

**UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
FINANCIAL CRIMES ENFORCEMENT NETWORK**

IN THE MATTER OF:)
) **Number 2016-03**
Sparks Nugget, Inc.)
d/b/a John Ascuaga's Nugget)
Sparks, Nevada)

ASSESSMENT OF CIVIL MONEY PENALTY

I. INTRODUCTION

The Financial Crimes Enforcement Network (FinCEN) has determined that grounds exist to assess a civil money penalty against Sparks Nugget, Inc., d/b/a John Ascuaga's Nugget (Sparks Nugget or the Casino) pursuant to the Bank Secrecy Act (BSA) and regulations issued pursuant to that Act.¹

Sparks Nugget, Inc. admits to the facts set forth below and that its conduct violated the BSA.² Sparks Nugget, Inc. consents to this assessment of a civil money penalty and enters into the CONSENT TO THE ASSESSMENT OF CIVIL MONEY PENALTY (CONSENT) with FinCEN.

The CONSENT is incorporated into this ASSESSMENT OF CIVIL MONEY PENALTY (ASSESSMENT) by reference.

¹ The Bank Secrecy Act is codified at 12 U.S.C. §§ 1829b, 1951-1959 and 31 U.S.C. §§ 5311-5314, 5316-5332. Regulations implementing the Bank Secrecy Act appear at 31 C.F.R. Chapter X.

² Sparks Nugget makes the admissions as stated above and elsewhere in this document solely in connection with the resolution of this civil proceeding and for purposes of the imposition of the civil penalty set forth herein. Nothing in the CONSENT or this ASSESSMENT, including Part V, will be construed by FinCEN to prevent Sparks Nugget or its agents from offering a defense (including denials of related factual allegations made by other government agencies or in litigation) in any litigation or government investigation, so long as the statement, defense, or argument is made (1) to a government investigative agency; or (2) to a court, in writing or orally; or (3) in any sworn testimony in connection with a judicial or administrative proceeding.

Located in Sparks, Nevada, Sparks Nugget is an 84,000 square foot casino and a hotel with over 1,600 rooms in two towers. The Casino opened in 1955. In December 2013, after the violations described herein occurred, Sparks Nugget, Inc. sold the Casino property.

FinCEN has the authority to investigate casinos for compliance with and violation of the BSA pursuant to 31 C.F.R. § 1010.810, which grants FinCEN “[o]verall authority for enforcement and compliance, including coordination and direction of procedures and activities of all other agencies exercising delegated authority under this chapter.” Sparks Nugget is a “financial institution” and a “casino” within the meaning of the Bank Secrecy Act and its implementing regulations. 31 U.S.C. § 5312(a)(2)(X); 31 C.F.R. § 1010.100(t)(5). The Internal Revenue Service, through the Small Business/Self-Employed Division (IRS SB/SE), examines casinos for compliance with the BSA. In 2010, IRS SB/SE examined Sparks Nugget and identified significant BSA violations.

II. DETERMINATIONS

From 2010 through November 2013, Sparks Nugget willfully violated the BSA’s program, reporting, and recordkeeping requirements.³ As described in more detail below, Sparks Nugget failed to establish and implement an effective anti-money laundering program, failed to report suspicious activity, and failed to secure and retain certain required records. 31 U.S.C. §§ 5318(a)(2), 5318(g) and 5318(h); 31 C.F.R. §§ 1021.210, 1021.320, and 1021.410.

A strong culture of compliance is key to any financial institution’s ability to comply with the BSA. Sparks Nugget, however, lacked a culture of compliance. The employee responsible for managing the Casino’s compliance with the BSA was routinely disregarded by her managers,

³ In civil enforcement of the Bank Secrecy Act under 31 U.S.C. § 5321(a)(1), to establish that a financial institution or individual acted willfully, the government need only show that the financial institution or individual acted with either reckless disregard or willful blindness. The government need not show that the entity or individual had knowledge that the conduct violated the Bank Secrecy Act, or that the entity or individual otherwise acted with an improper motive or bad purpose. Sparks Nugget admits to “willfulness” only as the term is used in civil enforcement of the BSA under 31 U.S.C. § 5321(a)(1).

