



## Regulating Cashless Wagering

by Jennifer L. Carleton

Gaming is no longer a strictly cash industry. With 40 percent of individuals aged 21 to 35 visiting a casino in the last year, there is no doubt that players are younger and more comfortable with a cashless economy. Casinos are now catering to this demographic in a number of ways.

Casino floors looked very different in 1988 when the Indian Gaming Regulatory Act (IGRA) was first passed. Patrons could cash checks at the cage or use an ATM to withdraw cash, but few U.S. operators allowed credit transactions that did not involve a marker from the casino. Over the past 25 years, ATM machines have evolved from cash dispensaries into stand-alone banking kiosks, combining cash account transactions with point of sale debit withdrawals and credit card advances. The National Indian Gaming Commission (NIGC) has developed minimum internal control standards for kiosks that address physical security controls, reconciliation reports and currency cassette protocols. These standards assume that the player will eventually leave the kiosk with cash, but technology is quickly evolving beyond cash-based gaming.

### Internet Gaming Payments

Nevada, New Jersey and Delaware are currently offering Internet gaming, with California, Colorado, Illinois, Pennsylvania and a host of other U.S. states rumored to be scrutinizing some form of gaming over the Internet. Internet gaming is, of course, based on electronic currency rather than cash. As a result, regulators in Nevada, New Jersey and Delaware have promulgated rigorous account establishment protocols. In Nevada, for example, funds may only be deposited by an authorized player into an interactive gaming account by using: (a) cash deposits made directly with the operator; (b) personal checks, cashier's checks, wire transfer and money order deposits made directly or mailed to the operator; (c) transfers from safekeeping or front money accounts otherwise held by the licensed gaming establishment holding the operator's license; (d) debits from an authorized player's debit card or credit card; (e) transfers through the automated clearing house or from another mechanism designed to facilitate electronic commerce transactions; or (f) any other means approved by the chairman of the Nevada Gaming Control Board. Internet poker players in Nevada cannot hold more than one account with an operator, occupy more than one position at a game at any given time, use anonymous interactive gaming accounts or accounts in fictitious names, transfer funds to another player, be overdrawn or receive funds on credit from the operator.

U.S. online players have encountered a number of issues trying to make deposits to their legal online gaming accounts with credit cards. Many credit card companies will not process charges for online gambling, even in jurisdictions where Internet gambling is legal. Visa and MasterCard allow gambling-related credit card transactions on their networks in states where such gambling is authorized, leaving the decision regarding whether to process these charges up to the card issuers. There are Internet sites devoted to assisting online players in determining which sites will accept their credit cards for gambling. Before entering into processing agreements with licensed U.S. Internet gaming operators, some credit card companies have required opinion letters by gaming counsel addressing the laws of the state and applicable federal laws as they relate to the use of credit and debit cards for the purpose of engaging in lawful Internet gaming. Other credit card companies and payment processors simply decline payment authorization from Internet gaming sites.

### State Lotteries and Account Wagering

On December 23, 2011, the Office of the United States Deputy Attorney General issued what is commonly referred to as the Wire Act memo, an opinion from its Office of Legal Counsel entitled "Whether Proposals by Illinois and New York to Use the Internet and Out-of-State Transaction Processors to Sell Lottery Tickets to In-State Adults Violate the Wire Act," reversing the United States Department of Justice's (DOJ) longstanding position that all forms of online gambling are illegal in the United States. The old position was premised on the DOJ's long-held view that the Wire Act of 1961 prohibited all forms of Internet gambling. The opinion specifically addressed the legality of proposals by both the Illinois and New York state-run lottery agencies and whether the Wire Act and the Unlawful Internet Gambling Enforcement Act "prohibit state-run lotteries from using the Internet to sell tickets to in-state adults (a) where the transmission over the Internet crosses state lines, or (b) where the lottery transmits lottery data across state lines to an out-of-state transaction processor."

