

State Gaming Associations Present:

TITLE 31 COMPLIANCE WEBINAR

June 21, 2017

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Today's Speakers

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Joel Doehring, Director of Cage/Credit Operations, MotorCity Casino-Hotel

Joel has been a part of the gaming industry for the past 17 yrs. He was a member of the opening team for MotorCity Casino Hotel when gaming first came to the city of Detroit. In the time since, Joel has worked in frontline, supervisor, and managerial roles before accepting his current position. Joel graduated from Eastern Michigan University with a major in Biology.



Walt Stowe, Retired Vice President of Compliance at Pinnacle Entertainment

Walt retired from Pinnacle Entertainment in May of 2016 where he served as the Vice President of Compliance and also served as a member of the company's Compliance Committee. Mr. Stowe is also a member of the American Gaming Association's BSA Working Group focusing on Anti-Money Laundering issues. He was formerly Vice President, Legal and Compliance and General Counsel for Elixir Gaming Technologies, a Las Vegas based gaming products manufacturer. Prior gaming industry experience includes Vice President, Legal and Compliance at Aristocrat Technologies and Associate Corporate Counsel at Konami Gaming. In 2001, Mr. Stowe retired from a 26-year career in the FBI where he served in a variety of investigative and management positions.

Today's Speakers

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Elizabeth Tranchina, Vice President and Legal Counsel for Pinnacle Entertainment

Elizabeth recently joined Pinnacle Entertainment as its Vice President and Legal Counsel in May of 2017. Previously, Elizabeth held various positions with Isle of Capri Casinos Inc. and from January 2013 to May of 2017 was the company's vice president of legal affairs. During her time at Isle, she held various positions with increasing levels of responsibility within the legal department from October 2002 through July 2010. From August 2010 to January 2013 she served as vice president of legal affairs, corporate compliance officer with Peninsula Gaming. Elizabeth has experience with gaming regulatory matters in Louisiana, Mississippi, Missouri, Iowa, Kansas, Colorado, Florida, Pennsylvania, Nevada and the Bahamas. She is a member of the American Gaming Association's Bank Secrecy Act working group, which developed the American Gaming Association's "Best Practices for Anti-Money Laundering Compliance". She is a member of the International Association of Gaming Advisors, the Association of Corporate Counsel and serves on the Global Gaming Women Mentorship Committee.



Dave Waddell, Gaming Attorney at RMC Legal

Dave Waddell is a gaming and business regulatory attorney with Regulatory Management Counselors, PC. He brings 33 years of experience working with businesses and casinos on regulatory and compliance issues. He is the Editor in Chief of The Michigan Gaming Newsletter and has written a number of Title 31 compliance related articles for Global Gaming Business magazine and other publications and has spoken on the topic at various seminars.



Learning Objectives

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Today, we will review the importance of implementing a sound Title 31 and AML compliance program and common practices implemented in order to mitigate government fines and penalties.

Today's Topics

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- Know Your Customer (KYC) Investigations
- Common Violations
- Culpability of Management
- Data Mining for Suspicious Activities
- Benefits of a 314b Program
- CTR and SAR Compliance; and
- Regulatory and Policy Changes

The Gaming Industry and AML Compliance

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- Several years ago FinCEN made it clear to the Casino Industry that enhanced enforcement efforts were coming.
- AGA proactively worked with the Government to put forward “Best Practices”.
- AGA commissioned a detailed study by Ernst & Young which was released in 2016 demonstrating the great strides the Casino Gaming Industry has made with regard to AML compliance
- In a “Treasury Note” issued by FinCEN last October, FinCEN noted:

[c]asinos appear to be steadily improving their anti-money laundering efforts. For example, in 2010 casinos filed fewer than 14,000 SARs with FinCEN. In 2015, casinos filed almost 50,000 SARs. Those numbers tell us that casinos are paying more attention to their AML/CFT responsibilities.

FinCEN subject matter experts regularly attend casino industry conferences to speak about the latest illicit finance issues relevant to the industry. These experts have noted increased attendance, and interest, in panels that focus on anti-money laundering issues. We certainly recognize and encourage these positive efforts.

