



August 12, 2021

VIA Electronic Mail

Acting Director Himamauli Das
Financial Crimes Enforcement Network
U.S. Department of the Treasury
P.O. Box 39
Vienna, Virginia 22183-0039

Re: Request for Anti-Money Laundering Guidance Regarding Casino/Operator Relationships

Dear Acting Director Das:

I write on behalf of the members of the American Gaming Association (“AGA”) to request guidance from FinCEN regarding the required anti-money laundering responsibilities for casinos when they provide a license to another company to operate an online gaming or wagering platform.

Background

The AGA is the premier national trade group representing the \$261 billion U.S. casino industry, which supports 1.8 million jobs across the country. AGA also serves on the Bank Secrecy Act Advisory Group. Our membership spans across the country and consists of 73 commercial and tribal casino operators, U.S.-licensed gaming suppliers, financial institutions, destination marketing organizations, food and beverage suppliers, and other key stakeholders in the gaming industry.

The AGA supports FinCEN’s efforts to promote compliance with the Bank Secrecy Act (“BSA”) and FinCEN’s overall anti-money laundering efforts. For instance, on September 17, 2020, FinCEN released an advance notice of proposed rulemaking requesting public comment on potential regulatory amendments in order to “modernize the regulatory regime” and “provide financial institutions with greater flexibility in the allocation of resources, resulting in the enhanced effectiveness and efficiency of anti-money laundering programs.” 85 Fed. Reg. 58023. In response to that request, AGA submitted a letter on November 16, 2020 outlining a number of proposed recommendations to enhance the effectiveness of anti-money laundering (“AML”) programs, particularly within the gaming industry.

One of the recommendations in our November 16 letter relates to the need for guidance regarding the AML responsibilities of casinos licensors and online operators when the latter operates an online gaming business under the license of the former. Ltr. at 5-6. This letter provides additional context and detail for that recommendation.

Since the Supreme Court's 2018 decision in *Murphy v. National Collegiate Athletic Association*, 138 S. Ct. 1461 (2018), sports betting and online gaming has been rapidly increasing in prominence within the gaming industry, resulting in approximately \$3.68 billion in gross gaming revenue. FinCEN has provided some guidance in this area by stating that sports betting and other mobile gaming services “are no different than other products and services” and that a casino’s AML obligations for sports betting “are the same” regardless of where the services are offered.¹

Analysis

There are novel considerations in this space that are not addressed by current BSA regulations. The regulations were written for gaming at brick and mortar casinos long before there was online gaming or mobile sports betting.

The industry needs guidance regarding what BSA responsibilities exist for casinos and online operators when casinos grant a license to operators to run an online gaming platform or sportsbook.

Consistent with state gaming requirements, it is common for a casino company that operates under a state casino license (“licensor”) to have an agreement with another entity to operate the online gaming platform/sportsbook (“operator”), with the licensor in some cases having little or no day-to-day involvement with the operator. In such cases, while the sports betting/icasino license itself belongs to the licensor, the operator functions independently (to varying degrees, depending on jurisdiction or business arrangement) of the licensor. The licensor typically receives a fee and/or some percentage of revenue. In such cases, the operator performs all functions of the sports betting/icasino operation, including: (i) developing and operating the sportsbook/icasino software and ensuring compliance with all geolocation requirements; (ii) branding and marketing the platform; (iii) managing the online gaming/sportsbook account creation process; (iv) establishing all customer accounts; (v) processing all customer deposits and withdrawals; (vi) underwriting all bets made; (vii) managing all back of house accounting; and (viii) handling all customer service functions and any patron dispute resolutions. The licensor generally does not have visibility into the accounts or transactions of the customers of the operator.

¹ Remarks of Kenneth A. Blanco, Director, FinCEN, August 13, 2019, *available at* <https://www.fincen.gov/news/speeches/prepared-remarks-fincen-director-kenneth-blanco-delivered-12th-annual-las-vegas-anti>.

Under current BSA regulations, the compliance responsibilities of the licensor and the operator are not addressed. Consequently, it is not clear whether the licensor, the operator, or both, are responsible for satisfying the BSA/AML obligations that arise in connection with activity on the online platform and which party would be liable for any compliance failures.

