



*State of New Jersey*

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**Director's Advisory Bulletin: 2015-01**

RE: Internet Gaming Affiliates/Marketing on Behalf of Illegal Online Gaming Sites

The conduct of those entities and individuals involved in promoting, marketing and directing business to online gaming sites, commonly referred to as affiliates, has generated significant discussion since the commencement of online gaming in New Jersey in November 2013. A major regulatory concern of the Division of Gaming Enforcement ("Division") are those affiliates who promote and market illegal online gaming sites to patrons located in New Jersey.<sup>1</sup> In some instances, certain affiliates promote and market on behalf of both illegal and legal online gaming sites.

It is clear that those illegal online gaming sites who accept wagers from players in New Jersey pose a significant threat to the regulation of lawful gaming. Online gaming operators who have been licensed by the Division were subject to a thorough investigation regarding their business history, the functionality of their system and the good character honesty, integrity and financial stability of their executive management team and principal owners. Such investigation is aimed at ensuring that the corporate ownership, past conduct and current operation of the licensee are compliant with New Jersey laws. This investigation includes a comprehensive testing of each operator's gaming system to ensure that it complies with the Division's regulations and testing protocols.

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<sup>1</sup>An illegal online gaming site is one that is not approved or licensed to accept online wagers from customers located in New Jersey or in any other State.



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In addition to these licensing requirements, licensed online gaming operators are required, pursuant to regulation, to implement controls and procedures relating to anti-money laundering, fraud, collusion, responsible gaming, underage gambling (e.g. KYC protocols) and various consumer protection policies (e.g. honest advertising, timely payouts). Unlicensed online gaming sites are not subject to any of these requirements and testing protocols and therefore are lacking important integrity and public safety protections.

To address these concerns, on April 17, 2014, the Division sent letters to several affiliates, instructing these affiliates to remove links to illegal online gaming sites. The letter identified two criminal laws that an affiliate might be violating by promoting and marketing illegal online gaming sites: N.J.S.A. 5:12-95.26 (offering of internet gaming without approval) and N.J.S.A. 2C:37a(2) (a person is guilty of promoting gambling when he or she "engages in conduct, which materially aids any form of gaming activity"). While the contents of these letters appeared online, the Division did not publish a formal Director's Advisory Bulletin on the matter.

***Affiliates that Promoted and Marketed Illegal Online Gambling Sites After  
November 26, 2013***

A question has been posed to the Division by several affiliates regarding the licensing consequences to those affiliates, whether currently licensed or a future applicant, who subsequent to November 26, 2013, have promoted and marketed illegal online gaming sites. The specific inquiry is whether those affiliates who have engaged in promoting or marketing illegal online gaming sites after the commencement of online gaming in New Jersey would be subject to enforcement action by the Division if they cease such activity. A corollary question is whether an affiliate's prior conduct in that regard would result in a finding of unsuitability if the affiliate were to apply to the Division for licensure or registration.

Affiliates who promote and market illegal sites to players located in New Jersey are violating New Jersey law and risk the Division taking adverse enforcement action against them. For affiliates licensed by the Division, revocation of a license or registration, and/or the imposition of a monetary penalty are also potential consequences for such conduct. In addition, affiliates who promote or market illegal online gaming sites to other players in other states, while arguably not subject to enforcement action by the Division or other New Jersey state agencies, are engaged in conduct that will reflect negatively on their suitability for licensure or registration.

After careful consideration of the various legal and policy issues involved, the Division has determined that for those affiliates who have promoted and marketed illegal online gaming sites to New Jersey players after the commencement of online gaming in New Jersey, on November 26, 2013, and meet the eligibility requirement set forth below, it will not:

(1) take any enforcement action against the affiliate or its principal owners and officers/directors or

(2) consider the affiliate's conduct subsequent to November 26, 2013, in promoting or marketing of illegal online gaming sites in any Division enforcement action or when assessing the suitability of an affiliate, or its principal owners and officers and directors for licensure or registration.

To be eligible for this deferment on enforcement, an affiliate must be in full compliance with New Jersey law as set forth below:

- Within one hundred and fifty (150) days of the date of this Director's Advisory Bulletin, the affiliate must completely cease promoting or marketing, directly or indirectly, any illegal online gaming sites accepting wagers from players in the United States and
- Within one hundred and fifty (150) days of the date of this Director's Advisory Bulletin, the Chief Executive Officer or Chief Operating Officer must submit a notarized Certification to the Division attesting to that fact.

Affiliates that are currently in compliance with New Jersey and federal laws need not submit a certification.