including the day-to-day gaming operations personnel, even after an IRS examiner told Sparks Nugget management that BSA compliance was too much for one person to handle. Sparks Nugget's former BSA compliance officer complained that the Casino frequently failed to file SARs for activity that she believed was required to be reported. Many of the prepared SARs the BSA compliance officer submitted to her direct manager for approval to file were ignored and went unfiled. The BSA compliance officer also voiced concerns about Casino employees' failure to gather required information that was necessary to comply with the BSA, including player names, addresses, and information related to financial transactions that occurred at the Casino. During an IRS exam in 2010, the BSA compliance officer's direct managers instructed her to stop speaking with the examiners. Despite her role as the designated BSA compliance officer, she was never allowed by Sparks Nugget management to see the IRS's final exam report and her requests to her managers to discuss the exam results were denied.

While Sparks Nugget was in an excellent position to make effective use of risk-based, information-driven compliance, it willfully failed to do so. As is typical within the casino industry, Sparks Nugget harnessed its software systems and its own employees to gather large amounts of information about its customers. The Casino used this information to provide better and more personalized customer service to its patrons and to minimize the business risk associated with running a casino. Yet, Sparks Nugget failed to use this same information to develop risk-based policies and procedures to assess and minimize AML risks.

Sparks Nugget's willful failure to take advantage of the valuable information about its customers that it was already gathering and using to improve its profit and minimize its business risks contributed to the Casino's failure to file required Suspicious Activity Reports (SARs) and Currency Transaction Reports (CTRs). The Casino's poor compliance culture also contributed to these failures. There was a blatant disregard for AML compliance that

permeated all levels of Sparks Nugget. During the 2010 IRS examination, Sparks Nugget employees told the IRS that they did not need to monitor for suspicious activity because nothing suspicious ever happened at the Casino. This comment is remarkable in light of the fact that a few years before the examination, a county official was arrested for and later convicted of embezzling at least \$2.2 million, and gambling half of that at the Casino. Sparks Nugget did not file a SAR on any of those transactions, even after the arrest became public. In 2006, in another example of suspicious activity, the Casino's former general counsel was arrested for (and later pled guilty to) embezzling about \$3 million from Sparks; the Casino had dismissed the attorney, but did not file a SAR.

When an employee did spot potentially suspicious activity and reported this information to the SAR Committee, a group of operational and financial managers tasked with the responsibility to determine whether or not potentially suspicious activity should be reported by filing a SAR, the employee was met with silence. The SAR Committee, in fact, never held a single meeting. Moreover, some of the members were not even aware that they were on the Committee. Sparks Nugget's overarching disregard for AML compliance was evident in its response to AML examinations by the IRS. As recently as 2013, the Casino had failed to make changes to its operations to address many of the AML program and reporting failures identified by the IRS to the Casino in the examination report related to the 2010 exam.

A. Violations of the Requirement to Establish and Implement a Written Anti-Money Laundering (AML) Program

A casino is required to develop and implement a written anti-money laundering program that is reasonably designed to prevent the institution from being used to facilitate money laundering and the financing of terrorist activities. 31 U.S.C. §§ 5318(a)(2) and 5318(h); 31 C.F.R. § 1021.210(b)(1). At a minimum, the program must provide for: (a) a system of internal

controls to assure ongoing compliance; (b) independent testing of the casino's AML compliance program by casino personnel or parties external to the casino; (c) training of personnel; (d) the designation of an individual or individuals responsible for assuring day-to-day compliance; (e) procedures for using all available information to determine and verify name, address, social security or taxpayer identification number, and other identifying information for a person, to the extent determining and verifying the information is otherwise required under the BSA; (f) procedures for using all available information to determine the occurrence of any transactions or patterns of transactions required to be reported as suspicious; (g) procedures for using available information to determine whether any records must be made and maintained pursuant to the BSA; and (h) for casinos with automated data processing systems, use of such systems to aid in assuring compliance. 31 C.F.R. §§ 1021.210(b)(2). As detailed below, Sparks Nugget committed sustained and consistent violations of the BSA.