Since the operator, and not the licensor, is typically handling all customer interactions, as well as processing all financial transactions, the AGA would appreciate guidance from FinCEN with respect to what AML obligations rest with the licensing casino, or whether those obligations may be fulfilled by the operator that actually runs the online gaming platform/sportsbook and establishes customer relationships and conducts customer transactions.

Specifically, the AGA respectfully requests that FinCEN issue guidance stating that entities which operate an online gaming or sportsbook platform under the license of another casino are separate independent financial institutions subject to the BSA requirements for casinos. To do so, the guidance would state that entities who maintain online gaming or wagering platforms that exceed annual gaming revenue of more than \$1 million are considered “gaming establishment[s]” under the Bank Secrecy Act. See 31 U.S.C. § 5312(a)(2)(X).² As a result, these operators would have an independent obligation to comply with BSA/AML obligations that arise from activity on the platform, including the filing of Suspicious Activity Reports (“SARs”). The casino licensors would have no BSA responsibility for the operators’ compliance and no liability for any compliance failures. These online platform operators would, of course, remain subject to state casino laws and could be examined by state gaming authorities as well. This interpretation would reflect the reality that the operator is responsible for all customers and conducts all customer transactions. Under this arrangement, information sharing and collaboration between licensors and operators would be permitted.

In the alternative, the operator could be subject to the BSA obligations of a casino while casinos that provide licenses to operators would be responsible for conducting reasonable oversight of the BSA/AML programs of these online operators. The guidance could state, for example:

² Precedent exists for FinCEN to issue guidance stating that certain entities meet the statutory definition of “financial institution” in the BSA. In 2007, for instance, FinCEN issued guidance stating that “racinos” are subject to the BSA if “state law defines or characterizes slot machine or video lottery operation at a racetrack as a ‘casino, gambling casino, or gaming establishment.’” Frequently Asked Questions Casino Recordkeeping, Reporting, and Compliance Program Requirements Q/A No. 3, FinCEN, Nov. 14, 2007, *available at* <https://www.fincen.gov/resources/statutes-regulations/guidance/frequently-asked-questions-casino-recordkeeping-reporting-0>.

Any online gaming platforms or online sportsbooks that are operating pursuant to the license of another casino are independently required to comply with relevant anti-money laundering laws and regulations, including the filing of Suspicious Activity Reports. A casino granting a license to online gaming platforms or online sportsbooks will not be held responsible in the event that the online operator fails to comply with its BSA/AML obligations if the casino has taken the following steps to oversee the AML program of the online platform using their license:

- *Require by contract that the online operator maintain a reasonable risk-based BSA/AML program that complies with the BSA compliance program, recordkeeping, and reporting obligations for casinos, including setting forth BSA/AML responsibilities in the event that the online operator maintains any physical presence (e.g., retail sports book locations) on the licensee's property;*
- *Require that the licensee report any significant issue of non-compliance to the licensor, FinCEN, and state and Tribal gaming authorities;*
- *Reserve the right to terminate a license with an operator in the event of a finding of significant non-compliance with any applicable laws, including relevant anti-money laundering laws or regulations by any gaming, regulatory, or law enforcement authority;*
- *Take reasonable oversight measures to ensure an adequate BSA/AML program is established and maintained.*

Factors that could be considered to determine whether a casino conducts reasonable oversight of operators' BSA/AML programs include:

- the quality of the review of the operators' BSA/AML program before granting a license, including its measures to identify customers establishing accounts, detect potentially fraudulent activity, and identify report suspicious activity;
- the steps taken to evaluate the operators' BSA/AML program on an ongoing basis, such as whether the operator periodically advises of any significant updates to its program or risk profile, provides reports of independent testing and compliance examinations, or discloses notable BSA/AML issues that arise to the casino; and
- whether any periodic reviews of the operators' BSA/AML program occurs by the casino and the results of such reviews.



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The AGA would appreciate the opportunity to provide additional specific information and insights to FinCEN on these issues in a virtual or in-person meeting. Our Senior Director of Government Relations, Alex Costello (acostello@americangaming.org) stands prepared to work with your staff to respond to questions and provide any additional details you may require.

Thank you again for your continued attention to these matters and willingness to engage with the gaming industry.

All the best,

A handwritten signature in black ink that reads "Bill Miller".

Bill Miller
President and CEO
American Gaming Association