



Skill-Based Gaming: AML IMPLICATIONS

By Reid J. Schar, Wade A. Thomson, and Emily K. McWilliams

Three drug dealers have several thousand dollars of dirty money they want to launder. They bring their cash and a friend (with no criminal record) to the local casino in which it is now legal to play group blackjack via a mobile app. In this game, the house only takes a small rake and the majority of the pot goes to the player with the highest card total (without busting). After each of the three drug dealers cashes in some of their dirty money to get credits on the app, the three criminals sit in different parts of the casino and play extremely aggressive hands (splitting 10s, hitting on 17s, etc.) and routinely go bust, so as to let their fourth friend win. This new skill-based app has allowed a group of criminals to gamble together in the casino and launder their money (for a relatively small fee) without them ever sitting at the same table or otherwise interacting within the casino. It is the modern day equivalent of partners in crime betting on both black and red in roulette. And this modern off-setting bets scenario presents new challenges for casinos' anti-money laundering programs.

In 2015, Nevada passed regulations allowing skill-based gambling and flexible payout percentages for gaming machines, breaking down two long-standing restraints on game developers. Skill-based, single player arcade games and multi-player touchscreen card games, made to resemble the interactive games that people play by the millions on their smartphones, are now being beta-tested on some casino floors. With these innovations,

the gaming industry aims to lure the next generation of gamblers onto casino floors by ushering in a new era of gaming that trends away from classic slot machines and toward games familiar to tech-savvy millennials where players' physical dexterity or mental skill—and not just chance—influence the chances of winning.

This article briefly reviews Nevada's new regulatory paradigm and analyzes the money-laundering ramifications of the new skill-based, multi-player games that are currently being field tested—and may soon become a staple—on casino floors.

Background

Traditionally, slots wagers are determined entirely by a machine's random number generator. By contrast, skill-based games allow players to increase their chances of winning depending on how well they perform a video game-like task. Although slot suppliers have been adding skill-type play to gaming machine bonus rounds for years, development of full-blown skill wagering content has stagnated, mostly due to laws and regulations providing that slots must remain games of chance.

In the meantime, gaming developers have created mobile apps and online skill-based games in a variety of styles—for example, arcade, and single or multi-player action games, word games, fantasy sports, and puzzles—that are popular among a younger demographic.

Following the success of online poker websites, online casinos, which are still illegal in most states but are legal in some countries, have for over a decade offered real-money games that allow users to play against each other instead of the house, including poker, gin rummy, spades, dominos, and Yahtzee. Other websites have popped up that allow users to play video games against each other, either head-to-head or in tournaments, for real money or rewards that can be converted into cash.¹ Even more popular are mobile apps, some of which are single player games where physical dexterity and speed increase the chances of winning (Candy Crush™, Angry Birds™), while others are multiplayer skill-based games and involve themes of exploration (Temple Run™, Adventure-Quest™), entrepreneurship (Adventure Capitalist™), intrigue (Mystery Case Files™), word play (Word Connect™, Words with Friends™), and sports (8 Ball Pool™, CSR Racing™), or that build on familiar video game console and PC games like Final Fantasy™, Super Mario Run™, and Minecraft™.

In lobbying Nevada regulators to allow flexible payout based on skill, gaming developers and manufacturers aimed to “gambelize” digital social and video games in land-based casinos by taking games people already play online, and adding real-money gambling with the option to compete against friends.²



Konami is currently field-testing its Frogger: Get Hoppin™ skill-based casino game inside certain Las Vegas casinos. The “gambalized” version of Frogger combines traditional slots play with a skill-based video element that requires players to use five pushbuttons to safely navigate their frogs across busy roadways and log-laden rivers. The game gives players the chance to compete against the house to win random cash awards and earn true skill-based cash awards.

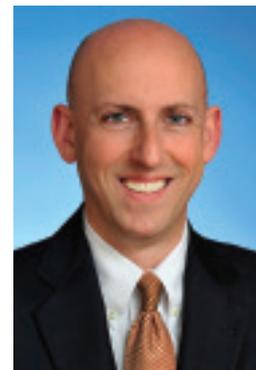
Nevada’s New Regulatory Paradigm

In May 2015, Nevada passed Senate Bill 9, which established a landmark regulatory paradigm to allow skill-based gambling and hybrid games blending both skill and chance, and permitting game payouts to be based on a player’s dexterity or ability.³ The Nevada Gaming Commission’s amendments to Regulation 14 permit casinos to use player identifiers—defined as “any specific and verifiable fact concerning a player or group of players which is based upon objective criteria relating to the player or group of players”—to track game play, and also to divide players into groups at different skill levels.⁴ Identifiers that may be used in skill-based games include “predefined commercial activities, such as the patron’s frequency of visitation, wagering activity, activity on social media, and the accumulation or rank, points, or standing in a gaming or non-gaming activity,” “subscription or enrollment in particular services, such as membership in a loyalty program,” and “the patron’s level of skill, as identified or maintained by the gaming system or self-identified by the patron,” “the patron’s level of skill relative to the skill of other patrons participating in the same game.”⁵

