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March 28, 2008

Via Facsimile and U.S. Mail

Paul Resch
Secretary
PA Gaming Control Board
P.O. Box 69060
Harrisburg, PA 17106-9060

Ré: Public Comment on Regulation No. 125-82

Dear Mr. Resch:

Please accept the following constructive comments to proposed Section 441a.24. As you know, we represent many licensees, manufacturers, key employees and principals who are active in the Pennsylvania Gaming Industry. As such, we have gathered much experience with respect to the operations of these companies, not only in Pennsylvania but also in other jurisdictions. While the following comments are not being made on behalf of the Pennsylvania Bar Association, please note that I am Chairman of the Pennsylvania Bar Association's Gaming Law Committee and therefore have had occasion to discuss many proposals with members of the Committee.

The first concern is the fact that the proposed Regulation will apply to entities which are not publicly traded and pose requirements that go far beyond the requirements now applying to publicly traded entities. The SEC recognizes the integral role that an audit committee plays in ensuring the fairness of financial reporting by publicly traded companies. In the past, the SEC did not require listed companies to have audit committees to oversee their financial reporting process, although the major stock exchanges did require this of their member companies. Since the 1980's, the trend has been to increase the responsibilities for audit committees of publicly traded companies. In the late 1990's, the SEC began to require listed companies to provide an audit committee report as part of the annual proxy statement. More recently, and most significantly, the Sarbanes-Oxley Act (SOA) in 2002 demanded significantly higher responsibility from audit committees of publicly traded companies, and amended section

IOA of the Securities Exchange Act of 1934, as amended, to make the audit committee of a reporting company an important participant in the financial reporting process of the company. Specifically, SOA requires, in pertinent part, that:

1. Each audit committee member must be independent, as defined in the act;
2. At least one member of the audit committee must be a "financial expert," as defined by the SEC;
3. The audit committee is directly responsible for the appointment, compensation, and oversight of the auditor, who in turn reports to the audit committee;
4. All auditing services and most non-auditing services must be pre-approved by the audit committee;
5. The audit committee has the authority to engage independent counsel and other advisors as necessary to carry out its duties; and
6. The audit committee must establish procedures for the receipt, retention, treatment, and confidential handling of complaints regarding accounting and auditing related matters.

These sweeping and strict requirements provide ample protection to the public and, of course, to the important interests of the Pennsylvania Gaming Control Board (PGCB). The broad proposal for non-public companies, however, goes far beyond that required of public companies, and we believe that many of the already well-recognized standards utilized by the SEC and the stock exchanges should be more than sufficient with respect to non-publicly traded entities. We know of no other gaming jurisdiction that requires its licensees to implement audit committee requirements that exceed those requirements imposed by SOA or the stock exchanges.

It should be emphasized that it is extremely challenging for companies to find individuals who are willing to put in the long hours and undertake the significant responsibilities that currently exist for audit committee members. To add additional burdens that go beyond the established norm will make it even more difficult. To that end, the requirements that currently exist for public companies with regard to term of service, minimum number of meetings and code of conduct for the company should be sufficient for non-publicly traded companies.

Proposed Sections 441a.24 (2) (v) and (vi) require the independent audit committee to establish a code of conduct for the independent committee and require the independent audit committee to review and approve the code of conduct for the slot machine licensee. Clarification is necessary with regard to this proposal. Most companies already have a code of conduct that covers company-wide activities. We believe this code should be sufficient with respect to the interests of the PGCB. We do not believe that a separate code is necessary and this should be made clear. Similarly, it should not be the PGCB that approves a company's

code of conduct as required by proposed Section 441a.24(3). We believe that responsibility rightfully belongs with the company's board. It should be sufficient to file the code of conduct (company-wide) with the PGCB. If retained, process for approval must be established.

Proposed Section 441a.24 (4) limits the audit committee to 5. This seems to be arbitrary and should be reconsidered.

Proposed Sections 441a.24 (5) and (7)(i) and (ii) need clarification with respect to "no relationships". These provisions could be interpreted in a broad context and thereby preclude otherwise capable individuals from serving. Indeed, the compensation restriction could seemingly bar a company's board member from serving on the audit committee. We believe such a restriction would be a disservice to a company. Finally, who is to determine whether a relationship "might appear" to affect judgment? When is that determination to be made and what is the process? In addition, Sections (5) and (7) seem to be duplicative and Subsections 7(i) and (ii) are duplicative.