At the conclusion of the one hundred and fifty (150) day compliance deadline, the Division will conduct a review of all licensed or registered affiliates and may take enforcement action against non-compliant affiliates. In addition, those non-compliant affiliates and their principals, officers and directors, as well as any future applicants, will be deemed unsuitable for licensure or registration by the Division going forward. To be clear, the negative suitability assessment will attach to each principal owner, officer and director regardless of any changes in corporate ownership and structure. Moreover, the Division will advise all other gaming regulatory agencies which affiliates, and their principal owners, officers and directors, have not complied with New Jersey law and identify each as unsuitable for licensure or registration in New Jersey.

***Affiliates That Promoted and Marketed Online Gambling Sites  
After the Passage of UIGEA on October 13, 2006***

As part of its analysis of the conduct of affiliates, the Division also considered a more complex licensing issue regarding the conduct of affiliates prior to the commencement of regulated online gambling in New Jersey. More specifically, if an affiliate promoted and marketed online gambling sites to United States players after the passage of the Unlawful

Internet Gambling Enforcement Act of 2006 ("UIGEA") on October 13, 2006, how will the Division weigh that conduct when assessing the suitability of an entity, its principal owners, officers and directors for purposes of licensure or registration.

The Division has previously taken the position with respect to online gaming operators and its principal owners, officers and directors who engaged in offering and/or taking wagers from United States patrons after UIGEA would, at this time, be found unsuitable and would not be granted a license or registration. In fact, certain individuals have been separated from employment by entities licensed by the Division and others have been denied prospective employment. Similarly, business and/or financial relationships by New Jersey licensees with certain entities have been terminated or not approved because of their conduct after the passage of UIGEA.

The question posed is whether, for purposes of licensure or registration, the same weight should be accorded to the post-UIGEA conduct of affiliates for promoting and marketing illegal online gambling sites.

The Division, after careful consideration, has made a determination that the conduct of affiliates after UIGEA can be distinguished from the past conduct of online operators and payment processors. Many affiliates certainly assisted online gaming operators in identifying and driving United States players to online gambling sites after the passage of UIGEA and received compensation from online operators for their services. However, the fact is that affiliates did not actually consummate the gaming transaction or process the payment of such activity. Some may say this is a distinction without a difference. The Division disagrees. While affiliates were paid under various compensation models for marketing to U.S. players after UIGEA, there was clearly some legitimate uncertainty as to whether the actions of an affiliate promoting or marketing to an illegal gambling site was, in and of itself, an illegal act. The same cannot be said for the online gaming operator itself or payment processors.


Having acknowledged this demarcation as it applies to legal culpability for past conduct, an affiliate's conduct going forward in a regulated market is directly relevant to any analysis of an affiliate's "good character, honesty and integrity", as well as that of its principal owners, officers and directors. Thus, the Division has determined that it will not direct its investigative resources nor take enforcement action against those affiliates that promoted and marketed to U.S. players post-UIGEA, provided they come into full compliance with New Jersey law and the laws of other states within one hundred and fifty (150) days of this Director's Advisory Bulletin. However, if an affiliate fails to come into full compliance with New Jersey law and the laws of other states within the one hundred and fifty (150) day compliance deadline, this conscious refusal, when coupled with its prior post-UIGEA conduct, will negatively affect an affiliate's "good character, honesty and integrity" when assessing suitability for continued licensure or registration or for future applicants. As noted above, the negative suitability assessment will attach to each principal owner, officer and director regardless of any changes in corporate ownership or

structure. In addition, if an affiliate removes links to, and marketing for, all illegal gambling sites prior to the expiration of the one hundred and fifty (150) days, the Division will not take any enforcement action against the affiliate, its principal owners, officers and directors for its post-UIGEA activities.

In sum, any affiliate whether currently licensed or registered with the Division, or any future applicant, who was engaged in the promotion or marketing of online gambling sites to U.S. players post-UIGEA, or has promoted or marketed illegal online gambling sites to New Jersey or United States players since November 26, 2013, who ceases to promote or market, either directly or indirectly, any illegal online gambling site to any New Jersey player, or players in other states, where such conduct is illegal, within one hundred and fifty (150) days of this Director's Advisory Bulletin, that affiliate, and its principal owners, officers and directors, will not be subject to enforcement action by the Division for its past conduct. Further, that entity will not have its past conduct considered in assessing the "good character, honesty and integrity" of the affiliate, and its principal owners, officers and directors when applying to the Division for licensure or registration.

Should an affiliate or operator have any questions, please contact DAG Michael Golub ([michael.golub@njdge.org](mailto:michael.golub@njdge.org)) or DAG Louis Rogacki ([louis.rogacki@njdge.org](mailto:louis.rogacki@njdge.org)).

Dated: June 4, 2015

  
David L. Rebeck  
Director