A good compliance culture is one where doing the right thing is rewarded, and where “looking the other way” has consequences. FinCEN will continue to work with the casino sector on its compliance efforts, in order to ensure each casino is taking the appropriate actions to protect the gaming industry – and the greater U.S. financial system – from abuse.”

Broad Goals of AML Compliance from a Property Perspective

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- Supporting governmental and international efforts to protect the financial system and prevent crime and terrorism.
- To have a “culture of compliance.”
- To identify the source(s) of patron funds.
- To conduct Customer Due Diligence to identify patrons using illicit funds and to preclude such parties from using the casino.

Why AML Efforts are Important

- CTRs and SARs are used in law enforcement investigations of:
 - ▣ suspected money laundering
 - ▣ identifying suspicious transactions
 - ▣ elevating the merits of possible criminal cases, and
 - ▣ tracing the proceeds from illegal activities and terrorism.
- AML requirements are a key tool in the government's efforts to stop criminal wrongdoing and terrorist activities.

Understanding the Need for Increased Spending on AML Compliance

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- Per the recently commissioned AGA Study:
 - Over 70% of gaming companies have increased their AML compliance spending by nearly 100%.
 - On average, spending on AML compliance has increased 74% per property during the last 5 years.
- The Industry has responded and governmental expectations are rising.
- Governmental regulators have not been shy in imposing sanctions.
 - Prior to 2012 only \$4 million in fines had been assessed.
 - Since 2012, over \$160 million in fines have been assessed for BSA violations.

Understanding the Need for Increased Spending on AML Compliance (Cont.)

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- BSA audits are likely to judge casino operations against the best practices of other operators.
 - ▣ There is a definite need to “keep up” with the times to ensure the casino is viewed as having a “culture of compliance.”

Recent Examples of Casino Penalties, Settlements and Sanctions for Noncompliance

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- 2013 - **Venetian/Sands**: \$47,400,300 payment to U.S. for an agreement not to prosecute.
- 2015 – **Trump Taj Mahal**: \$10 million (general **unsecured** claim in bankruptcy)
- 2015 – **Caesar's Palace**: \$8 million federal fine, plus \$2 million state fine for the failure to implement reasonable AML Program
- 2016 – **Sparks Nugget**: \$1 million fine under consent agreement for failure to establish a culture of compliance
- 2016 - **Cantor Gaming**: \$12 million penalty
- 2016 - **Hawaiian Gardens Casino**: \$2.8 million penalty
 - ▣ Failure to train and support efforts to file CTRs and SARs
 - ▣ No culture of compliance – helped customers avoid requirements

Factors FinCEN uses to Assess Fines

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- Thomas Ott, the Association Director for Enforcement for FinCEN, outlined the following factors in 2016:
 1. The Nature and Seriousness of the Violation
 2. Knowledge and Intent / Complicit?
 - Self Disclosure Helps
 3. Remedial Measures
 4. Financial Condition of the Institution or Individual
 - Assess a penalty that will be sufficient to assure future compliance without jeopardizing solvency
 5. Payments and Penalties Related to Other Enforcement Actions
 6. Other Factors
- Overall, they want to see an effort to build and sustain a “culture of compliance.”

Potential for Personal Responsibility or Liability

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31 C.F.R. 1010.820: In addition to sanctions against the offending entity, a civil penalty may be imposed against “**any partner, director, officer or employee who willfully participates**” in a violation of the Bank Secrecy Act or its implementing regulations.

- In re: The Tonkawa Tribe of Oklahoma, Edward E. Street, FinCen Enforcement Action No. 2006-1
 - Multiple, serious violations of the BSA and Title 31 Regulations
 - Failure to develop and implement adequate AML program
 - Violations of requirements to make and retain records
 - Failure to report suspicious transactions (ex. No report of a company named “John Doe, Inc.”; SSN of 123-45-6789)
 - Failure to file CTRs (no CTR filed after patron entered with duffle bag containing \$300,000 in \$100 bills; allowed to deposit into account)
 - Violations of Requirement not to “structure” transactions in currency
 - Civil money penalty of **\$1 Million** against casino, and a separate penalty of **\$1.5 Million** against Edward Street, individually.

