

REMARKS OF STEPHANIE BROOKER ASSOCIATE DIRECTOR OF ENFORCEMENT FINANCIAL CRIMES ENFORCEMENT NETWORK (FinCEN)

2015 Bank Secrecy Act Conference
Las Vegas, Nevada
June 18, 2015

Introduction

Good morning. It is a pleasure to be joining all of you today. I would first like to thank the State Bar of Nevada's Gaming Law Section, the American Gaming Association, and UNLV's International Gaming Institute, for sponsoring today's event. I would also like to thank Geoff Freeman of the AGA for his kind introduction.

Last year, FinCEN's Director, Jennifer Shasky Calvery, addressed the conference to highlight the critical role that casinos and card clubs play in keeping our financial system safe from potential money laundering and terrorist finance. There is a high level of attendance at today's conference, which tells me that the casino industry continues to show a strong interest in developing a deeper understanding about these issues. I am very glad I can be a part of the discussion.

Today, I would like to cover three topics. First, I would like to discuss Bank Secrecy Act (BSA) filing trends, the value of the BSA data, and share some feedback on encouraging compliance developments in the casino industry over the last year. Second, as the head of Enforcement, I will discuss FinCEN's enforcement approach and recent enforcement developments. And third, I will talk about the critical importance of a culture of compliance throughout the business and compliance sides of casinos and card clubs.

BSA Filing Trends

In her remarks last year, Director Calvery stressed the importance of SAR filings. One of the areas where we see tremendous industry improvement in the past year is on the filing of suspicious activity reports (SARs). In 2013, there were 27,520 SARs filed by casinos and card clubs. In the past year, we've seen this figure dramatically increase by almost 20,000 more filings in 2014 – an increase of 69 percent from 2013 to 2014. This trend has continued into 2015, and we have already seen an increase in filings compared to the same months in 2014. Notably, these increases have occurred industry-wide. We have observed increases in state-licensed casinos, tribal casinos, and card clubs.

From the data that you have provided us, we can tell that the highest reported categories of suspicious activity by your industry are minimal gaming and altering transactions to avoid currency transaction

report filing. But that's not all. Because of your reporting, we've seen patrons using casinos and card clubs to conceal narcotics transactions; to move money in support of international fraud schemes; to launder real estate fraud money; or to transfer money for other illicit purposes. Using this data can help financial institutions make decisions about adjustments to their casino's or card club's policies and procedures, or may help inform future training of your staff. We make these trends available to the public through the SAR Stats reports on our webpage, which allow you to see these filing trends for yourselves.

The Value of the BSA Data

We know you devote a significant amount of time and resources to the SAR process. And we want to assure you that SARs don't just go into a "black hole." BSA reports filed by our financial institutions, including casinos and card clubs, provide some of the most important information available to law enforcement and other agencies safeguarding the United States. The data is used to confront serious threats, including terrorist organizations, rogue nations, WMD proliferators, foreign grand corruption, and increasingly serious cyber threats, as well as transnational criminal organizations, including those involved in drug trafficking, and massive fraud schemes targeting the U.S. government, our businesses, and our people.

Taken together, BSA data includes nearly 190 million records. The reporting contributes critical information that is routinely analyzed, resulting in the identification of suspected criminal activity and the initiation of investigations.

The reporting aids in expanding the scope of ongoing investigations by pointing to the identities of previously unknown subjects, exposing accounts and hidden financial relationships, or revealing other information such as common addresses or phone numbers that connect seemingly unrelated participants in a criminal or terrorist organization. In some cases, it can even confirm the location of suspects.

Domestically, FinCEN grants more than 10,000 agents, analysts, and investigative personnel from over 350 unique federal, state, and local agencies across the United States with direct access to the reporting. There are approximately 30,000 searches of the BSA data taking place each day.

Through international information exchanges to support law enforcement efforts, we can get similar reporting from other countries. FinCEN facilitates the sharing of information internationally on both a bilateral and multilateral basis through the Egmont Group of Financial Intelligence Units. The Egmont Group, currently comprised of 151 member jurisdictions, provides an unparalleled, preexisting platform for the secure exchange of financial intelligence. Egmont members exchange information pursuant to guidelines meant to encourage the widest range of international cooperation and dissemination of financial intelligence while at the same time protecting each jurisdiction's equities in security, confidentiality, and sovereignty.

Every day, we see the BSA data being used by our partners in the counterterrorism and countering the financing of terrorism context to make our country safer. For example, the FBI reports that in 2014, approximately 16 percent of its total pending cases had related BSA filings. In particular, BSA filings were associated with about 42 percent of its pending drug cases, 33 percent of its pending transnational organized crime cases, 32 percent of its complex financial crime cases, and nearly 18 percent of its international terrorism cases.

