



December 24, 2014

Geoff Freeman  
President and CEO, American Gaming Association  
1299 Pennsylvania Avenue, NW, Suite 1175  
Washington, D.C. 20004

Dear Mr. Freeman:

Thank you for your December 23, 2014, letter to FinCEN Director Jennifer Shasky Calvery with your concerns about a news article referencing potential FinCEN guidance concerning sports betting. While the article apparently was based on unauthorized sources without a clear understanding of the facts, we have been planning on communicating to the casino industry directly with respect to a particular concern in this regard.

It has come to the attention of the Financial Crimes Enforcement Network (“FinCEN”) and its law enforcement and regulatory colleagues that increases in sports betting conducted on behalf of third parties are facilitating criminal activity and posing a money laundering risk to the U.S financial system. In connection with this, it has also come to our attention that casinos may be under the impression that unless specifically directed to do so, a casino never has to ask a patron whether he or she is betting on his or her own behalf or on behalf of another party. We are communicating directly with your organization to correct any such misperception and to remind your industry about the importance of applying a risk-based approach with respect to this issue as well as the need to implement reasonably designed AML programs to address among other risks, the risks associated with third-party betting.

### **Anti-Money Laundering (“AML”) Vulnerabilities and Risk Exposure**

FinCEN understands that certain organizations and individuals have been circumventing various laws related to sports betting.<sup>1</sup> More specifically, criminals are making bets with legally operating sports books, including by using intermediaries to place bets on behalf of unidentified

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<sup>1</sup> There has been a ban on land-based sports betting in most states since the passage of the Professional and Amateur Sports Protection Act (“PASPA”) in 1992. Currently, Nevada and Delaware have legal land-based sports betting, though several other states are trying to implement legalized sports betting. Together, the PASPA, the Interstate Wire Act of 1961 (18 U.S.C. § 1084), the Travel Act of 1961 (18 U.S.C. § 1952), and the Illegal Gambling Business Act of 1970 (18 U.S.C. § 1955) prohibit sports betting between states that disallow sports betting. The Interstate

third parties (third-party betting). In these cases, the intermediaries rarely voluntarily disclose to the casino that a transaction is being conducted on behalf of a third party, thereby disguising the third party's role in the transaction and obscuring the source of funds used to place the bet. This poses distinct money laundering risks for casinos.

In addition to concealing the owner and the origin of funds, third-party betting poses distinct money laundering risks for casinos because it allows criminal organizations, illegal sports books, and others located in any state, where gambling may be illegal, to place bets within states where sports betting is legal.

Law enforcement has been focusing on this activity for some time. For example, in October 2012, law enforcement closed down a significant bookmaking operation associated with a major organized crime group that had connections to Las Vegas sports books.<sup>2</sup> Additionally, FinCEN has observed numerous instances in which casino sports books failed to identify in Currency Transaction reports (CTRs) third-parties on whose behalf transactions had been conducted.

Money laundering and Bank Secrecy Act (BSA) compliance risks associated with unidentified third party-betting may include:

- Increased money laundering exposure.
- Failure to identify and report suspicious activity.
- Failure to file accurate CTRs.
- Possible AML Compliance program deficiencies.

### **AML Compliance Program Requirements**

Casinos subject to the BSA are required to develop and implement a compliance program reasonably designed to manage the risk of illicit activity and ensure compliance with applicable regulations. The BSA requires casinos to file reports, properly identify customers conducting transactions, and maintain appropriate records of transactions. These reports and records are highly useful in criminal, tax, or regulatory investigations or proceedings, or in the conduct of

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Wire Act, often called the Federal Wire Act, prohibits the operation of certain types of betting businesses in the United States. The U.S. Fifth Circuit Court of Appeals has ruled that the Wire Act prohibition on the transmission of wagers applies only to sports betting. The Travel Act forbids the use of the U.S. mail, or interstate or foreign travel, for the purpose of engaging in certain specified criminal acts. The Illegal Gambling Business Act was enacted as part of the Organized Crime Control Act of 1970 and specifically aimed at syndicated gambling, that is, large-scale, illegal gambling operations that were thought to be financing organized crime.

