

Where the Fed's are Focusing Their Enforcement Efforts

By Jeffrey B. Setness



INTRODUCTION

In various public pronouncements from 1984 through 2012, the Department of the Treasury and, later, the Financial Crimes Enforcement Network (“FinCEN”) have made it very clear that they believe casinos are vulnerable to money laundering.¹ However, these pronouncements did not appear to be backed up by substantial and sustained criminal investigations and prosecutions, thus potentially giving federal law enforcement the appearance of a dog whose bark was worse than its bite.

However, in late 2012, ominous warning signs were developing that would lead one to conclude that the days when casinos would face only civil money penalties for failing to maintain effective anti-money laundering (“AML”) programs may be over.² Then, in August 2013, the casino industry was awakened to a new reality that federal law enforcement did indeed have fangs and was willing to use them. Looking back, the August 26, 2013, Non-Prosecution Agreement

(“NPA”) entered into between United States Attorney’s Office for the Central District of California (“USAO”) and the Las Vegas Sands Corporation (the “Sands”) appears to have signaled the beginning of a new era in which federal criminal investigations of casinos relating to anti-money laundering compliance have become increasingly common.

This article will examine the actions taken by the federal government since 2013, which may provide the reader with some indications to casinos on where they may want to focus their anti-money laundering compliance efforts in the years to come. While many of the government’s actions since 2013 appear to have targeted the largest casinos, a casino need not have multi-million dollar players to suffer the potentially devastating consequences of a criminal investigation by the Department of Justice or substantial civil money penalties imposed by FinCEN.

FEDERAL ACTIONS AND PRONOUNCEMENTS FROM 2013 TO THE PRESENT

August 26, 2013 - Sands Non-Prosecution Agreement

On August 26, 2013, the USAO and the Sands entered into a NPA in which it was generally agreed that that the USAO would not bring any criminal or civil case against the Sands or any of its representatives or employees relating to the activities of Zhenli Ye Gon. According to the NPA, “Zhenli Ye Gon’s total gaming losses at . . . multiple casinos between 2004 and 2007 exceeded \$125 million, which included over \$84 million in losses at the Venetian.”³ As part of the NPA, the Sands “. . . voluntarily agreed to return the sum of \$47,400,300 to the United States Treasury, which represents funds accepted by the Company from or on behalf of Zhenli Ye Gon.”⁴

In the NPA, the USAO took the position that compliance personnel did not adequately investigate Ye Gon and attach appropriate suspicion to Ye Gon’s actions. Specifically, the NPA stated as follows:

The USAO also believes that after October 19, 2006 the compliance personnel at the Venetian-Palazzo did not:

- a. adequately investigate Ye Gon, his respective companies, or his source(s) of funds;

- c. attach appropriate suspicion, if any, to Ye Gon's use of multiple third-party fund sources;
- e. attach appropriate suspicion, if any, to the fact that the Venetian's internal due diligence investigations could not link Ye Gon to nearly all of the companies he professed to own and/or control which originated wire transfers of funds to the Venetian; . . .⁵

As justification for entering into this NPA, the USAO noted the voluntary disclosure and cooperation by the Sands. Specifically, the NPA stated that:

The USAO enters into this Non-Prosecution Agreement ("Agreement") based, in part, on the following factors: (a) the Company's voluntary and complete disclosure of the conduct, beginning in 2007 and continuing through the present; (b) the Company's extensive, thorough, and real-time cooperation with the Department of Justice and USAO, including conducting an internal investigation, voluntarily making current and former employees available for interviews, making voluntary document disclosures, and making multiple presentations to the USAO on the status and findings of the internal investigation; . . .⁶

