Trufina’s verification services into

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<sup>110</sup> [www.choicepoint.net/choicepoint/business/financial/ageverif\\_fs.html](http://www.choicepoint.net/choicepoint/business/financial/ageverif_fs.html) .

<sup>111</sup> [www.trufina.com](http://www.trufina.com). See *Exhibit AB-108*.

<sup>112</sup> [www.trufina.com/help/help2.php](http://www.trufina.com/help/help2.php).

<sup>113</sup> *Id.*

<sup>114</sup> [www.trufina.com/help/help1.php](http://www.trufina.com/help/help1.php).

the business's own infrastructure, allowing the business to process identity verification or other services as a requirement for membership or access to online sites.

#### **4. Verid**

57. Verid is another age and identification authentication service.<sup>115</sup> Verid's search technology instantly locates and compares information supplied by consumers and businesses against billions of records. With respect to verifying a person's age and identity, Verid's system instantaneously confirms that information provided by the person is valid and accurate while also checking multiple watch lists, exception lists, and other risk criteria as determined by a specific client's, industry, or governmental agency's specific rules.<sup>116</sup>

58. Verid's service also locates relevant background facts to build a set of customised questions geared specifically to the true individual's top-of-mind knowledge. Verid's technology allows for the intake of information from a consumer, then that information is matched against relevant public information records in order to build a specific profile for that consumer. Once the profile is complete, a specific set of questions is generated for that particular consumer. The questions are presented to the consumer, and the consumer's answers to the questions are evaluated by Verid to in order to verify the identity and age of the consumer. The results are then relayed back to the online business which is trying to verify the consumer's identity.<sup>117</sup>

#### **5. i-Mature**

59. i-Mature utilises a biometric device that employs a new technology that is able to measure a computer user's physiological features in order to determine the age group of the computer user.<sup>118</sup> The biometric device is used by i-Mature's customers as an online security solution that

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<sup>115</sup> [www.verid.com](http://www.verid.com). See *Exhibit AB-109*.

<sup>116</sup> [www.verid.com/verification.html](http://www.verid.com/verification.html).

<sup>117</sup> [www.verid.com/process\\_overview.html](http://www.verid.com/process_overview.html).

<sup>118</sup> [www.i-mature.net](http://www.i-mature.net) (describing the service as “[a]n innovative technology that can determine through a simple Biometric test, whether a user is a Child or an Adult, for controlling access to Internet Site, Content, Device, Service, Medium or Location.); [www.netcaucus.org/books/childsafety2006/i-mature.pdf](http://www.netcaucus.org/books/childsafety2006/i-mature.pdf) (i-Mature Age Recognition System - Children Safety Online). See *Exhibit AB-110*.

prevents underage computer users from accessing undesirable or inappropriate Internet materials.<sup>119</sup>

60. i-Mature's biometric device utilizes technology that evaluates a computer user's hand in order to classify the computer user into one of the following age group categories: (1) elementary school age, defined as children up to age 13; (2) high school age, defined as ages 13 to 17; and (3) adults, defined as individuals age 18 and older. i-Mature's system automatically performs the age category classification and then communicates the outcome to its customer whom, in turn, uses the information to decide whether to grant access to the computer user.<sup>120</sup>

61. i-Mature's biometric device is a compact electronic component that can work on a stand-alone basis or be connected to a personal computer. The device can also be used with cellular phones, laptop computers, and other electronic devices capable of accessing the Internet.<sup>121</sup> The device is expected to be available for commercial applications in 2007<sup>122</sup> e.<sup>123</sup>

## 6. NetIdMe

62. Net-ID-me is an Internet age and identity verification system.<sup>124</sup> A Net-ID is a secure electronic identity card that displays only a person's first name, age, gender, and general location and typically is used to verify the age and identity of a person involve in an online transaction.<sup>125</sup>

63. In order to obtain a Net-ID, any person under the age of 18 will have to have a parent or guardian present, as Net-ID requires their consent to sign a minor up for a Net-ID. Once an on-line registration is completed, a form is mailed to the applicant's home. The form must be

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<sup>119</sup> [www.i-mature.net/content.php?id=9&tno=7](http://www.i-mature.net/content.php?id=9&tno=7).

<sup>120</sup> [www.i-mature.net/content.php?id=15&tno=7](http://www.i-mature.net/content.php?id=15&tno=7).

<sup>121</sup> *Id.*

<sup>122</sup> [www.i-mature.net/content.php?id=64](http://www.i-mature.net/content.php?id=64).

<sup>123</sup> [www.i-mature.net/content.php?id=58](http://www.i-mature.net/content.php?id=58).

<sup>124</sup> [www.netidme.com/netidme.asp](http://www.netidme.com/netidme.asp). See *Exhibit AB-111*.

<sup>125</sup> *Id.*

signed, and certain detail must be confirmed by a professional person who knows the applicant, and, for a person under the age of 18, a parent or guardian must also sign the form.

64. Once Net-ID receives the completed form, the information is verified by Net-ID and then an electronic ID-Card will display the applicant's first name, age, gender and location.<sup>126</sup>

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<sup>126</sup> *Id.*