<sup>2</sup> See FBI New York Field Office press release (October 25, 2012). Twenty-Five Individuals Indicted in Multi-Million-Dollar Illegal Nationwide Sports Betting Ring, <http://www.fbi.gov/newyork/press-releases/2012/twenty-five-individuals-indicted-in-multi-million-dollar-illegal-nationwide-sports-betting-ring>.

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intelligence or counterintelligence activities, including analysis, to protect against international terrorism.<sup>3</sup> Casinos' compliance programs also must include risk-based procedures to prevent customers from circumventing BSA requirements.

The BSA requires casinos to file accurate and complete reports of each transaction in currency involving either cash in or cash out, of more than \$10,000 (Currency Transaction Reports) (CTRs).<sup>4</sup> Casinos also are required to aggregate transactions in currency (that is, treat the transactions as a single transaction) if the casino has knowledge that the transactions are conducted by or on behalf of any person and result in either cash in or cash out totaling more than \$10,000 during any gaming day.<sup>5</sup> With respect to completing a CTR, the BSA requires casinos to verify and record the name and address of the individual presenting a transaction, as well as record the identity, account number, and the social security or taxpayer identification number (if any) of any person or entity on whose behalf such transaction is conducted.<sup>6</sup>

When implementing a compliance program, a casino must consider and manage the risks associated with sports betting on behalf of third parties in order to file complete and accurate CTRs, as required by the BSA. One way that a casino can obtain information about the identity of the person on whose behalf the transaction is being conducted is to ask the person conducting the transaction whether he or she is acting for himself or herself or on behalf of another person.<sup>7</sup> This approach may be particularly effective for casinos that may not otherwise be able to identify a third party on whose behalf a transaction is being conducted. Casinos may also implement other approaches that are best suited to their business activities and customer base, but that allow them to identify effectively those persons on whose behalf a CTR-reportable transaction is being conducted. Casinos should also consider the possibility that a person conducting a transaction may intentionally fail to disclose a third party on whose behalf the transaction is being conducted. In circumstances where a casino knows or suspects this to be the case, the casino would be required to file a SAR consistent with FinCEN's regulations.<sup>8</sup>

Casinos should be aware that failure to identify a third party on whose behalf a transaction is conducted may constitute a violation of the casinos' recordkeeping and reporting obligations under the BSA. In addition, this may prompt concern over the adequacy of the casino's overall compliance program and result in potential deficiencies and rule violations. FinCEN is authorized to assess civil money penalties against a casino, card club, or any partner, director, officer, or employee of the casino for willful violations of BSA anti-money laundering program,

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<sup>3</sup> See 31 U.S.C. 5311.

<sup>4</sup> See 31 CFR § 1021.311-313.

<sup>5</sup> See 31 CFR § 1021.313.

<sup>6</sup> 31 CFR § 1010.312.

<sup>7</sup> See FIN-1989-R005.

<sup>8</sup> A SAR is required if a casino knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part) is intended or conducted as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation. 31 CFR § 1021.320.

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reporting, and recordkeeping requirements, and the U.S. Department of Justice prosecutes criminal violations of the BSA and related money-laundering statutes.<sup>9</sup>

FinCEN appreciates the efforts of your organization to help maintain industry focus on the importance of the BSA, and the effort that the American Gaming Association has put into the recent release of a best practices document. FinCEN invites the AGA to share this letter with its members in advance of FinCEN placing it on our website for future reference. Please don't hesitate to reach out to us again with any of your concerns. Your association and members are welcome to contact FinCEN's regulatory helpline at 800-949-2732 with any questions about this letter.

Sincerely,

/s/

Jamal El-Hindi  
Associate Director  
Policy Division

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<sup>9</sup> See 31 U.S.C. 5321(a)(4) and 5324 and 31 CFR § 1010.820(e) and 31 CFR § 1010.314; see also 18 U.S.C. 1956 and 1957.