In May of this year, we were very pleased to have the American Gaming Association, as well as other trade associations, join us for the launch of an annual FinCEN awards ceremony to highlight the value of BSA reporting. The goal of the program is to recognize criminal cases, and the law enforcement professionals who worked on those cases, in which BSA reporting played a significant role in the successful investigation and prosecution of a case. In this way, we are not only recognizing exemplary law enforcement achievements, but also providing meaningful feedback to the financial industry on how information they provided helped the case. You can see more on this awards program and the specific cases chosen for these awards on our website, www.fincen.gov.

Information Sharing

Let me move now to another positive development in the casino compliance space. Section 314(b) of the USA PATRIOT Act provides financial institutions with the ability to share information with one another, under a safe harbor that offers protections from liability, in order to better identify and report potential money laundering or terrorist activities.

Over the last year, FinCEN has also seen an increase in information sharing between casinos and card clubs through the 314(b) program. The 314(b) program now includes 98 casinos and card clubs. Information sharing across financial institutions can play a critical role in helping these institutions achieve their BSA/AML goals. Casinos and card clubs that participate in 314(b) are able to communicate with other 314(b) participants, even if those other institutions are not other casinos. The 314(b) program is a powerful tool for providing financial institutions with a more comprehensive view of potential money laundering or terrorist financing activity that involves multiple institutions. We strongly encourage all financial institutions to consider participation in the 314(b) program.

Enforcement Approach and Recent Developments

The Bank Secrecy Act provides FinCEN with broad supervisory and enforcement authority, allowing FinCEN to impose civil penalties not only against domestic financial institutions, but also against partners, directors, officers, and employees of such entities who themselves participate in misconduct. We also have the authority to obtain injunctions against institutions, as well as individuals, that we believe are involved in violations of the BSA.

FinCEN's enforcement authority extends across the broad range of industries covered by the BSA, including depository institutions, casinos, and card clubs, broker-dealers, money services businesses, and dealers in precious metals, stones, and jewels, among others.

In our BSA oversight role, we, of course, focus on compliance in all of our regulated industry sectors. But, nowhere is this more important than in those sectors of the financial industry where FinCEN is the only federal regulator with AML enforcement authorities, such as casinos and card clubs.

We work closely with the Internal Revenue Service Small Business/Self-Employed Division, which is FinCEN's delegated examiner for casinos and card clubs, as well as certain other industries. IRS makes referrals to FinCEN of significant violations found in its exams for our enforcement consideration. We also receive referrals from and coordinate our enforcement investigations with criminal law enforcement agencies, including IRS-Criminal Investigations (IRS-CI), the FBI, the Department of Justice's Asset Forfeiture and Money Laundering Section, U.S. Attorney's Offices, state authorities, as well as other regulatory partners, including the Nevada Gaming Control Board.

Our enforcement program follows a number of core principles. I would like to share a few of these with you today, as these principles shape FinCEN's enforcement approach.

- **Transparency in our Rationale:** Enforcement should never be a “gotcha” or hide-the-ball exercise. If you look at our past enforcement actions, and review the facts, you will clearly see why FinCEN took action in these cases. We devote a tremendous amount of time to ensuring that our public enforcement assessments clearly explain the facts and the violations underlying our enforcement action.
- **Accountability:** Over the last two years, we have changed our historical practice at FinCEN to one in which our presumption is that a settlement of an enforcement action will include an admission to the facts, as well as the violation of law. This is a departure from FinCEN's past practice in which institutions were permitted to “neither admit nor deny” FinCEN's enforcement allegations. It is important that financial institutions and institutions take responsibility when their actions violate the BSA. We have implemented this practice in our enforcement actions against all sizes and types of financial institutions and individuals, including casinos.
- **Credit Where Credit is Due:** All enforcement cases, by nature, focus in large part on historical conduct. We seriously consider documented improvements in AML compliance over time as part of our assessment of whether to take an enforcement action, as well as in our penalty decisions. To be clear, just because an institution had a series of violations and then made substantial remedial efforts does not mean that it will not be penalized for their past violations. But, at the same time, it will generally be in a better position than one that had violations, was cited for them, and then never fixed the problems.
- **Recidivism:** On the other hand, cases in which IRS SB/SE examiners have found repeat violations over multiple exams receive heightened scrutiny from FinCEN. Your IRS BSA examiner is an important source of information on whether your casino's AML program is on the right track. We are also aware of disturbing instances in which our IRS examiners were denied access to critical information and key personnel during the exam process. Obviously, obstructing the examination process and failing to address repeated violations are heavily weighted factors that we consider in enforcement actions and penalty determinations.
- **Individual Accountability:** We will continue to consider whether to take action against individuals responsible for a financial institution's BSA/AML failures, including, in appropriate cases, barring individuals from working in the industry. And, of course, this includes considering the institution as a whole and holding those on the business side accountable for willful participation in such failures. That being said, we know that the vast majority of financial institutions, and in particular their compliance officers, are working hard to comply with their responsibilities, and are successful at it. We appreciate all you are doing to keep your financial institutions safe from illicit use.
- **Remedial Framework:** Our recent enforcement actions have begun to focus more specifically on how financial institutions can work to correct the errors identified in our investigations. Some of our enforcement actions have included “undertakings” that aim to ensure that the financial institution rectifies identified problems. For example, we may insist on corporate monitor arrangements as part of our enforcement settlements. Our enforcement undertakings may require a casino to have more stringent independent testing for a given period of time, demonstrated training improvements, or updates to their written policies and procedures.