Thus, cooperation appears to have played an integral role in the government's willingness to enter into an NPA with the Sands. Former federal prosecutor Kevin Rosenberg, lead prosecutor in the Sands case and current Chair of Government Investigations and White Collar Litigation Group at the Los Angeles law firm of Lowenstein and Weatherwax, observes "recent settlements involving financial institutions make it clear that the government continues to value timely and full cooperation....Casinos under criminal or civil investigation would be very wise to carefully consider the benefits of complete cooperation with the government." According to Rosenberg, "doing so demonstrates that the casino is genuinely interested in addressing any potential deficiencies and doing better in the future, factors the government considers in deciding how to proceed against companies involved in potential wrongdoing." To be sure, Assistant Attorney General Leslie Caldwell gave several speeches earlier this year extolling the virtues of cooperating with the government and providing specifics of what constitutes full cooperation and what does not.

As discussed more fully below, this NPA provides a wealth of information and insight in to what the federal government believes is important in casino anti-money laundering compliance and where casinos may want to focus some of their compliance efforts including:

1. Knowing their customers and knowing their sources of funds;
2. The level of investigation and due diligence required for "high rollers"; and
3. The value of a casino conducting an internal investigation, making voluntary disclosures, and cooperating with the government at an early stage.

September 14, 2013 - FinCEN Director Shasky Calvery's Remarks at the Global Gaming Expo

On September 24, 2013, at the Global Gaming Expo, FinCEN Director Jennifer Shasky Calvery made the following statement regarding casinos knowing their customers:

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. . . 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. . . .⁷

At first blush, a lay person may think that such complimentary statements by a high-ranking government official should be taken as high praise. However, those who may have a skeptical nature may view these statements as a clear indication that any claim by a



casino that they did not know that a particular high roller's money came from an illegal source may fall on deaf ears. FinCEN has set the bar high on what it expects from casinos – will the casinos live up to these lofty expectations?

As discussed more fully below, this speech by Director Shasky Calvery provides clear and unequivocal guidance that FinCEN expects the casinos to take those actions necessary to ensure that they know their customers and their sources of funds.

October 11, 2013 – Caesar's Investigation

On October 11, 2013, Caesar's Entertainment Corporation filed their Form 8-K with the Securities and Exchange Commission that stated, in pertinent part, that:

... On October 11, 2013, a subsidiary of the Registrant received a letter from the Financial Crimes Enforcement Network of the United States Department of the Treasury ("FinCEN"), stating that FinCEN is investigating the Registrant's subsidiary, Desert Palace, Inc. (the owner of Caesars Palace), for alleged violations of the Bank Secrecy Act . . . Additionally, the Registrant has been informed that a federal grand jury investigation regarding these matters is on-going. . . .⁸

On April 15, 2015, a Reuters article titled *Caesars nears deal over anti-money laundering lapses* was published and stated, in pertinent part, that "The U.S. Treasury Department's anti-money laundering unit may soon issue a civil penalty to Caesars Entertainment Corp over anti-money laundering lapses . . . The investigation stemmed in part from failures to properly police sports book activity and prevent wagers being placed by illegal betting rings, one of the sources said."⁹

Such an investigation would lead one to conclude that the federal government has concerns that some of the individuals who are actually placing bets at the sports books are merely acting as conduits for the real bettors, thus preventing the casinos and the federal government from knowing whose money is actually being bet at the sports books.

June 12, 2014 - FinCEN Director Shasky Calvery's Remarks at the 2014 Bank Secrecy Act Conference

On June 12, 2014, at the 2014 Bank Secrecy Act Conference, FinCEN Director Shasky Calvery focused

a considerable amount of her speech on the risks associated with overseas junket operators. Specifically, Shasky Calvery made the following suggestions to the casinos regarding overseas junket operators:

Think about what it means when you are dealing with money that comes to you from overseas. This happens, for example, when you are affiliated with or have relations with a casino in an overseas jurisdiction, such as Macau, or when you are receiving patrons through overseas junket operators. . . . In particular, you should be paying attention to:

- Source of Funds: Where precisely are the funds coming from? . . .
- International Money Transfers: How are customers or junket operators moving the funds to and from the United States? . . .