Current Field-testing of Skill-based Games

In February and March 2017, respectively, Konami Gaming and Gamblit Gaming became the first gaming developers to be granted authorization to field test skill-based machines at Las Vegas casinos under the Nevada Gaming Commission’s “New Innovation Beta” process.⁶ Konami, a Japanese-based entertainment company, is currently field-testing its Frogger: Get Hoppin™ skill-based casino game inside certain Las Vegas casinos. The “gambalized” version of Frogger combines traditional slots play with a skill-based video element that requires players to use five pushbuttons to safely navigate their frogs across busy roadways and log-laden rivers. The game gives players the chance

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At the same time, Gamblit is field-testing its Model G multi-player touchscreen gaming table, which features the purely skill-based games of GrabPoker™ and Cannonbeard's Treasure™. For both Gamblit games, the player inserts a voucher to play. The house gets a 10-20% rake of the pot, depending on the operator's preference, and the winner takes the rest. The game play is simple and social. In GrabPoker™, two to four players square off and compete to grab cards from the center of the touchscreen table to create the best hand possible. Players start with two cards. Cards appear in the center, and players hit the "grab" button to build the best possible poker hand by grabbing cards faster than other players. To win the pot, players focus on building the best hand, or playing defense by grabbing cards that

other players need. Cannonbeard's Treasure™ is similar to blackjack. In this game, a number appears on the touchscreen, and two to four players compete to hit that number by grabbing cards that appear in the middle of the table. In both games, the win amount is based on a random number generator and is different with every play. For instance, in Gamblit Poker™, players can win up to 240 times their bet in a single hand.⁷

AML Implications of Multi-player Skill-Based Games

Anti-money laundering ("AML") has become a major issue in gaming, with the Financial Crimes Enforcement Network ("FinCEN"), the Department of Justice ("DOJ"), and the Internal Revenue Service ("IRS") expecting casinos—under threat of violating the Bank Secrecy Act's requirements for casinos to establish effective AML programs—to mitigate the risk that patrons will use gaming facilities to launder money. To that end, government regulators advise casinos to identify and develop policies and procedures to manage emerging AML risks specific to the "unique needs, risk profile, and structure of each institution."⁸ While AML regulations specific to skill-based games will continue to evolve, it is clear that the government will expect casinos to be a step ahead in terms of identifying and mitigating the AML risks associated with competitive, skill-based games.

The central AML issue on the horizon involving social, skill-based games like Gamblit Poker™ and Cannonbeard's Treasure™ is the risk of player collusion. Simply put, in a competitive skill-based game, players could launder dirty money by deliberately losing to each other. Although the pot of money currently at stake in games like Gamblit Poker™ and Cannonbeard's Treasure™ is relatively low, the risk of money laundering activity will increase as casinos begin to host higher dollar player-to-player tournaments or—as contemplated under the Amendments to Regulation 14—implement inter-casino games of skill that include progressive payoff schedules with increased cash prizes based on players' skill or frequency of play.⁹ For example, in a higher-stakes Gamblit Poker (™) tournament, the casino could set the minimum bet at \$1,000, with four players competing against one another for the pot of \$4,000 (and potentially even more if the casino retained the potential for a higher payoff dependent on a random-number generator), minus the house rake of 10%. In this scenario, three players could deliberately lose their \$900 to the winner, allowing the players to move \$2,700 in dirty money to the winner.

Casinos should consider assessing their AML policies to mitigate the risk of player collusion in competitive skill-based

1 See, e.g., Maddy Myers, *Inside the Unregulated and Scam-Filled World of Video Game Betting*, Kortaku, available at <http://compete.kotaku.com/inside-the-unregulated-and-scam-filled-world-of-video-g-1793306259> (Mar. 16, 2017); Kyle Russell, *YC Backed Kickback Offers an Easy Way to Play Minecraft Competitively*, Techcrunch (Mar. 2, 2015), available at <https://techcrunch.com/2015/03/02/yc-backed-kickback-offers-an-easy-way-to-play-minecraft-competitively/>.

2 International Game Developers Association, *2008-2009 Casual Games White Paper*, at 148, available at https://c.ymcdn.com/sites/www.igda.org/resource/collection/BCB11E9B-13E6-40D0-B390-952B5E11D35A/IGDA_Casual_Games_White_Paper_2008.pdf/

3 NEV. REV. STAT. § 463.745 (2015); NEV. GAMING CONTROL BOARD ADMIN. CODE, Reg. 14 (2015) (defining skill-based games).

4 *Id.* § 14 ("Gaming devices may use an identifier to determine which games are presented to or available for selection by a player.")