Proposed Section 441a.24 (6) requires that a member of the independent audit committee may not have any ownership interest in the slot machine licensee or any entity owned by the slot machine licensee. This requirement is troublesome and limits the ability of a company to attract qualified individuals to serve as audit committee members. A company should have the discretion to compensate audit committee members in various ways. One way, for example, would be to permit a company to offer an equity component in the company for service on the audit committee. Precluding such compensatory mechanisms does not advance the interests of the PGCB. No such restriction applies to public companies.

Proposed Section 441a.24 (7)(v) is unrealistically restrictive. A qualified audit committee member might work for a very large corporation which deals with a licensee but the person has no relationship whatsoever with that business.

Proposed Section 441a.24 (8) leads to a number of difficult issues. Is the PGCB intending to supplant the role of the board of directors of the licensee? If the license determines that a member should be terminated for a good cause and the board disagrees and subsequently the member conducts himself or herself in a manner unsuitable to gaming, who is responsible? It is suggested that the board adopt the provisions long held by the SEC to require notice of such terminations and an acknowledgement from the terminated member that he or she was not terminated because he or she disagreed with the policies of the company or to "cover up" any impropriety.

Proposed Section 441a.24 (11) is unduly restrictive. There are only four public accounting firms with national reputations. This of course flies in the face of the Board's own diversity requirements as well as making it impossible for any Pennsylvania accounting firm to enter into this new business. It is suggested that the audit committee must have the authority to select such accounting firm as it deems appropriate. If the Board deems that accounting firm to be unsuitable, the issue will be raised on the next renewal of the slot machine licensee's application.

Proposed Section 441a.24 (12) sets forth requirements for the audit committee with regard to audited financial statements. External auditors should be principally responsible for the requirements of this section with final approval coming from the audit committee.

Proposed Section 441a.24 (13) establishes reporting lines for the slot licensee's director of surveillance to the audit committee. I believe this requirement is too restrictive and that the regulation should permit more flexibility. For example, the director of surveillance should be permitted to report to a compliance committee or other corporate officer. Jurisdictions such as Indiana and Illinois permit this flexibility.

Proposed Section 441a.24 (14) requires the department heads of the departments of internal audit and surveillance to report to the slot machine licensee's chief executive officer for matters of daily operation. This is satisfactory as far as it goes, but other reporting structures should be permitted as approved by the PGCB. As an example, the department head for internal audit should be able to report to the vice president of internal audit of the slot machine licensee's parent company for daily operations, who in turn reports directly to the Audit Committee. Further, as noted above, the surveillance department head should have a reporting requirement either to a corporate Chief Compliance Officer, or other corporate officer.

Proposed Section 441a.24 (15) requires that the independent audit committee approve the slot machine licensee's internal controls. An audit committee should not be responsible for approving internal controls, as it is management who is responsible for these. It is suggested that this provision be eliminated. Further, internal and external auditors of the company should be monitoring for compliance with the internal controls and reporting such compliance to the audit committee. If retained, the provision must deal with the timing of reporting to the board.

Proposed Section 441a.24 (16) requires that the independent audit committee report to the PGCB any violations of the act or other law. This is unusually broad and somewhat vague. As to violations of the act, it is and should be the responsibility of management to self report material violations. Additionally, it should be the responsibility of management to report to the PGCB material violations of other laws. This proposal would require the audit committee to be a "super auditor," rather than a supervisor of the auditor.

Proposed Sections 441a.24 (18, 19) are burdensome requirements that do not further the objectives of the audit committee and should be eliminated.

Paul Resch
March 28, 2008
Page 5

I hope these comments will be helpful to the PGCB in its consideration of whether to adopt or modify the suggested proposal. I would be willing to further work with the staff of the PGCB in discussing the comments submitted herein and refining the proposal as necessary.

Very truly yours,



Robert P. Krauss

RPK/er
cc: Richard Sandusky (via email)
Kevin Hayes (via email)