Christopher J. Reed
General Counsel
2295 Susquehanna Trail
York, PA 17404
(717) 815-2839
creed@rutters.com

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VIA Hand Delivery

Pennsylvania Gaming Control Board
Attn: Honorable David M. Barasch, Chairman
P.O. Box 69060
Harrisburg, PA 17106-9060

Pennsylvania Gaming Control Board
R. Douglas Sherman – Chief Counsel
Attention: Regulation # 125-211 Public Comment
P.O. Box 69060
Harrisburg, PA 17106-9060

RE: Public Comment on Regulation #125-211

Dear, Messrs. Barasch and Sherman:

C.H.R. Corp., d/b/a Rutter's is an eligible Establishment Licensee in the Commonwealth of Pennsylvania under Act 42 of 2017 ("Act 42"). Rutter's is currently discussing opportunities in Pennsylvania with many experienced terminal operators. As such, Rutter's joins them in corresponding with the Pennsylvania Gaming Control Board (the "Board") regarding Temporary Rulemaking #125-211 (the "Temporary Regulations").

Act 42 is a revenue generating bill intended to increase potential revenue collections by the Commonwealth. In furtherance of that intent, the Pennsylvania Legislature drafted and approved the language of Act 42 to maximize potential revenue while still maintaining control and oversight of gaming within the Commonwealth. The Temporary Regulations generally further the intent of the Legislature, except for certain instances outlined below.

I. Qualification of Establishment Licensees

One such instance where the Temporary Regulations deviate drastically from Act 42 is with respect to the qualifications that an establishment licensee must meet. Initially, both Act 42 and the Temporary Regulations define an "establishment licensee" as, "[a] truck stop establishment that holds an establishment license."[1] Further, Act 42 and the Temporary Regulations define "truck stop establishment" in the same manner, except that the Temporary Regulations add that a truck stop establishment, "...[h]as at least 20 parking spaces dedicated for commercial motor vehicles *as defined in 75 Pa.C.S. § 1603*" (emphasis added).[2] Act 42 does not define "commercial motor vehicle," however, at least one Pennsylvania Representative has indicated that the definition of "commercial motor vehicle" set forth in 75 Pa. C.S. §1603 was the definition that the Legislature intended in Act 42.

[1] 4 Pa. C.S. §3102; 58 Pa. Code §1101.2
[2] 58 Pa. Code §1101.2

The Temporary Regulations go on to provide that an applicant for an establishment license must meet certain qualifications, which generally comport with the requirements listed in the definition sections of Act 42 and the Temporary Regulations. [3] Specifically, the requirement: (i) to maintain diesel fueling islands; (ii) of quantity of diesel fuels sales; (iii) of the number of parking spaces for commercial motor vehicles; (iv) of the on-site convenience store; (v) of minimum acreage; (vi) prohibiting being located on Pennsylvania Turnpike property; and (vii) of being a licensed Lottery Sales Agent are all verbatim from Act 42.[4] The Temporary Regulations, however, divert from the intent of Act 42 by setting forth additional requirements that a vehicle must meet in order to be considered a "commercial motor vehicle."[5] The Board has seen fit to define "commercial motor vehicles" as at least, "eight (8) feet in width and fifty-three (53) feet in length or otherwise which have a gross combination weight rating or gross combination weight of 26,000 pounds inclusive of a tow unit with gross vehicle weight rating or gross vehicle weight of more than 10,000 pounds, whichever is greater." [6] At least a portion of this definition is clearly taken from the 75 Pa. C.S. §1603 (the "Motor Vehicle Code"). [7] By adding the measurement and weight requirements, the Temporary Regulations are internally inconsistent and circumvent the intent of two Pennsylvania Statutes.

With regard to internal inconsistency, the Temporary Regulations specifically defined the requirements of a "truck stop establishment."[8] This initial definition is, however, meaningless as the subsequent establishment license applicant requirements render the definition void. Specifically, the Temporary Regulations utilize the Motor Vehicle Code to define "commercial motor vehicle," but then go on to define commercial motor vehicle in a different manner. A location cannot qualify as a truck stop establishment in one section of the Temporary Regulations and then not qualify in another section. This inconsistency will cause confusion amongst potential establishment licensees and will not incentivize applications for establishment licenses; thus, limiting potential revenue receipts by the Commonwealth.