A casino is required to implement procedures for identifying the junket representative and each member of the junket, obtaining other information on these individuals, and conducting due diligence, for front money accounts.¹⁰

In addition, Director Shasky Calvery reminded casinos that they are financial institutions and that it is advisable for them to start thinking more like other financial institutions when it comes to anti-money laundering compliance. Specifically, she stated that ". . . 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. And casinos must continue their progress in thinking more like other financial institutions to identify AML risks."¹¹

From this speech, casinos representatives may want to: (1) examine what procedures they currently have in place to identify the junket operator and each member of

the junket; and (2) accept the fact that they may be more like banks than they may like to admit.



August 2014 – Normandie Investigation

On May 22, 2015, a Reuters article titled *Feds probe L.A.-area casino over cash transactions* was published and stated that “[a] federal grand jury is probing a Los Angeles-area casino following allegations by state authorities the business allowed some players to evade transaction reporting requirements and possibly launder money, a source said.” The report went on to state that “Lauren Miller, general manager and spokeswoman for Normandie Casino, said in a written statement that federal prosecutors in Los Angeles informed the casino it was under investigation in August 2014”¹³

In light of this report that federal government was investigating a California-based casino/card club, any notion that the federal government will only investigate the large casinos who cater to players who win and lose millions of dollars should be dispelled.

INVESTIGATION INVOLVING WYNN RESORTS

On November 21, 2014, an article in *The Wall Street Journal* titled *Wynn Resorts Probed on Money-Laundering Controls* was published and stated that “Federal authorities are investigating whether casino operator Wynn Resorts Ltd. violated money-laundering laws, according to people familiar with the matter.”¹⁴ The article went on to report that “. . . A letter sent . . . by the IRS criminal investigation division in August requested information on Wynn’s U.S. and foreign clients . . .” and that “The letter . . . asked the casino for a list of its biggest customers from 2011 through

2013, requested a list of Wynn’s top 100 patrons from North America as well as its top 50 in each of three other regions: Asia, Europe and Latin America”¹⁵

Such a request by the Internal Revenue Service should be a clear indicator to all casinos that the government is focusing some of its efforts on “high rollers” and that it would be advisable for all casinos to conduct the appropriate level of due diligence regarding their high rollers and have a clear understanding of their sources of funds.

December 24, 2014 - FinCEN Correspondence to American Gaming Association

In correspondence dated December 24, 2014, from FinCEN to the American Gaming Association, FinCEN explained their concerns and expectations relating to sports books as follows:

It has come to the attention of the Financial Crimes Enforcement Network (“FinCEN”) and its law enforcement and regulatory colleagues that increases in sports betting conducted on behalf of third parties are facilitating criminal activity and posing a money laundering risk to the U.S. financial system. In connection with this, it has also come to our attention that casinos may be under the impression that unless specifically directed to do so, a casino never has to ask a patron whether he or she is betting on his or her own behalf or on behalf of another party. We are communicating directly with your organization to correct any such misperception”¹⁶

Such correspondence should encourage casinos to carefully examine what procedures they have in place to ensure that the individuals who are actually placing the bets are not acting as conduits for others.

June 3, 2015 – FinCEN Assessment of Civil Money Penalty Against Tinian Dynasty Hotel & Casino

On June 3, 2015, FinCEN assessed a civil money penalty in the amount of \$75 million against Hong Kong Entertainment (Overseas) Investments, Ltd., doing business as the Tinian Dynasty Hotel & Casino of the Northern Mariana Islands, for “willfully violat[ing] the BSA’s program and reporting requirements from 2008 through the present.”¹⁷ A FinCEN press release stated that “Tinian Dynasty didn’t just fail to file a few reports. The casino operated for years without an AML program in place. It failed to

file thousands of CTRs and its management willfully facilitated suspicious transactions and even provided helpful hints for skirting and avoiding the laws in the U.S. and overseas. Tinian Dynasty's actions presented a real threat to the financial integrity of the region and the U.S. financial system."¹⁸

Again, the federal government assessment of such a substantial penalty against a casino in the Northern Mariana Islands should make clear that smaller casinos are not immune to the scrutiny and enforcement actions that many of the larger casinos are facing.

