



# Regulations

# Guidelines

## **Culture of Compliance Required In Response to FinCEN's Current Emphasis on Casinos' AML Requirements**

By Veron Nelson & Kathleen Bliss

### **I. Introduction**

Beginning with her September 2013 address to the Global Gaming Expo, Jennifer Shasky Calvery, Director of the U.S. Treasury Department's Financial Crime Enforcement Network ("FinCEN"), has strongly suggested that nonrestricted licensees (also referred to as "Casinos") take a more vigorous approach to their AML efforts. This article will examine the recent developments with FinCEN and AML enforcement.

## II. FinCEN STRONGLY ADVISES NON-RESTRICTED CASINOS TO STEP UP ENFORCEMENT EFFORTS.

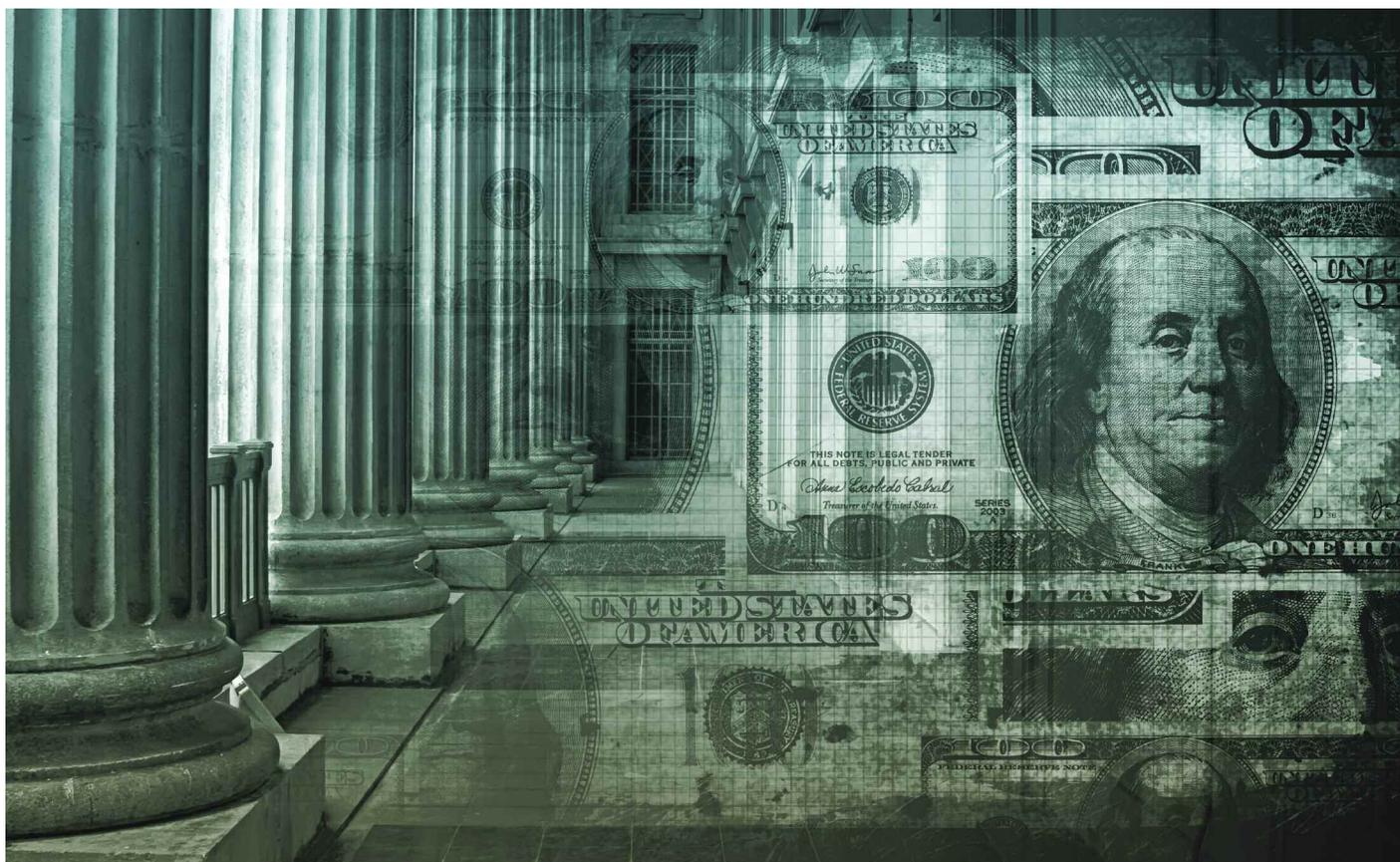
Casinos that generate more than \$1,000,000 in annual gaming revenues must comply with Title 31 (the Bank Secrecy Act or “BSA”), and are required to report specified currency transactions to the IRS. These reports are utilized by the IRS, the Financial Crimes Enforcement Network (FinCEN) (a bureau of the Department of Treasury) and other law enforcement agencies in uncovering money laundering activities and other financial crimes.

