NEVADA'S GAMING COMPLIANCE UNIT: What We've Learned So Far

By Dave Staley and Luke Rippee

The Nevada Gaming Control Board's ("Board") Gaming Compliance Unit ("Compliance Unit") formally started operation on January 1, 2016, to centralize the oversight of all gaming compliance plan ("Plan") reporting and provide a dedicated unit to ensure that related reviews are completed in a timelier fashion.

It is hard to believe, but the Compliance Unit has been operating now for over two and a half years. During this time, the Compliance Unit has:

- Established a "Compliance Email" account to receive all compliance-related correspondence in an electronic format.
- Expanded its oversight to include Foreign Gaming Reporting and Nevada Gaming Commission ("NGC") Regulation 5.115(3)(c) regarding Periodic Payments and established electronic reporting for both.
- Completed compliance reviews of approximately one-third of Nevada licensees with compliance plans.
- Increased in size from four to five agents.
- Completed its first reviews of International-based compliance plans.
- Provided compliance training in partnership with the UNLV International Center for Gaming Regulation.
- The Compliance Unit Special Agent and Senior Agent have both graduated from the two-year State of Nevada Certified Public Manager program.
- Completed various "Special Project" investigations.
- Increased the number of Annual Meetings with gaming industry compliance staff and the number of compliance meetings attended during the year.
- Facilitated the cross-training of various Compliance Unit agents and Corporate Securities Section agents to provide the Investigations Division with additional flexibility needed with fluctuating application submissions.
- Improved the Board staff's familiarity with anti-money laundering ("AML") requirements and gaming industry procedures for compliance.
- Provided an industry-facing resource available to licensees to help answer inquiries or direct them to appropriate resources.

Prior to establishment of the Compliance Unit, Plan reviews were conducted in connection with ongoing investigations or on a stand-alone basis. Active applications were typically viewed as more important than compliance reviews. If a compliance review was in process and an application was filed, agents were pulled off the compliance review to complete the investigation resulting in compliance reviews stopping, restarting, and stopping again. Some compliance reviews had field work conducted by one agent, analyzed by another, and the results written up by a third, often over a period of several years. This was not effective for the Board or helpful to licensees.

As a result, the Board created the Compliance Unit, to which it dedicated staff to oversee all aspects of a Plan, from creation and ongoing review following its implementation. As the Compliance Unit began conducting regularly scheduled compliance reviews, it found that licensees and the gaming industry were overwhelmingly in support of the additional scrutiny. Despite this imposition of additional regulatory oversight, licensees indicated that the compliance reviews validated their work and highlighted areas to improve. Since compliance reviews typically involve interviews in all areas of management, but especially executives and members of the boards of directors, company compliance staff found renewed awareness of their activities and increased appreciation of their role in company operations.

At companies where executive management or significant shareholders embraced the culture of compliance mentality, our reviews gave them an opportunity to showcase their investments in compliance infrastructure. In companies with a strong compliance culture, it is not uncommon for executives to spend more time asking questions about effective compliance programs than answering questions from Compliance Unit agents.

WHAT WE'VE FOUND IN COMPLIANCE REVIEWS

"Gaming" versus "Non-Gaming"

Early Plans included "Gaming" versus "Non-Gaming" designations. The concept at the time was that a consultant or vendor that supplied wallpaper for a hotel renovation was "non-gaming" and did not require vetting, or had a much higher threshold, while a consultant for casino floor layout of a vendor suppling gaming equipment did require vetting.

Over time, the Board has developed the view that casino companies are in the "gaming" business and all components of their operations are gaming related. As a result, a wallpaper vendor required the same vetting as a gaming equipment vendor because their involvement ultimately contributed to the company's sole business of providing gaming activities to the public.

However, during the last several years, some companies have been licensed in Nevada that clearly had a large and significant "non-gaming" component to their business such as fuel and convenience store sales or amusement gaming. The Compliance Unit has accommodated these types of operations by approving Plans that establish different thresholds for "gaming" versus "non-gaming" operations or provide very clear definitions of what constitutes "gaming" and "non-gaming" operations that are encompassed by the Plan and, in turn, what triggers unambiguous reporting requirements.

