

# Entity Wagering

## A New Twist on the Old Adage of Being in the Business of Betting or Wagering

By Jason Bacigalupi, Glenn Light and Karl Rutledge

In 2015, the Nevada Legislature passed Senate Bill 443 (“SB 443”) authorizing certain business entities to place race book and sports pool wagers. Essentially, SB 443 aimed to increase the wagering handle in Nevada by allowing Nevada corporate entities, limited liability companies, or partnerships, who can raise investment funds or debt, to conduct sports and race betting. In order to effectuate this landmark development, SB 443 also authorized the Nevada Gaming Commission to adopt regulations governing the acceptance of such wagers. After several workshops and comment periods, the Nevada Gaming Commission adopted regulations governing the acceptance of entity wagers in the fall of 2015.

In light of these developments, Nevada licensed race and sports books (collectively referred to as “Sports Books”) are now in the process of opening wagering accounts for Nevada business entities. This article provides a high level exploration of the requirements for opening and maintaining an entity wagering account.

To begin, an entity seeking to establish a wagering account is subject to several fundamental requirements. The entity must be formed in Nevada and remain in good standing with the Secretary of State. The entity must also maintain a bank account in Nevada, from which it must transfer and receive all money used in wagering.<sup>4</sup> Moreover, the entity must keep in Nevada all of its books and

records as required under general corporate law, as well as all records received from Sports Books for all wagers placed.<sup>5</sup>

One interesting aspect is that there are no residency requirements related to the individuals involved in the entity, in either a debt or equity relationship. Accordingly, the entity’s equity holders, holders of indebtedness, directors, officers, managers and partners do not have to be residents of Nevada. However, all persons must be over the age of 21.<sup>6</sup> Additionally, as discussed below, all persons must be disclosed and vetted by each Sports Book with which the entity desires to open an account. Similarly, if the entity is owned or controlled by one or more holding companies, every person associated with the controlling/holding com-

pany must also be disclosed and vetted by said Sports Books.<sup>7</sup>

In terms of who can place the entity’s wagers, the entity must appoint at least one authorized representative to make wagers with a particular Sports Book.<sup>8</sup> This individual(s), who must also be vetted by the Sports Book, is the only person who is permitted to place wagers on behalf of the entity. An entity must notify the respective Sports Books within five business days of any changes to any of its authorized representatives, its formation and/or standing with the Secretary of State, as well as any of the persons referenced above who are affiliated with the entity.<sup>9</sup>

Entities that open wagering accounts are also subject to several other ongoing



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requirements. In particular, any entity that makes wagers with a particular Sports Book that aggregate up to, and including, \$5 million in a calendar year must provide the Sports Book with an affirmation stating that the entity did not make payments based on profits/revenues to persons other than those identified and allowed.<sup>10</sup> Any entity that makes wagers aggregating more than \$5 million in a calendar year with a Sports Book must provide it with an independent third party verification that identifies to whom payments are made based on profits/revenues.<sup>11</sup> If the Sports Book does not receive the required affirmation or third party verification prior to April 1st of the year following any year in which the entity placed wagers with the Sports Book, the Sports Book shall suspend the wagering account and not allow further wagering activity on the account.<sup>12</sup>

Besides the entities, each Sports Book that desires to accept entity wagering is also subject to numerous regulatory requirements. To begin, a Sports Book must first notify the Nevada Gaming Control Board in writing of its intent to accept such wagers, and must adopt and display at its

premises the house rules governing entity wagering transactions.<sup>13</sup> Additionally, as alluded to above, it must implement strict due diligence procedures to identify and vet every person associated with an entity as well as the source of all funds (debt or equity) used to wager. The overall goal is to identify any natural person who either puts money into the operation, or receives any profits or revenues from the entity.<sup>14</sup> The Sports Book must also obtain affirmations from the entity that (i) it has met all applicable requirements under Nevada law and gaming regulations and (ii) it was not established for the purpose of circumventing any federal or state law regarding illegal sport wagering, electronic communications or money laundering.<sup>15</sup> The Sports Book must maintain records of the due diligence it performs for no less than one year following either the closure of the wagering account or the rejection of the entity’s application for such an account.<sup>16</sup>

Whenever an entity with a wagering account provides updated information to the Sports Book regarding its ownership and affiliations, and so on, the Sports Book must verify said information within 30 days of receipt.<sup>17</sup> If the Sports Book is unable to verify the information in this time frame it must suspend the wagering account.<sup>18</sup> Similarly, the Sports Book must suspend a wagering account if the entity fails to furnish its annual affirmation or 3rd party verification that identifies to whom payments are made, as referenced above.<sup>19</sup>

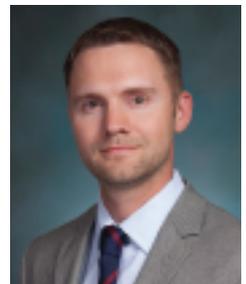
When establishing an account, the business entity patron must provide an employee of the Sports Book with the required due diligence information for the employee to record.<sup>20</sup> Additionally, the patron must sign, in the presence of a supervising employee, an affirmation that the patron: (1) confirms the accuracy of the information provided, (2) acknowledges receipt of the