Of equal concern is the circumvention of Legislative intent in two Pennsylvania Statutes. First, Act 42 delineates the requirements for a location to be considered a truck stop establishment. As discussed above, the Legislative intent was to provide for the broad definition of "commercial motor vehicle" utilized by the Motor Vehicle Code. The Temporary Regulations seem to initially embrace that intent and definition until summarily rejecting the provisions of Act 42 and narrowly defining "commercial motor vehicle." Second, the Temporary Regulations incorporate the Motor Vehicle Code's definition of "commercial motor vehicle." By referencing the Motor Vehicle Code, the Temporary Regulations must be consistent with application of the Motor Vehicle Code's definitions and provisions. The Motor Vehicle Code provides for five qualifying vehicles which are to be considered "commercial motor vehicles."[9] The Temporary Regulations completely ignore four of the qualifying vehicles; thus, misconstruing the Legislature's intent in passing the Motor Vehicle Code.

Rutter's respectfully requests that the Board strongly consider revising the Temporary Regulations to comply with Act 42 and the Motor Vehicle Code. By doing so, the final regulations will be internally consistent, compliant with the provisions of Act 42, and will further the intent of Act 42 by allowing for maximum revenue potential to be realized by the Commonwealth.

II. PRINCIPALS

Another instance where the Temporary Regulations alter the provisions of Act 42 is with respect to the definition and treatment of principals of licensed entities. Act 42 defines a "principal" as, "[a]n officer, director, person who directly holds a beneficial interest in or ownership of the securities of an applicant or

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[3] Id. at §1103.1(b)(1)-(5).
[4] Compare 58 Pa. Code §1103.1(b)(1)-(5) with 4 Pa. C.S. §§ 3102 and 3514(f)
[5] 58 Pa. Code §1103.1(b)(2)
[6] Id.
[7] 75 Pa. C.S. §1603 (definition of "commercial motor vehicle" at (1.1))
[8] 58 Pa. Code §1101.2
[9] 75 Pa. C.S. §1603

anyone licensed under this part, person who has a controlling interest in an applicant or anyone licensed under this part or has the ability to elect a majority of the board of directors of a licensee or to otherwise control anyone licensed under this part...."[10] Contrast the Legislature's definition with that of the Temporary Regulations and two distinct differences become apparent. First, the Temporary Regulations create a separate definition for principals of an establishment licensee; such principals are labeled "principal qualifiers."[11] Second, the Temporary Regulations' definition of a principal qualifier is more expansive than that of "principals" in either Act 42 or the Temporary Regulations. The definition "principal qualifier" adds that, "... an owner is each individual who has a direct or indirect ownership or beneficial interest of 10% or more in the truck stop establishment or other person as determined by the Board."[12] Essentially, the Temporary Regulations 'cast a wider net' on identifying principals of establishment licensees than on any other licensee. [13]

Act 42 and the Temporary Regulations focus the definition of a "principal" on "direct" ownership and control of an applicant or licensed entity.[14] This focus is relevant to the Legislature's intent of maintaining oversight of gaming within the Commonwealth. It follows that persons having direct ownership or control of an applicant or licensee must be known and vetted by the Commonwealth. An individual or entity holding direct ownership of an applicant or licensee has an immediate pecuniary interest in the applicant/licensee and the revenue generated by video gaming. Likewise, an individual or entity that has the ability to control the operations or appoint the board members of an applicant/licensee has some ability to impact video gaming activities within the Commonwealth. Appropriately, these individuals and entities with direct connection to an applicant/licensee are the persons whom the Legislature intended to identify and subject to vetting procedures. The Temporary Regulations, however, unilaterally expand the list of persons that are subject to such vetting procedures, but only with respect to establishment license applicants/licensees.

This expansion and application to a single class of license is in contravention of the Legislature's intent; especially, in light of the fact that the targeted class of license is not involved in the "conduct of video gaming." Both Act 42 and the Temporary Regulations define the "conduct of video gaming" as, "[t]he licensed placement, operation and play of video gaming terminals under this part, as authorized and approved by the board."[15] Act 42 prohibits establishments from any involvement in the placement, operation and play of video gaming terminals ("VGTs"). Those activities are limited to terminal operators, manufacturers, and suppliers, and with respect to playing VGTs, players. Thus, the Temporary Regulation's inclusion of "indirect" ownership when identifying principals of establishment license applicants/licensees is unnecessary and undermining of Act 42's purpose.