The BSA originally applied only to banks and other financial institutions. However, the BSA was amended in 1985 to include casinos and card clubs (collectively “casinos”).<sup>1</sup> Casino operations are unique. They are fast-paced and cash-intensive businesses. Large sums of currency pass through the cage, slot machines, and gaming tables with high frequency. Casinos also offer services similar to a bank, including ATMs, check cashing, credit, and cash advance services. In addition, casino patrons are diverse and Casinos may not know the source of the funds

of their high-end players. In light of these factors, FinCEN observed that the financial services offered by Casinos could be used for money-laundering and other criminal purposes.

The BSA requires that Casinos: (1) establish AML programs; (2) report certain cash transactions; and (3) report suspicious activity. With respect to establishing AML programs, Casinos must establish written anti-money laundering (AML) programs.<sup>2</sup> With respect to cash transactions, Casinos must report cash transactions that occur within a single Gaming Day in excess of \$10,000. Such reports must be made on a Currency Transaction Report (CTR, FinCEN Form 112).

With respect to suspicious activity,<sup>3</sup> Casinos are required to file “Suspicious Activity Reports by Casinos” (SARCs). According to federal regulators, money launderers have developed techniques to attempt to circumvent the BSA. As a result of this concern, the law imposes the SARC requirement on casinos. Thus, if a casino employee thinks that a player is trying to evade the filing of a CTR, the employee must file a SARC. Structuring multiple transactions that are under \$10,000 is one way that patrons attempt to avoid the filing of a CTR. Patrons may also seek to avoid the filing of a CTR by: (1) engaging in large transactions using chips or



cash and (2) spending little time or money gambling. If a suspicious transaction requires immediate attention, the casino should notify law enforcement. The USA PATRIOT Act of 2001 expanded the scope of the Bank Secrecy Act to intelligence or counter intelligence activities to protect against terrorist activities.<sup>4</sup>



Prior to 2007, FinCEN provided occasional guidance to Casinos with respect to the scope of the SARC reporting requirements. However, beginning in 2007, FinCEN attempted to clarify the reach of the BSA regulations and has continued to offer guidance on a regular basis. On August 1, 2008, FinCEN published guidance to casinos titled, “Recognizing Suspicious Activity – Red Flags for Casinos and Card Clubs.” In particular, the guidance urged casinos to identify activity that is inconsistent with wagering transactions, flag activities that appear to have no legitimate gaming purpose, and, given the in-house knowledge that casinos have about players, spot activities atypical for a particular player or type of player.