Additionally, if specific concerns arise over transactions, FinCEN may require a SAR look-back as part of the consent order as well. These undertakings serve as a way to remedy any potential violations and ensure that future issues do not arise.

Over the past two years, we have taken enforcement actions against a wide range of financial institutions and individuals covered by the Bank Secrecy Act, including casinos and a casino employee. For example, in March, we imposed a remedial framework to address identified BSA/AML deficiencies as part of an enforcement action taken against a casino. The casino agreed to an undertaking that requires periodic external audits that must be reported directly to FinCEN and the IRS. The penalty assessed by FinCEN was based upon recidivist behavior dating back to 2003 and included the casino's admission that it had willfully violated the BSA's program, reporting, and recordkeeping requirements.

Just this month, FinCEN assessed a civil money penalty against another casino after it identified willful and egregious violations of the BSA. The conduct included substantial program deficiencies and extensive reporting failures. However, not only did FinCEN act to hold this financial institution accountable for its behavior, but we also took action last August against an individual, a VIP Services Manager at the same casino, who was complicit in assisting customers that tried to avoid BSA reporting requirements.

Hopefully, our enforcement actions serve to assist financial institutions and the public as an education tool as well. We take great care to ensure that the facts underlying our actions are clearly articulated in our Assessments. Through them, the financial industry can spot trends in compliance as well as weaknesses that should help you self-identify corrective actions and industry-wide issues that may require future attention.

Culture of Compliance

Since the Director's address last year, we have issued an "Advisory to U.S. Financial Institutions on Promoting a Culture of Compliance." We have received feedback from across the financial services industry, including from casinos, that this Advisory has fostered important discussions between the compliance and business sides of the house.

I want to emphasize today that for the culture of compliance to be strong within an institution, the business side of the organization needs to take AML controls seriously. And it needs to begin with the institution's leadership.

A financial institution's leadership – the board of directors, executive management, and owners and operators – is responsible for performance in all areas of the institution, including compliance with the BSA. The commitment of an organization's leaders should be clearly visible. The degree of that commitment will have a direct influence on the attitudes of others within the organization.

I know that both business and compliance personnel are joining us today. The fact that you are here at this conference is evidence of your commitment in this area.

Business interests should never compromise an institution's AML program. What does this mean in practice? This means that AML compliance personnel should be listened to when they express concerns. This means that AML compliance should not be shut out of monitoring profitable areas of the casino. This means that, as compliance professionals, you should be empowered with sufficient authority, independence, and the tools you need to effectively implement the AML program within your

institution. This means that every casino employee, from the top down, views AML compliance as part of his or her responsibilities.

From an enforcement perspective, most roads lead back to one single point of failure – a failed compliance culture. How this failure reveals itself in an investigation may differ from institution to institution but the core breakdown is the same. This suggests to me that each institution should engage in some honest self-examination and ask itself whether its culture of compliance is merely lip service or is it real. We are seeing some meaningful improvements, but more work still needs to be done. I believe that it can be done but it will take real, sustained commitment.

Conclusion

Thank you for being here today and giving me the opportunity to make opening remarks for the conference. BSA/AML is a dynamic issue. Criminals will always look for new and innovative ways to move and conceal their illegal proceeds. In doing so, they put your financial institution and our country at risk. Each of you has the challenge and opportunity to help ensure that your casino or card club is doing its part to stay one step ahead of them and is not being used as a vehicle for unlawful activity. We each play a key role in this objective. For me, it is an honor and a privilege to be working with those in the private sector who are ready to take on the challenge and who understand the importance of what we are doing. I look forward to continuing our work together to make our country more safe and secure.