The targeted expansion on establishment license principals is unnecessary because individuals with an indirect ownership interest are not deriving the immediate pecuniary interest which is of concern to the Legislature, as discussed above. Further, any concern regarding individuals with an indirect ownership interest being able to control an establishment license applicant/licensee is addressed by the existing definition of "principal" which identifies a, "person who has a controlling interest in an applicant or anyone licensed under this part or has the ability to elect a majority of the board of directors of a licensee or to otherwise control anyone licensed under this part." Further, the Legislature's use of "controlling interest" or ability to "control" adequately addresses a parent-subsidiary corporation scenario. A controlling interest would require the holder of such interest to be able to exercise a vote to direct the action of an entity and its

[10] 4 Pa. C.S. §3102
[11] 58 Pa. Code §1101.2
[12] Id.
[13] Id.
[14] 4 Pa. C.S. §3102 and 58 Pa. Code §1101.2
[15] Id.

subsidiaries. Thus, controlling interests are voting-interests. The Legislature did not intend to burden non-voting equity holders of an applicant's parent entity with the vetting procedures that direct owners and controlling-interest holders of applicants are subject to. By way of example, an individual holding a passive non-voting equity interest in a corporation has no ability to control, direct, or influence the activities of said corporation. Further, the holder of such passive equity interest would neither have a direct pecuniary interest in, nor control over a subsidiary entity of the corporation for which the individual holds such passive interest. These individuals should not be classified as "principals" and subject to vetting.

There is no basis for the stricter identification and vetting of establishment principals in Act 42. Stricter treatment is an impediment to applicants for an establishment license. Such an impediment is against the Legislature's intent of promoting a robust gaming industry and increasing potential revenues of the Commonwealth. Further, it is inequitable to treat individuals associated with one license class that is not involved in the conduct of gaming, different than principals of all other license classes which are directly conducting gaming.

Rutter's respectfully requests that the Board amend the Temporary Regulations to remove the "principal qualifier" definition. Passive equity holders of an applicant's parent company are not principals as defined by Act 42 and should not be subject to vetting.

III. ESTABLISHMENT EMPLOYEE LICENSING

Rutter's employs hundreds of Pennsylvanians throughout the Commonwealth. Rutter's employees perform a variety of services for its customers, including sales of highly regulated items (e.g. alcohol and tobacco products). Likewise, other potential establishment license applicants provide employment opportunities for Pennsylvania citizens and offer highly regulated items for sale. Rutter's employees, like any other operator's employees, must submit to a background check, be trained, and, in some instances, certified to sell such regulated items. The extensive employee licensing model that the Temporary Regulations set forth, however, surpass any other licensing requirements that Rutter's has encountered before.

As discussed above, establishment licensees are not permitted to engage in the "conduct of video gaming." Act 42 empowers the Board to identify employees as "non-gaming" or "gaming employees."[16] As such, establishment licensee employees should be classified as non-gaming employees. Further the Board should limit the categories of establishment licensee employees who must obtain a Board credential in order to ease the administrative and fiscal burden on establishments and their employees and make video gaming a more attractive opportunity.

Act 42 states that gaming employees must be "...involved in the conduct of video gaming."[17] As outlined above, Act 42 prohibits establishments and their employees from any involvement in the placement, operation and play of video gaming terminals. Thus, establishment licensees and their employees are not involved in the conduct of video gaming. Accordingly, Act 42 does not require any establishment employees to be licensed as gaming employees.

The responsibilities Act 42 assigns to establishment employees are limited to monitoring the video gaming area for responsible gaming purposes.[18] The Legislature chose not to include monitoring the gaming area in the definition of "conduct of video gaming." The Temporary Regulations, however, contradict the Legislature's decision by unilaterally expanding the definition of "gaming employee" to include "monitoring the conduct of video gaming and patrons in the video gaming area" and exclude monitoring activities from the definition of a non-gaming employee registration.[19] Act 42 clearly states establishment employees, due

[16] 4 Pa. C.S. § 3510(a)(3)
[17] 4 Pa. C.S. § 3102
[18] 4 Pa. C.S. §§ 3702(a)(5), 3702(a)(6), 3706(d)
[19] 58 Pa. Code §§ 1101.2, 1109.2

to their limited responsibilities, are intended to be classified differently than terminal operator, manufacturer, supplier, and gaming service provider employees. Rutter's respectfully requests that establishment employees be classified as non-gaming employees and be required to only obtain a non-gaming employee registration with the Board. Such a classification advances the intent of Act 42 and it would streamline the process by which establishment employees become licensed.