1. Internal Controls

A casino, like any other financial institution, is required to have a compliance program that includes “[a] system of internal controls to assure ongoing compliance.” 31 C.F.R. § 1021.210(b)(2)(i). Sparks Nugget failed to establish and maintain appropriate internal controls to ensure compliance with the BSA's reporting requirements. As detailed below, Sparks Nugget failed to file Suspicious Activities Reports regarding transactions that clearly warranted such reports. In part, these failures were due to the fact that Sparks Nugget lacked sufficient internal controls to effectively monitor for and report suspicious activity or to document the review process for decisions not to file SARs. Although Sparks Nugget's AML program nominally had procedures for a SAR Review Committee to review potentially suspicious activity and to determine whether to file a SAR, the Committee had never held a single meeting. Indeed, some of the purported Committee members were unaware that they

were even on the Committee. As described in the IRS examination report, Sparks Nugget's management steadfastly maintained – going so far as to make that claim during the closing interview with examiners – that nothing suspicious ever happened at the Casino.

Sparks Nugget also lacked internal controls sufficient to ensure accurate completion of Currency Transaction Reports or even to ensure that they were being filed when required. Similarly, Sparks Nugget lacked internal controls to ensure that all required recordkeeping requirements were met, including the Multiple Transactions Log and Negotiable Instruments Log, and it also lacked protocols to appropriately aggregate cash in and cash out in a single gaming day. The Multiple Transactions Log is an important record that casinos use to ensure compliance with the BSA, including SAR filing obligations and the prohibition against structured transactions. Similarly, casinos can use the Multiple Transactions Log to determine whether multiple transactions have occurred within the same gaming day, and should be reported as a single reportable transaction for the purpose of determining whether those transactions meet the reporting threshold. The BSA's recordkeeping requirements also require casinos to maintain Negotiable Instruments Logs, which record transactions between a casino and its customers that involve negotiable instruments that have a face value of \$3,000 or more, including personal and business checks, promissory notes, traveler's checks, and money orders.

2. Independent Testing

A casino's AML program must provide for independent review to monitor and maintain an adequate program. 31 C.F.R. § 1021.210(b)(2)(ii). As of the date of completion of the IRS's 2010 examination, Sparks Nugget had never conducted any independent testing.

3. Use of All Available Information and Automated Systems

A casino's AML program must provide for procedures for using all available information to determine required identifying information, required recordkeeping, and the occurrence of any

transactions or patterns of transactions required to be reported as suspicious. 31 C.F.R.

§ 1021.210(b)(v)(A)-(C). If a casino has automated data processing systems, its AML program must include procedures for using these systems to aid in assuring AML compliance. 31 C.F.R.

§ 1021.210(b)(vi). Sparks Nugget acknowledged in response to the IRS examination findings that it lacked procedures in place to determine whether any records must be made or retained, and that it failed to have procedures to ensure that all required information was obtained for account openings.

Sparks Nugget admitted that, although it had automated data processing systems, it did not have procedures in place to use these systems to aid in assuring compliance with the BSA and the Casino's AML program. Instead, the Casino focused its data processing and information gathering functions on obtaining information about its customers' personal preferences and any business risk those customers presented to the Casino.

B. Violations of the Requirement to Report Suspicious Transactions

The BSA and its implementing regulations require a casino to report a transaction that the casino "knows, suspects, or has reason to suspect" is suspicious, if the transaction is conducted or attempted by, at, or through the casino, and the transaction involves or aggregates to at least \$5,000 in funds or other assets. A transaction is "suspicious" if the transaction: (a) involves funds derived from illegal activity; (b) is intended or conducted in order to hide or disguise funds or assets derived from illegal activity, or to disguise the ownership, nature, source, location, or control of funds or assets derived from illegal activity; (c) is designed, whether through structuring or other means, to evade any requirement in the BSA or its implementing regulations; (d) has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the casino knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of

the transaction; or (e) involves use of the casino to facilitate criminal activity. 31 C.F.R. § 1021.320(a)(2). A casino must file a SAR no later than 30 calendar days after initially detecting facts that may constitute a basis for filing a SAR. 31 C.F.R. § 1021.320(b)(3).