Potential for Personal Responsibility or Liability (cont.)

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- ❑ “**Willful** is a word of many meanings, its construction often influenced by its context.” Screws v U.S., 325 U.S. 91, 101 (1945)
- ❑ “**Willful**” includes “voluntary”, “premeditated”, “intentional”...but also “**with indifference to the natural consequences**” Black’s Law Dictionary (5th Ed.)
- ❑ FinCen has adopted a standard which includes **willful blindness or ignorance**
- ❑ To avoid “willful participation” in BSA/Title 31 violations:
 - Focus on compliance processes (filings, audits, periodic reviews, etc.)
 - Designation of officer charged with AML compliance
 - Training, training, training
 - Encourage employees to ask questions/state concerns

NOTE: BSA regulations provide for potential individual criminal liability as well.

IF YOU OR YOUR ORGANIZATION BECOME A TARGET OF SUCH AN INVESTIGATION, ENGAGE LEGAL COUNSEL EARLY IN THE PROCESS.

Know Your Customer

“Knowing your customers is something that casinos do very well. In fact, it can be argued that casinos in many cases have vastly more information on their customers than any other financial institution. Your surveillance systems are extensive. You cater to your customers and know everything about your high-rollers. These sophisticated systems and the development of client relationships are very important to your bottom line. And these same sophisticated systems and controls can and should be used to also protect our financial system, our national security, and our people. You ask your customers many questions about their preferences; you can and should get information about their sources of funds to meet your obligations to identify and report suspicious activity.”

EXCERPT FROM REMARKS OF JENNIFER SHASKY CALVERY (FORMER) DIRECTOR FINANCIAL CRIMES ENFORCEMENT NETWORK GLOBAL GAMING EXPO September 24, 2013

Know Your Customer (cont.)

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- An effective BSA Compliance Program must include a *Know Your Customer* component
- Risk-based approach to identify those customers and transactions posing the greatest risk of money laundering
- Triggers for performing CDD/EDD
 - Amount of spend (casino property threshold)
 - Can the patron ID and business-related info be confirmed
 - Wire transfers
 - SARs filed
 - Unexplained increase in spend
 - Grand Jury or Subpoena related to possible financial, fraud, drug or terrorist activity
 - Source of wealth/income commensurate with level of play
 - Indications of financial trouble (tax liens/bankruptcies)
 - Negative news reports
 - Prior criminal history
 - Politically Exposed Person (“PEP”)

Know Your Customer (cont.)

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- Use of Third Party databases/Sources for customer due diligence investigations
- Ongoing monitoring of customer information
- What to do with the information
- How *Know Your Customer* may come into play in your IRS BSA audit

CTR Compliance

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- 15 day filing time frame
- Expectations on non-critical information
- Use of slot machine bill-in reports
- E-filing

SAR Compliance

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- 30 or 60 day filing time frame
- Non-critical information
- Part III – Law Enforcement or Regulatory Contact Information
- Importance of the narrative
 - Use of provided checklist
 - Avoidance of casino/departmental jargon
 - Review by personnel outside of authoring department
- Attachments

Suspicious Activity

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- ~60% of SARs involve structuring to avoid CTRs (~30% involve minimal play)
- Common structuring methods:
 - ▣ Reducing the amount of a transaction when asked for ID and/SSN
 - ▣ Use of an agent
 - ▣ Transactions at different casino locations
 - ▣ Transactions at different times of the day
 - ▣ Requesting multiple checks for a single payout
 - ▣ Using chips/cash to purchase TITO tickets (usually multiples at lesser values) and then redeem with little or no play
- Minimal play
 - ▣ Large transactions without play
 - Generally using chips or negotiable instruments
 - ▣ Unusual use of redemption kiosks

Redemption Kiosks

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- Essential element of the industry comes with inherent risks
- Anonymous nature of the transactions
- Vulnerability that casinos must address
 - ▣ Cash multiple lesser value tickets
 - ▣ Feed bills into slot machines, get tickets with no play
- Use kiosk ticket redemption detail reports to look for patterns of transactions that are suspicious and aggregate to \$5,000 (2012 FinCEN guidance)
- May involve working with the redemption kiosk provider or in-house IT to produce workable reports.

