



Focus on Indian Law

by Kathleen E. Brody and Grace C. Rebling

Show Me the Money: Casinos' Anti-money-laundering Obligations and Enforcement

In the past several years, federal regulators have sent

strong signals that casinos, as well as their employees, officers, and directors, must take their responsibilities under the Bank Secrecy Act (BSA) seriously to protect the integrity of their institutions and the U.S. financial system. Through regulatory guidance, remarks, and enforcement actions, federal authorities have made clear that casinos must implement and maintain robust and risk-based BSA/anti-money-laundering (AML) compliance programs. Recent federal investigations into casino AML practices have resulted in significant penalties, further demonstrating the need for casinos to review their current compliance programs to ensure adherence to federal law.

This column briefly addresses recent trends that demonstrate the government's heightened interest in enforcing BSA/AML requirements against participants in the gaming industry.

Background on BSA/AML Compliance Programs

In speeches before the gaming industry, the director of the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN), Jennifer Shasky Calvery, has made clear that FinCEN is closely monitoring the casino industry's compliance with BSA/AML laws. Because of the amount of money changing hands in casinos and the fast-paced nature of casino gaming, criminals may use casinos to launder their illegal profits.¹ Indeed, as Shasky Calvery pointed out, casinos are "complex financial institutions with intricate operations that extend credit and that conduct millions of dollars of transactions every day. They cater to millions of customers with their bets, markers, and redemptions."²

The BSA and its implementing regulations provide the framework for financial institutions' obligations to assist in combating money laundering and countering the financing of terrorism.³ The BSA requires casinos to adopt written AML compliance programs, maintain certain records, and take affirmative steps to report suspicious activities.⁴

Under the BSA, a casino's written AML compliance program must, at a minimum, provide for all of these factors:

- (1) Internal controls to ensure compliance
- (2) Independent testing of the AML compliance program
- (3) Training of employees, officers, and directors in BSA requirements
- (4) Designation of an individual responsible for compliance
- (5) Procedures for using all available information to determine and verify a person's identification when required
- (6) For casinos with automated data-processing systems, the use of the systems to aid in ensuring compliance⁵

Moreover, regulators have repeatedly emphasized the importance of a "culture of compliance" within a casino when it comes to implementing a written compliance program. Shasky Calvery has stated that "[a] strong culture of compliance within any institution is key to its ability to comply with the BSA"⁶ and has observed in the enforcement cases she has seen during her time at the U.S. Department of Justice and FinCEN "that a strong culture of compliance could have made all the difference."⁷ FinCEN again highlighted this theme in an August 2014 advisory, "U.S. Financial Institutions on Promoting a Culture of Compliance," which sets forth general principles for improving and strengthening an institution's BSA/AML compliance culture, including ensuring that leadership actively supports compliance efforts and does not allow business interests to compromise efforts to manage and mitigate BSA/AML risks.

In addition to the written AML compliance program, casinos are also required to report suspicious activity to law enforcement when they suspect that gaming money derives from a criminal source.⁸ Specifically, a casino must file a suspicious activity report by casinos (SARC) for transactions involving \$5,000 or more that the casino "knows, suspects, or has reason to suspect" are suspicious. Transactions are suspicious if one of these applies:

- They involve funds derived from illegal activity or an attempt to disguise funds derived from illegal activity;
- They are designed to evade BSA regulations, such as reporting requirements, through structuring or other means;

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- They lack a business purpose or other apparent lawful purpose;
- They involve the use of the casino to facilitate criminal activity.⁹

In addition, casinos must report currency transactions of more than \$10,000 during a single gaming day.¹⁰ Compliance with these reporting requirements can be difficult because they require casinos to develop programs to detect activity approaching reporting thresholds. This may involve substantial investment in technology or the leveraging of technology already in place to monitor gaming activity. Given the government's recent trend of imposing penalties to ensure compliance, casinos will likely find that such costly investment is warranted.

Recent Trends and Cautionary Tales

In remarks at the Global Gaming Expo in Las Vegas in 2013, Shasky Calvery observed that some casinos may not feel it is their responsibility to take measures to protect their institutions, or the broader financial system, from being used by illicit actors. As a result, Shasky Calvery has called for a cultural change within the casino industry, demanding that casinos "continue their progress in thinking more like other financial institutions to identify AML risks."¹¹ In addition, the government has ramped up its own enforcement actions against casinos to incentivize compliance with BSA/AML laws and regulations.

For example, in August 2013 the Las Vegas Sands Corp. agreed to pay \$47.4 million for failing to file a SARC on a high-stakes player (known as Mr. Ye) who was linked to drug trafficking.¹² The government had no evidence that anyone at the Las Vegas Sands knew of the player's alleged criminal activities, but the nonprosecution agreement nonetheless stated that the federal government believed that compliance personnel did not adequately investigate him or attach appropriate suspicion to various activities. Under the agreement, the Las Vegas Sands was required to conduct reviews of its AML program and file periodic reports with the government.

This record-setting penalty in the gaming industry should draw pause and remind casinos of the importance of adopting appropriate measures to ensure that they are meeting their reporting requirements under the BSA. Indeed, Shasky Calvery has made clear that FinCEN expects casinos, like all financial institutions, to inquire about a customer's source of funds as appropriate—meaning that casinos should be paying attention to the source of funds, customer due diligence, international money transfers, pass-through activity, and dormant accounts.

In August 2014, FinCEN permanently barred George Que, a former VIP services manager at the Tinian Dynasty Hotel & Casino in the Northern Mariana Islands, from participating in the financial industry for his willful violations of the BSA/AML laws.¹³ Que also agreed to pay a \$5,000 civil penalty in connection with the violations. According to FinCEN, Que helped high-end gamblers avoid detection of large cash transactions by agreeing not to file currency transaction reports (CTRs) and SARCs related to the transactions. Subsequently, in June 2015, FinCEN assessed a \$75 million civil penalty against Tinian Dynasty Hotel & Casino for willful violations of the BSA, including failing to maintain an adequate AML compliance program and failing to file CTRs and SARCs.

