STATE OF NEVADA
GAMING CONTROL BOARD

1919 E. College Parkway, P.O. Box 8003, Carson City, Nevada 89702
555 E. Washington Ave., Suite 2600, Las Vegas, Nevada 89101
3650 South Pointe Cir., P.O. Box 31109, Laughlin, Nevada 89028
557 W. Silver St., Suite 207, Elko, Nevada 89801
495 Apple St., Reno, Nevada 89502

KENNY C. GUINN
Governor

DENNIS K. NEILANDER, *Chairman*
BOBBY L. SILLER, *Member*
SCOTT SCHERER, *Member*

May 22, 2002

Carson City
(775) 684-7700
Fax: (775) 687-5817

Judith Starr, Chief Counsel
Office of Chief Counsel
FinCEN, Department of the Treasury
P.O. Box 39
Vienna, VA 22183

Attention: NPRM – Casino SAR Rule
Attention: Section 352 AMLP Regulations

Dear Ms. Starr:

The State of Nevada Gaming Control Board has reviewed the Federal Register notices dated May 18, 1998, March 29, 2002 and April 29, 2002 regarding amendments to Bank Secrecy Act (BSA) regulations that will require casinos and card clubs to report suspicious transactions (31 CFR 103.21 and 31 CFR 103.64), and to establish and maintain anti-money laundering programs (31 CFR 103.120). We herein provide the following comments on the proposed requirements:

Suspicious Activity Reporting

The Gaming Control Board supports the concept of requiring casinos to report suspicious activity to FinCEN. Our experience with having such a requirement in effect in Nevada Gaming Commission Regulation 6A has been positive and beneficial, providing the Nevada casino industry an avenue to report suspicious activity to both the state of Nevada and the federal government. Our dealings with casinos have shown that their insights into the nature and behavior of those individuals who frequent casinos and conduct transactions has been essential to the success of the program.

The proposed rule differs from Nevada's current regulation in one major respect. Nevada's Regulation 6A.100 contains wording that requires the use of a casino employee's judgment in determining if a transaction is suspicious, specifically the phrase "the 6A licensee [casino] knows or, in the judgment of the 6A licensee ... has reason to suspect...." This requirement is referred to in the Federal Register Notice as the "subjective standard". FinCEN's proposed rule parallels Nevada's regulation except it does not contain the phrase "in the

judgment of the casino" and thus refers to its proposed rule as an "objective reporting standard" or "'reason to suspect' standard" in the Federal Register Notice. After reviewing the March 29, 2002 Notice, we concluded that FinCEN views the subjective standard as not requiring a casino to exercise due diligence. However, Nevada's regulatory system does require casinos to use due diligence in identifying suspicious transactions as part of an employee's job duties and, as a result, has yielded a useful suspicious activity reporting system.

While the Board may not necessarily agree with FinCEN's assessment of the subjective standard, it is our intention to initiate our own rulemaking process to address the regulation changes necessitated by adoption of a final rule related to the judgment issue. We anticipate the procedures to facilitate a change in our regulatory system will take a few months to process once the final Treasury rule is adopted. Nevada is committed to keeping our regulatory system substantially similar to federal regulations in order to maintain our current exemption from BSA regulations. Additionally, as has always been done with Regulation 6A, it is our intention to continue to vigorously enforce our regulations ensuring that Treasury will receive from Nevada casinos all required reports and that our casinos do not participate in any prohibited activities with patrons.

Regardless of which standard is used in the final rule, the nature of identifying suspicious activity involves examining facts and situations in the context of their occurrence. After the fact, when the circumstances of the situation and facts may not be fully obtainable or new information may be available that was not known at the time of the transaction, different conclusions may be reached as to whether the activity requires reporting. A reasonable auditor or regulator, especially with a hindsight point of view, may come to a different conclusion than those originally making the decision to report or not to report activity as suspicious. Therefore, since evaluation and judgment are inherent in identifying suspicious activity, focus should be placed on determining if a casino is using procedures to identify suspicious activity rather than performing an after-the-fact scrutinizing of every transaction.

