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March 28, 2008

VIA HAND DELIVERY

Paul Resch, Secretary
Pennsylvania Gaming Control Board
5th Floor – Strawberry Square
Harrisburg, PA 17101
Attn: Public Comment on Regulation No. 125-78

Re: Downs Racing, L.P.'s Comments to Proposed Rulemaking
In re: Regulation No. 125-82 (Independent Audit Committee)

Dear Mr. Resch:

Enclosed please find Downs Racing, L.P. and Mohegan Tribal Gaming Authority's
Comments to Proposed Rulemaking with regard to the above-referenced Regulation.

Sincerely,



Alan C. Kohler
For WolfBlock LLP

ACK
Enclosures

HAR:79589.1/MOH005-222463

**BEFORE THE
PENNSYLVANIA GAMING CONTROL BOARD**

In re: Regulation No. 125-82 :
Proposed Rulemaking -- 58 Pa. Code :
Chapter 441a :
Section 441a-24 – Independent Audit :
Committee :

**DOWN'S RACING, L.P. AND MOHEGAN TRIBAL GAMING AUTHORITY'S
COMMENTS TO PROPOSED RULEMAKING**

BACKGROUND AND INTRODUCTION

On March 1, 2008, the Board published a proposed rulemaking at 38 Pa.B. 1039 which would amend Chapter 441a of the Board's regulations to establish requirements governing the independent audit committees of "[s]lot machine licensees that are not publicly traded corporations or whose holding or intermediary companies are not public traded corporations..."¹ The Board's stated explanation for the proposed regulation is to establish requirements on non-publicly traded slot machine licensees that are not subject to Security and Exchange Commission ("SEC") requirements as to such committees.²

The purpose of these comments is to clarify that Downs Racing, L.P. t/d/b/a Mohegan Sun at Pocono Downs' ("MSPD") "holding company" the Mohegan Tribal Gaming Authority ("MTGA") is a "publicly traded corporation" as that term is defined in Section 1103 of the Pennsylvania Race Horse Development and Gaming Act ("Gaming Act"), 4 Pa. C.S. § 1103.

¹ See proposed Section 441a.24(a).

² See *Explanation of Amendments to Chapter 441a*.

Accordingly, neither MSPD, MTGA nor the Mohegan Sun organization are subject to or affected by this proposed rulemaking.

COMMENTS

Proposed Section 441a.24 would, if finally promulgated, establish requirements governing independent audit committees of "[s]lot machine licensees that are not publicly traded corporations or whose holding or intermediary companies are not publicly traded corporations..." The stated purpose of the proposed regulation is to establish requirements on the independent audit committees of licensees which are not subject to SEC requirements.

MTGA holds a 99% partnership interest in MSPD. As such, MTGA is the "holding company" of MSPD, as that term is defined by 4 Pa. C.S. § 1103.

MTGA is also a "publicly traded corporation" as that term is defined by 4 Pa. C.S. § 1103. The definition of "publicly traded corporation" in Section 1103 provides as follows:

"Publicly Traded Corporation." A person other than an individual which:

- (1) Has a class or series of securities registered under the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78A et. seq.);
- (2) Is a registered management company under the investment company act of 1940 (54 Stat. 789, 15 U.S.C. § 80A-1 et seq.); or
- (3) Is subject to the reporting obligations imposed by section 15(d) of the Securities Exchange Act of 1934 by reason of having filed a registration statement which has become effective under the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77A et seq.).

While MTGA is not "publicly traded" in the sense it does not have stock which is publicly traded on one of the stock exchanges, it is a "publicly traded corporation" under the Gaming Act's definition because MTGA has multiple bond offerings which have been registered with the SEC under the Securities Exchange Act of 1934, 15 U.S.C. § 78A et. seq., ("1934 Act") and, as a result, MTGA is subject to the reporting obligations imposed by Section 15(d) of the

1934 Act. Accordingly, MTGA falls within the language of both Subsections (1) and (3) of the Gaming Act's definition and clearly and unequivocally is a "publicly traded corporation."³

Under the express language of the Board's proposed regulation, and because MSPD's holding company, MTGA is a public trading corporation, the proposed regulation does not and can not apply to MTGA, MSPD or the Mohegan Sun organization. Therefore, and by way of clarification, MSPD has no interest in the proposed rulemaking other than to express this clarification.

Furthermore, any inclination to amend the proposed regulation to include MSPD should be rejected. As a publicly traded corporation, the MSPD/MTGA independent audit committee is subject to SEC jurisdiction and is subject to certain SEC requirements. Accordingly, to include MSPD/MTGA in this rulemaking would fall outside the stated purpose of the proposed regulation – which is to establish requirements for licensees not regulated by the SEC.⁴

Furthermore, by the Board's own assessment, a licensee's implementation of the regulation would cost approximately \$250,00 a year.⁵ While MSPD believes that the Board's estimated cost is grossly understated, even the Board's current estimate would cause the incurrence of cost on MSPD/MTGA, an SEC regulated company, without any corresponding

³ MTGA's SEC filings are available at: <http://www.sec.gov/cgi-bin/browse-edgar?company=mohegan+tribal+gaming+authority&CIK=&State=ct&SIC=&action=getcompany>

⁴ Further information concerning MTGA's existing audit committee structure can be found in MTGA's most recent Form 10-K filing, which is available at: <http://www.sec.gov/Archives/edgar/data/1005276/000119312507270756/0001193125-07-270756-index.htm>.

⁵ See Board's *Fiscal Impact* of proposed regulation.

benefit. MSPD's existing independent audit committee is extremely effective and meets all applicable regulatory requirements. No additional requirements are necessary on proper.

WHEREFORE, MSPD/MTGA requests the Board to adopt this clarification that the proposed regulation is not applicable to MTGA/MSPD.

Respectfully submitted



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