State lotteries now sell tickets online, requiring the use of a player account similar to an Internet gaming account. For example, the Illinois lottery allows Powerball, Mega Millions and Lotto online ticket sales to any Illinois resident over 18 with an Illinois lottery online account. The Georgia lottery requires an iHOPEcard player account to purchase

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Georgia lottery tickets online. The iHOPEcard is a prepaid Discover debit card, on which card holders can load funds onto their account for use purchasing tickets on the Georgia lottery's website. Lottery prizes of up to \$5,000 are automatically paid to the player's account. These player accounts are regulated by the individual state lotteries, each with its own set of standards and protocols for verifying and protecting player data. Potential payment providers have to submit to a rigorous vetting process and comply with all account and payment processing standards promulgated by the state gaming regulators.

Lottery account wagering is very similar to the patron deposit accounts and cashless systems addressed in the NIGC minimum internal control standards. In order to establish a deposit account under the NIGC Minimum Internal Control Standards (MICS), a patron must appear at the gaming operation in person, at a designated area of accountability, and present valid government-issued picture identification. Prior to the patron making a deposit or withdrawal from a patron deposit account, the agent or cashless system must verify the patron deposit account, the patron identity, and availability of funds.

This type of account wagering has been used in Nevada race and sports books for decades. In Nevada, a book can only accept wagers on its licensed premises, and only at book betting stations or through an account wagering system. The book must be reasonably assured that the patron is located within the borders of a state or foreign jurisdiction in which such wagering is legal, and that the state or foreign jurisdiction does not otherwise restrict wagering on accounts located outside its borders prior to accepting a wagering communication. Reasonable assurance of patron location includes, but is not limited to, an inquiry process through electronic or voice-only means in which patrons affirm their physical location at the time of each wagering communication. A recording of the inquiry process with the patron is retained for a minimum of 60 days.

### **Bits into Cash**

Bitcoin, or digital currency, is a software-based online payment system. Bitcoin is created by a process called mining, in which participants verify and record payments into a public ledger in exchange for transaction fees and bitcoins. In May 2014, Nevada approved the first bitcoin ATM machine to be placed on a casino floor. Customers of the D Las Vegas Casino Hotel can now transform their bitcoin into cash and cash into bitcoin. The Robocoin machine allows users to both buy and sell the currency. The D is the

first casino property to accept bitcoin for hotel stays, restaurants and gift shop items, but it does not currently accept bitcoin for its gaming operations. The Nevada gaming regulators have yet to promulgate licensing or technology standards for the use of digital currency for gaming.

### **Electronic Payment Processors**

Like credit card companies, electronic payment processors are free to determine whether and under what circumstances to process payment for gambling activities. While there are myriad payment processing companies that specialize in gaming, most mainstream payment processors have yet to embrace cashless wagering. Eventbrite, the event and ticket sourcing company, does not allow its customers to facilitate gambling, gaming, lotteries, raffles, contests, sweepstakes and/or any other activity featuring the award of a prize other than raffles, contests or sweepstakes conducted in a manner that complies in all respects with Eventbrite's Raffles, Contests and Sweepstakes Guidelines. *Authorize.net's* merchant service agreement provides that the customer will not at any time conduct its business in any manner that directly or indirectly offers any content which is associated with any form of gambling or lottery-type services not affiliated with a state-run lottery service. Unless the merchant has been approved by PayPal, account holders may not use PayPal to send or receive payments for any form of gambling activities, including but not limited to payments for wagers, gambling debts, and gambling winnings, whether conducted online, in person, or through any other means of communication. Even when the specific activity is lawful or is not legally defined as gambling, PayPal prohibits the sending or receiving of payments related to games of chance, games of skill, casino games, sports books, horse and greyhound racing, person-to-person betting, lottery tickets and gaming machines, unless the transactions are associated with an approved merchant.

There is obvious potential for increased sales if electronic payment processors remove their prohibitions on transactions for gambling activities by merchants and account holders in the U.S. If recognized online payment processors begin processing legal gambling wagers in the U.S., operators are likely to see more patron play. The more options players have for payment, the more legitimate the activity becomes in the eyes of the patron. ♣

*Jennifer L. Carleton is a member of the Gaming Law team at Brownstein Hyatt Farber Schreck. She can be reached by calling (702) 464-7086 or email jcarleton@bhfs.com.*