

White Collar Law

Gaming Industry Not Gambling on Money Laundering Enforcement

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The phrase "money laundering" conjures lurid images such as Tony Montana's goons straining to lift duffle bags stuffed with hundred-dollar bills, while a well-coiffed but ill-intentioned banker anxiously watches. Certainly, while some banks have been central to money laundering activity, the banking industry has also been a main focus of the government's anti-money laundering enforcement efforts. Other industries, however, now find themselves on the government's radar. For example, in recent years, much anti-money laundering enforcement attention has been focused on the gaming industry, resulting in a string of high-dollar and high-profile settlements. To its credit, the gaming industry noticed and reacted. Its leading industry group—the American Gaming Association (AGA)—collaborated with authorities to develop a set of best practices designed to empower its members to minimize the possibility of future investigations and settlements. This article describes the gaming industry's recent history with money laundering enforcement and its resultant efforts to improve.

Background on Money Laundering

In 1970, Congress passed the Currency and Foreign Transactions Reporting Act, which is commonly called the Bank Secrecy Act (BSA). The BSA established record-keeping and reporting requirements for financial institutions (mostly banks) to report certain cash transactions. Casinos were added to the BSA in 1985 and therefore they had to start keeping records of cash purchases of negotiable instruments, file reports of cash transactions exceeding \$10,000 as a daily aggregate, and report suspicious activity that might signal money laundering. In 1990, the U.S. Department of Treasury established the Financial Crimes Enforcement Network (FinCEN), whose mission is to combat money laundering. More recently, in 2001, the USA Patriot Act imposed an affirmative obligation on financial institutions, including all gaming entities with more than a million dollars in annual revenue, to develop and implement written anti-money laundering (AML) compliance programs.

Enforcement in the Gaming Industry

While casinos have been covered by the BSA for more than 30 years, they largely avoided investigation or sanction under this law until relatively recently. Indeed, between 1999 and 2012, casinos were fined a total of just \$4.2 million for money laundering violations. That total has been eclipsed by a recent series of large settlements and fines. For example, in 2012, Sands was fined \$47 million related to a series of money laundering allegations involving a single high-net-worth customer who was affiliated with Mexican drug trafficking. In 2015, a casino in the Northern Mariana Islands was fined \$75 million for what the government termed "willful and egregious violations of the BSA," including failing to file thousands of required reports for large-dollar cash transactions. In 2015, the Trump Taj Mahal casino, despite being in bankruptcy, agreed to pay \$10 million to settle claims that it failed to file scores of required reports of suspicious cash activities. In that same year, Caesars Palace agreed to pay \$8 million to settle allegations that it allowed high-roller gamblers from China to play anonymously, despite the fact that their cash transactions should have been reported under the BSA. Clearly, law enforcement focus on the gaming industry found some problems.

The Gaming Industry Strikes Back

To its credit, the gaming industry took these problems to heart and committed itself to improving its AML compliance. Specifically, in 2014, the AGA partnered with FinCEN to create Best Practices for AML Compliance, a guidance document geared specifically for the gaming industry. In December 2015, the AGA issued an updated version of the best practices, which focused on creating a culture of compliance, assessing AML risks, improving employee training and incorporating the key conclusions included in FinCEN's most recent National Money Laundering Risk Assessment.

It appears that these best practices are working. Commissioned by the AGA, Ernst & Young recently completed an industry-wide survey of AML efforts in the gaming industry. E&Y concluded that the gaming industry has significantly stepped up its AML compliance efforts. For example, all survey respondents engaged in a risk-based assessment before implementing an AML compliance program; nearly two-thirds of the respondents perform AML compliance risk assessment at least once a year. Casinos are also spending more—in many instances, much more—on AML compliance. Indeed, the two-thirds of respondents who increased their AML compliance budget did so on average by a whopping 75 percent. In a word, the survey found "more": more training, more spending, more hiring, more focus on identifying suspicious activities and more AML awareness.

Whether this equates to more AML compliance will be put to the test next year, when the Financial Action Task Force—an intergovernmental body composed of 34 member countries that promotes effective implementation of AML activities—performs what is known as a mutual evaluation of the U.S. financial sector. The last mutual evaluation of the United States (conducted in 2006) resulted in specific recommendations on how the gaming industry could strengthen its AML compliance. The industry certainly hopes that its vigilance in the interim will lead to a "clean" mutual evaluation in 2016 and, of course, that large settlements for AML noncompliance become a thing of the past within the gaming industry. If

that does happen, other segments of the U.S. financial industry should take an important lesson about improving AML compliance from the gaming industry. •

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