As detailed above, Sparks Nugget's internal controls for the detection, review, documentation, and reporting of suspicious activity were deficient on several fronts: it had a SAR Review Committee that never met, and many of whose members were unaware of their membership. Sparks Nugget lacked any mechanism to document or otherwise account for decisions not to file SARs, and its management simply maintained its position that no suspicious activity ever transpired in the millions of dollars of transactions that occurred at the Casino.

FinCEN's investigation found that Sparks Nugget's SAR filings have been inconsistent and often inaccurate. Since 2003, the BSA has required casinos to monitor for, detect, and report suspicious activity. Yet, Sparks Nugget did not file a single SAR until August 10, 2004. In the more than three years between August 10, 2004, and September 22, 2007, the Casino filed only five SARs. Between September 22, 2007, and May 1, 2011, it filed none. When Sparks Nugget again began filing SARs on May 2, 2011 (after more than three and a half years without a single SAR), it filed 26 SARs between May 2, 2011, and December 10, 2013, but eight of those filings were incomplete and another four were filed late. During the IRS's 2010 examination of Sparks Nugget, the IRS found that Sparks Nugget failed to file 16 SARs, totaling \$200,416, between January 1 and June 30, 2010. Moreover, Sparks Nugget was unable to point to any records to show that it had identified and investigated potentially suspicious activity during the same period.

C. Violations of the Requirement to Report Currency Transactions

The BSA and its implementing regulations require casinos to report transactions that involve either "cash in" or "cash out" of more than \$10,000 during a single gaming day. 31

C.F.R. § 1021.311. A casino must aggregate transactions in currency – treat the transactions as a single transaction – if the casino has knowledge that the transactions are conducted by, or on behalf of, the same person. 31 C.F.R. § 1021.313. A casino must report transactions in currency through the filing of Currency Transaction Reports (CTRs). A CTR must be filed within 15 days after the transaction that requires a report. 31 C.F.R. § 1010.306(a)(1). Sparks Nugget filed a number of CTRs late, as recently as August 2013, as well as some others that were filed inaccurately or incompletely. In addition, the Casino failed to file CTRs for a number of transactions worth between approximately half a million dollars to over five million dollars during the exam scope period alone. More troubling, however, is that Sparks Nugget’s poor recordkeeping prevented examiners from ascertaining the exact number of CTRs that it failed to file.

D. Violations of the Recordkeeping Requirements

Casinos are subject to specialized recordkeeping requirements under the BSA. The BSA and its implementing regulations require casinos to secure and maintain a record of the name, permanent address, and Social Security Number of each person involved in a deposit of funds, account opened, or line of credit extended. Further, casinos are required to verify the name and address of such person at the time the deposit is made, account opened, or credit extended.

31 C.F.R. § 1021.410(a). Casinos are also subject to the following requirements: (a) the requirement to maintain a separate record containing a list of each transaction between a casino and its customers involving certain monetary instruments having a face value of \$3,000 or more (31 C.F.R. § 1021.410(b)(9)); (b) the requirement to retain records prepared or received by the casino in the ordinary course of business which would be needed to reconstruct a person’s deposit account or credit account or to trace a check deposited with the casino through the casino’s records to the bank of deposit (31 C.F.R. § 1021.410(b)(6)); (c) the requirement to

retain all records prepared or used by a casino to monitor a customer's gaming activity (31 C.F.R. § 1021.410(b)(8)); and (d) the requirement to maintain all records that are required to be maintained by a casino pursuant to state and local laws or regulations (31 C.F.R. § 1021.410(b)(7)).

During its 2010 examination, the IRS found that, in the six months between January 1 and June 30, 2010, alone, Sparks Nugget committed at least 245 distinct recordkeeping errors. Among those were 141 negotiable instruments of at least \$3,000 that were omitted from the Negotiable Instrument Log. These 141 monetary instruments amounted to more than \$1.3 million. Further, of the 60 records that were entered into the Negotiable Instruments Log during that same period, all 60 were missing critical required fields.