Further, if during a compliance review an auditor or regulator uses the suspicious guidance document issued by FinCEN as a benchmark or an audit program, more unnecessary second-guessing could result. The suspicious guidance document issued by FinCEN used in a similar manner by a casino could result in a rote, nonanalytic reporting process resulting in the filing of a large volume of suspicious activity reports of routine transactions most of which will not have any law enforcement benefit. A suspicious activity reporting requirement will best serve its purpose when reports are required for truly suspicious activity and not when reports are automatically required for certain types of transactions.

We recommend that FinCEN clarify that the suspicious guidance document is only for guidance purposes and that casinos are not expected to use it as a

reporting checklist. Casino employees being diligent in understanding potential suspicious activity and in using that understanding to identify suspicious activity will provide FinCEN with the reports that it desires. A rule that supports casinos using their judgment will help achieve this goal.

Compliance and Anti-Money Laundering Programs

The interim final rule noticed on April 29, 2002 adopting 31 CFR 103.120 requires that a casino establish and maintain an anti-money laundering program. Anti-money laundering programs for casinos are to consist of a casino's compliance program, the requirements for which are in 31 CFR 103.64. These compliance program requirements were incorporated into Nevada's regulatory system when major revisions were adopted in 1997.

The Federal Register Notices dated May 18, 1998 and March 29, 2002 address proposed changes to casino compliance programs in 31 CFR 103.64. The proposed changes, when added to the existing Section 103.64(a)(2)(v), require that a compliance program provide for procedures for using all available information to determine the occurrence of any suspicious activity disclosed in the records that reflect or monitor a customer's activity in Section 103.64(a)(2)(v)(B).

The compliance program proposed rule appears to require subjecting each and every transaction recorded within a casino to an after-the fact testing in order to find suspicious activity. An examination to this extent would be an enormous undertaking. Additionally, we noted that this type of specific requirement was not included in the proposed rules for anti-money laundering programs for other industries such as money service businesses and operators of a credit card system. The casino industry does not require greater scrutiny than these other industries. A better requirement for the compliance program is one that calls for testing procedures that encompass examining all types of documents rather than requiring an examination of all transactions and of all documents.

Additionally, the proposed changes to 31 CFR 103.64(a)(2)(ii) add a requirement for an annual statement whether internal controls and procedures work effectively to detect and report suspicious activity and currency transactions and to comply with recordkeeping requirements and compliance program standards. This requirement implies that the internal and external independent testing has to be of such a level to allow for such an affirmative statement to be made. The extent of work that may be required to issue such a statement may be burdensome and excessive.

Nevada's regulatory system currently requires the accounting department, internal audit department and independent accountant to review the procedures used by a casino. Noncompliance noted through such review procedures are

reported to the Nevada Gaming Control Board. We do not require the independent accountant to issue an opinion as to whether the casino compliance program is working properly. Also, this requirement for an annual statement and the implied level of testing was not included in the proposed rules for anti-money laundering programs for other industries such as money service businesses and operators of a credit card system. Again, the casino industry should not require greater scrutiny than these other industries.

The Gaming Control Board supports FinCEN's efforts to require suspicious activity reporting requirements for casinos and believes the reports will prove to be useful in the prevention and detection of money laundering. Should you have any questions regarding these comments, please contact me or Chief Auditor Gregory Gale at (702) 486-2060.

Sincerely,

Dennis K. Neilander
Chairman

DKN/KG

Sent by electronic mail to: regcomments@fincen.treas.gov

cc: Peter G. Djinis, Executive Assistant Director for Regulatory Policy
Bobby L. Siller, Board Member
Scott Scherer, Board Member
Gregory Gale, Chief Auditor
Jennifer Carvalho, Deputy Attorney General
Central Files