



KENNY C. GUINN
Governor

STATE OF NEVADA
GAMING CONTROL BOARD

1919 E. College Parkway, P.O. Box 8003, Carson City, Nevada 89702
555 E. Washington Ave., Suite 2600, Las Vegas, Nevada 89101
3650 South Pointe Cir., P.O. Box 31109, Laughlin, Nevada 89028
557 W. Silver St., Suite 207, Elko, Nevada 89801
495 Apple St., Reno, Nevada 89502

DENNIS K. NEILANDER, *Chairman*
BOBBY L. SILLER, *Member*
SCOTT SCHERER, *Member*

#28

July 1, 2002

Carson City
(775) 684-7742
Fax: (775) 687-5817

Judith Starr, Chief Counsel
Office of Chief Counsel
FinCEN, Department of the Treasury
P.O. Box 39
Vienna, VA 22183

Attention: Section 312 Regulations

Dear Ms. Starr:

The State of Nevada Gaming Control Board has reviewed the Federal Register notice dated May 30, 2002 regarding proposed amendments to Bank Secrecy Act (BSA) regulations that will require casinos to establish special due diligence programs for correspondent accounts and private banking accounts (31 CFR 103.175, 31 CFR 103.176 and 31 CFR 103.178). We herein provide the Board's comments on the proposed requirements.

Covered Financial Institutions

The Gaming Control Board supports the concept of requiring due diligence policies, procedures and controls for correspondent accounts and private banking accounts. However, Nevada casinos do not have correspondent accounts held by foreign casinos or foreign financial institutions, nor do they offer private banking accounts to their patrons as defined in the proposed regulations. Generally, all casino patron accounts and their associated activity are subject to the reporting and recordkeeping requirements of the BSA regulations, including the proposed suspicious activity reporting requirements, or similar Nevada regulations. Therefore, we believe that casinos should **not** be included in the definition of "covered financial institutions."

Correspondent Accounts

The proposed regulations require covered financial institutions to maintain due diligence programs for foreign financial institutions' correspondent accounts. As previously indicated, casinos do not establish accounts for any financial institutions, much less a foreign financial institution or a foreign bank. A financial institution or other commercial entity does not qualify as a casino account holder because an "entity" does not gamble.

Casinos offer individual personal deposit accounts, credit accounts or wagering accounts to casino patrons (individuals). The deposit and wagering accounts are offered to allow a patron to deposit with the casino funds that the patron won or will use to gamble. Credit accounts allow a patron to take out a marker (IOU) from the casino (i.e., draw on a line of credit) in order to obtain cash or chips for gambling purposes. Patrons repay the credit extensions with funds or chips. The patrons with accounts are required to be identified, in person, by the casinos pursuant to BSA regulations (31 CFR 103.36) or Nevada regulations (NGC Regulation 6A.050). Additionally, all of these accounts and their associated activity are subject to the reporting and recordkeeping requirements of the BSA regulations, including the proposed suspicious activity reporting requirements, or similar Nevada regulations.

A foreign financial institution, including a foreign casino, would not have a casino account at a Nevada casino. A foreign casino that is an affiliate of a Nevada casino may have transactions with the Nevada casino. However, any transactions for a casino patron are considered the patron's transactions and not the foreign casino's transactions. The Nevada casino does not establish a correspondent account for an affiliated foreign casino to handle such transactions. To handle a transaction the Nevada casino must establish an account for the casino patron and will deal directly with the patron in order for the patron to access any funds or to conduct any other transactions with the Nevada casino. All the same identification, recordkeeping and reporting requirements, including suspicious activity reporting requirements, apply to the patron and the patron's transactions. Further, the proposed due diligence requirements address procedures related to assessing the risk associated with the foreign financial institution, in this case an affiliated foreign casino. The money laundering risk associated with these transactions should be focused on the casino patron and the nature of the patron's transactions, an area for which measures are currently in place, and not on the affiliated foreign casino.

Additionally, a Nevada casino uses the regular banking system when conducting transactions with unaffiliated foreign casinos (e.g., receiving a wire transfer for a casino patron that originated at the foreign casino's bank).

Accordingly, correspondent accounts are also not established for unaffiliated foreign casinos.

Since the BSA regulations currently require patrons with accounts to be identified and account activity to be subject to reporting and recordkeeping requirements, and since casinos do not have correspondent accounts, it is unnecessary to include casinos as a covered financial institution or subject casinos to the requirements of proposed 31 CFR 103.176.

Private Banking Accounts

The proposed definition of “private banking account” cited in 31 CFR 103.175(n) requires that the account “is assigned to, or administered or managed by, an officer, employee, or agent of a covered financial institution acting as a liaison between the covered financial institution and the direct or beneficial owner of the account.” This definition is not clear. The proposed rule should be revised to clarify that employees conducting patron directed, ordinary transactions for retail accounts (e.g., accepting a deposit to a personal checking account, or disbursing a withdrawal from a savings account, accepting a payment on a personal loan or paying out a credit advance from a personal credit line account, etc.) are not acting as a liaison between the covered financial institution and the owner of the account.

A casino cage cashier accepting a deposit from a casino patron is not a “liaison” but rather is conducting an ordinary transaction for a retail account, the type of transaction a bank teller would normally perform for an individual from the general public. Casino accounts are of a retail nature in that casino patrons directly conduct transactions without the assistance of a financial professional. Within the casino environment, a casino host may be assigned to an account to ensure the casino patron is having an enjoyable experience at the casino (i.e., making dinner reservations, etc.) A host may forward to management a patron’s request for a credit account, recommend to management that a patron’s credit line be increased or receive a credit repayment from a patron for transmittal to the casino. However, we believe that because a host’s responsibilities are of a ministerial nature, a casino host is not acting as a liaison between the casino and the patron for financial service purposes. Further, accounts are not established for specialized financial services treatment.

Therefore, casinos do not have private banking accounts and it is unnecessary to include casinos as a covered financial institution or subject casinos to the requirements of proposed 31 CFR 103.178.

As previously stated, the Gaming Control Board supports FinCEN's efforts to require due diligence programs and believes the results will prove to be useful in the prevention and detection of money laundering. However, due to the nature of casino transactions and accounts, it is unnecessary to have these particular requirements apply to casinos. Should you have any questions regarding these comments, please contact me or Chief Auditor Gregory Gale at (702) 486-2060.

Sincerely,

Dennis K. Neilander
Chairman

DKN/KG

Sent by electronic mail to: regcomments@fincen.treas.gov

cc: Bobby Siller, Member
Scott Scherer, Member
Gregory Gale, Chief Auditor
Jennifer Carvalho, Deputy Attorney General
Peter G. Djinis, Executive Assistant Director for Regulatory Policy
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