Key Employees

All Plans include due diligence requirements for Key Employees. However, the definition of Key Employee varies among the various Plans. Some Plans define Key Employees as an employee with significant decision-making authority or as defined by NGC Regulation 3.100, while other Plans define Key Employee with a salary threshold.

Using a definition tied to NGC Regulation 3.100 certainly demonstrates reliance on regulatory precedence, but our review of various Plans has discovered that Plans using a salary threshold are more successful at capturing Key Employees and easier to audit. While reliance on the Regulation is certainly a valid method of defining Key Employees, some companies have found it to be a confusing standard when evaluating employees that are not directly involved in gaming either at the property level or in the corporate office. Using a salary level, usually base salary before bonuses, is clear and easy to follow at all levels of the organization. In addition, using a salary level allows a company to establish exception reporting, within its accounting or human resources ("HR") systems, ensuring that a compliance officer can get a monthly or quarterly report identifying Key Employees.

As Plans have been submitted for amendments and updating, the Compliance Unit has been working to standardize Key Employee definitions tied to salary levels.

Professional Advisors as Consultants and Lobbyists

Professional Advisors are generally defined by Plans as a licensed attorney, licensed accountant, bank, licensed real estate agent, etc. and allows a company to rely on the strength of their professional licensure as proving suitability. This "carve-out" does not apply if the company becomes aware of derogatory information that may impact the professional advisor's suitability, in which case, due diligence background review is required.

Plans also require due diligence to be completed on Consultants and Lobbyists. Plans handle them separately. However, there has been some confusion when a Consultant or Lobbyist is also a Professional Advisor, thus, straddling both definitions.

The Board has determined that a company can rely on professional licensure when a Professional Advisor also provides consulting services.

Plan reviews have found that the use of Lobbyists increases dramatically when a company is planning to enter an emerging jurisdiction. Emerging jurisdictions, or jurisdictions that are new to a company, include higher risks due to a company's inexperience in that jurisdiction or the jurisdiction's inexperience regulating the gaming activities. As a result, the Board requires all Lobbyists, regardless of dollar thresholds, to undergo suitability due diligence even if they qualify as a Professional Advisor.

As Plans are submitted for amendments and updating, the Compliance Unit will be working to standardize the requirements for Professional Advisors, Consultants and Lobbyists.

Due Diligence and Suitability Expectations

All Plans require levels of due diligence to support suitability evaluations. Compliance committees are typically comprised of company executives and individuals familiar with the gaming industry. Plans will usually require that at least one person is familiar with Nevada-specific gaming laws and regulations. In recent years, the trend has been to include one or several members who are independent of the company.

However, even with this mix of qualified individuals sitting on the compliance committee, its common to find differing views of what constitutes an appropriate level of due diligence or how suitability is effected by due diligence results. The Board takes the position that the company has established a compliance committee of individuals it has found to be qualified to meet its compliance goals. As a result, the Board has stepped away from setting industry standards on appropriate levels of due diligence and suitability thresholds. The Compliance Unit's reviews focus on examining the compliance process to ensure that compliance committees are adequately informed to make their recommendations. Whether or not the Compliance Unit agrees with the compliance committee's decision is less important.

Going forward, the Compliance Unit will be paying more attention to suitability determinations to better understand the strength of the information gathering process and related suitability decision. This additional scrutiny will likely focus on areas that experience additional public awareness as new issues become topical and include a risk that the public perception of gaming in Nevada may be negatively impacted.

Compliance Programs are Growing

Despite the gaming company acquisitions that have occurred in Nevada, resulting in the acquired company falling under the acquiring company's Plan, the total number of Plans has increased as more new companies have been licensed.

In addition, companies are placing more areas of review under their compliance programs. For instance, many companies are placing AML reporting, sexual harassment initiatives and Foreign Corrupt Practices Act ("FCPA") initiatives under the review of their compliance programs and compliance committees. While compliance programs usually have developed a robust reporting infrastructure to support the additional oversight, many compliance programs may not have the expertise to manage AML problems or sexual harassment issues.