Additionally, Rutter's respectfully requests that the Temporary Regulations be amended to clarify that only those employees of an establishment with direct responsibility for "monitoring the conduct of video gaming and patrons in the video gaming area" be required to obtain a Board-issued credential.

IV. Marketing and Advertising

Act 42 prohibits both establishments and terminal operators from providing an "incentive" which it defines as "consideration, including a promotion or prize, provided to a player or potential player as an enticement to play a video gaming terminal."[20] Nothing in Act 42, however, prohibits giving items of value to players as a reward for playing a video gaming terminal. Customer loyalty/rewards programs are a staple of Rutter's business, and the retail industry. Customers expect to have such programs made available and, to some extent, choose which retailers to patronize based upon such programs. Rutter's loyalty/rewards program offers a variety of benefits, including discounts on items (e.g. coffee, gas). Additionally, not all items of value should necessarily and automatically be considered an enticement to play VGTs. The Temporary Regulations define "video gaming related activity" as including "...applying for player club memberships...or accepting a complimentary gift, service, promotional item, or other thing of value at an establishment licensee's premises."[21] Rutter's respectfully offers that the Board should follow the lead of Illinois and actively regulate the types of marketing promotions that are permissible to ensure that terminal operators and establishments do not mistakenly cross the line into offering an impermissible incentive.[22] Examples of types of marketing promotions permitted in Illinois include:

- No Purchase Necessary Promotions: Patrons may earn entries into a sweepstakes giveaway via a handwritten entry slip, business card, and/or through an app/loyalty program using location services. The key is that no form of entry requires a purchase of any kind.

- App-based Loyalty Clubs: An app downloaded on a tablet or mobile device uses geolocation services to allow a patron to "check-in" at an establishment and, thereby, earn rewards. Additionally, a patron's use of an existing loyalty/rewards card for non-gaming purchases at an establishment earns rewards. The "check-in" and/or purchase does not require the patron to be in the video gaming area or playing a VGT. Instead, the reward is based on the player patronizing the establishment.

Further, with respect to direct mailings, Act 42 directs the Board to establish procedures which place the burden on terminal operators to "...remove self-excluded persons from customer loyalty or reward card programs and targeted mailing or other forms of advertising or promotions."[23] Act 42 does not provide that such a burden be placed upon an establishment; likely because establishments may only receive 15% of gross terminal revenue and should not have to bear the costs associated with scrubbing self-excluded and excluded persons from targeted mailings. Establishment licensees' duties with respect to self-excluded and excluded patrons are limited only to those set forth in the Act.[24]

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[20] 4 Pa. C.S. §§ 3102, 3702

[21] 58 Pa. Code §1119.1

[22] Illinois Admin. Code § 1800.250(n)

[23] 4 Pa. C.S. § 3903(b)(3)

[24] 4 Pa. C.S. § 3903(b)(3)

The Temporary Regulations, however, place the burden on establishments to "ensure that video gaming self-excluded persons do not receive, either from the video gaming establishment licensee or any agent thereof, targeted advertisements of video gaming activities at its premises."[25] This burden is at odds with the direction of Act 42. Rutter's respectfully requests that the Temporary Regulations be amended to conform to Act 42's delegation of responsibilities among terminal operators and establishments. Such a regulatory scheme would not prohibit both terminal operators and establishments from executing general advertisements (e.g. newspaper, radio, building exterior) so long as they comply with Act 42 and problem gambling regulations.[26]

Additionally, terminal operators and establishments must be able to market VGTs and should be able to share the costs of marketing initiatives. An "inducement" is defined in both Act 42 and Temporary Regulations as including "marketing and advertising cost" and both prohibit a terminal operator from providing an inducement to an establishment licensee.[27] Both Act 42 and the Temporary Regulations define an "inducement" relative to "...secur[ing] or maintain[ing] a terminal placement agreement" and "solicit[ing] or maintain[ing] the establishment licensee or establishment licensee owner's business."[28] The Legislature's specific choice of words demonstrates that the items/activities that constitute an "inducement" are only prohibited when a terminal operator's intent is to secure/solicit a terminal placement agreement and/or maintain/renew a terminal placement agreement with an establishment.