*Continued on page 12*



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<sup>4</sup> SB443 Sec 3(4)(b)

<sup>10</sup> Reg 22.155(6)(a)

<sup>16</sup> Reg 22.155(3)

<sup>5</sup> SB443 Sec 3(4)(a)

<sup>11</sup> Reg 22.155(6)(b)

<sup>17</sup> Reg 22.155(5)

<sup>6</sup> SB443 Sec (3)(2)(a)

<sup>12</sup> Reg 22.155(6)

<sup>18</sup> *Id.*

<sup>7</sup> Reg 22.155(2) & (3)

<sup>13</sup> Reg 22.155(11); Reg 22.155(1)

<sup>19</sup> Reg 22.155(6)

<sup>8</sup> SB443 Sec 3(4)(a)

<sup>14</sup> Reg 22.155(2) & (3)

<sup>20</sup> Reg 22.140(7)(d)

<sup>9</sup> SB443 Sec 3(5)

<sup>15</sup> Reg 22.155(3)(a)

## MEMBERS IN THE NEWS

### LARRY GREGORY APPOINTED TO THE BOARD OF DIRECTORS OF THE AMERICAN GAMING ASSOCIATION

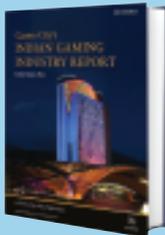
Larry Gregory, Executive Director, Ms. Gaming and Hospitality Association and former recipient of the IMGL Regulator of the Year award for



North America was recently appointed to the Board of Directors of the American Gaming Association.

### 2016 EDITION OF INDIAN GAMING INDUSTRY REPORT RELEASED

In March 2016, Alan P. Meister, Ph.D., Principal Economist with Nathan Associates and a California-based member of IMGL, released the latest edition of his annual Indian gaming study, the *Indian Gaming Industry Report*. In its fourteenth year of publication, the study provides comprehensive and up-to-date nationwide and state-by-state data and analysis on Indian gaming in the United States. A summary of the study's findings is included in Dr. Meister's article starting on page 30 of this issue of *American Gaming Lawyer*.



## Entity Wagering

*Continued from page 7*

rules and procedures for wagering communications, (3) has been informed that patrons are prohibited by law from placing wagering communications from outside Nevada, and (4) consents to monitoring or recording by the Board of any wagering communications.<sup>21</sup> Both the Sports Book's employee and supervising employee must also sign statements that they witnessed the patron's signature and confirmed the patron's identity and residence.<sup>22</sup>

Once the account has been established, the entity may begin wagering. However, all business entity wagering account deposits and withdrawals must only be made by transfers between the entity's account at its bank or financial institution, and may not be made in cash.<sup>23</sup> A Sports Book may not extend credit to an entity and may only accept wagering activity from an entity through its wagering account.<sup>24</sup> Also, the Sports Book may only deposit winnings into the entity's wagering account.<sup>25</sup>

A Sports Book must report any violation (or suspected violation) of law or regulation related to an entity wagering account to the Board immediately, including, but not limited to, the Federal Wire Act, the Illegal Gambling Business Act, and anti-money launder-

ing laws.<sup>26</sup> Similarly, the Sports Book must notify the Board, within five days, of any account being suspended or closed, as well as the reinstatement of any suspended account.<sup>27</sup>

In conclusion, although SB 443 and its related regulations provide an interesting vehicle to conduct an entity wagering business, including the ability to raise equity and debt financing, there are serious risks involved. These include administrative and criminal penalties for violating certain requirements of the new law and regulations, as well as applicable federal laws. Additionally, just as in any other business, how the entities are structured and operated can raise regulatory concerns, as well as expose the entity and individuals associated with that entity to civil lawsuits and other typical business risks. Therefore, should one be interested in exploring the entity wagering model, we recommend consulting with knowledgeable legal and business experts in order to understand and mitigate such risks. ♣

<sup>21</sup> Reg 22.140(7)(e)

<sup>22</sup> Reg 22.140(7)(f)

<sup>23</sup> Reg 22.160(5)

<sup>24</sup> Reg 22.150(9); Reg 22.150(8)

<sup>25</sup> Reg 22.150(8)

<sup>26</sup> Reg 22.155(7)

<sup>27</sup> Reg 22.150(10)

## Malta iGaming Eco-System

*Continued from page 9*

now faces Malta is its ability to adapt to new market conditions. Regulations enacted in 2004 have served the industry well; however, technology has advanced in leaps and bounds. The current authority chairman has taken a serious pro-active approach to this, undergoing consultations with industry

stakeholders to gain recommendations and opinions in order to further improve the regulatory framework. Innovation here is key, and Malta seems to have this in abundance. Malta has become the default choice for operators looking to establish themselves in a serious regulated environment; however, in reality Malta's success stems from the different members of its eco-system which give it the right environment to thrive. ♣