Sparks Nugget's Multiple Transaction Log, which enables the Casino to properly aggregate transactions and to detect patterns of suspicious activity, had similar deficiencies. On multiple occasions, Sparks Nugget erroneously designated "cash in" transactions as "cash out," and vice versa, and failed to log slot tickets cashed at the slot booths on the Multiple Transaction Log. As a result, Sparks Nugget potentially failed to report 38,008 tickets totaling \$4,674,866 that may have required aggregation. These recordkeeping failures led to the Casino's inability to comply with its reporting obligations under the BSA.

These recordkeeping violations are significant for several reasons. First, of course, these obligations are required by law. As importantly, however, Sparks Nugget's failure to maintain these records hindered its ability to meet its other requirements, including its ability to know its customer, to properly file CTRs and SARs (and to aggregate transactions accordingly), and to maintain an appropriate, effective anti-money laundering program. And finally, the Casino's violations of these requirements – in addition to the program violations and the multiple

reporting violations – demonstrate that Sparks Nugget suffered a systemic breakdown of its AML system.

III. CIVIL MONEY PENALTY

FinCEN has determined that Sparks Nugget willfully violated the program, reporting, and recordkeeping requirements of the BSA and its implementing regulations as described in this ASSESSMENT, and that grounds exist to assess a civil money penalty for these violations. 31 U.S.C. § 5321(a)(1); 31 C.F.R. § 1010.820. FinCEN has determined that the penalty in this matter will be \$1 million.

IV. CONSENT TO ASSESSMENT

To resolve this matter, and only for that purpose, Sparks Nugget consents to this assessment of a civil money penalty in the sum of \$1 million and admits that it willfully violated the BSA’s program, reporting, and recordkeeping requirements.

Sparks Nugget recognizes and states that it enters into the CONSENT freely and voluntarily and that no offers, promises, or inducements of any nature whatsoever have been made by FinCEN or any employee, agent, or representative of FinCEN to induce Sparks Nugget, Inc. to enter into the CONSENT, except for those specified in the CONSENT.

Sparks Nugget understands and agrees that the CONSENT embodies the entire agreement between Sparks Nugget and FinCEN relating to this enforcement matter only, as described in Section II above. Sparks Nugget further understands and agrees that there are no express or implied promises, representations, or agreements between Sparks Nugget and FinCEN other than those expressly set forth or referred to in this document and that nothing in the CONSENT or in this ASSESSMENT is binding on any other agency of government, whether Federal, State or local.

V. PUBLIC STATEMENTS

Sparks Nugget expressly agrees that it shall not, nor shall its attorneys, agents, partners, directors, officer, employees, affiliates, or any other person authorized to speak on its behalf, make any public statement contradicting either its acceptance of responsibility set forth in the CONSENT or any fact in the DETERMINATIONS section of the CONSENT.⁴ FinCEN has sole discretion to determine whether a statement is contradictory and violates the terms of the CONSENT. If Sparks Nugget, or anyone claiming to speak on behalf of Sparks Nugget, make such a contradictory statement, Sparks Nugget may avoid a breach of the agreement by repudiating such statement within 48 hours of notification by FinCEN. If FinCEN determines that Sparks Nugget did not satisfactorily repudiate such statement(s) within 48 hours of notification, FinCEN may void, in its sole discretion, the releases contained in the CONSENT and reinstitute enforcement proceedings against Sparks Nugget. Sparks Nugget expressly agrees to waive any statute of limitations defense to the reinstated enforcement proceedings and further agrees not to contest any admission or other findings made in the CONSENT. This paragraph does not apply to any statement made by any present or former officer, director, employee, or agent of Sparks Nugget in the course of any criminal, regulatory, or civil case initiated against such individual, unless Sparks Nugget later ratifies such claims, directly or indirectly. Sparks Nugget further agrees that, upon notification by FinCEN, it will repudiate such statement to the extent it contradicts either its acceptance of responsibility or any fact in the CONSENT.

⁴ To the extent any purchaser, transferee, successor, assign, or other party (collectively, Successor-in-Interest) seeks to be covered by the Releases provided in Part VI, any such Successor-in-Interest must comply with and agree to be bound by the provisions of this Paragraph.