Therefore, Act 42 does not prohibit terminal operators from offering items of value (e.g. cost-sharing of marketing and advertisements) to establishments when the intent is to generate taxable revenue. Since terminal placement agreements must have a minimum term, there necessarily is a period of time when the intent of providing an establishment with an item of value can reasonably be interpreted as not relating to securing/soliciting or maintaining/renewing a terminal placement agreement.

Rutter's respectfully requests that the Temporary Regulations address the types of marketing and advertising expenses that terminal operators and establishments may permissibly share (e.g. items directly provided to players; co-branded signage/advertisements/merchandise) and the extent to which they may be shared (e.g. pro rata basis, dollar limit).

V. Player Tracking Systems

Rutter's respectfully submits that the Temporary Regulations should be revised to provide for permissible use of player tracking systems. Customer loyalty/rewards programs necessarily require a player tracking system. Even more, however, a player tracking system is an important tool in an establishment licensee's efforts to comply with monitoring requirements.

VI. Renovation Costs

Act 42 exempts from the definition of "inducement" "...costs paid by a terminal operator applicant or terminal operator licensee related to making video gaming terminals operate at the premises of an establishment licensee...."[29] While the Temporary Regulations delineate the type of renovation costs which may be paid by a terminal operator they limit those costs to "...an existing area of the footprint of the truck stop establishment...."[30] Rutter's respectfully requests the Temporary Regulations be amended to remove this limitation.

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[25] 58 Pa. Code §1119.4(a)(3)
[26] 4 Pa. C.S. § 3706; 58 Pa. Code § 1118.4
[27] 4 Pa. C.S. § 3102; 58 Pa. Code §1101.2
[28] 4 Pa. C.S. §§ 3102, 3702(b)(6)
[29] 4 Pa. C.S. § 3102
[30] 58 Pa. Code § 1116.7(f)

Terminal operators have more experience and expertise in creating gaming facilities. Potential establishments will vary in size and layout from location to location and creating a customized video gaming area may require expanding beyond an establishment's footprint. Such an expansion would provide optimal safety to terminal operator employees when collecting VGT proceeds and filling redemption terminals, as well as aid establishment employees in monitoring for underage individuals and self-excluded/excluded persons.

Further, because of the relatively low percentage of gaming revenue that establishments will receive (i.e., 15% of gross terminal revenue), placing the financial burden on establishments to build-out existing footprints will be a barrier to many potential establishments applying for licensing. An expansion of an existing footprint for the purpose of gaming is a benefit for terminal operators, establishments and the Commonwealth. Terminal operators, establishments, and the Commonwealth are aligned in desiring to create optimal gaming areas. Creation of gaming facilities to provide for secure and enjoyable gaming experiences, is key for the success of video gaming within the Commonwealth. Allowing terminal operators to take on the financial burden of creating gaming areas, including expanding existing footprints, is not an improper inducement. Costs relative to foot-print expansion and/or gaming area build-out would be documented by invoices and subject to audit. Supporting documentation and audit would prevent improper payments by a terminal operator to an establishment. Accordingly, permitting terminal operators to take on the financial burden of gaming room build-out, including expansion of existing footprint, is necessary for safe, effective operations that will maximize taxable revenue to the Commonwealth.

Additionally, the Temporary Regulations mandate that the "...video gaming area shall be separated from the remaining establishment premises by a physical barrier which may consist of a wall no higher than forty inches, a partition or gate which shall not obstruct the view of the conduct of video gaming...."[31] As a video gaming area may only contain a maximum of five (5) VGTs, the video gaming area will be quite small and able to be seen easily by an establishment employee. Accordingly, Rutter's respectfully requests that the Temporary Regulations be amended to make clear that only one wall of the video gaming area must be at most forty (40) inches in height to provide visual observation into the room.