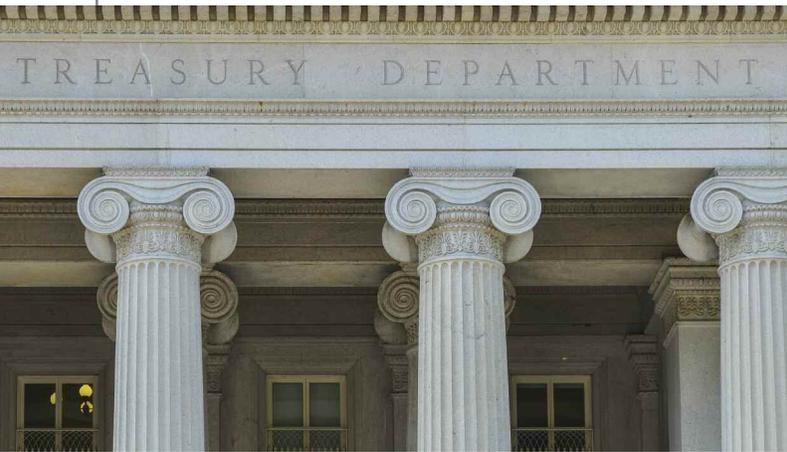
In 2013, a confluence of issues came together to thrust AML compliance and FinCEN onto center stage of the gaming industry. First, in June of 2013, it was revealed that Las Vegas Sands, Inc. (“LVSI”) was the subject of an investigation related to the casino’s failure to alert authorities that a high-stakes gambler, who was later linked to international drug trafficking, made numerous large and suspicious deposits with the casino. LVSI agreed to return \$47,400,300 to conclude the investigation. In exchange, the government agreed not to prosecute the casino for failing to file SARCs.

Specifically, the probe found that Chinese-Mexican businessman Zhenli Ye Gon (“Gon”) transferred more than \$45 million to the Venetian between 2006 and 2007. LVSI failed to comply with a federal law requiring casinos report suspicious financial transactions involving

customers. LVSI should have identified as suspicious wire transfers of around \$45 million and cashier's checks valued at around \$13 million that were transferred to LVSI. LVSI should have been alerted that Gon was suspicious because he transferred money from Mexican check-cashing centers, in the name of companies he was not obviously connected to, and without identifying himself as the beneficiary. In addition, LVSI asked Gon to wire the money in larger sums and not break it into smaller parts. Gon refused to do so because he "preferred to wire the money incrementally because he did not want the government to know about the transfers." LVSI also allowed Gon to transfer money to a non-casino aviation account. It is important to note that LVSI agreed that it would no longer use accounts with generic names.

Not long after news of the LVSI investigation became public, FinCEN Director Jennifer Shasky Calvery delivered a pointed speech to a group of AGA Members and casino executives at the Global Gaming Expo. Based on published reports, Ms. Shasky Calvery was appointed Director as part of a management change at FinCEN that was intended to reallocate resources to terrorism purposes as opposed to the previous focus on mortgage fraud. During her speech Ms. Shasky Calvery stressed several key points: (1) Casinos and other financial institutions play an important role in countering drug trafficking, fraud upon the government, and terrorist organizations; (2) AML programs play an important role in keeping criminals out of the financial system; and Casinos must put effective controls in place to deal with money laundering threats to meet their AML reporting obligations; (3) Casinos must report suspicious activity: (i) when they suspect that funds were derived from an illegal source; and (ii) when their customers provide suspicious information about the sources of funds; (4) Casinos know their customers very well as: (i) they have sophisticated systems related to the development of client relationships; and (ii) these same sophisticated systems should also be used to protect the financial system and national security; (5) Casinos must: (i) recognize that laws and manuals have limited uses and that a robust and effective AML framework requires effective implementation of an AML program; (ii) implement a program that understands what is at stake not only for the Casino, but for the financial system as a whole; and (iii) recognize that casinos that choose to ignore their AML obligations and operate outside of the law are going to be held accountable, and that FinCEN will act to stop abuses of the US financial system; (6) Casinos will have to: (i) establish a “culture of compliance” to comply with

FinCEN's regulations that is commensurate with other financial institutions; (ii) avoid a culture of reluctant compliance; and (iii) implement effective AML programs that focus on the risk to the Casino and the financial system as a whole; and (7) Undertake efforts to ensure that relevant information is shared internally with the Compliance Officer and with affiliates (Ms. Shasky Calvery also indicated that sharing among other Casinos is something that will be addressed in the future). Finally, Ms. Shasky Calvery told the attendees that FinCEN established a stand-alone Enforcement Division to ensure that FinCEN can enforce AML obligations and BSA civil matters.



