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***VIA FACSIMILE TRANSMISSION  
AND FEDERAL EXPRESS***

August 8, 2008

Paul Resch, Acting Director, Gaming Operations  
Attention: Public Comment on Regulation No. 125-82  
Pennsylvania Gaming Control Board  
P.O. Box 69060  
Harrisburg, Pennsylvania 17106-9060

Dear Mr. Resch:

In accordance with my conversations with you, other representatives of various departments of the Pennsylvania Gaming Control Board (“Board”) and Lynne Hughes, Vice President Legal Affairs—Eastern Division for Harrah’s Operating Company, Inc., the following additional comments are respectfully submitted in response to the Board’s revised proposed regulation 125-82. These additional comments are submitted on behalf of Harrah’s Entertainment, Inc. and its various subsidiary entities (collectively, “HET”) with an interest in Chester Downs and Marina, LLC (the “Licensee”), the holder of a Category 1 Slot Operator License issued by the Board. These additional comments are intended to supplement those previously submitted on behalf of HET on March 31, 2008. HET would like to take this opportunity to thank the Board for its willingness to accept the submission of these additional comments through August 8, 2008.

**General Comments**

- 1. Proposed regulation 125-82 does not address a compelling regulatory need that could not be addressed by far less onerous enactment.**

HET is not aware of any compelling purpose to be served by the adoption of proposed regulation 125-82. While recognizing the Board’s emphasis on the importance of the independence of the internal audit and surveillance department heads, HET also notes that the Board has addressed these concerns in other regulations, including 58 Pa. Code 465a.11(c) which provides for the direct reporting of surveillance and internal audit department heads to the independent audit committee on matters of policy, purpose, responsibility and authority. Elsewhere in its existing regulations, the Board has required that slot machine licensees must adopt internal controls and audit procedures governing all aspects of the licensee’s business. These internal controls and audit procedures must

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be approved by the Board prior to implementation. This regulatory structure provides adequate safeguards for all legitimate Board interests and, to HET's knowledge, has worked without incident for all licensees.

If the Board's goal in adopting proposed regulation 125-82 is simply to provide a definition of "independent" in the context of the independent audit committee, HET respectfully suggests that this end could be accomplished by a much less onerous amendment to 58 Pa. Code 465a.11(c).

**2. The burdens imposed by proposed regulation 125-82 far outweigh any perceived benefits.**

Under the proposed rule, companies would not be able to use individuals for more than one committee resulting in additional costs for retaining other outside individuals for the sole purpose of sitting on the independent audit committee. HET has estimated the costs of compliance with the proposed regulation at approximately \$275,000 to \$345,000 per year. This estimate is comprised of assumed committee member compensation of approximately \$60,000 to \$75,000 each, legal fees of approximately \$25,000 to \$50,000 (based on HET's best estimates of legal fees incurred if the independent committee were to require independent counsel akin to Mount Airy) and the potential for an incremental increase in auditor's fees of \$70,000 (recognizing the possibility of the appointment of an outside auditor other than the independent auditor for all other HET subsidiary operations).

As noted above, the regulatory benefits implied by the proposed regulations are unclear.

**3. Proposed regulation 125-82 unreasonably imposes disparate requirements on privately-held licensees and publicly-held licensees.**

The proposed regulation is applicable only to slot machine licensees that are privately-held or whose holding or intermediary companies are privately-held. The Board should reconsider its effort to impose more stringent audit committee standards on private entities than those imposed by the SEC on the New York Stock Exchange ("NYSE") on public entities. The requirements imposed by the SEC and various established stock exchanges provide sufficient controls and protections for the safeguarding of assets and revenue. Arbitrarily imposing more stringent requirements on privately-held licensees places an unreasonable burden on such licensees.

Anecdotally, HET notes that no other gaming jurisdiction in the United States imposes more stringent audit committee standards on privately-held companies than on publicly-held companies. In fact, other than New Jersey and Pennsylvania, no other domestic jurisdiction even requires a



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separate independent audit committee. Instead, the regulations and internal controls established by the gaming regulatory agencies contain controls and protections for the safeguarding of assets and revenues and ensure that operational matters are addressed within the organization. For example, Indiana regulation, 68 IAC 2-3-1.1, requires the property-level head of surveillance report to a corporate office, while Illinois and Missouri have adopted minimum Internal Controls that require these same individuals to report to the company's Board of Directors unless otherwise approved by the regulatory agency.

### **Specific Section Comments**

#### **1. Section 441a.24(a)(1)**

Section 441a.24(a)(1) identifies the general purpose and duty of the independent audit committee as "monitor[ing] and report[ing] to the Board on the operations and financial control of the slot machine licensee." These functions are overly broad and are inconsistent with the limited function already established by the Board's regulations. Under 58 Pa. Code 465a.11(c), the function of the independent audit committee is for the direct reporting of surveillance and internal audit department heads on matters of policy, purpose, responsibility and authority. This function is the broadest, most intense function served by HET audit committees in any jurisdiction in which HET subsidiaries operate, and in all jurisdictions but New Jersey, the function served by HET audit committees is generally narrower and less intense than that described.