WHAT LESSONS CAN BE LEARNED FROM THESE RECENT FEDERAL ACTIONS AND PRONOUNCEMENTS?

Lesson No. 1 - Feds Want Casinos to Know their Customers and their Sources of Funds

Essential to every effective anti-money laundering compliance program are the diligent and concerted actions of casino personnel to know their customers and their sources of funds. Casino representatives can assure themselves that, in any IRS examination or criminal investigation, the government will assess what actions the casino has taken to get to know their customers and find out where their customers' money is coming from.

As explained above, at the September 2013 Global Gaming Expo, Director Shasky Calvery, in not so subtle fashion, made it clear that she believes that the casinos already know their customers very well.

Finally, nine months later, in order to ensure that casinos got the message, Director Shasky Calvery stated at the *2014 Bank Secrecy Act Conference*, "Under a risk-based approach, these situations represent times when you may need to learn more about your customer and his or her source of wealth to identify suspicious activity."¹⁹



There is no indication that government's expectations along these lines in any way depends upon the size of the player. Indeed, none of the federal actions described above were likely simply a product of the amount of money involved. According to Rosenberg, these federal actions "likely involved inadequate corporate governance/responsibility, incomplete or inconsistent customer due diligence and source of funds analysis, a lack of internal controls and testing, or inadequate communication across casino and corporate departments. . . . These situations can arise whether a casino's players wager millions or hundreds of dollars." As a result, casinos should continue to conduct thorough risk assessments and ensure that proper procedures are in place to sufficiently know their customers and source of funds.

Lesson No. 2 - Feds Are Focusing Some of Their Efforts on "High Rollers"

Common sense tells us that the casinos should expect that federal investigators and prosecutors to focus some of their time and effort on what is referred to in gaming circles as "high rollers." With limited resources, federal law enforcement cannot investigate and prosecute every possible violation of the law so they must focus their attention on those cases where "you can get the most bang for your buck."

One needs to go no further than the Sands NPA to find proof that the federal government has some interest in a casino's high rollers. The Sands NPA stated, in pertinent part, that "During his patronage, Zhenli Ye Gon lost a total of \$90,125,357 at Venetian- Palazzo . . . Ye Gon's losses at the casino tables were so extraordinary that the Venetian classified him as an 'outlier' in company earnings graphs and charts . . ."²⁰

Finally, as explained above, at least one casino was recently asked to provide a list of its biggest customers in North America, Asia, Europe, and Latin America.²¹ It would be a mistake for casinos to take a "this won't happen to me" attitude.

Lesson No. 3 – Feds are Looking at Third-Party Betting at Sport Books

The investigations referred to above, as well as FinCEN's December 24, 2014, correspondence, make it clear that casino sports books are under scrutiny and that casinos should institute procedures to determine if their patrons are betting on behalf of themselves or betting on behalf of others.

Lesson No. 4 – Casinos Need to Scrutinize Money from Overseas and Junket Operators

FinCEN Director Shasky Calvery's prepared remarks at the 2014 Bank Secrecy Act Conference were approximately 4½ pages in length and she devoted approximately ½ of a page to overseas junket operators. The devotion of a significant portion of her speech to reminding the casinos of the money laundering risks associated with overseas junket operators is a clear indication that this is a subject of great concern to FinCEN which may translate into enforcement actions and investigations.

Lesson No. 5 – Feds Want Casinos to Start Thinking Like Banks

As set forth above, in her remarks at the 2014 Bank Secrecy Act Conference, Director Shasky Calvery stated that "Casinos must continue their progress in thinking more like other financial institutions to identify AML risks."²² Such a statement should send a clear signal to those in the casino industry that FinCEN does not buy into the argument that casinos are that much different than banks and that casinos should not be held to the same anti-money laundering standards.