Ms. Shasky Calvery's speech got the attention of the United States casino industry. We believe that her speech signified her desire that FinCEN to take swift and forceful action for perceived BSA violations. Moreover, another significant event occurred in October of 2013 when Caesars Entertainment Corp. ("Caesars") announced in its filing with the Securities and Exchange Commission that its subsidiary Desert Palace, Inc. (owner of Caesars Palace), was under investigation for alleged violations the BSA. According to Caesars' filing, Desert Palace, Inc. received a letter from FinCEN stating that the subsidiary was under investigation: (1) for alleged violations of the BSA; and (2) to determine "whether it is appropriate to assess a civil penalty and/or take additional enforcement action against Caesars Palace." Caesars was also informed that a federal grand jury investigation regarding the alleged violation is on-going.

Following on the heels of the LVSI charges and Ms. Shasky Calvery's speech, the news of the Caesars investigation left no doubt that FinCEN was targeting the casino industry. While the Caesars investigation continued, industry executives were examining the

potential financial impact of FinCEN's expectation of increased scrutiny on high-end players. Executives also looked for advice and guidance as to how they could bolster their AML compliance efforts.

Ms. Shasky Calvery returned to Las Vegas in June of 2014 when she spoke at the Section's 2014 BANK SECRECY ACT CONFERENCE. She gave another important speech highlighting FinCEN's intentions, and its expectations of Casinos. Ms. Shasky Calvery's speech focused on a few important topics:

### **Risk-based approach to money laundering** - Ms. Shasky Calvery stated that a

risk-based approach is important because there is not a "one size fits all" approach to AML efforts. She said it is important that casinos help FinCEN understand the industry risks that could impact the safety of the financial system. She stressed that in addition to filing reports about certain financial transactions and suspicious activity, casinos are also required to report suspicious activity when:

They know or have reason to suspect that a financial transaction, or attempted transaction:

1. *involves funds derived from illegal activity or is an attempt to disguise funds derived from illegal activity;*
2. *is designed to evade regulations promulgated under the BSA; or*
3. *lacks a business or apparent lawful purpose.*

Ms. Shasky Calvery suggested that monitoring tools and other technology used by Casinos should be leveraged for AML purposes. She asked the audience to think about the systems already in place and how they can be adapted so that Casinos can "use all available information to assess risk more effectively and improve monitoring on the AML side." Ms. Shasky Calvery then focused on several important risks that should be apparent to Casinos; and the need to direct resources to reduce these risks. These risks include:

- A. **Source of Funds** - Ms. Shasky Calvery stated that casinos are required to be aware of a customer's source of funds under current

AML requirements. FinCEN expects that Casinos, like other financial institutions, inquire about source of funds as appropriate under a risk-based approach. She emphasized that significant amounts of money coming in from jurisdictions with high crime or corruption present greater risks to a Casino and, therefore, the Casino may need to learn more about such customer and his/her source of wealth to identify suspicious activity. Casinos should inquire as to where precisely are the funds coming from. Is it a high-risk jurisdiction with weaker controls and reputations for higher corruption? In addition, Casinos should also consider whether customers have been linked to negative news reports (such as links to crime or failing businesses). Are they politically exposed persons? How are funds moved to and from the United States? Are funds being passed through Casino accounts without engaging in much gambling activity?

Finally, Ms. Shasky Calvery warned that FinCEN considers "chip walking" to be a "red flag" of suspicious activity. ("Chip walking" describes a situation where a customer leaves the casino with a large amount of chips or stores them in a deposit box in the cage). While there are legitimate reasons for a casino to allow a customer to leave with chips – obviously for convenience or safety reasons – at least according to FinCEN, the casino should report "chip walking" if Casino workers suspect that the use of the chips is indicative of an illegitimate purpose.