5 Nevada Gaming Control Board, Technical Standards for Gaming Devices and Associated Equipment, §§1.200, 1.300 (Feb. 15, 2016), available at <http://gaming.nv.gov/modules/showdocument.aspx?documentid=2919>.

6 Nevada Gaming Control Board Notice re: Gaming Technology Approval Process (Oct. 20, 2015), available at <http://gaming.nv.gov/modules/showdocument.aspx?documentid=10497>.

games. For example, the Amendments to Regulation 14 and Technical Standards permit, but do not require, casinos to assign identifiers to individuals who play skill-based games. Casinos should consider adopting a “best practice” of assigning identifiers to all players that track skill level, frequency of play, win rates, loss rates, and total win/loss amounts.

Mirroring existing “know your customer” (“KYC”) requirements, casinos should also consider ensuring that every patron who uses a skill-based machine or enters a skill-based gaming tournament first presents identification so that the casino can verify that customer’s identity.¹⁰

Casinos should consider AML “red flags” for collusion specific to skill-based games that would trigger the need to conduct enhanced due diligence, or even file a SAR, on a player. For example, casinos should consider monitoring for:

■ **Suspicious win loss rates or pattern of losses to same group of players:** If a player seems to “almost always win” or “almost always lose” a multi-player game, after a certain number of rounds of play, this could be a sign that players are colluding to throw the game for or against that player. This is particularly so if a player has a pattern of losing to the same group of players.

■ **New player makes high-dollar bets on skill-based games:** If a player with no previously recorded play puts at risk over a threshold dollar amount on a skill-based game, over a 24-hour period, or enters a high stakes tournament, this could be a sign of collusion.

■ **Highly skilled player loses to new or low-rated player:** If a repeat player whose game play (tracked by assigning that player an identifier) reflects a high level of skill losses—either repeatedly, until crossing the monetary threshold, or by exceeding the threshold with one large bet—to a new or low-rated player or group of players, this could be a sign of player collusion.

■ **Unskilled known player beats skilled known players:** If a player with history of losses on skill-based games, or a player whose skill is rated below other players, bets a threshold amount in a game against those players, this may be a sign that players are colluding to wash dirty money by engineering losses to a designated “winner.”

These red flags could be a sign of money laundering activity requiring additional review.

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Conclusion

Skill-based, competitive games will bring new players—and novel AML challenges—into casinos. While certain AML risks posed by skill-based games are still unknown, these dangers will quickly emerge as casinos expand into the millennial market with new gaming technology. Casinos should not underestimate the sophistication of fraudsters who have been using online video games to launder money for years, and who will likely scheme to find ways to tamper with skill-based digital games on casino floors.¹¹

Although there are many uncertainties regarding skill-based games, one thing that is certain is that the government will expect casinos to increase their AML capacity to mitigate these new risks, even without instruction from FinCEN, the DOJ, or the IRS. Casinos should consider being ahead of the curve by revising their AML policies and procedures to reflect the risks posed by skill-based games. ♣

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7 *Caesars, Gambbit Gaming Launch Skill-Based Gaming*, Jeremy Agüero, Las Vegas Review-Journal (Mar. 30, 2017), available at <https://www.reviewjournal.com/business/casinos-gaming/caesars-gambbit-gaming-launch-skill-based-gaming/>.

8 2016 National Title 31 Suspicious Activity & Risk Assessment Conference & Expo: Speaker Remarks of Deborah Connor (Aug. 17, 2016), available at <http://www.casinoessentials.com/AML-remarks/>.

9 NEV. GAMING CONTROL BOARD ADMIN. CODE, Reg. 14, § 17 (2015) (“Inter-casino linked system means (a) A network of electronically interfaced similar games which are located at two or more licensed gaming establishments that are linked to: (1) Conduct gaming activities, contests or tournaments; or (2) Facilitate participation in a common progressive prize system and the collective hardware, software, communications technology and other associated equipment used in such system to link and monitor games or devices located at two or more licensed gaming establishments, including any associated equipment used to operate a multi-jurisdictional progressive prize system.”)

10 31 C.F.R. § 1021.210 (b)(v). Casinos should also run existing KYC processes against skill-based gaming patrons, including running identification against certain watch lists.

11 *From the Mob to Mario: How Money Laundering Lives on Through Video Games*, Panopticon Laboratories (Aug. 3, 2016), available at <https://www.panopticonlabs.com/from-the-mob-to-mario-how-money-laundering-lives-on-through-video-games/>; *Jackpot! Money Laundering Through Online Gambling*, McAfee (2014), available at <https://www.mcafee.com/fr/resources/white-papers/wp-jackpot-money-laundering-gambling.pdf>.