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U.S. Sports Betting Expansion: Nine Ways To Mitigate Legal and Regulatory Exposure

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In May 2018, the Supreme Court of the United States overturned the Professional and Amateur Sports Protection Act (PASPA) of 1992. This decision has opened sports betting opportunities nationwide, and many states are now moving quickly to build the regulatory infrastructure that is required to support this type of business. Legalized gambling, in all forms, requires a significant amount of oversight and resources to ensure operators, players, and the public are protected. Regulators will be watching for a variety of issues including consumer protection, data protection, money laundering, and sanctions concerns. Presently, six states allow full-scale legalized sports betting, four have recently passed bills that will allow it in the near future, and 16 others have introduced pending legislation.

From a litigation perspective, opening and gaining licensure for a sports book can be a murky endeavor, even in a bull market for the expansion of



sports betting. While the state of New Jersey saw \$95 million in betting in August via web-based and in-person betting, the southern New Jersey-based owners of the sole destination that state legislators have deemed eligible for sports betting are embroiled in a lawsuit that may be indicative of future local battles across any state that legalizes sports betting (*Cherry Hill Towne Center Partners v. GS Park Racing, L.P.*).

With regards to money laundering and criminal activity concerns, the 2017 \$8 million penalty against Artichoke Joe's Casino for violations of "U.S. anti-money laundering (AML) laws from October 2009 to November 2017" may best be described as a case of negligence towards preventing illegal

activity and failure to implement internal controls. Notably, Financial Crimes Enforcement Network (FinCEN) highlighted the importance of a "culture of compliance" in its press release. This is certainly a component of compliance and oversight that is neither easily nor quickly developed.

Recently, the Securities and Exchange Commission (SEC) has indicated it will pursue enforcement actions against those who set up investment funds to pool money for sports betting that may run afoul of the federal securities registration laws. It has already done so in the September filing against Nevada Sports Investment Group, LP for "conducting an unregistered offering of securities in violation of Sections 5(a) and 5(c) of the Securities Act of 1933."

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The activities under scrutiny in this case involved the unlicensed amalgamation of funds from multiple parties and placing wagers with those assets. Nevada is the only state that permits similar pooling activity via Chapter 463 of the Nevada Revised Statutes (NRS) passed in 2015.

All three of these high-profile cases beg the question of how local municipalities, state legislatures, and federal regulators will be able to provide proper oversight and resolve the inevitable influx of varying challenges likely to occur as experienced operators and presumed new entrants race into the expanded sports betting market. Even potential federal legislation, recently mentioned by Sen. Chuck Schumer, may not resolve oversight conflicts. Some casino entertainment companies and groups like the American Gaming Association (AGA) prefer the legalized sports betting be regulated by individual states. Any new approach may need to consider 18 U.S. Code §1084, which prohibits using any “wire communication facility for the transmission in interstate or foreign commerce of bets or wagers ... which entitles the recipient to receive money or credit as a result of bets or wagers” and would potentially affect regional and national operators. Previously, the geographic concentration of legalized sports betting precluded much consideration of the aforementioned “Federal Wire Act,” and related online gaming concerns have yet to be addressed by the Supreme Court.

Similar to the cryptocurrency boom of the past 18 months and the ensuing race for various federal agencies and state governments to claim jurisdiction over regulatory functions, variations in enforcement standards across states are likely to lead to compliance risks

for all stakeholders, most notably with regard to money laundering, corruption, and tax evasion. Synchronized and easily understandable regulations will be most important for single operators providing in-person betting services in multiple jurisdictions, as well as online betting. Industry scaling via first-movers and market winners throughout any industry provides some advantages in maintaining regulatory and legal standards, though sports betting organizations are likely to find a dearth of experienced talent to execute their supervision and controls in some very practical ways.

The white-collar crime risks that will present themselves through expanded sports betting require a few types of resources to ensure proper prevention, detection, reporting, and remediation. Reducing risks of white-collar crime throughout the gaming industry requires knowledgeable compliance and legal professionals. Growing from a singular, geographically-concentrated legal venue (such as Nevada) for sports betting to five, 10, or 25 jurisdictions will present a challenge because there is an inherently limited quantity of experts with real sports betting compliance experience. Prior to the overturn of PASPA, the American Gaming Association released a report that projected 10-year growth of gaming jobs by over 60,000. That figure is likely to grow in multiples with a significant portion of internal jobs dedicated to compliance, a real concern assuming an inherent limitation on available experience in the short term.

Considerations for sports book operators in achieving compliance and risk mitigation across legal and regulatory concerns and conflicts include:

- Dedicating appropriate resources to understanding player profiles and

behaviors, including sources of funds, associations, and suspicious betting activity;

- Leveraging technology to enhance risk and legal controls, especially for online operators;
- Identifying and preventing real-money sports pool betting;
- Benchmarking compliance programs with more mature industry peers, such as operators in the United Kingdom;
- Prohibiting undocumented proxy betting;
- Conducting enhanced due diligence on high value or volume accounts;
- Limiting cross-border and third-party transactions (i.e., transfers, bank wires, etc.) for reasons not supported by legal gaming activity;
- Maintain proactive relationships with appropriate regulatory and legal entities (e.g., FinCEN and SEC); and
- Conducting regular, risk-focused audits of compliance controls.

Placing these considerations into effective action will require operators to consider the lessons learned from instances of previous legal and regulatory enforcement. It's critical that operators also maintain cooperative relationships with local, state and federal authorities, continue proactive involvement with industry trade groups such as the AGA and leverage the experienced talent pools from other industries with similar challenges including banks, cross-border trading corporations, payment services, cryptocurrency and financial services.