An independent audit committee should not have operational and managerial authority over a casino but, instead, should be established to ensure the safeguarding of assets and revenues of the licensees. As indicated above, the responsibilities currently assigned by the SEC and the various established stock exchanges are less broad than those proposed by the Board. For example, NYSE rule 303A.07(c) sets forth the purpose of audit committees as assisting the Board of Directors in its oversight of the following: 1) the integrity of the listed company's financial statements; 2) the listed company's compliance with legal and regulatory requirements; 3) the independent auditor's qualifications and independence; and 4) the performance of the listed company's internal audit function. These functions are narrower and do not pose a threat to the ordinary and appropriate operational or managerial functions of a licensee. The Board should limit the responsibility of the independent audit committee accordingly.

#### **2. Section 441a.24(a)(2)(v) and 441a.24(a)(3)**

These sections require the independent audit committee to establish a code of conduct for the committee and approval of that code of conduct by the Board. First, the term "code of conduct" is



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undefined and the application of the requirement is unclear in instances where regulatory or exchange rules may require adoption of a company-wide code of conduct. For example, NYSE rule 303A10 requires listed companies to adopt a code of business conduct and ethics for its officers, directors, and employees. The implications of the adoption by the audit committee of a non-conforming code are unclear.

**3. Section 441a.24(a)(4)**

Section 441a.24(a)(4) requires members of the independent audit committee to file an application for a principal license. HET submits that the regulation should clarify that temporary licensing/qualification provisions would be applicable to these individuals and that members will not be limited in their ability to perform functions on the committee pending licensing/qualification. This will ensure continuity of the committee throughout any transition, particularly since it is required that the members be independent of the HET and, therefore, a current employee could not be installed on an interim basis.

**4. Section 441a.24(a)(6) and 441a.24(a)(7)**

Section 441a.24(a)(6) prohibits members of the audit committee from having an ownership interest in a slot machine licensee or any entity owned by the slot machine licensee. It is unclear whether this prohibition would extend to ownership interests in holding or intermediary companies of a licensee. If, in fact, this does apply to ownership interests in holding or intermediary companies it is problematic in that it unreasonably limits the ability of a licensee to attract qualified individuals to serve on the committee. Licensees should have the ability to exercise discretion in determining the appropriate method for compensating committee members, including the ability to offer ownership equity in the company. NYSE rule 303A.00 regarding compensation to committee members does not prohibit independent directors from receiving an equity interest as compensation for committee membership. This form of compensation should be deemed appropriate as long as the compensation is solely in consideration service on the committee.

Section 441a.24(a)(7) prohibits independent audit committee members from having a "material relationship" with the slot machine licensee. "Material relationship" includes: i) receiving any compensation other than the compensation received for serving as a member of the committee; ii) receiving compensation in an amount exceeding \$100,000 within any 12-month period during the three years prior to becoming a member; iii) having been an employee of the entity within the last three years; iv) having been engaged to perform external or internal audit functions of the entity within the last three years; and v) having been employed by any company that has made or received payments from the entity exceeding \$1 million within the last three years.



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Items (i), (ii), and (v) are particularly problematic for the following reasons. With regard to items (i) and (ii), this prohibition would limit the ability of a company to utilize an independent member for other types of company committees such as the Board of Directors or the Compliance Committee. As previously indicated, it is challenging for companies to find individuals who are willing to put in the time and undertake the responsibilities that exist with committee membership and, therefore, it is beneficial for companies to have the flexibility to utilize a qualified person for more than one type of committee. In addition, it is valuable to companies to have qualified individuals who become knowledgeable on various aspects of the business by having the ability to sit on various company committees. For the same reason, items (ii) and (v) are problematic in that the dollar threshold for compensation could impact a company's ability to utilize a qualified person for more than one type of committee.

These limitations do not currently exist for public companies and imposing these more stringent limitations on private companies is unreasonable. For additional information, see NYSE rule 303A.02 which sets forth independence tests under the definition of "independent director." As one example, HET currently has a member of its Board of Directors who also a member of the independent audit committee for Chester Downs. This individual was an independent director of HET when HET was a public entity. Under the Pennsylvania proposed rule, this independent director would not currently qualify to be a member of the Pennsylvania independent audit committee. Neither the SEC nor any stock exchange or gaming regulatory agency prohibits this outside individual from holding a position on more than one committee within the HET organizational structure. In addition, there are no prohibitions with regard to compensating this individual through an equity ownership interest or a monetary amount that totals more than \$100,000.