Some companies have found success with consolidating oversight beyond gaming compliance, but they are typically large companies with significantly more established resources than much smaller companies that rely on a limited number of executives to fill multiple roles. For the majority of Nevada licensees, most have found success by addressing sexual harassment issues through HR, and AML through their Audit Committee, both with limited, high-level reporting only, to the Compliance Committee.

Non-Routine Regulatory Inquiries

As Plans have been submitted for amendments and updating, the Compliance Unit has been requiring additional language to address "non-routine" inquiries or unscheduled information requests, audits or other non-routine inquiries from the Financial Crimes

Enforcement Network ("FinCEN"), Internal Revenue Service ("IRS"), Federal Bureau of Investigation ("FBI"), United States Department of Justice ("DOJ"), U.S. attorneys' offices, United States Securities and Exchange Commission ("SEC") or any other local, state or federal agencies, or foreign equivalents, regarding the company's compliance with any laws or regulatory requirements.

While the IRS and FinCEN may conduct surprise audits, such audits by these agencies are routine. The goal of this additional Plan language is for Compliance Committees to be notified of any unexpected inquiries or charges. Thus ensuring that potential issues are reported to the Compliance Committee, but also to the Board by extension, since the Compliance Unit receives copies of all Compliance Committee minutes and materials.

Political Contributions

The Compliance Unit has found that more and more companies are requiring review of Political Contributions by Compliance Committees. Political Contributions have been recognized as a higher risk area, especially in connection with FCPA requirements and in emerging jurisdictions.

CONCLUSIONS

The Compliance Unit has found the gaming industry to be overwhelmingly supportive of increased scrutiny of Plans and compliance programs. All companies we have reviewed during the last two and a half years have been following their Plan and using their Compliance Committees for guidance.

The increased outside scrutiny of AML issues and related development of a culture of compliance has proven to be complimentary to Plans and gaming regulatory compliance, resulting in stronger compliance efforts throughout the companies reviewed to date. However, compliance reviews have discovered gaps in the coverage of certain Plan areas.

The Compliance Unit determined that one company had not completed due diligence on any vendors for several years. Apparently, a previous compliance officer had created a vendor spreadsheet for vendor tracking, then left the company. The spreadsheet had a prepopulated "Due Diligence Completed YES/NO" field that had a "YES" default. Corporate reviewed the spreadsheet and believed that the property was completing the due diligence while the property thought due diligence was completed by corporate. The compliance committee saw that due diligence had been completed and approved the vendors. The company was compliant in all other areas so it was not a lack of compliance, just miscommunication.

The Compliance Unit agents found another company had completed due diligence on key employees when they were hired at the appropriate threshold, or promoted to exceed the threshold, but missed key employee due diligence when a promotion included a transfer to a different property. Again, miscommunication created a gap.

The Compliance Unit discovered that a company had captured all vendors at all of its properties, except one. The missing property had been acquired several years before the compliance review and operated on a different database management system than the parent company. The compliance officer had established monthly and quarterly reporting to ensure that vendors were captured when they met the Plan threshold, but consistently missed vendors from the new property because the two management systems did not communicate.

The Compliance Unit agents reviewed a company where the compliance officer established monthly and quarterly reporting on vendors by requesting a list of "Vendors" from the management system. However, the accounting department was inconsistent on how it labeled new vendors and the compliance officer's report only captured vendors that were specifically identified as "Vendors" in the management system, missing vendors that had been mislabeled when they were added to the system.

All of these examples of mistakes, or gaps in compliance coverage, occurred in companies that had a culture of compliance and had dedicated appropriate staff and resources to comply with their Plan. As a result, these gaps were noted in Compliance Unit reports, but did not result in any disciplinary action. In fact, just about every company that experienced a gap usually had the issue fixed before Compliance Unit agents completed their field work.

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Agents Staley and Rippee were tasked with establishing and managing the Compliance Unit, which was created in July 2015, and began operations on January 1, 2016.

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