Lesson No. 6 - Casinos Should Strongly Consider Disclosure and Cooperation Once the Investigation Starts

In Kenny Rogers' 1978 hit "The Gambler," he sang "[y]ou've got to know when to hold 'em [and] [k]now when to fold 'em, . . ."²³ Attorneys who represent casinos should take these lyrics to heart when confronted with a casino client who informs you of potentially criminal conduct or you receive word that a federal criminal investigation is underway.

At the outset, the attorney who represents a casino must appreciate that he or she represents the entity and not the individuals who may have been involved in the alleged criminal conduct. Second, what is in the best interest of the casino may not necessarily be in the best interest of the individuals who work at the casino. For example, in hopes of convincing the prosecutors not to charge the entity, it may be in the best interest of the casino to make a voluntary disclosure to federal authorities or cooperating with the government once the investigation starts.

The rewards and benefits of disclosure and cooperation are spelled out in the very name of the agreement that the Sands entered into with the USAO–Non-Prosecution Agreement. Given the potential catastrophic consequences of a criminal investigation and prosecution, casinos and their counsel would be well advised to consider disclosure and cooperation at a very early stage.

CONCLUSION

The actions and pronouncements of the Department of Justice and FinCEN since August 2013 provide clear signals as to where the federal government is likely to focus their enforcement efforts in the near future. Casino representatives should take heed of these actions and pronouncement and always be mindful of Edmund Burke's famous quotation, "Those who don't know history are doomed to repeat it."

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¹ Jeffrey B. Setness & Leonard C. Senia, Why The Federal Government Believes That Casinos Are Vulnerable To Money Laundering, Nevada Gaming Lawyer (Sept. 2013)

² Id.

³ Non-Prosecution Agreement dated August 26, 2013 between the United States Attorney's Office for the Central District of California and the Las Vegas Sands Corp., Attachment A – Statement of Facts, p. 4, ¶ 9

⁴ Id. at 3

⁵ Id. at 2-3, ¶ 7

⁶ Id. at 2

⁷ Prepared Remarks of Jennifer Shasky Calvery, Director, Financial Crimes Enforcement Network, Global Gaming Expo, Sept. 24, 2013, available at: http://www.fincen.gov/news_room/speech/html/20130924.html

⁸ United States Securities and Exchange Commission Form 8-K dated October 21, 2013, filed by Caesar's Entertainment Corporation, p. 2

⁹ Brett Wolf, Caesars nears deal over anti-money laundering lapses - sources, Reuters, Apr. 15, 2015, available at: <http://www.reuters.com/article/2015/04/15/gambling-moneylaundering-idUSL2N0XC1LS20150415>

¹⁰ Prepared Remarks of Jennifer Shasky Calvery, Director, Financial Crimes Enforcement Network, 2014 Bank Secrecy Act Conference, June 12, 2014, p. 3, available at: http://www.fincen.gov/news_room/speech/html/20140612.html

¹¹ Id. at 2, available at: http://www.fincen.gov/news_room/speech/html/20140612.html

¹² Brett Wolf, Exclusive: Feds probe L.A.-area casino over cash transactions", Reuters, May 22, 2015, available at: <http://www.reuters.com/article/2015/05/22/us-usa-casinos-normandie-idUSKBN00708G20150522>

¹³ Id.

¹⁴ Kate O'Keeffe, Rachel Louise Ensign & Christopher M. Matthews, "Wynn Resorts Probed on Money-Laundering Controls," The Wall Street Journal, Nov. 21, 2014, available at: <http://www.wsj.com/articles/wynn-resorts-probed-on-money-laundering-controls-1416512645>

¹⁵ Id.

¹⁶ FinCEN Correspondence dated December 24, 2014, to Geoff Freeman, President and CEO, American Gaming Association