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FinCEN Issues Guidance to Casinos Confirming that Suspicious Activity Reports May Be Shared with U.S. Parents and Affiliates

On Jan. 4, 2017, the Financial Crimes Enforcement Network of the U.S. Department of the Treasury (FinCEN) issued guidance to casinos to confirm that, subject to certain limitations, a casino may, in accordance with the Bank Secrecy Act (BSA) and its implementing regulations, share a Suspicious Activity Report (SAR) that it has filed, or any information that would reveal the existence of the SAR, with a parent or affiliate of the casino that is located within the United States.¹

The rationale in support of this guidance is that sharing SARs with U.S. parents and affiliates will: (i) assist casinos in their risk-management responsibilities and compliance with BSA requirements; (ii) facilitate a casino's ability to identify suspicious transactions; and (iii) enhance a parent or affiliate's anti-money laundering (AML) program efforts by reviewing the casino's SARs and obtaining a more comprehensive understanding of the activities that the casino has identified as suspicious.

FinCEN's approval to share SARs, or information that would reveal the existence of a SAR, with U.S. parents and affiliates is subject to limitations. Casinos **may not** share SARs, or information that would reveal the existence of a SAR, with:

- > Parents, affiliates, offices, or other places of business located **outside** of the United States, including non-U.S. offices of domestic parents or affiliates;

¹ A "parent" of a casino means any entity that controls the casino filing the SAR. An "affiliate" of a casino is a financial institution that is required under the BSA to report suspicious transactions and that is controlled by, or is under common control with, the casino filing the SAR. FIN-2017-G001, Sharing Suspicious Activity Reports with U.S. Parents and Affiliates of Casinos, https://www.fincen.gov/sites/default/files/2017-01/FinCEN%20Guidance%20Jan%204_508%20FINAL.pdf

- > Individuals or entities within a parent or casino's organizational structure who perform functions unrelated to gaming (e.g., shops, restaurants, hotels or similar businesses within a gaming establishment);
- > A financial institution without an independent SAR-filing obligation, such as a check casher; or
- > A money services business that may be located within the casino but is not an affiliate of the casino.

In addition to the above, an affiliate that obtains a SAR, or information that reveals the existence of a SAR, may not forward that SAR, or information that reveals the existence of a SAR, to another affiliate.

While BSA regulations generally prohibit SAR disclosures, they authorize SAR disclosures, provided that no person involved in a reported suspicious transaction is notified that the transaction has been reported to: (i) FinCEN; (ii) federal, state, or local law enforcement agencies; (iii) any Federal regulatory agency that examines the casino for compliance with the BSA; (iv) any state regulatory authority administering a State law that requires the casino to comply with the BSA; or (v) any tribal regulatory authority that examines the casino for compliance with tribal laws requiring compliance with the BSA.

BSA regulations also provide that casinos may: (i) disclose the underlying facts, transactions and documents upon which a SAR is based, including, but not limited to, disclosures to another financial institution, or any director, officer, employee, or agent of a financial institution, for the preparation of a joint SAR; and (ii) share a SAR, or any information that would reveal the existence of a SAR, within a casino's corporate organizational structure for purposes consistent with the BSA.

Casinos should consult with counsel to review their AML policies, procedures, and internal controls to ensure that SARs, and information that would reveal the existence of a SAR, remains confidential and is only disclosed as provided in the FinCEN guidance. Casinos must be aware that a casino, its parent or affiliate, or both, may be liable for direct or indirect disclosure of a SAR, or any information that would reveal the existence of a SAR, to any person who is the subject of the SAR.

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