

Investigations, Compliance and Defense

If Sports Betting Goes National, AML Risks Will Proliferate

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In a few months, the US Supreme Court will decide whether federal law can continue to prohibit sports betting in most states. If the federal prohibition ends, new sports books – both brick-and-mortar venues and online – will undoubtedly proliferate. Along with the many new sports books will come an exponentially higher volume of cash and web-based transactions associated with sports betting. For independent sports books and those attached to casinos, the cash infusion will bring additional money laundering risks to these businesses.

The case before the Supreme Court – *Christie v. National Collegiate Athletic Association*, 16-476 – involves the Professional and Amateur Sports Protection Act (PASPA), 28 U.S.C. 3701 *et seq.*, which since 1992 has prohibited sports betting everywhere but Nevada, Delaware, Oregon and Montana. Congress also made an exception for New Jersey, but it was not until 2012 that New Jersey's legislature enacted a law to provide licenses to casinos and racetracks for sports-wagering pools, and in 2014 a law to decriminalize sports betting. On the heels of New Jersey's legislation, the National Collegiate Athletic Association and several professional sports leagues challenged the legislation as a violation of PASPA. Through the federal courts and now before the Supreme Court is the question of whether PASPA is an unconstitutional mandate of state regulations in violation of anti-commandeering principles and the Tenth Amendment. In June, the Supreme Court granted *certiorari*.

Depending on the Supreme Court's decision in the New Jersey case, the days could be numbered for a national prohibition on sports betting. Legalizing sports betting would drastically change the current landscape. The American Gaming Association (the AGA) wrote in its *amicus* brief filed on September 5 that the last Super Bowl alone saw \$4.2 billion wagered, with 97% of those bets placed illegally. The annual market for illegal sports gambling ranges from \$149 billion to \$500 billion. The AGA added that PASPA has not only failed to stop sports betting, but it has "drive[n] betters to black markets," which in turn support organized crime and other illicit activity, such as drug and human trafficking, racketeering, and money laundering.

If instead billions of dollars in bets are placed legally, sports outlets would (mostly) take the place of illegal bookies and offshore web-based outlets. New sports books may pop up on every corner, in newspaper kiosks, convenience stores and on the internet, making the United States look more like the United Kingdom when it comes to the prevalence of betting outlets. What can those new outlets expect with the massive and relatively sudden rise in legalized sports betting? On the upside, legalized sports betting would pull millions of individual gamblers away from the underground illegal outlets.

Yet even legitimate outlets face, and will continue to face at a larger magnitude, the risk of criminal activity such as money laundering that is associated with sports gambling. In 2014, the Financial Crimes Enforcement Network (FinCEN) of the U.S. Treasury Department wrote a letter to the president of the AGA warning the gaming industry that sports betting carries high anti-money laundering risks, even for legitimate sports books. The FinCEN letter stated: "... criminals are making bets with legally operating sports books, including by using intermediaries to place bets on behalf of unidentified third parties ... [T]he intermediaries rarely voluntarily disclose to the casino that a transaction is being conducted on behalf of a third party, thereby disguising the third party's

role in the transaction and obscuring the source of funds used to place the bet. This poses distinct money laundering risks for casinos.”

At a minimum, the Bank Secrecy Act (BSA) requires casinos and other gambling establishments to develop and maintain anti-money laundering compliance programs that are tailored to the risks posed by a specific profile of customers. New sports books and the casinos partnering with them should be ready to handle the influx of funds, and along with this influx an increase in the number of opportunities to launder. Compliance programs should, as appropriate, be preemptively reviewed to address the potential new risks. Here are just three suggestions for casinos operating new sports books and entirely new sports betting establishments to manage these potential new risks.

First, sports books should consider developing thorough know-your-customer programs to ensure gamblers have a legitimate source of funds. For example, sports books may consider developing a registration program that allows customers to place sports bets at multiple locations only after going through a reasonable vetting process. That initial vetting could include checks on a customer’s identity, employment, and criminal and civil litigation background, and searches in various databases, such as FBI, Nevada Gaming, and OFAC watch lists. The risk-analysis should have flexibility and enhanced procedures depending on myriad factors (e.g., the amount of money bet).

Second, sports books should consider carefully tracking individual play with the goal of identifying suspicious patterns and conducting heightened due diligence of high-amount accounts that may serve as pools for multiple gamblers. Sports books should also consider, as required by the BSA, a combination of technology-driven techniques to catch patterns of suspicious activity, along with at least some personalized analysis conducted by trained personnel.

Third, sports books may consider taking specific measures to prevent “messenger betting,” which is the illegal practice of an individual placing bets on behalf of other individuals, a concern FinCEN mentioned in its letter to the AGA. There could soon be a high risk that an individual with ill-gotten funds is able to launder his money through a messenger at multiple, geographically scattered betting locations that are unaware of the patterns of suspicious activity. Sports books may want to prohibit “messenger betting” not only with a written policy, but also by training employees on how to identify and prevent the practice, particularly at the more casual sports betting outlets (i.e., kiosks).

The sports betting landscape may be entirely different in the near future. It is not yet clear that these suggestions for enhanced AML measures will be necessary or even warranted in every situation. With the landscape potentially about to change, however, any casino or independent sports book already in or getting into the sports betting business may want to take note of the potential risks and consider preemptively reviewing its anti-money laundering compliance measures.

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