- B. Culture of Compliance - Ms. Shasky Calvery reemphasized that a strong "culture of compliance within any institution is key to its ability to comply with the BSA." She stated that it is understandable that a Casino wants the best reputation for catering to guests. However, management must remember to be



careful to not run afoul of the law. She also emphasized the need to share information within the business enterprise and to make sure information gets to the right people. She also stated that FinCEN is examining the amount of information that can be shared with other Casinos and other financial institutions. In short, she stated that the business side of a Casino must take AML controls “just as seriously as it treats its high-rollers.”

- C. Ongoing Efforts Strengthen Relationships - Ms. Shasky Calvery stated that she has been encouraged by discussions between FinCEN and American Gaming Association. She also emphasized the close working relationship that FinCEN has with IRS BSA examiners, who serve as FinCEN’s examiners for Casinos. She suggested that each Casino’s IRS BSA examiner is an important source of feedback on the quality of the Casino’s AML program. She added that FinCEN also works well with the Nevada State Gaming Control Board, the FBI, and other law enforcement agencies.

**Ms. Shasky Calvery’s speech made it clear that FinCEN intends to be actively engaged with Casinos for the foreseeable future. With regards to Ms. Shasky Calvery’s latest speech, we have the following observations:**

1. Casino’s Need to Ensure that Their Written AML “Risk Assessment” is Up to Date. In BSA audits, auditors start with the Casino’s written AML “risk assessment.” If this is not done, the IRS will develop its own risk assessment instead. The content of the risk assessment depends on a Casino’s individualized analysis of the risks posed by its Casino operations. These factors should include the Casino’s location, the types of games offered, and a review of the Casino’s target customers.

2. In light of Ms. Shasky Calvery’s speech, the “red flags” listed in AML procedures should include suspicious chip walking, and employees must be trained to identify and report this “red flag” when it is apparent that taking chips is done for an illegitimate purpose or inconsistent with a player’s wagering activity.
3. Employees who work with international “high rollers” or junket representatives should be trained to ensure that they do not violate any U.S. law or any law of the foreign country where the debtor resides.



4. Casinos should act to instill the “Culture of Compliance” referred to by Ms. Shasky Calvery. All employees must know “a single customer is not worth the casino’s license.” Employees should be instructed that they cannot be willfully blind to the source of its customers’ funds where an employee has an articulable basis for suspecting that those funds may be derived from an illegitimate or illegal source or used in a way to violate the law (like knowingly and willfully “structuring” transactions to hide income.)



**5.** Casinos should file a SARC when an employee has an articulable basis “to suspect” that a transaction is suspicious. In this regard, however, Casinos should be cognizant of the possibility federal regulators may not fully understand the nuances and dynamics of Casino operations and the wagering activities of their patrons. As such, the SARC should narrate a clear basis for its filing, and SARC committees operated by Casinos should be sensitive to the possibility that vague or ambiguous reports could result in federal investigations of an innocent.

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Vernon A. Nelson, Jr., is a partner in the Las Vegas office of the firm of Lewis Brisbois Bisgaard & Smith LLP. Vernon concentrates his practice on casino regulatory compliance and gaming /hotel operations. Vernon has served as corporate counsel for gaming companies in multiple jurisdictions and is versed in domestic and international business operations, contract negotiations, credit and collections, intellectual property, real property, employment law and corporate governance.

Kathleen Bliss is a partner at Lewis Brisbois Bisgaard & Smith LLP in Las Vegas. Ms. Bliss has 22 years of experience as a federal prosecutor, which include more than 12 years as an Assistant U.S. Attorney in Nevada. Ms. Bliss prosecuted numerous fraud and RICO (Racketeer Influenced Corrupt Organization) cases that involved money laundering charges, including the high-profile cases of United States v. Berney (securities fraud and money laundering) and United States v. Fung (racketeering, fraud, and money laundering).

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<sup>1</sup> The BSA became applicable to casinos in May of 1985 and Nevada enjoyed an exception because its regulatory system substantially met the BSA's reporting and recordkeeping requirements."

<sup>2</sup> AML programs are required to have provisions that address the following requirements: (1) Internal controls that assure compliance with the Bank

Secrecy Act (BSA)); (2) Training of the casino employees; (3) Independent testing for compliance; (4) A compliance officer to oversee the daily compliance with the BSA and AML program; (5) Procedures to determine the identity, address and social security number of patrons. (6) Procedures for using all available information to determine any transactions or patterns of transactions required to be reported as suspicious; and (7) procedures for using computers to aid in assuring compliance.