More recently, this spring, FinCEN assessed a \$10 million civil penalty against the Trump Taj Mahal Casino Resort based on its willful violations of the BSA.¹⁴ FinCEN found that Trump Taj Mahal failed to file 56 percent of the required SARCs during a three-month examina-

tion in 2010. During a similar period in 2012, it failed to file 44 percent of the required SARCs. According to FinCEN, the casino had a long history of prior, repeated BSA violations dating back to 2003.¹⁵

Trump Taj Mahal ultimately admitted to willfully and repeatedly violating the BSA by failing to establish and implement an effective AML compliance program, failing to report suspicious activity, and failing to properly file currency transaction reports or keep appropriate records. The casino also consented to retain an independent auditor, subject to FinCEN's approval, to examine the casino's BSA compliance program for defined review periods through 2019. The casino's audit committee and board of directors, as well as FinCEN and the IRS, will receive copies of the independent auditor's written reports.

Caesars Entertainment Corp. may also be entering into a settlement agreement soon to resolve allegations of BSA/AML violations. The company reported in its quarterly filing with the U.S. Securities and Exchange Commission that the U.S. Department of Treasury has proposed settlements that could include \$12 million to \$20 million in fines.

Future Enforcement Actions

Intense regulatory scrutiny of financial institutions is likely to continue for the foreseeable future, with FinCEN continuing to focus on the casino industry and continuing to bring enforcement actions. Shasky Calvery has indicated that the bureau is focused on ensuring that casinos adopt a risk-based approach to compliance efforts and on numerous occasions now has told casinos to think about how they can use technology to capture all information to assess risk and improve monitoring for AML purposes.

FinCEN's expectations place a lot of pressure on casinos to define measures they will take to track potential money laundering—measures that may be difficult given the nature of gaming industry and money laundering in general. Casinos that have not already done so should carefully review their BSA/AML compliance programs and tackle head-on the increased regulatory expectations for the industry. ☉

Endnotes

¹Casinos or card clubs with gross annual gaming revenue of \$1 million or more are "financial institutions" under the BSA. Tribal gaming establishments that offer slot machines, video lottery, or table games, and have gross annual gaming revenue in excess of \$1 million are also covered by the definitions. According to a report released by Morgan Stanley, global gaming took in \$423 billion last year, with U.S. commercial and tribal operations accounting for \$67 billion. Muhammad Cohen, *As VIP Play Shrinks and Shifts, Morgan Stanley Upbeat on Global Gaming*, FORBES (April 6, 2015), available at www.forbes.com/sites/muhammadcohen/2015/04/07/as-vip-play-shrinks-and-shifts-morgan-stanley-upbeat-on-global-gaming/. The American Gaming Association has additional sources on gaming revenue.

²Remarks of Jennifer Shasky Calvery, director of FinCEN, 2014 Bank Secrecy Act Conference, Las Vegas, NV (June 12, 2014).

³Money laundering is the use or conversion of money gained from illegal activity. See 31 U.S.C. § 5340. The purpose of money laundering is to conceal the source of illegal proceeds so that the money can be used without being traced to its criminal source. The U.N. Office on Drugs and Crimes has estimated that the amount of money laundered globally in one year is 2 to 5 percent of global gross domestic product—or \$800 billion to \$2 trillion in U.S. dollars. U.N. Office on Drugs and Crimes, Money-Laundering, and Globalization, available

at www.unodc.org/unodc/en/money-laundering/globalization.html.

⁴See 31 U.S.C. §§ 5318(a)(2), 5318(h).

⁵31 CFR § 1021.210(b)(2).

⁶Remarks of Jennifer Shasky Calvey, Director of FinCEN, 2014 Bank Secrecy Act Conference, Las Vegas, NV (June 12, 2014).

⁷Remarks of Jennifer Shasky Calvey, Director of FinCEN, 2013 Global Gaming Expo, Las Vegas, NV (September 24, 2013) at 2-3.

⁸The BSA authorizes the secretary of the Treasury to issue regulations requiring financial institutions to keep records and file reports that the secretary determines "have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence matters, including analysis, to protect against international terrorism." 31 U.S.C. § 5311.

⁹31 CFR § 1021.320(a)(2).

¹⁰31 CFR § 1021.311. FinCEN Form 103, Currency Transaction Report by Casinos (CTRC), is used to report cash-in or cash-out of more than \$10,000 conducted by, through, or to the casino during a

single gaming day.

¹¹Remarks of Jennifer Shasky Calvey, Director of FinCEN, 2014 Bank Secrecy Act Conference, Las Vegas, NV (June 12, 2014).

¹²Press release, U.S. Attorney's Office, Central District of California, Operator of Venetian Resort in Las Vegas Agrees to Return Over \$47 Million After Receiving Money Under Suspicious Circumstances (Aug. 27, 2013), *available at* www.justice.gov/usao/cac/Pressroom/2013/110.html.

¹³FinCEN Matter No. 2014-05 (Aug. 20, 2014), *available at* www.fincen.gov/news_room/ea/.

¹⁴FinCEN Matter No. 2015-02 (Mar. 6, 2015), *available at* www.fincen.gov/news_room/ea/.

¹⁵FinCEN News Release, FinCEN Fines Trump Taj Mahal Casino Resort \$10 Million for Significant and Long-Standing Anti-money laundering Violations, *available at* www.fincen.gov/news_room/nr/html/20150306.html.

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