Resources available

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- Many companies provide software options
- Looking for:
 - ▣ Interface with existing patron management systems
 - ▣ Be able to use property wide
 - ▣ Ability to scan and retain electronic copies of IDs and W-9
 - ▣ Detailed reporting options
 - ▣ Easy data entry
 - ▣ Ability to verify SSN accuracy
 - ▣ Ability to check patron against various databases

Independent Testing

- Title 31, Section 1021.210(b)(2)(ii) requires “Internal and/or external independent testing for compliance. The scope and frequency of the testing shall be commensurate with the money laundering and terrorist financing risks posed by the products and services provided by the casino.”

Independent Testing

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- What constitutes independent?
- What is acceptable in terms of scope and frequency of the independent testing?
- Look to FinCEN guidances and enforcement actions for guidance.
 - ▣ FinCEN Guidance – [FIN-2010-G003](#)
- Focus on the language in Section 1021.210 that talks about “risk posed...”

Independent Testing and the IRS

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- REMEMBER: Good results on Internal Audit testing may not translate into good results on IRS BSA audits!
- IRS Audits focus on the adequacy of Independent Testing and Compliance with Internal Controls

Apparent Criminal Activity

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- What is “apparent criminal activity?”
- What constitutes criminal activity can cover an extremely broad range of activities.
- Employ a commonsense test; i.e. if the activity appears to be criminal in nature, look into it!
- Review FinCEN guidances and especially enforcement actions for examples.
- “Vegas Dave” case
 - ▣ patron provided false SSNs to sports book

Recent Changes

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- Results of the FATF evaluation, December 2016
- **The United States has a well-developed and robust anti-money laundering and counter-terrorist financing (AML/CFT) regime through which it is effectively investigating and prosecuting money laundering and terrorist financing.**
- FATF recognized the gaming industry's significant investment in AML efforts and reported that the industry "has a good understanding of risks and obligations" and has shown "an increased focus on raising awareness and improving compliance."
- FIN-2017-G001, issued January 4, 2017, allows casinos to share SAR or information related to the SAR with a parent or affiliate.
- Grassley/Feinstein "Combating Money Laundering , Terrorist Financing and Counterfeiting Act"
 - Introduced after the bombings in Manchester, England

Recent Changes & Resources

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- Where do we look for possible changes in regulations (or more importantly, interpretations of regulations)?
- FinCEN website: guidances, enforcement actions, even speeches of FinCEN executives

Enforcement Actions

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- Three FinCEN enforcement actions in 2016
 - Sparks Nugget
 - Hawaiian Gardens Casino
 - CG Technology

Patriot Act, Section 314(b)

- Section 314(b) of the Patriot Act provides financial institutions with the ability to share information with one another, under a safe harbor that offers protections from liability, in order to better identify and report potential money laundering or terrorist activities. 314(b) information sharing is a voluntary program, and FinCEN strongly encourages information sharing through Section 314(b).
- It is possible that FinCEN may impute information available, but not developed, regarding a patron and take enforcement action accordingly.

Resources

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- **AGA AML “Best Practices” Guidance:**
<https://www.americangaming.org/sites/default/files/Best%20Practice%202017.pdf>
- **AGA Ernest & Young AML Report:**
<https://www.americangaming.org/sites/default/files/AGA%20AML%20Research%20Report%20Final%20011916.pdf>
- **Financial Crimes Enforcement Network (FinCEN):** <https://www.fincen.gov/>
- **Bank Secrecy Act (BSA) and Regulations:**
<https://www.fincen.gov/resources/statutes-regulations>
- **FinCEN Guidance (searchable):** <https://www.fincen.gov/resources/statutes-regulations/guidance>
- **USA Patriot Act:** <https://www.fincen.gov/resources/statutes-regulations/usa-patriot-act>
- **Financial Action Task Force (FATF) to combat terrorism and money laundering:** <http://www.fatf-gafi.org/>
- **National Money Laundering Risk Assessment:**
<https://www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/National%20Money%20Laundering%20Risk%20Assessment%20%E2%80%93%202006-12-2015.pdf>

Feedback and Questions

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Thank you for participating

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