<sup>3</sup> Section 103.21 of the BSA defines "suspicious transaction" as: [O]ne that is conducted or attempted by, at, or through a casino, and involves or aggregates at least \$5,000 in funds or other assets, and casino knows, suspects, or has reason to suspect that the transaction (or pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this part or of any other regulations promulgated under the BSA . . .

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the casino knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the casino to facilitate criminal activity.

<sup>4</sup> With new authority and reason to fear, the federal government revoked the exemption to the BSA enjoyed by the state's gaming industry. To give some insight to the then prevailing mindset, consider Volume 72, No. 122 of the Federal Register, which states that the 1985 Amendment to the BSA allowed the Treasury to exempt "casinos in any state whose regulatory system substantially meets the reporting and recordkeeping requirements" of the BSA regulations. Nevada casinos were exempted from the BSA because of Nevada's rigorous gaming regulatory regime. At its September 21, 2006 meeting, the Nevada Gaming Commission repealed NGC Regulation 6A effective June 30, 2007. The BSA became effective upon Nevada casino's immediately thereafter. Once repealed, Nevada casinos with annual gross gaming revenue in excess of \$1 million in a business year were required to comply with BSA cash transaction reporting requirements.



# 2014 Gaming Law Conference

*Presented by the State Bar of Nevada, Gaming Law Section*

Friday, November 7, 2014 | 9:00 a.m. - 5:00 p.m. | Red Rock Casino, Resort & Spa  
6 Hours CLE Credit (includes 2 Hours Ethics and 1 Hour Substance Abuse)

## Agenda

9:00 a.m. to 10:00 a.m.

### Women General Counsels

Phyllis Gilland, General Counsel, American Casino & Entertainment Properties (Moderator)  
Susan Carletta, VP, Deputy Chief Regulatory & Compliance Officer, Caesars Entertainment  
Lynn Handler, Vice President and General Counsel, Palms Casino Resort  
Katie Lever, General Counsel, Senior VP of Legal and Compliance, Bally Technologies  
Kim Sinatra, Senior Vice President, General Counsel & Secretary, Wynn Las Vegas  
Whitney Thier, EVP & General Counsel, Baha Mar (Nassau, The Bahamas)

10:00 a.m. to 10:10 a.m.

### Break

10:10 a.m. to 11:10 a.m.

### Problem Gambling and the Law: Implications for Clients, Companies & Others

Bo Bernhard, Ph.D., Executive Director, International Gaming Institute - UNLV  
Stacy Tovino, JD, Ph.D., Professor of Law, William S. Boyd School of Law - UNLV

11:10 a.m. to 11:20 a.m.

### Break

11:20 a.m. to 12:20 p.m.

### AB 360 Interim Legislative Committee

Peter C. Bernhard, Of Counsel, Kaempfer Crowell (Moderator)  
Greg Brower, Senator, Nevada State Legislature (R-District 15)  
William C. Horne, Assembly Majority Leader, Nevada State Legislature (D-District 34)  
Mark A. Lipparelli, Founder & CEO, Gioco Ventures, LLC  
Tick Segerblom, Senate Judiciary Chairman, Nevada State Legislature (D-District 13)

12:20 p.m. to 1:45 p.m.

### Lunch

### A Conversation with Elaine Wynn

Director for Wynn Resorts and President of the Nevada State Board of Education



*Punam Mathur, Moderator*

Sponsored by:



1:45 p.m. to 2:45 p.m.

### Regulators Roundtable

Tony Alamo, M.D., Chairman, Nevada Gaming Commission  
A.G. Burnett, Chairman, Nevada Gaming Control Board

2:45 p.m. to 3:00 p.m.

### Break

3:00 p.m. to 5:00 p.m.

### Technethics: The Ethics of Social Media

Stuart Tiecher, Esq. "CLE Performer"

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