

Two US states expand sports and race wagering

Two US states have recently passed legislation or regulations that widen the means and methods by which a patron can wager on sports and/or race events. Namely, Nevada has introduced business equity wagering, while New Jersey has issued its first licence to Betfair for exchange wagering. Mark A. Clayton and Erica L. Okerberg of Greenberg Traurig LLP detail the respective changes in each jurisdiction and the impact.

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Nevada - business entity wagering

The rapidly increasing availability of data regarding all forms of sporting events has led companies and individuals to develop various models and techniques to analyse that data. Under the new legislation, these analytical tools may become useful to assist in placing legal sports wagers in Nevada. When the sports data modeling system proves to be accurate and profitable, investment will likely follow. Similar to a traditional mutual fund, Nevada sports wagering investors can now turn their money over to a professional investment advisor, relying on the adviser's skill and knowledge to make investment decisions on the investor's behalf that will earn a return.

From a regulatory standpoint, the individual making wagering decisions ('designated individual') must be located in Nevada and place such wagers with a licensed sportsbook in Nevada. The investors can be from outside of Nevada; however, the investors cannot direct any wager decisions. Each investor must be a passive investor and rely exclusively on the designated individual to make all decisions regarding the wagering activity.

While such an arrangement could exist without using a business entity, for clear lines of authority and tax and liability reasons, using a business entity becomes necessary. Thus in 2015, the Nevada Legislature approved and the Governor signed into law Senate Bill 443¹, which codified that a business entity can place

sports and race wagers with licensed sportsbooks and race pools in Nevada. On 26 November 2015, the Nevada Gaming Commission adopted the enabling regulations pursuant to Senate Bill 443.

The Nevada Gaming Commission's regulations provided further details as to compliance and other requirements that must be met prior to a licensed sportsbook accepting wagers from business entities. The stated regulatory goal is full transparency of all those involved in the business entity.

In order for a sportsbook to comply with its federal and state obligations such as 'know your customer' and anti-money laundering requirements, a sports book shall conduct appropriate due diligence, including: (i) confirming that the business entity 'is not established for the purpose of circumventing any applicable federal or state laws including, but not limited to, laws concerning illegal sports wagering, electronic communications, and money laundering'² (ii) determining 'all equity owners, holders of indebtedness, directors, officers, managers, partners, anyone entitled to payments based on the profits or revenues, and any designated individuals;³ and (iii) identifying the source of funding for each investment in the business entity⁴. Conversely, a book shall not accept a wager if 'the book is unable to verify the identity of all the equity owners, holders of indebtedness, directors, officers, managers, partners, anyone entitled to payments based on the profits or revenues, and any designated individuals of the business entity' or is unable to verify the source of funds⁵.

Separately, depending on the amount of wagering activity by the business entity, the business entity

has to provide the sportsbook with an independent third-party verification detailing to whom payments are made⁶. This is to ensure that only those individuals disclosed to the sportsbook are receiving payments from the wagering activities.

Additionally, to provide a full and auditable record of the business entity's wagering activities, the business entity must establish a computerised wagering account with the sportsbook. Such wagering accounts will track each deposit, withdrawal, wager, the outcome of each wager, and the payment of the winning wagers⁷.

As Nevada Gaming Commissioner Randolph Townsend stated prior to adopting the regulations: "[...] this opportunity is unprecedented. And for those that are too close to this, this is no different than what billions and billions and billions of dollars are dealt with every single day in the world financial markets, it is no different. It is oil, it is gold, it is equities, it is bonds, it just isn't any different. It's no different than the futures market in commodities. It just isn't. I think you are going to see people may put their toe in and see how that works. I think you are going to see some really significant entities come forward, and it is very exciting [...]"⁸

New Jersey - exchange wagering

In 2011, the New Jersey legislature passed the Exchange Wagering Act, which authorises peer-to-peer horse race wagering by New Jersey residents in New Jersey⁹. Unlike Nevada, business entities are not permitted to hold exchange wagering accounts¹⁰. Pursuant to the Exchange Wagering Act, the New Jersey Racing Commission ('NJRC') promulgated regulations further outlining the requirements to participate in exchange

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wagering, how wagers must be made, and the manner in which exchange wagering operators can obtain licences¹¹.

Pursuant to the NJRC's regulations, the exchange wagering licensee may operate the exchange or enter into an agreement with a licensed exchange management agent and/or an exchange services agent, if such relationship(s) and agreement(s) are approved by the NJRC. To date, only one company has received an initial exchange wagering licence. On 18 November 2015, the NJRC approved the first exchange wagering licence for Betfair US LLC, which Betfair received through Darby Development LLC¹². As long as neither the New Jersey Governor nor the New Jersey Attorney General object to the approval of such licence within a veto period, the licence will be issued¹³.

Exchange wagering operators may offer specifically identified or approved markets¹⁴. Specifically, they may establish off-time, antepost, finish, or any other markets approved by the NJRC¹⁵. Each involves 'a market within the exchange through which an exchange wagering account holder may back or lay a selected outcome on horse races conducted within and outside this State,' and where:

- For an off-time market, 'the market is closed for exchange wagering at off-time.'¹⁶
- For an antepost market, 'the exchange wager is placed in advance of the closing of entries on an outcome, and the exchange wager includes both that the selected horse will run the race and that the selected horse will finish the race in the selected position of win, place, or show. An antepost market closes for exchange wagering at the close of entries.'¹⁷
- For a finish market, 'the market remains open after the off-time and closes for exchange

wagering at the official finish of the race.'¹⁸

Once an exchange wagering operator has established a market, it may suspend the market for good cause before winning exchange wagers are paid¹⁹.

Exchange wagering operators are permitted to include pools of exchange wagers in the pools at the track conducting the races with prior NJRC approval²⁰. Additionally, exchange wagering operators may offer an interstate exchange pool with prior NJRC approval²¹. As other jurisdictions authorise exchange wagering, interstate exchange pools may provide more liquidity.

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1. See S.B. 38, 78th Leg. (Nev. 2015), available at http://www.leg.state.nv.us/Session/78th2015/Bills/SB/SB443_EN.pd
2. NGC Reg. 22.155(3)(a).
3. *Ibid.* 22.155(3)(b).
4. *Ibid.* 22.155 (3)(c).
5. *Ibid.* 22.155(4).
6. *Ibid.* 22.155(6).
7. *Ibid.* 22.155(8).
8. See NGC Transcript, 26 November 2015, p. 43.
9. N.J.S.A. § 5:5-168 et seq.
10. N.J.A.C. 13:74C-4.1(a).
11. See *Ibid.* 13:74C.
12. Matt Hegarty, 'Betfair gains first exchange-wagering license in U.S.,' Daily Racing Form, 30 November 2015, available at <http://www.drform.com/news/betfair-gains-first-exchange-wagering-license-us>
13. *Ibid.*
14. N.J.A.C. 13:74C-5.1.
15. *Ibid.*
16. *Ibid.* 13:74C-5.1(a)(1).
17. *Ibid.* 13:74C-5.1(a)(2).
18. *Ibid.* 13:74C1(3).
19. *Ibid.* 13:74C-5.4(a).
20. *Ibid.* 13:74C-5.9.
21. *Ibid.* 13:74C-5.10.