VII. Surveillance

Act 42 places the burden on establishments to monitor a video gaming area so that it is "...secure and easily seen and observed by at least one employee of the establishment licensee."[32] Act 42 permits this requirement to be met "directly or through live monitoring of video surveillance."[33] It is clear, however, that the purpose of these provisions is to promote responsible gaming.[34] Rutter's respectfully requests that the Temporary Regulations provide clear guidance for establishments on how to meet the Act's requirements.

Act 42's strenuous requirements are likely to dissuade establishment's from seeking licensure due to various prerequisites and operating barriers, including burdensome effects on labor costs. The Temporary Regulations expand these burdensome labor costs by requiring constant "line of sight" live monitoring of the gaming area by establishment employees. While monitoring a video gaming area promotes responsible gaming, requiring "line of sight" live monitoring of patrons both accessing the gaming area and while in the gaming area serves no purpose. Even land-based casinos are not required to have "line of sight" live monitoring of every single patron entering a slot machine area or playing a slot machine at all times. VGTs,

[31] 58 Pa. Code § 1116.1(c)(3)
[32] 4 Pa. C.S. §3702(a)(5)
[33] 4 Pa. C.S .§3702(a)(6)
[34] Id.; 4 Pa. C.S. §3706(d)(3)

like slot machines, cannot be tampered with to effect outcomes and unauthorized entry to a cabinet or redemption terminal will notify the terminal operator and central monitoring system.

Surveillance technology and player tracking provide greater safeguards for responsible gaming than "line of sight" live monitoring. Surveillance technology allows for increased oversight than "line-of-sight" for the simple reason that surveillance technology enhances the angles by which players can be viewed. Simply, an establishment employee may be limited to viewing the back or side of players entering the gaming area or while in the gaming area. Surveillance technology would allow for viewing of a player's face before entering and while inside of the gaming area. The ability to view a player's face increases the ability to prevent excluded persons from entering the gaming area.

Likewise, utilizing player tracking technology to prevent impermissible access to a gaming area is more effective than "line of sight" monitoring. As discussed above, loyalty/rewards programs provide for player tracking by identifying when an individual is on-site at an establishment. With respect to Rutter's, the holder of a loyalty/rewards card must provide identifying information in order to register and use a loyalty card. Once registered, the loyalty/rewards card is used to confirm age and identity for age-restricted purchases (e.g. alcohol and tobacco products). The same loyalty/rewards cards could be utilized by verified, permitted players to gain access to a gaming area. By swiping their loyalty/rewards card a qualified player could enter the gaming area and an establishment employee would be notified of the player's entrance to the gaming area. Allowing establishments to implement technology-based surveillance systems accomplishes Act 42's intent to promote safe gaming more effectively than "line of sight" live monitoring

Technology allows a trained employee to have constant access to view players entering the gaming area as well as the entire gaming area via a surveillance feed. This scenario not only allows for constant monitoring, but enhances monitoring. Further, combining a live surveillance feed with use of loyalty/rewards cards increases security over the gaming area.

Rutter's requests that "at all times" monitoring should be interpreted in the following manner:

> The designated employee monitoring the gaming area must be able to monitor the entrance to the gaming area and the interior of the gaming area. To accomplish such monitoring, a licensee may utilize technology-based surveillance, including video surveillance, player tracking technology, and any other technology the Board may approve. Further, provided the surveillance system notifies the designated employee that a person has entered the gaming area, then the designated employee need not be continuously viewing the surveillance monitor.

With the advent of video gaming within the Commonwealth, it may be beneficial for all stakeholders, both potential licensees and Board representatives, to meet. Such a meeting would allow for an open discussion of private and public-sector concerns and, further, provide an opportunity to address those concerns through discussion and development of regulatory language. Rutter's prides itself on operating pursuant to best practices and a meeting between licensees and Board representatives would allow for the development and implementation of best practices for the video gaming industry. Open communication between licensees and regulators will allow for successful implementation of Act 42 and advance the Legislature's intent to develop a robust video gaming industry throughout the Commonwealth.

Thank you for your consideration of the above comments and for endeavoring to make video gaming a productive operation that benefits licensees, the Commonwealth, and citizens of Pennsylvania. Should you have any concerns, do not hesitate to contact me.

Best Regards,

Christopher J. Reed

Christopher J. Reed
General Counsel, The Rutter's Companies