**5. Section 441a.24(8)**

This paragraph requires licensees to give notice to the Board upon the resignation or termination of an audit committee member and to provide a description of the cause for the resignation or termination. In addition, it requires licensees to request a letter from the member, addressed to the Board, stating whether the member agrees with the statements made by the licensee on termination or resignation. Again, this provision is more stringent than those faced by public companies. See the provisions implemented by the SEC set forth as Item 5.02 to Form 8-K. Applying this item, licensees would provide the member with a copy of their communication to the Board regarding the resignation or termination and the member has the opportunity to respond. Under the SEC rules, a response from the member is not required but can be made to the licensee if the member deems it



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appropriate. It would be difficult for the licensee to have the authority to require a member to submit such a response after termination or resignation.

Most domestic jurisdictions require notice to the gaming regulatory agency of changes in Committee membership. For instance, Nevada requires notification of changes to the membership of the Compliance Committee. Although they take administrative action to approve those changes, they do not require a letter from the former member stating whether that individual agrees with the licensee regarding termination or resignation.

**6. Section 441a.24(11)**

This paragraph requires the independent audit committee to be responsible for the appointment, compensation, retention and oversight of an independent certified public accountant and that the independent certified public accountant must report directly to the independent audit committee. The proposed regulation fails to consider that a separate audit committee may already exist within an entity's organizational structure, particularly at the parent company level, that is authorized to perform the functions set forth in the proposed regulation. A separate audit committee could decide, for example, that a different independent certified public accountant should be utilized specifically for the Pennsylvania slot machine licensee. This would result in engagement of a separate independent auditor who would have to repeat testing and reviews already performed by the parent company auditor. This would be time consuming, disruptive, repetitive and expensive for the Pennsylvania licensee. One independent auditor for a family of companies meets the needs of the Board.

Lastly, while most domestic jurisdictions require the submission of annual independent accountant reports, no other gaming regulatory agency gives authority to a separate entity within a licensee's organizational structure to retain an independent accountant. As indicated above, such an approach is costly and duplicative.

**7. Section 441a.24(13)**

This paragraph provides that the department heads of internal audit and surveillance must report to the licensee's chief executive officer for matters of daily operation. The Board should consider adding the language ". . . or his/her designee," after the term chief executive officer as, in some instances, these individuals may report to other management level employees such as General Managers or the Vice President of Internal Audit.



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**8. Section 441a.24(14)**

Under this proposed section, the independent audit committee is required to establish adequate procedures for handling complaints regarding corporate and regulatory compliance and internal controls, including a system for handling anonymous complaints. Note that companies may already have procedures in place to address these items and, therefore, there should be an exception that only requires *reporting* of matters specific to the Pennsylvania licensee to this independent audit committee. For example, HET is required, by statute in various gaming jurisdictions, to have a compliance system that addresses corporate and regulatory compliance matters. To that end, HET has established a Compliance Committee that implements a Compliance Program throughout the organization. The Compliance Program not only establishes procedures regarding compliance matters but also establishes a hotline as a vehicle for handling anonymous complaints. In addition, these types of matters are disclosed and/or addressed through HET's Audit Committee.

As such, it is impractical for these functions to be handled by a separate independent audit committee. It is recommended that the Board consider revising this section such that information, specific to Pennsylvania operations and already addressed by another committee within the organizational structure, be required to be submitted to the independent audit committee for information purposes and that the independent audit committee not be responsible for establishing procedures to handle complaints.

**9. Section 441a.24(15)**

This paragraph gives the Board the authority to grant waivers for one or more of the requirements under section 441a.24 and that a waiver may be granted based on supporting documentation and an explanation of how the requirements would impose an unreasonable financial hardship to the licensee. The Board should consider expanding this language beyond an "unreasonable financial hardship" standard to include consideration that a requirement may be impractical or unreasonably burdensome, or that a waiver may be in the best interests of the public and the gaming industry.

**Miscellaneous Comments**

The Board provide that all approvals required in proposed regulation 125-82 may be granted administratively by the Board and should not require full Board approval, including the granting of waivers allowed under section 441a.24(15). This will allow the Board flexibility to grant administrative approvals in a timely manner and without having to hold formal public meetings, as is done in many jurisdictions including Nevada, Mississippi, and New Jersey.

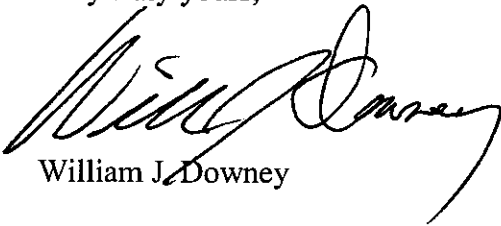


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Please feel free to contact me if you have any questions regarding the above comments or if you would like to discuss any of the comments in greater detail. Additionally, please be aware that if you determine that conversations with HET's SEC or other regulatory counsel may assist in your consideration of these matters, HET is prepared to make such parties available to you at your convenience. Thank you, in advance, for your consideration.

Very truly yours,



William J. Downey

cc: Richard Sandusky, Director of Regulatory Review, Pennsylvania Gaming Control Board  
Melinda Tucker, Director of Racetrack Gaming, Pennsylvania Gaming Control Board  
James Talerico, Deputy Director, Bureau of Corporate Compliance and Internal Controls  
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